Scope interventions for following pathways

How to cite:
Denvir, Audrey; Caro, Paloma; Humphreys, David; Yin, Daphne; Visseren-Hamakers, Ingrid; Cashore, Ben; McDermott, Connie and Auld, Graeme (2016). Scope interventions for following pathways. In: Caro Torres, Paloma; de Jong, Wil; Denvir, Audrey; Humphreys, David; McGinley, Kathleen; Auld, Graeme; Lupberger, Sarah; McDermott, Constance; Sax, Sarah and Yin, Daphne eds. Can Legality Verification enhance local rights to forest resources?: Piloting the policy learning protocol in the Peruvian forest context. International Union of Forest Research Organisations (IUFRO), pp. 63–77.

For guidance on citations see FAQs.

© 2016 International Union of Forest Research Organisations (IUFRO)

Version: Version of Record

Link(s) to article on publisher’s website:

Copyright and Moral Rights for the articles on this site are retained by the individual authors and/or other copyright owners. For more information on Open Research Online’s data policy on reuse of materials please consult the policies page.
Scope Interventions for Following Pathways

Lead Authors: Audrey Denvir, Paloma Caro, David Humphreys, Daphne Yin, Ingrid Visseren-Hamakers
Contributing Authors: Ben Cashore, Connie McDermott, Graeme Auld

Introduction

In Step 7 of the Protocol we identify and analyze some existing and potential future global processes that may be drawn upon to influence “on the ground” impacts on forests and community forest control in Peru. Building off the backwards-looking analysis of Step 6, Step 7 now moves to a forward-looking analysis for potential future forest instruments and how they may achieve “on the ground” influence by traveling the pathways of influence in Peru.

We distinguish between moderate and comprehensive interventions to categorize a broad range of international policy processes, both those that relate directly and indirectly to community rights. We then focus in on three leading global interventions, REDD+, Zero Net Deforestation (ZND), and Legality Verification (LV) for in-depth analysis, reflecting on their current and potential future pathways of influence.

Categorizing the Potential Interventions

Following Step 6, which explained how international policy processes can achieve “on the ground” influence through four pathways of influence, we now identify various international processes that may potentially be of value in enhancing community legal ownership of, and access to, forestland and forest resources, the problem definition of this project, as discussed in Step 2.

As we think about these interventions, we want to consider the theory behind how they work. Table 7.1 takes the instruments discussed in Step 6 that could potentially support community access to forests and categorizes them according to whether they are direct or indirect, and moderate or comprehensive. Whereas a direct intervention is actively dedicated to solving a specific problem, an indirect intervention may involve patching or grafting efforts to existing approaches that may not have adequately addressed a problem in the past. An intervention with a comprehensive starting point establishes a thorough framework for supporting indigenous rights and/or community forest control, whereas an intervention with a moderate starting point may provide only a partial working framework.
Table 7.1. Potential Global Processes and Instruments to Support Community Forest Control in Peru

<table>
<thead>
<tr>
<th>Starting Point</th>
<th>Indirect (grafting)</th>
<th>Direct</th>
</tr>
</thead>
<tbody>
<tr>
<td>Moderate</td>
<td>• Community Forestry Manual for legality verification</td>
<td>• United Nations Declaration on the Rights of Indigenous Peoples (free, prior, and informed consent)</td>
</tr>
<tr>
<td></td>
<td>• International third party auditing for legality verification</td>
<td>• International Labor Organization (ILO) Indigenous &amp; Tribal Peoples Convention No. 169</td>
</tr>
<tr>
<td></td>
<td>• Integrating local resource rights into Zero Net Deforestation (ZND) commitments</td>
<td>• Rights of nature (an emerging global norm)</td>
</tr>
<tr>
<td></td>
<td>• Convention on Biological Diversity (article 8(jj))</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• International Finance Corporation safeguards</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Equator Principles</td>
<td></td>
</tr>
<tr>
<td>Comprehensive</td>
<td>• REDD+ safeguards</td>
<td>• International Land and Forest Tenure Facility</td>
</tr>
<tr>
<td></td>
<td>• ITTO Voluntary Guidelines for the Sustainable Management of Natural Tropical Forests</td>
<td>• World Bank Operational Policies on Indigenous Peoples (OP 4.10)</td>
</tr>
<tr>
<td></td>
<td>• World Bank Operational Policies on Forests (OP 4.36)</td>
<td>• Fair Trade community forestry certification</td>
</tr>
<tr>
<td></td>
<td>• Forest Stewardship Council</td>
<td>• Inter-American Court of Human Rights</td>
</tr>
<tr>
<td></td>
<td>• United Nations Convention Against Corruption</td>
<td>• Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests (VGGT, adopted by UN Committee on World Food Security)</td>
</tr>
</tbody>
</table>

Adapted from Table 2, “Application of Pathways Framework Forwards (to Promote Community Forestry)” in Cashore et al. Protocol for the Diffusion of Community Forest Management through Pathways of Influence.

Given this broad range of policy options, the remainder of this chapter will focus on three leading global interventions for Peru:

- **REDD+**: A dominant window for forest-related international financing and capacity building that has developed major livelihoods and safeguards elements for indigenous
and local communities alongside its primary focus on reducing carbon emissions from forests.

- **Zero Net Deforestation**: ZND enjoys strong top-down support from international NGOs trying to create and promote a new norm of zero deforestation in supply chains. Ideas are still being developed around implementation, but it offers some potential compatibility with strengthened community forest tenure as it begins to be piloted through projects with forest-dependent communities in Latin America.

- **Legality verification**: LV offers potential for changes in land tenure, forwarded through major international (and Peru-focused) policies that ban imports of illegally exported timber products, with many consumer countries having simultaneously committed to the UN Declaration on the Rights of Indigenous Peoples.

These three instruments have been selected for in depth treatment for three reasons. First, all have achieved, or have the potential to achieve, widespread normative acceptance on a global scale. Second, and as will be seen below, all work through various pathways of influence. They thus offer the possibility of achieving a greater degree of influence relative to those instruments that operate through just one pathway. Third, all three are not solely global processes, but focus, to differing degrees, on governance reforms within countries, including working at the local level.

---

**REDD+**

**Background in Peru**

In anticipation of an agreement on “Reducing Emissions from Deforestation and Forest Degradation” (REDD+), reached through the United Nations Framework Convention on Climate Change (UNFCCC), Peru has been experimenting with REDD+ on a project level for many years. In 2008, Peru created a working party for REDD+ readiness. In 2011, the Climate Investment Funds’ Forest Investment Program (FIP) approved US$50 million in funding to support Peru’s implementation of REDD+. Using FIP funding, Peru began its national REDD+ preparation phase in 2012. In 2014, Germany, Norway, and Peru signed a partnership to support Peru in reducing its forest-related emissions with the aim of making the forestry and agricultural sectors carbon neutral by 2021. As part of the partnership, Peru agreed to provide titling for an additional 5 million hectares of indigenous people’s land claims, and provide funds for 2 million hectares of conservation activities of indigenous communities. Norway, in turn, agreed to provide US$300 million to pay for verified results (Office of the Prime Minister and Norway 2014; MINAM 2014).

However, Peru, like other countries navigating REDD+ readiness, is running into some obstacles in its implementation of small-scale REDD+ projects. First, the country tends to have limited capacity for enforcement and implementation of land-use regulations, especially at the local level. Recent decentralization, intended to empower local governments and make local enforcement more efficient, has seemingly further stressed these limitations (Scriven 2012). Local
governments in many areas of the Peruvian Amazon are short on staff and resources to effectively enforce existing policy, leading to bribery and corruption (Scriven 2012).

Fostering appropriate and sufficient indigenous involvement in a national REDD+ program is also an issue. As forest-dwelling communities, indigenous Amazon tribes play a key role in REDD+. Yet after a long history of marginalization, these groups have only recently begun to demand rights to their land and fair treatment in the global market. Isolation, lack of resources, and limited previous integration into global markets make these communities especially vulnerable to exploitation. In some places, recent calls by indigenous peoples for land rights have turned into violent conflict (White 2014).

**Link to Communal Access and Legal Ownership of Land and Forests**

In many contexts, the risk of indigenous exploitation must be minimized for REDD+ to achieve durability. In Peru, AIDESEP (Interethnic Association of Peruvian Amazon Development), one of the national indigenous representative groups, views the titling of indigenous land as a necessary first step to implementing REDD+. In fact, AIDESEP attended COP21 of the UNFCCC in Paris to request eight actions to address the challenge of climate change, including the demand that the Peruvian government grant titles to all 1,200 outstanding indigenous community title requests as a key “enabling requirement” for REDD+. The group also requested more financial support to implement REDD+ projects for indigenous communities in the Amazon (AIDESEP 2015).

**Pathways Analysis**

**Rules:** REDD+ includes several rules relevant to local communities, especially the safeguards, which require countries to ensure that REDD+ respects the knowledge and rights of indigenous peoples and local communities, and the full and effective participation of stakeholders (Visseren-Hamakers et al. 2012). Countries, however, can decide on how to interpret and implement the safeguards at the national level, although a Safeguards Information System should be in place before REDD+ payments are made.

**Norms:** Attention to the norms pathways offers potential insights for understanding the trajectory of REDD+ in the Peruvian context. First, the international norm prioritizing market mechanisms appears to give REDD+ certain traction in focusing current and future international efforts to address forest governance challenges. Likewise, the problem definition it explicitly seeks to address—deforestation and forest degradation—can also be traced in part to international norms establishing these as globally important (Arts et al. 2010). Moreover, new norms are being championed by REDD+ efforts, including FPIC.

Linking the norm of indigenous rights to REDD+ gives the Peruvian government an opportunity to prevent unwanted indigenous conflict, like the Bagua incident in 2009 that garnered international attention. At Bagua, demonstrators and police were killed in the northern Amazonian town when police clashed with indigenous people who were protesting against laws allowing for the exploitation of natural resources on ancestral land that had been passed without the free, prior, and informed consent of indigenous people on the land under dispute (Amnesty
International 2014). The government’s desire to avoid conflict is not necessarily an internalization of the norm of indigenous rights per se; instead it likely comes from a desire to maintain good international trade relations. Yet, their incentive to avoid conflict might help explain their support for the norm of indigenous rights, since it is consistent with their own domestic agenda. As such, linking the norms and markets pathways could actually strengthen the overall influence on indigenous land rights of the REDD+ policy option.

**Markets:** Although REDD+ is intended to leverage market incentives, many argue that the international resources targeted to this instrument in Peru do not provide a strong enough incentive to countervail the financial gains derived from production of coca, cocoa, palm oil, and mining, all of which are major causes of deforestation in the Peruvian Amazon. Communities are prone to undergo land-use change when there is economic incentive to do so (that is, when the profits from agriculture are greater than those that can be realized through REDD+ from the carbon market). This pathway can continue to be nurtured to provide stronger financial benefits to communities for protecting their forests.

**Direct access:** Further linkage between REDD+ and community rights can be achieved through the direct access pathway. Capacity-building activities, which would likely be of use no matter what the indigenous communities decided to do to their land, could reinforce this linkage by teaching the communities about REDD+ and entrenching the technical systems involved with REDD+ in these communities. Hence, we argue that norm linkage can continue to be fostered here; if REDD+ is the mechanism through which indigenous communities can gain land titles, then the linkage of the two events could support the communities to implement REDD+ themselves.

### Zero Net Deforestation

The second policy option considered in depth is Zero Net Deforestation (ZND). During the 2008 Bonn Conference of the Parties to the CBD, the World Wildlife Fund (WWF) launched a campaign promoting the ZND principles and 68 states signed statements of support. ZND is a concept that attempts to secure production of certain commodities in ways that promote reforestation practices while not deforesting primary forests. National governments around the world including Canada, USA, Peru and Colombia (UN Climate Summit 2014), as well The Consumer Goods Forum companies (TCGF 2010), have created individual commitments to produce forest products under ZND principles.

### Background in Peru

In Peru, there have been some attempts to work with ZND. However, given that ZND is more of a concept with many competing ideas about implementation, rather than a single mechanism, it is difficult to identify programs backed by real efforts to implement ZND on the ground. Here, we present the principal efforts of ZND in Peru at this time.
During the Copenhagen COP of the UNFCCC in 2009, Peru pledged to achieve a deforestation rate of 0% by 2021. Before the UNFCCC COP20 in Lima, the Minister of the Environment at the time reaffirmed the government’s commitment to achieve the zero-deforestation goal. Some indigenous communities, like the Tres Islas and Infierno communities of Madre de Dios, are being supported by Rainforest Alliance to become ZND zones, but all of these areas are also preparing for REDD+ or FSC certification.

The National Plan to Promote Palm Oil is a 10-year effort to incorporate palm oil in “recovered areas” that have been previously deforested by illegal crops and migratory agriculture. In May 2014, during a conference organized by Sociedad Peruana de Ecodesarrollo (SPDE), a MINAGRI officer presented a new plan for palm oil competitiveness between 2015-2021. One of the four main principles set forth in the plan is to continue promoting palm plantations without deforesting new areas (Aponte Martínez 2014).

**Link to Communal Access and Legal Ownership of Land and Forests**

In March 2015, USAID financed a study through the Forest Carbon, Markets and Communities (FCMC) project that analyzed opportunities and challenges to expand sustainable palm oil production in Peru (Hajek 2015). The study suggests creating a Zero-Deforestation Palm Oil Fund to incentivize small- and medium-sized producers to expand their production onto previously deforested lands. However, the analysis points to land-use regulation and governance challenges, including land conflicts arising from palm oil expansion, as obstacles to implementation, suggesting a moratorium on all agro-industrial projects until these issues are resolved. Even further, seeing unclear indigenous land tenure in the Amazon as an obstacle, the report recommends that ZND Palm Oil efforts also support indigenous land titling initiatives in the Amazon (Hajek 2015).

**Pathways Analysis**

As mentioned above, Zero Net Deforestation is an instrument based on general principles to improve commodity production, without providing specific directions about what to do on the ground. When the ZND concept was first introduced in 2008, its main supporters and promoters presented ZND as a potential new norm. We argue that ZND is a top-down approach from international NGOs trying to create and promote a new norm of zero deforestation in supply chains. ZND can work through all four potential influence logics.

**Rules:** Domestic policy responses to this normative principle could vary depending on the instrument options that can be drawn from the ZND framework. Taking Paraguay as an example, in response to ZND commitments, the Paraguayan government approved a law in 2004 that prohibited deforestation in one of their regions (Región Oriental) for five years. The law has been extended several times. The most recent extension in 2015 prohibits deforestation until 2018. However, deforestation in the region is still a problem because enforcement capacity for non-compliance is low. Similar to Paraguay, rule of law in Peru is weak, meaning that the creation of new domestic rules could have little effect on practice on the ground.
Norms: The second possible causal logic is one of fostering norms as a way to pressure governments to create or reform policy to adhere to the ZND principles. Companies and countries that signed on in support of WWF’s ZND pledge were not committing to any particular goal, making the commitment easy with little or no cost at all to the signatory. The ease of signing led to many signatories, and the endorsement of the signatory organizations was published and available online, fostering seemingly wide support of the principle. Such a display of support creates “social pressure” on governments to create policies in response to demands related with ZND principles of environmental protection and forests conservation.

Markets: Alternative potential influence logic for Zero Net Deforestation is that of a market mechanism similar to an eco-labeling certification system for agricultural commodities. A voluntary certification labeling instrument would require a third-party auditor and would give producers access to premium prices for special markets, creating economic incentives for compliance. The voluntary nature of such an instrument would avoid “impinged sovereignty” concerns; and could lead to an increase of national environmental performance. Under its FCMC program, USAID aims to promote a markets approach that increases the palm oil production in deforested and degraded areas. However, tough environmental regulations would cause increased costs of production, and thus lead to low support among producers. Furthermore, certification is often disproportionately difficult for smallholders to achieve. This is true for a variety of reasons, including insecure land tenure, lack of economies of scale and lack of capacity. To the extent that markets require certification, this can thus have negative impacts on rural livelihoods (McDermott 2013). On the other hand, weaker regulations that could garner wide support among producers would have low impact on both social and environmental goals.

USAID’s promotion of zero-deforestation palm oil through its FCMC Program is an example of efforts to foster ZND by traveling the markets pathway. However, some stakeholders are skeptical of using a crop usually associated with mass deforestation for ZND purposes. In other tropical countries such as Indonesia, the profitability of palm oil has led to indiscriminate expansion of the crop into forestland since production of palm oil is more profitable than most other land uses. In Peru, the promotion of sustainable palm oil may actually increase deforestation and encroachment on traditional indigenous land due to compliance problems and high economic incentives. Furthermore, if linking ZND to palm oil leads to the exploitation of un titled indigenous lands for oil palm plantations, the linkage could, in fact, incentivize palm oil producers to not support indigenous land titling, in the interest of claiming the land for themselves.

Direct access: WWF and the Rainforest Foundation are working with communities to support ZND, and WWF and others are working on guidance on how to operationalize ZND, showing that actors promoting ZND are also utilizing the direct access pathway.

Legality Verification

While illegal logging has long been a domestic issue in many forested countries, it was not until the gradual rise in international cooperation on forests following the 1992 United Nations Conference on the Environment and Development (UNCED) that political space opened for
‘illegal logging’ to be identified and framed as an international issue (Gulbrandsen and Humphreys 2006). It first appears in an inter-governmentally negotiated document from the second session of the Intergovernmental Panel on Forests in 1996 (Humphreys 2006). Illegal logging has since been addressed in other international processes, such as the 1998 G8 Action Programme on Forests and, more than a decade later, in the UNFF negotiated Non-Legally Binding Instrument on Forests (renamed the United Nations Forest Instrument in 2015). The most relevant international policy processes on illegal logging for Peru are discussed below.

**EU FLEGT and EUTR**

One of the major initiatives for addressing illegal logging is the EU Forest Law Enforcement, Governance and Trade (FLEGT) program. Established in 2003, FLEGT is designed to stimulate timber legality and good forest governance through domestic and multilateral, cooperative efforts and supply- and demand-side measures (European Commission 2003). The FLEGT Action Plan encompasses a broad range of voluntary and collaborative approaches for addressing illegal logging and related trade, including development cooperation, public procurement policies, private sector initiatives, financing, and investment safeguards (idem). Under FLEGT, illegal logging is defined as “the harvesting, processing, transporting, buying, or selling of timber in contravention of national and international laws” (EU FLEGT Facility 2016). The action plan defined illegal logging as that which takes place when timber is harvested in violation of national laws.

The primary instrument for implementing FLEGT is the Voluntary Partnership Agreement (VPA), which is a bilateral trade agreement negotiated between the EU and a timber exporting partner country that becomes a legally binding agreement once ratified by both parties. The VPA is designed to jointly address illegal logging and prevent/eliminate the bilateral trade of illegal timber and related products through enhanced forest governance, improved market access, technical cooperation, technology transfer, and a range of other measures (Brown et al. 2008).

Through the VPA negotiation process, the standard for legal timber and related products is established, along with the chain of custody (CoC) verification system, license issuing authority, and independent monitoring (European Commission 2003). Once these mechanisms are in place, a FLEGT license is required for all timber products from the partner country if they are to enter and be traded within the EU. As of January 2016, six VPAs had been signed between the EU and Cameroon, Central African Republic, Ghana, Indonesia, Liberia, and Republic of the Congo. An additional nine VPAs were being negotiated with Côte d’Ivoire, Democratic Republic of the Congo, Gabon, Guyana, Honduras, Laos, Malaysia, Thailand, and Vietnam. As of the start of 2016, all of the VPA partner countries were continuing to develop the systems needed to control, verify, and license legal timber, but no “FLEGT timber” had yet entered the EU market.

Another significant outcome of the FLEGT initiative is the European Union Timber Regulation (EUTR), which was adopted in 2010 and came into force in 2013. The Regulation prohibits illegally harvested timber and products derived from such timber from being placed or traded in the EU. It leaves the definition of illegal logging to the timber-producing country, but goes beyond the FLEGT definition to include international conventions:
In the absence of an internationally agreed definition, the legislation of the country where
the timber was harvested, including regulations as well as the implementation in that
country of relevant international conventions to which that country is party, should be the
basis for defining what constitutes illegal logging (Article 14 of the EUTR Preamble).

The EUTR includes the following key provisions:

• Prohibits illegally harvested timber and a select list of products derived from such timber
  in the EU market;
• Prohibits the placing on the EU market of illegally harvested timber and select products
derived from such timber;
• Requires EU timber and timber products traders who place select timber products on the
  EU market for the first time to exercise “due diligence”;
• Requires timber and timber products traders to keep records of their suppliers and
  customers.

The EUTR applies to foreign and domestic timber and assigns differentiated requirements and
responsibilities to operators (i.e., those who place timber or timber products on the EU market
for the first time) and traders (i.e., those who sell or buy timber or timber products already placed
on the EU market). Operators are required to put in place a risk management or ‘due diligence’
system that incorporates information on timber and timber products, country of origin, species,
quantity, supplier, and compliance with national legislation, as well as risk assessment and
mitigation. Traders are required to keep information about their suppliers and customers so that
the timber products can be traced if necessary (European Commission 2010). The Regulation
does not require a specific import declaration per se, but timber and timber products with a valid
FLEGT or CITES license are considered to be in compliance with the requirements of the EUTR
(European Commission 2010). The EUTR is legally binding for all EU Member States, who are
responsible for its enforcement, including the development and implementation of “effective,
proportionate, and dissuasive penalties” for noncompliance (European Commission 2010).

To date, FLEGT and the EUTR have had limited direct influence on Peru’s forest sector. Peru
has demonstrated marginal interest in developing a VPA, in part because a small portion of its
exported timber is destined for the EU. Hence the EUTR has had limited if any impact on timber
production in Peru. According to Orozco et al. (2014), timber exports (US$167.7 million)
represented less than one percent of Peru’s total exports (US$ 35 billion) in 2010. That year, the
primary destinations of Peruvian timber and timber products were Mexico (39%), the U.S. (25%),
and China (23%), while just six percent were exported to the European Union.

The U.S. Lacey Act and U.S. – Peru Trade Promotion Agreement

In the U.S., illegal logging and related trade have been addressed most recently through a 2008
amendment to the Lacey Act, which makes it unlawful to import, export, sell, acquire, or
purchase fish, wildlife, or select plants (including timber products) in the U.S. that have been
illegally taken, possessed, transported, or sold from their point of origin (USDA, 2016). Enacted
in 1900, the original focus of the Act was on the control of illegal hunting, trapping, and trade of
wildlife. Later, amendments extended its mandate to include concern for plants. However, it
was not until a 2008 amendment through the Farm Bill that its scope expanded significantly to
include illegally obtained plants and products made thereof. Supported by a diverse coalition of environmentalists, the 2008 amendment produced the world’s first ban on trade in illegally sourced timber and related products.

The 2008 Lacey Act Amendment (LAA) requires importers and traders to exercise “due care” in their handling of plants and plant products, including an import declaration that includes the scientific name, volume, value, and country of origin of all plants and plant products, excepting certain scientific specimens and food crops. Because the amendment establishes a fact-based (as opposed to document-based) mandate, a CITES permit does not constitute proof of legality (as with the EUTR), nor do third-party certifications or other legality verification documents. Nevertheless, these types of documents do contribute to the demonstration of “due care”.

The LAA also establishes penalties for noncompliance, including forfeiture of goods and vessels, fines, and imprisonment. Violators may be prosecuted for knowingly importing illegal timber and timber products, or even when they did so unknowingly but should have known what they were so doing. A few highly publicized cases involving violations of the LAA have included the Gibson Guitar Company, which ended in July 2012 with a criminal enforcement agreement in which the firm accepted responsibility for knowingly importing banned timber species from Madagascar and India and agreed to pay US$ 600,000 in penalties and fines but avoided a criminal prosecution (USDA 2016). Another recent, high profile case involved Lumber Liquidators Inc., a major hardwood flooring retailer in the U.S. that pleaded guilty to knowingly importing illegally sourced hardwood from Russia. On 17 October 2015, Lumber Liquidators agreed to pay more than US$ 13 million in fines and penalties and accepted a five-year probationary period during which it must put into place a Lacey Act Compliance Plan. This case represents the first felony conviction and largest fine to date under the Lacey Act (USDOJ 2015).

Less high profile cases alleging Lacey Act violations involving wood from Peru have also occurred. In 2010, three pallets of wood from Iquitos, Peru were confiscated on grounds that the shipment violated the Lacey Act import declaration requirements. Evidence indicated that the exporter used stolen and forged documents to transport and export the wood and that the importer did not demonstrate “due care” in his dealings with the exporter. No penalties other than forfeiture of the wood were enacted in this case (Hanson 2010).

Lawson and McFaul (2010) examined the effects of the LAA, FLEGT, and other illegal logging trade measures on timber and timber product exports from countries with or suspected of having high levels of illegal wood production and found that since coming into force exports of illegally sourced wood and related products had declined. They also found that related timber product prices had risen, reported rates of illegal logging had decreased, and certification in these timber exporting countries had increased, attributing these changes, in part at least, to the enforcement of new trade measures. In another study on the impacts of illegal logging trade measures, Prestemon (2015) analyzed the effects of the 2008 Lacey Act Amendment on import prices and quantities of timber products (i.e. tropical hardwood lumber and plywood) entering the U.S. from nine ‘suspected illegal fiber source countries’, including Peru. Utilizing trade data from 1989 to 2013, and accounting for explanatory and control variables, his models demonstrate a 40% increase in import prices and a nearly 80% decrease in quantities imported to the U.S. from the countries studied since the advent of the Lacey Act Amendment. These results indicate that the LAA may have affected producers’ incentives given the “backward shift in export supply of
these products from these countries” (Prestemon 2015, p. 43). Prestemon suggests further study should be conducted to account for the extent to which, if any, illegal timber and related products have been diverted away from the U.S. and toward internal, domestic markets or to other countries without such trade measures.

The 2009 US-Peru Trade Promotion Agreement (PTPA) also addresses illegal logging, but through a very different approach than the LAA. The Agreement was developed primarily to eliminate tariffs and remove barriers to trade and services between the U.S. and Peru. Between 2009 and 2013, total trade between the U.S and Peru increased from nearly US$ 9 billion to more than US$ 16 billion (Office of the United States Trade Representative 2016).

The PTPA includes an Annex on Forest Sector Governance on legality verification. The Annex was added in response to concerns in the US that trade liberalization between the two countries would result in illegal exploitation of both people and natural resources in the Peruvian Amazon. It requires Peru to verify that all wood being exported to the US comes from legal origins (del Gatto 2009). Importantly, it contains actual on-the-ground commitments towards improving environmental and social resources stewardship. Proponents heralded the agreement as a new way to foster a ‘ratcheting up’ of domestic practices in the global era (Jinnah 2011), while maintaining a pro-growth development agenda. While the mechanisms set up for this verification give the US the option to participate in audits, the burden of auditing is largely placed on Peru (del Gatto 2009). Many of these provisions have appeared to backfire, as the agreement helped the Peruvian government accelerate its development agenda, which emphasized granting of concessions to industrial users, especially in the mining sector.

Australian Illegal Prohibition Act

In 2012, the Australian Senate passed the Illegal Logging Prohibition Act. The legislation aligns with EU and US legislation in prohibiting the placing of illegally logged timber, or products made from such timber, onto the market. This covers both imports and Australian timber. Like the EU Timber Regulation, the Act imposes due diligence obligations on importers and traders, which were defined in the 2014 Illegal Logging Prohibition Regulation. The Act is similar to the Lacey Act, and different from the EU Timber Regulation, in not accepting a CITES permit as proof of legality, although such permits may be used to support a due diligence case (Australian Government 2014).

Public Procurement Policies

One demand-side measure that governments may take is adopting a public procurement policy of purchasing only timber that has been legally sourced. By September 2014, at least 26 countries had adopted a national timber procurement policy that requires the purchase of timber from legal and sustainable sources. These countries were primarily in the EU, with other countries including China, Japan, Mexico, and New Zealand. Government purchases of timber represent only a small share of the global market. Nevertheless, government support for legal timber can provide market signals and encourage suppliers to increase their efforts in exercising due diligence (Brack 2014).
The acts and regulations considered in this section prohibit the import of wood products produced in violation of the laws of their country of origin. They furthermore require that imported wood products be accompanied by declarations of their origins and their legality and/or proof of “due diligence” to ensure their legal origin. Like timber certification schemes, these initiatives aim to make timber supply chains transparent to external actors and hence subject to external surveillance and control.

Pathways Analysis

Rules: While international LV instruments generally place the authority for defining what is legal and illegal logging is with producer countries, these rules on legality represent an important aspect of LV. An inherent danger of these definitions is to criminalize local informal timber production, given current lacking tenure and access rights. Organizing the processes to define legality through multi-stakeholder participatory processes could help mitigate these dangers.

Norms: LV is reinforced by and reinforces the norm of focusing on illegal logging as a problem definition of importance — a growing norm in international forest governance. If it incorporates indigenous land titling, LV can link to the growing international and domestic norm of respecting indigenous land rights, which could give the instrument significant normative strength.

Markets: Legality Verification is in essence a market-based mechanism that travels the markets pathway by seeking to strengthen demand for legally harvested timber and subsequently increasing economic incentives for producers to verify legal compliance.

Direct access: While the markets pathway is leveraged to get initial buy-in from timber companies, LV can also utilize the direct access pathway through capacity building efforts to entrench LV processes and technologies in the timber supply chain. The FLEGT VPAs, for example, explicitly includes direct access elements to incorporate participatory multi-stakeholder processes and capacity building.

Conclusions

In this step we identified several possible interventions that seem promising given our problem definition. The bulk of our analysis has focused on three possible interventions: REDD+, Zero Net Deforestation, and Legality Verification. All three offer potential for influencing community land titling and forest access in Peru, as all three operate, in different ways and to differing degrees, through the four pathways of influence. However, before a decision can be made on which instrument to select we need to carry out a comparative analysis of the pros and cons of each. That is the focus of Step 8.
References


Amnesty International. 2014. "Peru: Five years on from Bagua violence and still no justice for victims."

Aponte Martínez, Ing. Augusto. 2014. "Plan nacional de promoción de Palma Aceitera - Proceso de actualización " Viabilidad de los Cultivos de Palma Aceitera en la Amazonía Peruana Conversatorio.


76


