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Assessing Comparative Advantage

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Introduction

Step 6 comprised a detailed introduction to the pathways of influence approach, providing an analysis of the causal logics of four pathways and considering how working with them offers a new approach to identifying strategies for change. It was argued that the four pathways – rules, markets, norms and direct access – interact with the forces of economic globalization and sovereignty in different ways. The focus in this step was on “looking backwards”, using the pathways approach to explain outcomes in the past. Step 7 then also integrated a “looking forwards” approach, using the pathways approach to scope future interventions that may nurture durable “on the ground” outcomes. A broad range of potential policies was introduced. These options were then narrowed down to three that were analyzed in more depth: REDD+, zero net deforestation (ZND), and legality verification. In Step 8 we now assess the competing merits of these three policy options, evaluating the comparative advantages and disadvantages of each in terms of the potential for Peruvian forest actors to strategically nurture the international policy instrument and its influence through the four causal pathways on community legal ownership of, and access to forestland and forest resources.

The Pros and Cons of REDD+

One advantage in pursuing REDD+ at the present time is that the government of Peru is committed to embracing this global policy intervention. In 2011 the government of Peru pledged to the World Bank’s Forest Carbon Partnership Facility (FCPF) to embark on a process of territorial recognition of indigenous land claims as part of its REDD+ strategy. Peru has also been selected as a pilot for a World Bank Forest Investment Program (FIP) project that has pledged US\$14.5 million for indigenous land titling (Menton et al. 2015), and which would be subject to World Bank rules and safeguards on indigenous tenure rights (FIP design document, cited by AIDSESEP and FPP 2011). REDD+ holds out the promise of significant international investment in Peruvian forests. With investment would come international scrutiny from donor governments, NGOs and indigenous rights’ groups seeking to ensure that any money spent promoted (or at least did not undermine) indigenous tenure claims. While in the first instance any gains for indigenous peoples would apply only to forests in REDD+ projects it seems plausible

that any tenure gains for indigenous peoples within these areas might catalyze a broader process of land reform throughout the country.

Another advantage of REDD+ is that it relies (amongst others) on the markets pathway, and as such is consistent with neoliberal norms, which tend to favor voluntary, market-based solutions to environmental problems rather than regulatory, target-based responses (Humphreys 2006). REDD+ thus resonates ideologically with the policies of most of the donor governments that can provide the financial and technological resources necessary for the successful implementation of REDD+.

REDD+ also has a measure of political support from Peru's indigenous peoples' groups. In 2011 AIDSESEP, along with other representative communities and regional indigenous organizations of Amazonia, issued the Declaration of Iquitos, which stated that REDD+ must go beyond carbon and the market to be accompanied by recognition of the territories, rights and autonomy of indigenous peoples, what has been termed Indigenous REDD+ (Friends of the Amazon 2011; see also Step 3). AIDSESEP welcomed in 2014 an agreement in which the government of Norway pledged to give US\$300 million to support Peru's efforts to reduce emissions from deforestation and forest degradation (REDD Monitor 2014). The Peru-Norway deal contains commitments to give all relevant stakeholders, including local communities and indigenous peoples, the opportunity of full and effective participation in REDD+ planning and implementation, and to respect the tenure rights of indigenous, forest dependent and local communities. Some of the financial resources available under this deal can be directed towards forest community groups and land titling, and the support of AIDSESEP and its links to international NGOs offers the possibility for change through international networking and capacity building through the direct access pathway.

However, AIDSESEP and Rainforest Foundation Norway have warned that major improvements are needed if the Peru-Norway deal is to tackle deforestation and respect forest communities' tenure rights. In a joint statement the two groups noted that Peru has weakened its environmental policies relating to forests. On 9 July 2014, the Standing Committee of Congress approved Proyecto de Ley No. 3627/2013-PE designed to ease environmental restrictions in order to encourage private investment. AIDSESEP and Rainforest Foundation Norway have warned that there is a "risk that the agreement may become only a statement of intentions" due to strong conflicts of interest within the Peruvian government and "weak formulations regarding indigenous peoples' control over their ancestral territories" (REDD Monitor 2014).

NGO support for REDD+ is thus qualified rather than unconditional. AIDSESEP has previously voiced some serious concerns on Peru's REDD+ Readiness Preparation Proposal (R-PP) for the FCPF. According to AIDSESEP and the Forest Peoples Programme, the R-PP addressed only national legislation, ignored tenure issues and customary rights, and made "unsubstantiated promises of millions of dollars" to indigenous communities (AIDSESEP and FPP 2011). Analysis by AIDSESEP found that proposed REDD+ projects, for example in the Tambopata National Reserve and Bahuaja Sonene National Park, have only acknowledged indigenous land claims but not recognized them, with the sole land rights holder being the state (AIDSESEP and FPP 2011: 31).

Of particular concern to AIDESEP is that the REDD+ projects proposed to date in Peru have failed to respect the principle of free, prior and informed consent (FPIC). Some project operators have attempted to persuade indigenous communities to sign contracts for the sale of carbon credits, with one example involving the business Carbon Capital and the people of the Asháninka Communal Reserve (AIDESEP and FPP 2011: 52). AIDESEP have argued that there is a gap between the theory and practice of REDD+ in Peru, with key problems relating to lack of transparency and consultation and the absence of a rights-based focus. Another significant concern relates to different methodologies for the measuring of carbon stocks (AIDESEP and FPP 2011:62).

These concerns from the civil society community receive some support in recent forest policy scholarship. A CIFOR-led study on the land-tenure ramifications of REDD+ based on six countries including Peru concluded that REDD+ may create opportunities for improved tenure security, but only under particular circumstances. The study found that “piecemeal interventions” by REDD+ projects at the local level “are insufficient in the absence of broader national programs for land tenure reform” (Larson et al. 2013: 678). REDD+ can help to secure the borders of indigenous forests in those cases where the primary cause of deforestation is illegal land incursions. And there is evidence (from Brazil) that REDD+ has added political momentum to pre-existing land regularization efforts (Larson et al. 2013: 687).

However, the impact of REDD+ is much less clear in those circumstances where there are substantial momentum trends towards deforestation, in particular where the state itself is an agent for forest incursions. This is an example of what in Step 4 is considered a Type 3 problem (win/lose, hierarchy) where entrenched problems must first be addressed before the specific problem at hand can be solved. While it is possible that REDD+ projects could generate a Type 1 outcome (win/win) where securing the tenure rights of indigenous peoples can also reduce forest-related emissions, the CIFOR study found that in the case of Peru REDD+ is more likely to lead only to isolated and incremental change. There is also evidence that when REDD+ projects do not lead to changes to customary rights, powerful external actors and elites capture many of the of benefits, leading to increased marginalization and poverty for forest-dependent peoples (Larson et al. 2013: 688).

Certainly REDD+, with its reliance on a rules-regulated market pathway, can respond to these concerns. After criticisms that the original conceptualization of REDD was too narrow, the idea was broadened to include sustainable management of forests and the livelihood concerns of indigenous peoples through the adoption of safeguard rules. This combination of market and international rules pathways was intended to attract investment so that forest carbon could be traded on international markets while ensuring that broader environmental and social concerns were integrated. However, critics argue that two shortcomings have materialized with this vision, one relating to the rules pathway, and the other to the markets pathway.

With respect to the rules pathway: the REDD+ safeguard rules and World Bank FIP guidelines have not yet translated into on the ground gains in terms of land tenure titles and economic benefits that proponents of REDD+ have claimed will materialize. REDD+ rules are not strong enough to challenge the entrenched system of land ownership in Peru, which historically has privileged the state over local communities. Where communities are located in protected areas, communal territories can be titled, but the size of communal territory is limited to land used for

agriculture. The rights of communities to extract resources from protected areas are constrained. The state commonly authorizes overlapping and competing rights between different sectors, for instance when it concerns subsoil minerals. There are rules for the resolution of overlaps between indigenous land claims and other claims, although implementation of any resolution is questionable.

With respect to the markets pathway: the long-term viability of REDD+ as a market-driven tool is unclear, especially where there are strong conversion pressures. Where there are pressures to convert forests to alternative land uses, REDD+ would succeed only when the revenue that a forest owner, such as the state or a private forest owner, would receive from selling carbon credits were to exceed that which they would earn from deforestation and using the land for, say, cattle or soya farming. When this is so, the rational forest owner would in theory opt to conserve their forests, which could provide opportunities for increased land tenure for communities. However, should the price of REDD+ credits fall, and the price of other commodities rise, so that the revenues from farming exceeded that which can be earned from REDD+, then once transaction costs have been taken into account, the rational response would be to move from conservation to conversion, which would undermine the possibility of indigenous peoples of achieving security of land tenure. In short, the causal logic of the markets pathway for REDD+ - both as a long term conservation tool, as well as one that indigenous peoples can harness for realizing tenure and livelihood concerns – is far from proven.

The Pros and Cons of Zero Net Deforestation

In 2008 Peru committed itself to ZND at the climate change negotiations in Poznan, Poland. In 2011 the government of Peru announced that its target for achieving ZND is 2021. A number of other actors have since subscribed to the goal of zero net deforestation, including the governments of Mexico and Colombia.

The World Wide Fund for Nature (WWF) is actively promoting ZND, and it considers two recent international declarations to be supportive of the idea (WWF 2015). The first is the Aichi Biodiversity Targets agreed in 2010 by state parties to the CBD. One of the targets is that “By 2020, the rate of loss of all natural habitats, including forests, is at least halved and where feasible brought close to zero, and degradation and fragmentation is significantly reduced” (Convention on Biological Diversity 2010). The second is the New York Declaration on Forests, a non-legally binding statement agreed in 2014 and endorsed by 36 national governments (including Peru), 20 regional governments from around the world (including the Peruvian subnational governments from Huanuco, Loreto and Madre de Dios), 53 companies, 26 indigenous peoples’ groups, and 54 NGOs and community support organizations. The declaration contains the commitment to “At least halve the rate of loss of natural forests globally by 2020 and strive to end natural forest loss by 2030” (Climate Summit 2014). Although neither declaration mentions “zero net deforestation” both can be interpreted as consistent with it.

WWF’s commitment to ZND is significant, as the organization has a history of promoting ambitious targets and international rules, which other actors later adopt. The most significant such example is the FSC. The WWF was one of the policy leaders behind the creation of the

FSC and its ten principles of forest stewardship. The World Bank later adopted operational policies that drew directly from the FSC principles (Humphreys 2006: 178-181). WWF thus has a respected role as an international “rules entrepreneur” that could prove significant in attracting further support behind ZND. Amongst the other NGOs to have pledged commitment to the idea is the Rainforest Alliance, which has established a Net Zero Deforestation Zones (NZDZ) project, working with farming and forest-dependent communities to promote sustainable forest management in Colombia, Ecuador and Peru, including the Infierno and Tres Islas indigenous forest communities in Madre de Dios (Rainforest Alliance 2016). This indicates that ZND is already attracting support in Peru via the direct access pathway.

The diversity of actors subscribing to ZND globally is fostering a growing normative strength of the idea that is helping to nurture an embryonic, broad-based multi-level governance system of committed public and private actors. While only a relatively recent idea, it can be argued that ZND has untapped potential that makes it an attractive option for Peruvian forest-based communities seeking to realize land tenure gains, especially as the idea has achieved a toehold in the Madre de Dios region.

However, some important disadvantages of ZND should also be noted. ZND should be seen first and foremost as an aspiration. It is not yet a policy tool with a coherent methodology for formulation, implementation, and monitoring. It is best seen as a growing international objective that can be realized by a portfolio of tools and policies. For example, the Rainforest Foundation is considering a broad basket of policies and mechanisms within its ZNDZ project, including REDD+, the FSC, private-sector financing and carbon mitigation strategies. At this point in time, ZND should be viewed as a toolkit rather than an operational strategy. Unlike REDD+, for example, there is no set of rules or safeguards for ZND projects or initiatives.

This raises questions on the pathways of influence that should be nurtured if indigenous communities in Peru are to use ZND to achieve influence. With so many uncertainties on the direction of travel of ZND it is not clear where the activities of forest dependent communities and their supporters should be directed in order to achieve optimum results. For example, ZND could potentially evolve as an eco-labeling mechanism that certifies that forest products have been produced according to principles (yet to be agreed) of ZND harvesting. There is some demand-side support for such a scheme, with the Consumer Goods Forum, a global forum of shoppers and consumers, having adopted a pro-ZDF policy in 2015 in the run up to the Paris climate change summit (Consumer Goods Forum 2015). The evolution of ZND in this direction would provide an opportunity for actors promoting land tenure security to shape *ab initio* the international rules of ZND and to use the markets pathway to bolster demand-side support. But such a system would be costly to producer countries such as Peru, as it would require expensive supply chain tracking and monitoring systems. It is far from certain that ZND will evolve in this direction, and even if it does the added value of such a scheme over the FSC is not clear.

An alternative is that ZND will provide opportunities for support through the direct access pathway, for example through donors providing aid to forest-dependent communities. Again, however, there is no indication that ZND will evolve in this direction. The idea has been slow to garner high-level international support, with no international mechanism for coordinating learning and resources, such as UN-REDD or FCPF. This is symptomatic of a broader lack of political commitment, with economically powerful actors such as the regional development

banks and government aid donors yet to commit to the idea. While WWF has good working relations with the World Bank, the latter has not yet pledged its support to ZND as a principle or target.

Overall, ZND is an idea that is in its very early stages, and has yet to solidify into a clear set of rules, approaches and institutional apparatus, as compared to REDD+ and legality verification. The benefits that can be realized through pursuing ZND are unclear at present, and there are significant uncertainties on its future.

The Pros and Cons of Legality Verification

As Step 7 outlined, legality verification processes include regional processes (principally EU FLEGT and EUTR), bilateral processes (such as the US-Peru Trade Promotion Agreement) and unilateral processes (such as the US amended Lacey Act and Australian Illegal Logging Prohibition Act). Several governments have adopted public procurement guidelines stipulating that only timber that was legally harvested in the country of origin should be purchased.

The markets pathway is a clear route for influence in the case of legality verification schemes, which generate considerable demand-side market power for the legal trade. The logic is that the legal trade will gravitate towards the world's strongest economies, putting pressure on illegal operators who will increasingly be denied access to international markets. Some timber consuming governments are now using fines to discipline traders that do not exercise due diligence when purchasing timber. In 2012 the United States acted for the first time under the amended Lacey Act when the Department of Justice took legal action against Gibson Guitar Corporation following evidence that the company knowingly imported illegally logged timber from Madagascar. The US Department of Justice opted not to prosecute the company in court after the company agreed to a criminal enforcement agreement requiring it to pay a US\$600,000 fine (EIA 2012). In 2015, the USA customs intercepted a shipment of timber from Iquitos, Peru, and which is now immobilized in Houston.

The international rules pathway is also relevant. For example, most timber consuming governments to have adopted a legality verification policy are also committed to the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), which promotes the rights of indigenous peoples including their rights to lands, territories and resources. Actors wishing to promote the tenure rights of forest communities can invoke the UNDRIP as an authoritative legal source to timber consuming governments, timber importing business and consumer groups to argue that the concept of "legality" in LV agreements should be broadly defined, going beyond property claims recognized by the state to include the tenure claims of forest communities.

This relates to an important point noted above, namely that the four pathways interact in different ways with the forces of economic globalization on the one hand, and sovereignty on the other. Historically the Amazonian Pact states, especially Brazil but also Peru, have taken a strong line on sovereignty over their forest policy. However, while sovereignty remains important, economic globalization can open up political space that can be used to contest national policy.

This can be illustrated below using the case of FLEGT Voluntary Partnership Agreements (VPAs).

A VPA is an agreement between a timber producing country and the EU. VPAs have two main dimensions. The first is the licensing of legal timber; all timber exported from the producer country to the EU must be accompanied by a license. In this way the EU aims to incentivize the trade in legal timber exports by discriminating against illegal timber using the international rules and markets pathways. Second, VPAs aim to promote governance reform in the producer countries, such as poverty alleviation and increased community participation in forest management (an example of a direct access pathway). Legality verification also operates through the international norms pathway. Norms are strengthened in international society when they are reiterated in several international policy arenas, and the norm against illegal logging and the associated trade has now been recognized by a number of international processes, including the International Tropical Timber Organization and the United Nations Forum on Forests.

VPAs have been designed as voluntary bilateral instruments for two reasons. The first is to avoid any legal case that they may run counter to WTO rules (as any rules that conflict with international trade rules may face challenge in the WTO Dispute Settlement Body). The second is to enable a focus on the specific dimensions of illegality in the producer country. VPAs consider “legal timber” to be that which is produced according to the laws of the country of origin. A first step in designing a VPA is settling on a clear definition of legality that can then be used to differentiate between legal and illegal timber. At first sight this may seem straightforward; legal timber is that which is compliant with the laws of the country where it was harvested. At its simplest, therefore, agreeing such a definition will merely involve interpreting the law in order to yield a definition of legal timber that coheres with the law. However, the experience so far of VPAs has revealed that there may be inconsistencies between different bodies of law (for example, between national and regional levels, between civil and criminal law, and between legislation and government decrees). There may also be tensions between the law of the land and the customary rights of rural communities and indigenous people.

These inconsistencies can make it impossible for logging to be fully compliant with all laws. In such cases, the process of agreeing a VPA needs to resolve such contradictions. The identification of inconsistencies or shortcomings in the law may result in the VPA process stimulating legislative reform in order to clarify or change the law. Here the relationship between economic globalization and sovereignty is important. In line with the principle of sovereignty, responsibility for determining “legality” is the sole prerogative of the government of the producer country. However, the globalization of the international timber trade introduces other actors to the decision-making process. In particular, because any definition of legality will form the cornerstone of a legal agreement with the EU, the European institutions will inevitably have a bearing on deliberations. Importantly, the FLEGT Action Plan is committed to addressing “relevant issues including local and indigenous peoples’ rights to the forests they depend on for a living” (Commission of the European Communities 2003: 21). VPAs thus, in theory, open up scope for the EU to influence what constitutes legal timber while respecting the sovereignty of producer countries.

Two different theoretical positions can be introduced here to explain the relationship between the EU and producer countries and any influence the former can exert on the latter. According to

rational choice theorists, an economically powerful actor may exercise influence by using its power to coerce others into accepting its norms and rules in order to further its self-interests. This is sometimes called a logic of consequences, with other actors complying with what the powerful want to the extent that it is in their rational self-interest to do so (Mitchell 2007; Alkoby 2008). In this view, the EU has significant demand-side market power that can be used to leverage political reforms in timber producing countries. According to constructivists, however, actors interact as social entities to develop common intersubjective understandings. What matters here is not power relations, but shared values and norms. This is sometimes called a logic of appropriateness, with the rules of social life negotiated and co-constructed through deliberation and dialogue (Mitchell 2007; Alkoby 2008). In this view, any VPA definition of illegality is constructed through interactions between the EU and the producer country that generate shared understandings on what is right and desirable. Whether one subscribes to a rational choice or a constructivist explanation – and in most “real life” situations outcomes can be explained by a mix of both theories, rather than one or the other alone – the key point is that the process of dialogical interaction between consumer and producer countries opens up political space that can potentially be used to promote indigenous land rights.

There are also risks associated with VPAs. The VPAs agreed to date do not yet address the broader factors driving deforestation, such as land-use changes for agriculture (Lesniewska and McDermott 2014), although the same may be said of REDD+ projects and commitments to ZND. And legality verification processes are not without their risks. There is a risk that the process of agreeing a legality verification agreement between a producer and consumer country could further strengthen state sovereignty over forests, marginalizing indigenous and other local claims still further. However the co-construction of international rules could help to reduce this risk. The values and market power of timber importing governments will be important elements of any future bilateral agreements, and with focused and critical international attention can help prevent an erosion of the land tenure rights of forest communities.

It should be stressed that to date no South American country has adopted the VPA model, which is just one approach to bilateral legality verification. Other models are possible. Nonetheless, the VPA example does make clear that the process of establishing a bilateral legality verification process can open opportunities that indigenous communities and their supporters can exploit to advance their tenure interests.

Conclusions

In this chapter, we have reviewed the three international policy instruments REDD+, ZND and LV in terms of the potential for Peruvian forest actors to strategically nurture the international policy instrument and its influence through the four causal pathways on community legal ownership of, and access to forestland and forest resources.

While all three to a certain extent have potential, we conclude that there are more opportunities for influence to be exerted for legality verification, compared to REDD+ and ZND. Given the fact that of the three options, REDD+ has been dominant in international academic and practitioner debates on forests, it appears that relatively little can be expected from applying our

protocol to this option as compared to the others, with learning efforts best directed elsewhere. As for ZND, this concept is so new and underdeveloped that little can be expected of it for now without significant investment of resources. This points to legality verification – an option that has attracted support from important actors yet which has significant unrealized potential – as our recommended policy choice.

Three further reasons for choosing legality verification can be given. The first is LV's explicit focus on helping government's enforce their own laws, rather than, as with REDD+ and ZND, imposing substantive requirements on sovereign governments. It is evident that progress in legally recognizing the rights of forest communities over customary lands happened because civil society organizations put pressure on the government to implement land-titling programs, because Peru received international funding for land titling programs, and because progress in land titling among indigenous communities is a condition for the disbursement of funds. Incremental land tenure gains, as understood here, will only happen through effective pressure by Peru forest communities and their representative and support organizations. Appealing to international forest governance instruments and efforts such as legality verification can be an important reinforce and strengthen the work of communities and their supporters.

The second reason relates to the markets pathways. The market pathway for LV is backed by the state power of timber importing countries, which can impose legal penalties on businesses that violate the policy, which is an important sanction for compliance. The LV market pathway thus operates in a very different way to that of REDD+ which is voluntary and where, as noted above, the market for carbon credits competes with, and has no necessary comparative advantage over, markets in agricultural commodities.

Finally, and in terms of policy learning, legality verification does not exclude other policy initiatives. It can enhance and support ZND commitments, and there are potential synergies between the FLEGT and REDD+ (EUREDD Facility 2014). Any insights gained from pursuing LV as our choice may therefore "travel" in support of other policies.

In short, we consider that the present moment should be seen as a critical juncture, with significant potential for harnessing influence through the international rules and markets pathways in support of legality verification policies. The promotion of indigenous land rights has been gaining traction in Peru in recent years, especially since the agreement of the UNDRIP, and this has been happening at the same time that legality verification has been in the ascendancy. There is thus scope for creatively linking these two processes, which could be made to be complementary and mutually reinforcing. In terms of causal influence logics, therefore, legality verification has the strongest potential comparative advantage at the present time, hence we focus on how to get the most leverage out of this advantage.

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