CBD

Distr.
GENERAL

UNEP/CBD/SBSTTA/20/INF/76
21 April 2016

ENGLISH ONLY

SUBSIDIARY BODY ON SCIENTIFIC,
TECHNICAL AND TECHNOLOGICAL ADVICE
Twentieth meeting
Montreal, Canada, 25-30 April 2016
Item 13 of the provisional agenda*

CAN LEGALITY VERIFICATION ENHANCE LOCAL RIGHTS TOFOREST RESOURCES?

Piloting the policy learning protocol in the Peruvian forest context

Note by the Executive Secretary

1. The Executive Secretary hereby provides, for the information of participants in the twentieth meeting of the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA), results of the application of a Means-Oriented Policy Learning Protocol that was piloted in Peru during 2015 and 2016. This report is an executive summary of the full report which can be found at http://www.iufro.org/science/divisions/division-9/90000/90500/90505/publications/.

2. The Protocol focuses on stakeholders operating at multiple levels of governance to generate a better understanding of the causal processes through which global governance initiatives might help lead to influential and durable results "on the ground" in one or more domestic country contexts. The report was provided by the International Union of Forest Research Organizations (IUFRO), including its Unit "Forest policy learning architectures", and Yale University's Governance, Environment and Markets (GEM) Initiative. This effort was generously funded by the German Federal Ministry for Economic Cooperation and Development through the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ).

3. The information is provided by the Executive Secretary in the language and format in which it was received.

* UNEP/CBD/SBSTTA/20/1/Rev.1.

Can Legality Verification enhance local rights to forest resources?

Piloting the policy learning protocol in the Peruvian forest context

Executive Summary

Photo Credit: Adam Bauer-Goulden

Coordinating Lead Authors:
Ben Cashore and Ingrid Visseren-Hamakers

Lead Authors:
Paloma Caro Torres
Wil de Jong
Audrey Denvir
David Humphreys
Kathleen McGinley

Contributing Authors:
Graeme Auld
Sarah Lupberger
Constance McDermott
Sarah Sax
Daphne Yin

Executive Summary

Can Legality Verification Enhance Local Rights to Forest Resources?

Piloting the Policy Learning Protocol in the Peruvian Forest Context

Introduction

This report presents the results of the application of a Means-Oriented Policy Learning Protocol that was piloted in Peru during 2015 and the Spring of 2016. The Protocol was developed through the International Union of Forest Research Organizations (IUFRO), including its Unit "Forest policy learning architectures", and Yale University's Governance, Environment and Markets (GEM) Initiative. This effort was generously funded by the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ).

While the protocol can apply to any problem, it was inspired by the recognition that the proliferation of 30 years of well-intentioned global forest policy interventions has not had the durable impacts in addressing deforestation and degradation, and enhancing livelihoods that many had hoped for. To help address this gap between intention and outcome, the protocol focuses stakeholders operating at multiple levels of governance on better understanding the causal processes through which global governance initiatives might help lead to influential and durable results "on the ground" in one or more domestic country contexts.

The 'value added' of this framework lies in its efforts to co-generate knowledge through two related efforts: 1) identification of four pathways of influence through which international policy interventions might travel; and 2) fostering 'policy learning' about the strategic choices that result from this analysis for nurturing durable, rather than short lived, domestic and local policy objectives.

Drawing on a broad literature on the ways in which "policy learning" might be generated, the Protocol is organized around three phases (getting ready, co-generating insights and implementation) and 11 steps, which are presented sequentially, but are developed and revisited iteratively throughout the project.

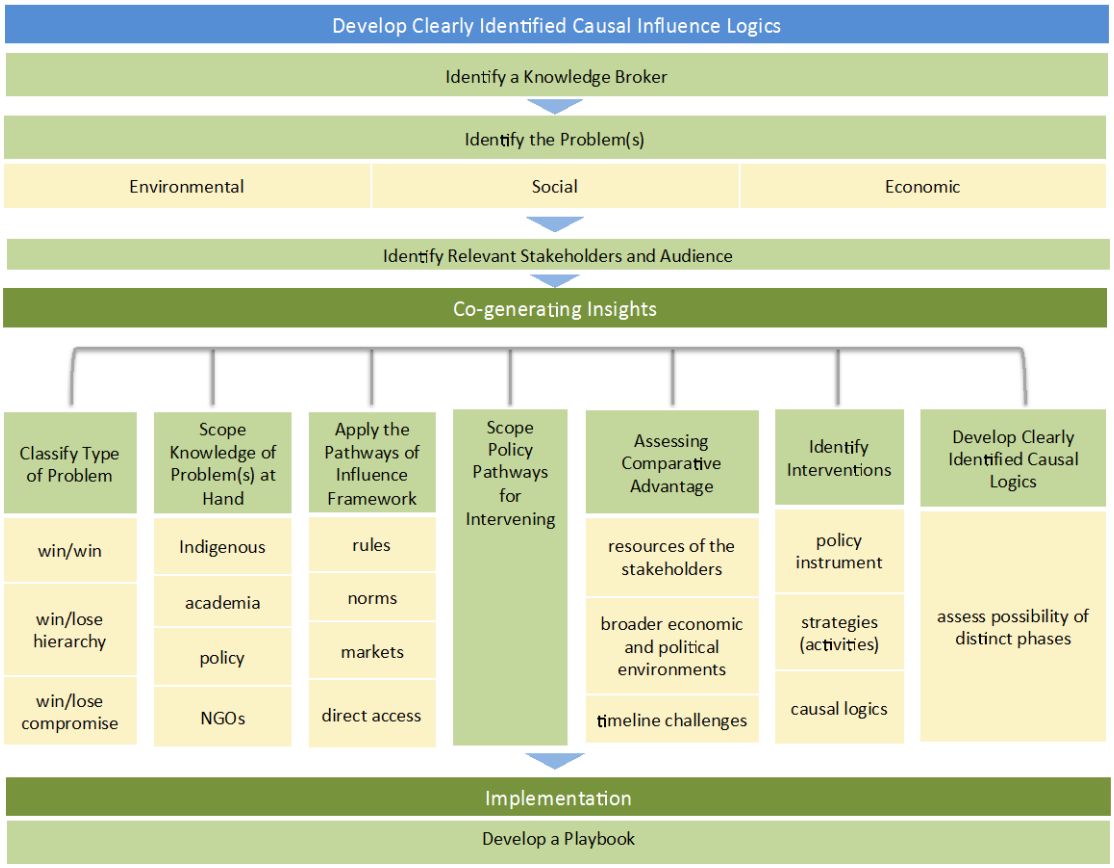

Figure 1: General overview of the protocol (from Cashore et al. 2014: 4)

Social science research on policy learning finds that a multitude of methods are best applied to generate these insights, rather than relying on a single approach. As a result, we undertook the following efforts designed to co-generate knowledge around these pathways.

On site workshops with academics and practitioners

Two policy stakeholder workshops were organized in Lima, one on June 25, 2015, which focused on identifying the specific "on the ground" issue to which we would devote our attention, and the other on October 22, 2015 which focused on identifying and discussing the global intervention with which we would apply the pathways analysis. These events played a central role in the data collection process, providing valuable insights into forest policy issues and the diverse views of a broad range of stakeholders on these issues.

In person interviews

During the summer and fall of 2015 students and faculty conducted over 100 'semi-structured' in person and Skype interviews with relevant stakeholders working on Peruvian forest policy at the local, national and global levels.

Literature review and document analysis

Students and faculty conducted extensive literature reviews of relevant scholarship and practitioner reports, and analysis of primary data, including organizations' web pages, archival analysis and primary documents.

Sharing of draft analysis with stakeholders and scholars

We also shared our provisional analysis and findings with stakeholders and scholars. This included another onsite visit in March 2016 in which summaries of results were presented to key stakeholders, whose feedback has been documented and incorporated into the final text. We also sent the draft analysis for peer review to external evaluators, which provided further insights and refinement.

Phase One: Getting Ready

Step 1: Identify a Knowledge Broker

An important first step of the "Getting Ready" phase is to identify a knowledge broker. The knowledge broker is an individual or a group of professionals that work together with stakeholders to unlock knowledge and ideas in relation to the specified problem or challenge that the stakeholders seek to address.

Effective analysis from a knowledge broker will require a literacy of power dynamics that are not always explicitly stated, an historical evaluation of forest legislation, and the recognition of bias, including any potential sources of bias within the knowledge broker. A knowledge broker must be able to read the nuances of underlying motivations and relationships among stakeholders who seek to influence the Peruvian forest sector and policies. As the protocol is designed to assess the potential of global interventions a knowledge broker must have the skills and training to trace their influences in the Peruvian context.

Given this was the first piloting of the Protocol the IUFRO Unit on Forest policy learning architectures was self-selected as the knowledge broker. (It is our intention that through training workshops, knowledge brokers for future applications of the Protocol can be selected from a wider set of scholars or practitioners.) This IUFRO unit brings together political scientists and scholars from related disciplines who collectively bring to the table expertise in forest and environmental governance research and vast experience with the Peruvian forest sector. A project team was established of people from the working group interested in and committed to this project and a smaller core team implemented the work.

Step 2: Identify the Problem

Step 2 directs the learning effort to identifying a specific "on the ground" problem to which the analysis will be directed. The IUFRO working group started this process by identifying key overarching challenges for the forest sector in Peru: enhancing the livelihoods of forest

dependent peoples; promotion of biodiversity conservation; and reducing carbon emissions from deforestation and forest degradation.

Following input from the first stakeholder workshops in Peru, the decision was made to focus analytic attention on the efforts of a range of non-governmental and governmental agencies ***to enhance community legal ownership of, and access to, forestland and forest resources.***

This problem definition is quite complex and hence requires further disentangling. In particular, we acknowledge that indigenous communities' efforts to seek land titling differ historically from the important, concerns of non-indigenous forest dependent *ribereño* communities.

Identifying this particular problem definition allows us to reflect on the multitude of effects that securing greater access to land might have on other forest-related challenges. Titling could, for example, trigger important issue linkages, including equity issues such as the distribution of income from forest-related activities, and livelihood issues more generally. At the same time legal access might, depending on choices made by communities, lead to different practices than those seeking to maintain traditional ways of life and/or focus only on biodiversity conservation. Hence, by focusing on titling and rights, our analysis can provide for greater analytic attention than if we had conflated these very distinct, but related, outcomes. In other words, our analysis paves the way for, rather than comprehensively addresses, future work assessing the myriad of effects that might occur through enhanced legal rights processes.

In other words, focusing on a narrow, albeit complex problem definition allows us to undertake the type of causal analysis the learning protocol was designed to address. We recommend further efforts to address related questions outside the scope of this analysis. At the same time we are clear that by formulating this problem definition, the IUFRO project team is transparent about the aims of the project: to contribute strategic insights to those seeking to enhance community legal rights. These efforts, we argue, may also have positive effects on livelihoods and reducing deforestation and forest degradation.

Step 3: Identify Relevant Participants & Audience

With a clear problem definition in place, Step 3 turns to identifying the relevant stakeholders who would most benefit from, and engage with, the generation of collective strategic insights.

As our focus is on understanding better how global interventions might be drawn on to nurture national and subnational policies surrounding community tenure and forest access, our piloting of the Protocol emphasized engaging with organizations who were active in developing, or influencing, Peruvian public policies. We recommend that future learning exercises be expanded to incorporate a range of local interests and individual community forest management goals and practices that were beyond the scope of this exercise.

Drawing on the research methods discussed above, several organizations and individuals who work on some aspect of forest community land tenure and access to forest resources were identified by the IUFRO team as those who might benefit from, and contribute to, our learning analysis. These included the two umbrella indigenous federations, AIDESEP and CONAP, both

of whom are active in national, subnational, and international policy-making processes, and organizations that represent indigenous federations. Key governmental agencies included OSINFOR, SERFOR, and multiple other agencies within MINAM and MINAGRI. We also recognize that our analysis could be of interest to several regional governments, including their directorates of agriculture and natural resources. Likewise multiple international non-governmental organizations, such as IBC, DAR and EIA-Peru; research organizations such as CIFOR; and international donors and development cooperation organizations, such as the World Bank and GIZ, all of which play important roles in addressing forest community rights as part of broader efforts to curb deforestation and forest degradation while enhancing local livelihoods, may find our work of interest. Many individuals from these organizations participated in one or more of our learning efforts, including workshops and/or interviews.

Phase 2: Co-Generating Insights

Step 4: Classify the Problem

Step 4 focuses those involved in the Protocol on reflecting, given their own values, scientific expertise and other forms of knowledge about the problem, on how they wish to conceptualize the problem definition in question, vis-à-vis other related challenges. This exercise focuses attention on three related questions: 1) How do stakeholders prioritize this questions compared to others?; 2) Does addressing this problem lead to the generation or worsening of other problems, or are there synergies with other problems?; and 3) How might unintended negative "whack-a-mole" effects be made transparent, and managed?

The learning protocol directs stakeholders to understand that, because answering such questions relies on subjective values as well as on more 'objective' scholarly knowledge about the problem, such as levels of poverty, species loss or climate change. As such, there is no "right" answer to the specific problem we wish to address. Rather, our intention is twofold: to render explicit what is often implicit - when 'push comes to shove', how do participants in the learning effort view this problem compared to others; and to open up innovative policy options that may increase 'hidden' ideas and synergies that emerge from being transparent about dynamics of change. To promote such discussion, the protocol asks stakeholders and analysts to reflect on which of three following conceptualizations of Problem Types they place this analysis.

Type 1: Win/win

A problem is identified as Type 1 ("win/win") when, through learning assessments, stakeholders come to evaluate the very act of addressing the specific problem as generally making almost everyone better off. In other words, stakeholders learn and/or perceive there to be very few "whack-a-mole" effects to worry about, and usually synergies with other concerns can be realized. This conceptualization is inherent in work on 'tragedy of the commons' issues where overharvesting of an economically beneficial resource will leads to its eventual depletion. Hence, failure to address the problem will mean everyone loses, while efforts to maintain the resource in perpetuity will be of benefit to all in the community. (To be sure, some argue that 'tragedy of the

commons' conceptualizations downplay biodiversity concerns by focusing on economically beneficial resources, and hence, do have unintended whack-a-mole effects. The point here is that these discussions need to be a key part of the learning process, rather than being glossed over, or ignored.)

Type 2: Win/lose, compromise

Type 2 conceptualizes problems as those in which evaluations are made that addressing the problem will have to result in some type of "compromise" with other non-synergistic challenges. For example, although rarely stated explicitly, most broad scale land-use designation approaches in domestic settings tend to focus on compromising among different land uses from biodiversity conservation to developing commodities such as palm oil, forest plantations, soy, or mining, to community forestry designations.

Type 3: Win/lose, hierarchy

Finally, Type 3 directs participants to consider whether the particular problem in question will lead to trade-offs with others, but that the problem in question, or other problems, should be treated as some type of "hierarchy" in which some are designated as more important than others. Such designations could be owing to scientific knowledge (such as climate scientists warning that any compromise that leads to an increase in the global mean temperature above 2 degrees Celsius could result in catastrophic environmental impacts, or wildlife biologists' evidence that logging in old growth forests could result in the extinction of a species), or it could be owing to values, such as the desire to preserve indigenous cultures in the face of rapid land grabs and commodification of natural forests.

This step in the protocol is meant to be constantly revisited, since the generation of subsequent steps, including creative ideas about instrument choice, and scientific knowledge about the problem may cause stakeholders to shift conceptual designations. Ultimately, the final analysis must justify strategic choices on the basis of whether the problem in question is diagnosed as Type 1, 2, or 3. Failure to do this might have stakeholders inadvertently offering policy interventions and strategies that are inconsistent with the problem conceptualization. For example, many fear that while many agree that 1.5 degrees Celsius is the highest temperature threshold beyond which catastrophic climate change will occur, and hence an implicit Type 3 designation in which addressing climate change must take priority over all other problems, most instruments being offered to address the problem seem to be designed for Type 2 problems in which some compromises are permitted between environment and development objectives.

For the purposes of this analysis, the problem definition was focused on enhancing "community land ownership of, and access to, forestland and forest resources". To date, this problem definition has been treated implicitly within Peruvian policy making processes as "Type 2", as development objectives have sought to enhance land use for a range of multinational firms who produce global commodities including mining, soy, palm oil and timber.

Interestingly, during input through our range of learning initiatives, all three types of problem conceptualization were advanced. Many saw the problem as a win/win because they reasoned that enhanced indigenous and *ribereño* empowerment over lands would coincide positively with

a range of other related objectives, such as reducing deforestation and forest degradation and promoting livelihoods. Others argued that the problem of enhancing legal ownership of forests was a win-lose since there are also other important, competing issues (e.g. extractive industries) that are related to economic development. Those who conceived 'win-lose' were split as to whether Type 2 or 3 ought to be applied. In general, indigenous rights' groups viewed our problem definition as Type 3, asserting that indigenous forest rights were an important priority that if not addressed in a more sustained way could result in permanent and negative effects on communities and their cultures; while others felt that while incredibly important, local rights to resources were better identified as Type 2, because other uses, especially commodities that could enhance growth and lift many Peruvians out of poverty, were also important. We found that the very discussion of these three types was useful in advancing thinking among disparate stakeholders, and rendered explicit what before were implicit differences about how various actors viewed the problem of community legal ownership and access vis-à-vis other problems.

Similarly, even though different stakeholders interpret the problem definition differently, overall it appeared that when standing back to consider land-use designations in general, no organization was suggesting the elimination of other types of land uses; rather they were simply arguing that a greater share of land, and access to resources be granted to indigenous and *ribereño* communites than is currently the case. In other words, they wanted a greater share of the "compromise" pie, rather than the entire pie. Hence, the input that emerged from stakeholders was consistent with classifying secure land tenure as a Type 2 problem. As a result, deliberations over these three types lead us to emphasize that this analysis is focused on how to enhance policy decisions that lead to a greater share of local land tenure and access for what is currently a small slice of a very large pie.

Step 5: Scoping Knowledge of the Problem at Hand

Step 5 of the Protocol focuses attention on assessing the range of knowledge sources that may shed light on the problem at hand, including both scholarly literatures and other relevant sources such as indigenous insights. Given the problem definition of the project, we targeted attention on: the policy history of indigenous property rights in Peru and some of the obstacles to enhanced community titling; the contribution that forests make to household income; and the causes of deforestation and forest degradation.

Step 5 also focuses discussion on identifying knowledge gaps and uncertainties. In our case, a central theme was uncertainty about how Peruvian policies would be developed. Would the decentralization process continue and be better resourced? How would the jurisdictional uncertainties between the national government and the regions be managed? How would the increasing number of government institutions involved in community land titling be coordinated?

A second theme was uncertainty about the livelihood benefits in promoting greater local control and access. Studies to date have arrived at different estimates about income generation that might accrue for forest dependent communities. While some argued that remoteness might explain some of these differences, there are still conflicting expectations about the precise role that

secure tenure will play in leading to improvements in the household income of forest communities.

A third theme surrounds the causes of deforestation and forest degradation, which even in one country such as Peru will vary significantly from area to area and over time. Academic scholarship has an important role to play in filling knowledge gaps, but due to the dynamic and shifting nature of causal patterns some degree of uncertainty is always likely to remain on this topic. And, while many have found that input of local stakeholders is vital to helping understand these causal forces, different socially situated actors bring different perspectives, both enhancing knowledge but also creating uncertainty over sometimes diverse and contradictory claims.

Step 6: Apply the Pathways of Influence Framework

Step 6 focuses analytical attention on the causal processes through which global interventions might 'tip the scales' in domestic settings, and to then identify strategies that are consistent with these processes. It focuses especially on identifying those causal processes that are more likely to lead to durable results, rather than short-lived "victories". To guide these deliberations, the protocol directs learning around four pathways of influence through which global interventions might influence or nurture domestic efforts.

Rules Pathway

The rules pathway is based on coercion/compliance incentives, and focuses attention on the role of binding agreements in shaping lower level policy responses. Recognition of these dynamics is important since they can have important influences on domestic policies, which can, in turn, significantly influence forest management practices.

Norms Pathway

The norms pathway focuses attention on the role of deeply engrained values and ideas about appropriate behaviors that often precede any self-interested calculations. Norms are important for building collective support for, and trust in, existing or new governance arenas. Norms also emerge, and diffuse, in a multitude of ways. For instance, 'indigenous rights norms' have been initiated within countries, but then found their way to global processes, that have then 'boomeranged' to reinforce the original domestic norms. Hence, the norms pathway does not imply a 'top-down approach' but rather focuses on the ways in which norms operating globally might help reinforce, or place attention on, specific issues within particular countries. Norms have causal influence when they are synergistic with other pathways and/or when they are so strong that they trump self-interested motivations (think, for example, of anti-slavery norms). While changing norms is highly difficult, for the same reasons this pathway also carries the highest transformative potential when successful.

Markets Pathway

The markets pathway focuses attention on causal mechanisms that create behavioral and policy changes owing to some type of market or economic incentive or disincentive. The markets pathways can include various mechanisms, from procurement policies that favor third-party

certification, eco-labeling, legality verification requirements enacted by consumer countries, and the use of boycott campaigns by NGOs.

Direct Access Pathway

Finally, the direct access pathway focuses attention on the role of external influences in shaping capacity building, technology transfer, resources, and, as a result, altering domestic power dynamics among differing interests and sector-level policy networks. Recognition of this direct access pathway focuses attention on better understanding how the variety of direct access initiatives might influence other governance arenas, including their policy decisions and outcomes.

Step 6 is important, because it provides those involved in the Policy Learning Protocol with a fresh perspective to think about past and future global interventions. Looking backward, the four pathways guide practitioners to thinking about how the four causal processes have shaped, or failed to shape, forest policy in their own domestic experiences, and whether these influences were durable or short lived. As the pathways framework has been applied extensively throughout the world, we are able to show examples from other parts of the world to illustrate their importance. For example, biodiversity norms generated in the Brundtland report that the world's governments ought to conserve 12% of land from industrial uses, helps explain the British Columbia government's decision to protect, in the early 1990s, 12% of its land-based biodiversity. Similarly, as part of REDD+ efforts, the 'direct access' pathway resulted in Tanzanian forest dependent communities receiving knowledge and resource to increase community forest licenses. Likewise boycott campaigns largely lead to less durable results on their own using the markets pathways, but may be useful when combined with others, such as norm generation. However, efforts to foster tracking of timber, given durable signals from the EU and US, suggest more direct influence. These distinctions generated significant discussion about how international influences have affected Peruvian forest policy. In one example, stakeholders discussed how the US-Peru Trade Promotion Agreement that contained provisions for environmental stewardship attempted to follow the rules pathways, reinforced by market incentives. However, these provisions actually helped foster unrest as indigenous communities felt these provisions downplayed their own concerns for greater access to resources.

Step 7: Scope Policy Pathways for Intervening

Step 7 focuses attention on applying the pathways framework to assess possible interventions that seem promising given our problem definition. For these reasons the bulk of our analysis focuses on three possible global interventions that have been developed in the last decade and a half to address community rights, as well as deforestation and forest degradation: REDD+, Zero Net Deforestation, and Legality Verification. These three instruments have been selected for three reasons. First, all have achieved, or have the potential to achieve, widespread acceptance on a global scale. Second, all three operate, or could operate, in different ways and to differing degrees, through the various pathways. Hence the pathways framework allow us to consider each intervention's "causal influence logics", and whether, when, and how, each pathways might be followed to nurture the intervention. In addition, the pathways framework allows us to reflect on whether there exists meaningful synergy, through the combination of one or more pathways, in

helping shape on the ground influence. Third, all three are not solely global processes, but focus, to differing degrees, on governance reforms within countries, including work at the local level.

REDD+

"Reducing Emissions from Deforestation and Forest Degradation" (REDD+) is a climate change mitigation policy developed under the United Nations Framework Convention on Climate Change (UNFCCC). The policy has been under negotiation since the idea was first introduced in 2005, and has been recognized in the Paris Agreement in 2015. In anticipation of an agreement on REDD+, Peru, like many other developing countries, developed its national approach to REDD+, and has received international funding for its REDD+ work, for many years. AIDESEP (Interethnic Association of Peruvian Amazon Development), one of the national indigenous representative groups in Peru, has lobbied extensively to include the issue of titling of indigenous land as a necessary first step to implementing REDD+. Linking indigenous land titles with REDD+ funding can not only help indigenous communities achieve control of their traditional lands, but could also aid in the promotion of the REDD+ instrument itself, and help achieve its goals of avoiding deforestation and forest degradation.

Zero Net Deforestation

The second policy option considered is Zero Net Deforestation (ZND). During the 2008 Bonn Conference of the Parties to the Convention on Biological Diversity (CBD), the World Wildlife Fund (WWF) launched a campaign promoting the ZND principles with 68 States signing statements of support. ZND is a concept that attempts to secure production of certain commodities in ways that promote reforestation practices while avoiding the deforestation of primary forests. National governments and companies have created individual commitments to produce forest products under ZND principles.

In 2009, Peru pledged to achieve a deforestation rate of 0% by 2021. Some indigenous communities, like the Tres Islas and Infierno communities of Madre de Dios, are being supported by the Rainforest Alliance to become ZND zones, with these areas also preparing for REDD+ or FSC certification. There are also governmental initiatives underway to promote oil palm plantations without deforesting new areas.

Legality Verification

There are currently several international policies to enact Legality Verification (LV) within the timber trade that are relevant to Peru: the US Lacey Act (USLA), the US-Peru Trade Promotion Agreement (TPA), and European Union initiatives, including the European Union Timber Regulation (EUTR), and the Forest Law Enforcement, Governance and Trade action plan (FLEGT). The latter is currently less relevant for Peru, since Peru is not yet negotiating the establishment of a Voluntary Partnership Agreement (VPA) through FLEGT. Other international forest-related policy processes focused on illegal logging include the Australian Illegal Prohibition Act and public procurement policies.

The original US Lacey Act was passed in 1900 to restrict the trade of illegal wildlife products. It was amended in 2008 to ban the importing of any illegally obtained tree species into the US. The EUTR is a policy similar to the US Lacey Act in that it prohibits importing illegally sourced

wood from any country into the EU timber market. The Lacey Act and the EUTR apply to all Peruvian timber exports destined directly or indirectly to US or EU markets. Finally, the US-PTA, a bilateral agreement between the US and Peru that entered into force in 2009, includes an Annex on Forest Sector Governance on LV, which requires Peru to verify that all wood being exported to the US comes from legal origins. Its implementation has been uneven, however, with the two countries so far failing to meet their obligations on illegal logging.

Step 8: Assessing Comparative Advantage

In Step 8 the protocol directs attention to assessing the competing merits of the global policy interventions considered in Step 7. Those involved in the learning processes are directed to assess the comparative advantages and disadvantages that emerge from the pathways framework. Hence, for our case, deliberations focused on the potential for three interventions to help 'tip the scales' for Peruvian forest actors working to enhance 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 LV, compared to REDD+ and ZND. Given that of the three options, REDD+ has been dominant in international academic and practitioner debates on forests, we reasoned that there was less 'value added' of our learning exercise, given so many strategic decisions and approaches have already been undertaken for REDD+. As for ZND, we reasons that this concept is so new, ambiguous, and underdeveloped that it would require a much greater set of learning initiatives, and resources, that are far beyond the scope of this project. However, we saw great potential to apply the pathways analysis to global efforts to promote LV – an option that has attracted support from important actors and yet, to date, we reason, has significant unrealized potential.

LV is important to assess for a number of reasons. First, LV's explicit focus is to helping governments enforce their own laws, rather than, as with REDD+ and ZND, imposing substantive requirements on sovereign governments. Hence, if efforts continue to expand domestic legal recognition of the rights of forest communities over customary lands, which occurred in large part owing to domestic pressures, then LV could help provide global incentives to reinforce these commitments. Second, direct access pathways can help to facilitate these efforts as the Peruvian government, and indigenous communities, have received international funding for land titling programs. In fact, under REDD+, enhancing land titling among indigenous communities has emerged as a condition for the disbursement of funds. Hence, LV presents a global intervention that might help, depending on how the four pathways are traveled, to reinforce and strengthen the work of communities, their supporters and government agencies seeking to foster these efforts.

In this regard application of the Protocol theorizes that the markets pathways seems particularly important initially, since timber importing regions/countries, especially the EU and the United States, now impose penalties on businesses that fail to show "due care" or "due diligence" that they are importing legal timber. The LV market pathway thus operates in a very different way to that of REDD+, which is voluntary and where the market for carbon credits competes with, and has no necessary comparative advantage over, markets in agricultural commodities. To be sure,

the decision to focus on LV for purposes of this Protocol also paves the way for reflections on the synergies with ZND commitments and exiting REDD+ efforts.

In short, application of the protocol led us to prioritize LV in this analysis, since we seem to be at a critical juncture in which specific choices made in the next two years may either help entrench, or detract, from the ability of global LV efforts to help reinforce, rather than exacerbate, efforts to promote local rights to resources. This is all the more timely when we consider that the promotion of local communities' land rights has been gaining traction in other domestic and global forums.

Step 9: Identify Interventions and Instruments to be Pursued

In Step 9 of the protocol we examine LV in detail, both in its current applications and various forms, as well as its theoretical implications for further developments in Peru. In this step, we focus on theorizing how Peruvian stakeholders could play a role in international negotiations on LV to enlarge its potential contribution to enhancing community forest ownership and access. For this, we zoom in on a specific strategy that has emerged from our analysis, namely incorporating social safeguards in global LV interventions.

So here, the analysis identifies how LV may have specific opportunities and constraints for enhancing community legal ownership of, and access to, forestland and forest resources in Peru. As demand side policies, the USLA and EUTR have had limited impact on the forest sector in general in Peru, largely due to the low level of timber exports, and no perceptible impact on communal forestland rights to date. The US-Peru TPA has had some measurable effects on the legal framework and forest governance, including enhanced participation of indigenous and non-indigenous groups in the policy process, but has had little if any perceptible direct impact on forest community ownership of, and access to, forestland and forest resources. And though Peru has not yet sought to enter negotiations with the EU to develop a VPA, other VPA processes point to the importance of considering forest tenure implications and other potential social and economic effects from LV early in the planning process, and working through a multi-stakeholder process for solutions that engender broad support and implementation.

While LV may have positive impacts in weeding out illegal practices in Peru's forest sector, ongoing tenure issues may produce a bottleneck to any significant progress if left unattended. Because LV policies tend to focus on the final product, rather than management practices in the forest and related tenure and use, they can reinforce land rights, particularly where they are clear and uncontested, but may also take them away, particularly where they are unclear, insecure, and/or contested. Moreover, LV has the potential to marginalize informal rights and practices, or make them illegal outright, resulting in significant socioeconomic impacts to forest-dependent communities.

While our analysis theorizes that LV may provide a lever, through norms and market incentives for reinforcing domestic commitments to strengthening land titling, it also seems, based on our analysis, that modifications to the instrument itself would need to be made if it were to be influential in the Peruvian context. This is because, initially, the main supporters, and initiators of LV, did not directly address the problems of forest dependent communities or enhance tenure

security. Rather, they were focused on following legal requirements. Hence, fine-tuning to better address those impacts related to illegal logging that are germane to communities would need to be made. For instance, we suggest that LV could emphasize legal harvesting on existing titled lands – an area that has been of interest to groups such as the Environmental Investigation Agency. In addition, and to avoid concerns that LV might render informal or unrecognized rights as illegal, we theorize that, just like REDD+, 'safeguards' specific to legal security of forest tenure and use might be added to LV to avoid adverse social and economic impacts in Peru, particularly on forest-dependent communities.

Safeguards are efforts to reduce/avoid unintended "whack-a-mole" effects, such as avoiding deforestation by rewarding industrial companies who don't log, but, inadvertently, disempower indigenous communities who were never planning on deforesting. Such safeguards now appear with increasing frequency in policy guidelines of international organizations (e.g. the World Bank, the United Nations Environment Program) and in one form or another in several of the VPAs. Safeguards typically encompass minimum standards, as well as best practices. They can range in scope (i.e. narrow to broad) and focus (e.g. legal security for forest users, capacity building, benefit sharing and compensation) and be implemented through legal reform, financial incentives, and education, among others. Also, multiple safeguards may be needed - a coherent set of tailor-made mechanisms for specific target groups should be designed and incorporated in LV planning and implementation.

We reason that if social safeguards that encompass legal security for all forest users were attached to LV in Peru, they might serve as a lever for advancing community land titling and security, providing not only demand-side incentives, but also direct technical and financial support, particularly if their implementation were focused on the remaining community forest land claims which may eventually add stability and security to the forest sector. According to this logic, Peru is more likely to support LV when the standards (and safeguards) are viewed as reinforcing, rather than detracting from, national sovereignty. If LV + safeguards ultimately helps the Government of Peru address its domestic concerns, including communal forestland titling, then a broad-based coalition of support, we theorize is more likely to develop.

Safeguards could emerge in different ways. They might be appended to the US Lacey Act, or the EUTR – although this could come up against WTO anti-protectionist regulations. Additionally, safeguards might also be added to the US-Peru TPA, but given the slow progress with existing commitments and changes in administrations in both countries since the initial signing, it may be difficult to renegotiate the treaty anytime soon. However, safeguards would fit very well with any future EU VPA negotiation, since they are consistent with WTO policies, and could provide for the type of careful forums and deliberations for ensuring meaningful impacts on the ground.

Peruvian stakeholders could thus puzzle through, using the pathways framework, what kind of safeguards would be required in any future VPA to enlarge the potential contribution of LV in enhancing community forest ownership and access, what types of coalitions could work towards achieving the inclusion of such safeguards, and the process through which this could be achieved.

Step 10: Identify Clearly Identified Causal Logics

In step 10 we explore, empirically and theoretically, the influence of international LV and the central problem identified in Step 2: How can community legal ownership of, and access to, forestland and forest resources be enhanced? Following Step 9's focus on safeguards as a possible way to guide instrument design and choice as a global mechanism that might help foster community rights to resources, we here focus analytic attention on how LV, and its inherent 'causal logics' might operate in practice in the Peruvian context. We then assess how these insights may help inform, and offer strategic insights for, existing policy proposal efforts in Peru that are designed to draw on LV as a way to enhance community ownership and rights.

We begin by considering theories of LV's causal logics that argue there may in fact be two phases, "emergence" and "institutionalization" that have distinct causal logics. In the first phase, policy settings and standards must be developed in a way that appeals to distinct organizational objectives of legal timber operators, indigenous communities, and environmental groups. In particular, firms that view support for legality as being in their economic self-interest, are more likely to support, and help build, critically important supply chain tracking systems of legal timber. However, if firms view the costs of compliance as higher than the rents that accrue by weeding out illegal timber, they may vacate the coalition in general, and support for supply chain tracking in particular – in effect "knee capping" the system before it has a chance to become institutionalized. A second phase is theorized to occur when tracking and implementation of legality become routinized as part of daily practice. At this time, the mature institution in which shirking was not considered an option would be able to cover a broader range of issues, as increases in standards would result in higher prices (a positive for forest dependent communities), rather than increases in costs to firms and community managers.

As we are squarely in the first phase of emergence, two themes emerged from our means-oriented learning about the current impacts and potential of LV to reinforce community rights to resources. First, it appears that, without modifications, efforts to enhance LV in Peru have, and may continue to pose, significant obstacles for forest dependent communities. In fact, as LV has emerged in Peru and gained traction, the story of influences is a contested one: seemingly well-intended efforts to promote forest regulations and enforce them have also led to significant unrest among the forest sector, who fear negative economic impacts. In addition, those who focused on forest dependent communities and enhancing forest livelihoods also argued that they, too, would now be required to conform to additional and costly regulatory requirements. Second, policy modifications to LV in Peru could reverse these trends. However, they require attention not only to the content of policy, but also to their role in generating coalitions of support that could unite diverse organizational interests.

Reviewing a number of domestic proposals that are being offered as a way to focus LV on enhancing community rights to resources and livelihoods, we draw on the pathways framework in general, and the 'causal logics' in particular, to assess the conditions in which widespread support might occur. We theorize that an emphasis not only on desired standards, but also in generating coalitions of "Bootleggers and Baptists" (i.e. groups with diverse interests including indigenous communities, environmental groups, and business interests), might generate strategic insights for fostering uptake and policy durability.

We theorize that efforts to increase the supply of legal timber produced by communities, or from forest land that is controlled by communities, is potentially a Type 1: “win-win” policy option, as it could contribute significantly to increasing the production of legal timber in Peru, and re-establish the currently tainted international image of Peru’s forest sector because of the prevalence of illegal logging. Hence, we posit that this strategy could reactivate a stagnated process of land titling of indigenous communities and create opportunities for indigenous and non-indigenous communities to obtain rights over forestlands that under current regulation cannot be titled as communal lands. In fact, the momentum for such an endeavor in Peru is starting to build, with the country’s forest sector eager to increase timber from certified legal sources, without which Peru’s timber trade runs the risk of being excluded from the growing part of the international timber trade that requires legality verification.

The hypothesis is that by generating such coalitions, policy makers are more likely to look favorably on these changes, owing to the diverse support. To do this, strategic decisions must be taken, that draw on both international rules and markets pathways, but which profoundly benefit from supporting roles of norms pathways by placing attention on the plight of forest dependent communities, and the direct access pathway, through which resources and technical knowledge about forest resource management are often supplied. To be sure, legality verification is only one of a myriad of instruments that began globally and that are now starting to have important, albeit uneven effects. Likewise, as we have discussed above, global interventions only matter when they are seen as helping to reinforce exiting domestic commitments, and/or play a role in “tipping the scales” in desired directions.

What is important, and has emerged from our framework and learning deliberations, is that for the above insights to be influential and effective, it is imperative that community focused stakeholders, and their allies, develop strategies and activities consistent with the causal logics at play, so that they can be, progressive incrementally, nurtured in productive and important directions. These strategic implications of our efforts are summarized in the separate Step 11: Playbook for Action.

Acknowledgements

We would like to thank the donor of the project, the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), for making this research possible, and Alexander Buck, IUFRO Executive Director, and Michael Kleine, IUFRO Deputy Executive Director, for their support of the project. We would also like to genuinely thank all of the Peruvian stakeholders and colleagues who contributed their time and insights to this project, and the reviewers of the draft report who provided tremendously valuable inputs. We would also like to thank Jeremy Rayner and Steven Bernstein, whose work has inspired the development of the framework used in this report, and Iben Nathan, deputy coordinator of the IUFRO Unit on Forest Policy Learning Architectures. We dedicate this report to the memory of Professor Peter Glück.