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CHATHAM HOUSE
The Royal Institute of
International Affairs

CLIMATE FOCUS

Strengthening Forest Governance Frameworks

BRIEFING SERIES
Goal 10: A Closer Look

Progress in Nine Major Tropical Forest Countries

The New York Declaration on Forests (NYDF) is an international pledge to halt global deforestation. It sets out ten ambitious goals related to protecting and restoring forests. In 2018, the NYDF Assessment Partners published the NYDF Goal 10 Assessment Report, *Improving Governance to Protect Forests: Empowering People and Communities, Strengthening Laws and Institutions.* This three-part Briefing Series takes a more detailed look at key findings from the assessment to highlight and present additional research on progress towards Goal 10.

This brief, *Strengthening Forest Governance Frameworks: Progress in Nine Major Tropical Forest Countries*, was produced by the NYDF Assessment Partners in collaboration with **Chatham House and Climate Focus**.

Key Messages

- Legal and institutional frameworks have seen marked improvement in many countries, with international engagement through voluntary partnership agreements (VPAs) and REDD+ helping to open space for progress, in particular through facilitating multi-stakeholder participation in policy processes. However, greater political commitment within governments is essential if these mechanisms are to be meaningfully employed.

- The impact of improvements in forest governance will be limited by the continued lack of cross-sectoral coherence in legal and institutional frameworks. This will be critical to address in the coming years if avoided deforestation commitments are to be met. Giving appropriate recognition to the forestry sector in national climate strategies could go some way to achieving better coordination.

- Tenure reform processes are underway in a number of countries, and there has been some progress in land-use planning. However, challenges remain in effectively implementing existing laws and policies, mapping and demarcating land, and resolving land disputes.

- Some countries have made notable improvements to their resource allocation processes for timber, but the principle of free and prior informed consent (FPIC) remains absent or poorly implemented in most countries.

- There is a need for more attention to reducing the demand for illegal or unsustainable timber within forest countries. Steps towards this are being taken with the development of legislation to control imports and through public procurement policies, but these tools remained underutilized. Extensive resources (for training and for their enforcement) will be necessary to make these tools effective.

- While there have been continued improvements in transparency, more far-reaching changes are needed for this to result in improved accountability. The deployment of new technologies (such as smart phone apps, data management systems and satellite monitoring) offer potential for improvements in future.

- VPAs have been influential in leveraging change in some countries, although where there remains strong institutional resistance, progress has been slow. The Extractive Industry Transparency Initiative (EITI), a private sector initiative, could play a role in helping to drive change, but it has yet to be fully utilised in the sector.

- The rule of law suffers from major weaknesses in all of the countries assessed. High levels of corruption, limited resources for law enforcement, and weak systems for management of sector revenues represent significant challenges.

Introduction

The New York Declaration on Forests (NYDF) is an international pledge to halt global deforestation. It sets out ten ambitious goals related to protecting and restoring forests. In 2018, the NYDF Assessment partners released a progress assessment on progress towards Goal 10, which calls for the strengthening of forest governance.[1] For the assessment, Climate Focus worked with Chatham House to assess the state of forest governance, and how this has changed in nine tropical forest countries over the past five years. In this brief, we describe the research findings and identify where the key challenges lie for reform in the next five years if these countries are to succeed in placing their forest sectors on a more sustainable footing.

The 2018 assessment was based on a standard framework of questions developed by Chatham House as part of an international research program to assess what progress is being made in efforts to reduce illegal logging and related trade. The project began in 2006, and two assessments were completed in 2010 and 2015. For this new research, the questions were amended to reflect changes in the forest sector over the last decade, including questions on climate strategies and public procurement policies. In follow-up research, additional questions relating to gender in forest policy processes, small-scale enterprises and the informal sector, and forest conversion will also be included.

The questions cover twelve aspects of governance, which we have grouped here into five categories (**Table 1**). **Figure 1** provides an overview of the progress made by the nine countries across these twelve indicators over the course of the three assessments.

Legal & institutional framework

Most of the countries reviewed have made some progress regarding their legal and institutional arrangements for the forest sector over the past five years, although the extent of progress varies widely. There have been improvements in multi-stakeholder engagement and in clarifying and reforming the legal framework. For example, in both Ghana and Indonesia there has been legal reform and the roll-out of national timber licensing systems developed under the European Union's Forest Law Enforcement, Governance and Trade (FLEGT) program, with FLEGT licensing beginning in Indonesia in 2016. Additionally, some major changes have been seen in Lao PDR, although this was from a low base: in five years illegal logging went from receiving little attention to becoming a priority issue. This shift has seen the government implement a suite of measures, including improve-ments to cross-government coordination and restrictions on timber exports.

However, the picture is not entirely positive. There has been no progress in Papua New Guinea, where illegal logging continues to receive little government attention. Cameroon has seen significant delays with reform efforts, as well as a drop in the quality of consultations within these. The Democratic Republic of the Congo (DRC) drafted a plan to promote sustainable forest management and to tackle illegal logging but it has yet to be implemented, and an increasingly uncertain political climate has hindered progress over the past two years. In Brazil, attention to illegal logging has been declining. Action plans to control deforestation in the Amazon and Cerrado were introduced in 2013, but political commitment to these has declined in subsequent years. The down-playing of the importance of forest protection by the new president there creates additional uncertainty in this regard.

Table 1. Twelve indicators of the policy response to illegal logging, grouped into five governance areas

Legal and institutional framework	High-level policy
	Legislative framework and government structures
	International trade cooperation
Tenure and resource allocation	Tenure and use rights
	Allocation and management of rights to harvest
Demand-side measures	Policies regulating the demand for timber
	Legislative framework (on import regulations & procurement)
Transparency	Information management
	Timber tracking systems
	Transparency
Rule of law	Enforcement
	Checks & balances
	Financial management

Figure 1. Policy scores for nine producer countries across twelve areas of forest governance, 2008/10, 2013, & 2018

Note: Scores are on a scale of 0 to 100 percent, from worst to best performance. DRC = Democratic Republic of the Congo, Lao PDR = Lao People's Democratic Republic.
Source: Climate Focus and Chatham House. (2018). Assessments of government forest policy in nine countries.

Where progress has been seen, for example in Ghana, Indonesia, and Lao PDR, Voluntary Partnership Agreements (VPAs), and to some extent REDD+,[i] have been important factors. However, these processes are not enough in themselves, as indicated by the limited progress in Cameroon, the Republic of Congo, DRC (all of which are engaged in VPAs and REDD+) and Papua New Guinea (which is

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[i] REDD+ refers to efforts to reduce emissions from deforestation and forest degradation, and foster conservation, sustainable management of forests, and enhancement of forest carbon stocks in developing countries

only engaged in REDD+). Thus, while these international processes can create the impetus for new approaches and help to establish the institutional mechanisms required to implement these, this will only be realized if there is the political will and capability to instigate change.

One positive step that has been seen in the last five years has been increased coherence between strategies focused on illegal logging and those on deforestation and climate change. In nearly all of the countries, tackling illegal logging is identified as a priority in national REDD+ strategies, and in some cases there is explicit recognition of the need to build on existing efforts to improve legal compliance. For example, in the Republic of Congo, the REDD+ investment plan identifies support for enforcement agencies, independent forest monitors, and implementation of the country's timber legality licensing system as priorities.

In most of the countries the forest sector is recognized as a priority for reducing emissions in broader climate change policies, such as in Nationally Determined Contributions (NDCs) and national climate strategies. However, only a few give detailed consideration to forest governance and illegal logging. Brazil is one of the few countries which includes a focus on tackling illegal deforestation in both its national REDD+ strategy and its NDC.

Even in those countries that have adequately considered forests in their climate strategies, the ability to reduce deforestation is limited by a continued lack of cross-sectoral policy coherence. This remains a critical challenge for all of the countries reviewed. Achieving this is hugely challenging, as it requires coordination between agencies which are often competing for resources and influence. Without improvements here, efforts to establish a sustainable forest sector will be ineffective, and forests will be at continued risk of poorly-planned, or illegal, conversion.

Tenure & resource allocation

Absent and insecure land titles remain a major challenge in rural areas of developing countries. While many countries have laws requiring demarcation of land ownership both on the ground and in publicly accessible maps, few of the countries studied have achieved this for the majority of forest or other rural land. Similarly, while many countries have systems for resolving land conflicts, most of

these systems have deficiencies that hinder their effectiveness.

Across the countries assessed, local communities still often lack secure land and forest rights, including to lands and forests over which they have long-standing customary claims. In Lao PDR, the state has ownership of almost all forests and customary rights remain severely limited. In Brazil, while indigenous people have strong legal rights, they are often threatened by land grabbers, and the new government has caused concern by indicating it may open up indigenous lands to agribusiness and mining. There have, nonetheless, been some positive developments in this area. DRC is undertaking land use reforms, which are expected to result in rights being clarified and better implemented. In addition, in the Republic of Congo, a revised legislative framework also includes provisions that are expected to further secure customary rights.

There have been a number of advances in improving land-use planning and managing land-use data. In Papua New Guinea an online forest monitoring tool, which provides maps of concessions and REDD+ activities, was launched in 2016. In Indonesia, the long-awaited One Map Policy Geoportal (KSP Geoportal) was launched in late 2018, completing the integration of 83 (often conflicting) thematic land-use maps. While a major achievement, the portal has been criticized for failing to include maps of indigenous territories.[2] Meanwhile, the Republic of Congo is developing a land-use plan that should help clarify land tenure, but the country still lacks legislation requiring land tenure to be shown in publicly available maps. And in the DRC, these requirements exist, but are poorly implemented.

Resolution of land-related disputes remains a challenge in most countries. In the Malaysian state of Sarawak, for example, over 70 land dispute cases in the native courts (involving logging and other issues) filed between 1995 and 2010 were still pending trial in 2010. In Indonesia, the government recently stated it intends to prioritize land dispute resolution, but as of the end of 2018 had only addressed 15 percent of the 555 cases it had received.[3]

Several countries have made encouraging progress in improving processes for the allocation of rights to timber harvesting. In both Ghana and Cameroon these improvements have resulted from implementation of their VPAs. In other countries, such as Papua New Guinea, procedures are clear

and fairly robust but are not effectively enforced. Indonesia has also made significant progress in this area, having instituted a Forestry Licensing Information platform, which provides unified and simplified information related to the resource allocation procedure. DRC and the Malaysian state of Sarawak have also strengthened their procedures for ensuring the free, prior, and informed consent (FPIC) of local communities is obtained before timber concessions are allocated. The other two Malaysian states, however, are still lacking provisions to ensure FPIC, as are Brazil and DRC. While other countries have provisions in place, they are mostly weakly implemented.

Demand-side measures

Over the last decade, the forest sector has become more "multi-nodal" in nature, with the growth of markets in many forested countries, increased regional trade, and the expansion of processing hubs in a number of countries, most notably China and Vietnam. Reflecting this, there has been growing recognition that measures to control the trade into the Australian, European Union, and United States markets will be insufficient on their own to bring about a transformation of the forest sector; rather, they will need to be complemented by measures to increase demand for legal timber in these other markets.

Those countries that are implementing VPAs - Cameroon, Ghana, Indonesia, and the Republic of Congo - have been developing legislation or measures aimed at reducing imports of illegal timber. This is to ensure that timber imports are compliant with the national licensing systems that are being put in place under the Agreements. Adequate training and resources for their enforcement and implementation will need to be provided to ensure their effectiveness.

Ghana and Indonesia also have controls in place aimed at aligning timber processing capacity with the legal supply of raw material. In most other countries, there is no coherence between the approval process for such facilities and efforts to reduce demand for illegal or unsustainable timber.

Regulating domestic markets also remains a big challenge in all nine of the countries, as these continue to be dominated by illegal and informal production and trade. Some progress has been made in supporting producers in the informal sector to operate legally, particularly in Ghana and Indonesia. However, reducing the demand for illegal

timber on the domestic market has received less attention to date.

Public procurement policies have potential but have yet to be widely deployed. In both Cameroon and Ghana, public procurement policies have been drafted, but are pending approval. In Indonesia, the legal framework allows for purchasing of sustainable timber, but it is not a requirement. And in Malaysia, the government has set a target to increase green public procurement, but this only covers paper and furniture and excludes other timber products. Thus, this is a policy area that remains underutilized in all the countries and is in need of further attention.

Transparency

The assessment covers a number of different aspects of transparency relating to: timber supply chains; resource allocation and management; enforcement activities; and information and data management. While there have been improvements across many of these areas in the last five years, overall this has slowed compared to the preceding five years.

One area of progress has been in timber tracking and information management systems, with progress mostly linked to investments made under the VPA processes. For example, Ghana rolled out its wood-tracking system across the country in 2017, which is now to be assessed to determine its readiness for issuing FLEGT licenses. Indonesia has completed this process and became the first country to issue FLEGT licenses in 2016. Cameroon and the Republic of Congo have also been developing licensing systems, although progress has been slow, particularly in Cameroon.

Both the Republic of Congo and DRC have increased the amount of information available on concession allocation processes, and on harvesting, processing and trade data. However, both countries were starting from a low base and significant improvements are still needed – for example, data is often incomplete and out-of-date. While both countries have committed to reporting on their forest sectors under the Extractive Industry Transparency Initiative (EITI), only the Republic of Congo has started reporting. However, in the Republic of Congo's last report (of 2016) only 1 out of the 20 companies expected to disclose revenue information did so, making reconciliation with government data impossible. It remains to be seen if

the EITI provides sufficient incentive to leverage change.[ii]

Information on enforcement remains the least transparent. Malaysia, Indonesia, and Ghana are among the better performing countries, regularly publishing data on forest crimes and on timber seizures, but it is often in summary form. Elsewhere such information is either unavailable, hard to obtain, or incomplete.

An important question is whether the improvements that have been seen in transparency are having the intended impacts. In other words, is the information being used to hold governments to account and/or to improve legal compliance by the private sector? This is hard to determine, but there are indications that it is taking place in some countries. In both DRC and Republic of Congo, government attitudes towards independent forest monitoring have reportedly become more open, enabling civil society to fulfil this role more easily. In Ghana, efforts to improve the availability of forest sector data have resulted in collaboration between the government and civil society to establish an online portal, which should facilitate legal compliance by the private sector, as well as monitoring of their activities.

All countries have large gaps in information that hinder efforts to monitor the sector effectively. Furthermore, many of the improvements to transparency have entailed making information available online, which is inaccessible to the majority of the rural population in most countries. Consequently, their ability to claim or maintain their rights remains severely limited.

Rule of law

The rule of law remains weak across the countries assessed, with many systematically failing to implement and enforce the law, control corruption and the abuse of power, and ensure transparent and sound financial management.

Enforcement of forest-related laws is a major challenge across all the countries surveyed. With illegal logging and deforestation frequently occurring in remote areas, many countries have limited resources and capacities to detect incidents, and in some cases illegal loggers work in collaboration with enforcement officials. Brazil has the most advanced enforcement machinery of the countries surveyed, including a dedicated

environmental enforcement agency (IBAMA) and advanced remote sensing technologies. However, sharp reductions in the budget allocated to IBAMA in 2017, as well as indications by President Jair Bolsonaro, that he will further limit the agency's enforcement actions, have raised concerns that recent increases in deforestation will worsen.

Some countries, such as Ghana and the Republic of Congo, have recently been active in training law enforcement officials but resources for local enforcement offices are lacking. In Cameroon and DRC, major shortcomings are evident both at the national level (e.g., weak systems to coordinate and monitor enforcement efforts) and at the local level, such as limited numbers of inspections and preferences for "amicable" solutions between offenders and enforcement officers over fines and prosecutions. Lao PDR made significant improvements in law enforcement by establishing a new information management system, developing and implementing smartphone-based reporting and assessment systems, and executing more enforcement activities.

In several of the nine countries analyzed for this assessment, checks and balances against corruption remain weak. In Papua New Guinea, for example, there are no internal systems for government departments to monitor corruption and there is no independent forest monitoring system. Moreover, legal limits to government officials' discretionary powers are often not respected in practice. The Republic of Congo has an independent forest monitoring system but has no parliamentary oversight of the broad discretionary powers granted to government officials. Malaysia has an anticorruption unit, but its scope is limited to investigation rather than prosecution. Indonesia's anti-corruption unit has more power and is effective in the cases it takes, but limited resources means it can only take on a fraction of the cases it is presented with.

A number of countries have relatively strong checks and balances to ensure the rule of law is respected. These include limiting the powers of senior government officials to override laws, providing for performance audits, ensuring parliamentary and judicial oversight of government decisions, and enabling the public to mount legal challenges against government decisions. Notable

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[ii] The Republic of Congo and the DRC are the only two of the nine countries assessed to have committed to reporting under the EITI; Cameroon, Ghana, Indonesia, and Papua New Guinea are members of EITI, while Brazil and Lao PDR have not joined.

improvements to the rule of law in recent years include the adoption of laws in Ghana and Indonesia to strengthen transparency and to hold government officials and forest officers accountable for any involvement in the trade of illegal timber.

Several countries also have important deficiencies in the financial management of forest revenues, which can facilitate corruption and embezzlement. For instance, Brazil lacks systems for ensuring that fees for forest exploitation activities (e.g., concession fees) are paid to the government, while recommendations arising out of audits of the forest administration system are rarely implemented. Some countries, such as Malaysia, do have better financial management systems. There, state authorities maintain records of royalties, fees and taxes. Furthermore, forest departments in Sabah and Peninsular Malaysia also provide details of their revenue and expenditure in their annual reports.

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