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FOREST DECLARATION ASSESSMENT

# Forest Governance: Theme 4 Assessment

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## FOREST GOVERNANCE

THEME 4

Theme 4 of the Forest Declaration Assessment covers forest governance systems and the extent to which they support the goal of halting and reversing forest loss and land degradation by 2030. Elements of forest governance assessed include legal, policy, and institutional frameworks on sustainable management and protection of forests; demand-side measures and international engagement; law enforcement; tenure security, rights protection, and empowering Indigenous Peoples and local communities; and transparency, public participation, and access to justice. This report builds on previous NYDF Progress Assessment reports on NYDF Goal 10.

The Forest Declaration Assessment (formerly the New York Declaration on Forests (NYDF) Progress Assessment) is an independent, civil society-led initiative to assess progress toward the global goals of halting deforestation and restoring 350 million hectares of degraded land by 2030 as set out in international declarations such as the New York Declaration on Forests (2014) and the Glasgow Leaders' Declaration on Forests and Land Use (2021). Globally, terrestrial and coastal ecosystems including savannas, grasslands, scrublands, and wetlands are all under threat of conversion and degradation. Countering this threat for all ecosystems is essential to meeting global climate and biodiversity goals. This annual assessment of global progress for 2022, however, focuses specifically on forest ecosystems. It is published as a set of four reports covering different themes: Overarching forest goals, Sustainable production and development, Finance for forests, and Forest governance.

Achieving global mitigation results in line with the aim of limiting global temperature rise to 1.5°C, as articulated in the Paris Agreement, will require a drastic reduction in natural forest loss and degradation and a commensurate increase in restoration and reforestation activities, which must be pursued through equitable and inclusive measures. Nothing less than a radical transformation of development pathways, finance flows, and governance effectiveness and enforcement will be required to shift the world's forest trajectory to attain the 2030 goals. The 2022 Forest Declaration Assessment evaluates recent progress toward the 2030 goals and answer the question: **"Are we on track?"**

## KEY MESSAGES

With only eight years left to reach the 2030 goals, governance of forests and forest lands is not yet strong enough to curb deforestation and degradation in line with those goals. Robust legal and policy instruments such as moratoria, strengthened enforcement capacity, smart conservation policies, and improved transparency and accountability are effective in protecting forests—as evidenced by remarkable reductions in deforestation in various periods since 2004 when these tools have been employed in Indonesia, Ghana, Côte d'Ivoire, Gabon, Guyana, and Brazil. Yet, some of these achievements have been reversed—notably in Brazil—or are at risk of being reversed as countries phase out or roll back policy gains through recent and proposed amendments.

In some countries, reforms and new initiatives have strengthened legal and policy frameworks governing forests and land use. Jurisdictions such as the Republic of the Congo and the United States have recently developed laws and policies to protect and sustainably manage their forests more effectively. Others, like the European Union (EU), Australia, Vietnam, and China are expanding on their demand-side regulations by developing laws addressing import of forest-risk commodities and enhancing traceability in the forest sector. However, most of these proposals lack sufficient detail, are in early stages of development, or have yet to be implemented at a sufficient scale to curb deforestation in line with the 2030 goal.

More inclusive approaches to policy development, implementation and enforcement have been adopted by a growing number of countries, reflecting both growing capacity and expertise within civil society and government recognition of the value of forest protection. This has resulted in improvements in policies and laws, and enhanced accountability of government and the private sector in the Republic of the Congo, Ghana, and Cameroon.

Law enforcement has also improved in a few tropical forest countries, for example, reducing illegal timber exports from Lao People's Democratic Republic, and contributing to reduced deforestation in Indonesia. But there has also been a weakening of enforcement and gaps in the existing legal frameworks, preventing effective enforcement in other countries. Furthermore, corruption is widespread in many forest areas, facilitating illegalities in forests and illegal trade in timber.

Finally, tenure insecurity is persistent in many countries, with at least 50 percent of the lands and territories held by IPs and LCs still not legally recognized. Reforms in Congo Basin countries such as the Republic of the Congo and Democratic Republic of the Congo (DRC) have strengthened IPs and LCs rights' recognition and protection. However, other major tropical forest countries have also weakened the legal protection of IPs and LCs' rights through regulatory and legislative changes, or have not accelerated implementation of policies and laws for the recognition of IPs and LCs' forests, lands, and waters, and IPs and LCs still face violations of their rights and territories, as well as violence and marginalization.

## Recommendations

Governments must take urgent steps to strengthen forest governance, including:

- Address weaknesses, overlaps, and ambiguities in forest legal frameworks; clarify unclear and overlapping laws, regulations, and institutional mandates; streamline legal frameworks in the forest and non-forest sectors; and improve the enforcement authorities' capacity to understand the law.
- Halt and reverse the weakening of legal frameworks and institutional capacities. Governments should carefully assess the long-term implications of recent rollbacks for sustainable development and forests. This includes the recent amendments and introduction of laws that undermine forest protection and reforms weakening environmental and social protections in the wake of COVID-19.
- Secure IPs and LCs' land tenure rights by developing and implementing clear and coherent laws that formally recognize and protect these rights.
- Implement inclusive processes for forest governance, including by embedding the participation and inclusion of forest-dependent communities in forest decision-making into the legal frameworks, ensuring that IPs and LCs are consulted on and have consented to decisions around their forest lands through a process of FPIC. More broadly, ensure participation of non-state actors in policy and law-making and implementation; land-use planning; law enforcement; and forest monitoring.
- Address regulatory weaknesses and ensure the proper implementation of environmental and social impact assessments (ESIAs) and of legislations on protected areas. Proper implementation of ESIA includes, considering all direct, indirect, and cumulative negative impacts on forests and the people dependent on them, and prioritizing their avoidance in accordance with the mitigation hierarchy.
- Increase checks and balances to combat corruption in the land and forest sector. This requires, for example, limiting government officials' discretion in approving concessions; adopting robust rules to avoid conflicts of interest; robust implementation of timber legality assurance systems and due diligence requirements; and ensuring compliance with or the strengthening of transparency laws.
- Strengthen enforcement by allocating sufficient resources to enforcement agencies, strengthening international cooperation, and empowering civil society and communities in monitoring.
- Strengthen land-use planning, including evidence-based spatial planning analyses and processes for allocation of concessions and ESIA, in alignment with forest goals.

## Introduction

### Why look at forest governance?

Governance generally refers to structures and processes that enable and ensure different stakeholders to engage in decisions affecting their livelihoods in an inclusive, transparent and accountable manner. It encompasses clear and equitable legal frameworks, effective institutions, rule of law, and oversight of government decisions by non-state actors. In the context of this report, we consider forest governance to cover the following elements;

- The legal, policy and institutional frameworks and processes that govern the sustainable management, use and protection of forests.
- Transparency, inclusiveness and participation of non-state actors in the development and implementation of legal and policy frameworks.
- The rule of law in forest-related matters, including the implementation and enforcement of laws and access to justice for those wronged by forest-related decisions.
- Governance of the demand and consumption of forest and non-forest products linked to deforestation and forest degradation
- Tenure security, rights protection and empowering Indigenous peoples and local communities (IPs and LCs)

Effective forest governance results in clear policy and legal frameworks that are conducive meaningful participation by all groups, hold governments accountable and advance action towards the achievement of shared goals. In the context of this report, such goals include forest protection, improved land tenure, and access to natural resources. Evidence suggests that weak forest governance can be harmful, not just for forest landscapes and their ecosystems, but also for societies - particularly those who are most dependent on forest lands, including Indigenous Peoples and local communities (IPs and LCs), poor people, and other marginalized groups. Case studies show that robust governance systems have successfully contributed to reducing deforestation including in Brazil between 2004-12, Indonesia since 2016, Ghana in 2021 and Gabon since 2018 (see case studies in the Theme 1 report on Overarching forest goals).

Globally, a significant share of deforestation and timber harvesting is done illegally, pointing to the essential need for effective enforcement. A recent study<sup>1</sup> also found that between 35-55 percent of tropical forest land cleared for agriculture remains unused in the following years. This can be explained by land speculation, unsuitability of the land for cultivation, conflict over or unclear tenure, claims that the land will be used for agriculture which actually act as a vehicle for illegal logging, or market fluctuations that made farming financially unattractive. This high prevalence of deforestation that is not followed by land use highlights the importance of effective governance.

In a world where voluntary pledges are increasingly used to communicate actors' intent to work collectively toward the 2030 forest goals, effective forest governance is essential for ensuring that actions are aligned towards a common objective.

### What has been pledged on forest governance?

Through the Glasgow Leaders' Declaration on Forests and Land Use, 145 countries accounting for over 90 percent of the global forested area have pledged to work collectively to halt and reverse forest loss and land degradation by 2030. Soon after the declaration was made at COP 26, governments and organizations pledged USD 1.7 billion to support advancement of IP and LC forest tenure rights and recognition of their forest guardianship through the IPLC Forest Tenure Joint Donor Statement. Another USD 12 billion was pledged by countries to support, among others, strengthening of forest and land governance and clarifying of land and forest tenure rights of IPs and LCs (**Table 1**).

The below pledges include some references to the urgent need for improved forest governance, for example, highlighting the need for enhanced international engagement, improved legal and institutional frameworks, and recognizing the rights of IPs and LCs. Despite their importance, issues of transparency, participation, and access to justice, as well as improved law enforcement, are not

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well-covered in the existing landscape of pledges, and overall, the critical need for strengthening or reforming forest and land-use governance is given little attention.

One year after their adoption, it is too early to assess progress under these pledges. While the Glasgow Leaders' Declaration plans an annual stocktake of progress, neither the IPLC Forest Tenure Joint Donor Statement nor the Global Forest Finance Pledge has yet, to our knowledge, implemented a regular reporting mechanism.

**Table 1. Pledges and other initiatives that include commitments to improved forest governance announced at COP26 in Glasgow**

Pledge/ Initiative	Description	Intermediate targets and progress reporting	Final target
<a href="#">Glasgow Leaders' Declaration on Forests and Land Use</a>	145 national governments endorsed this declaration with an overarching goal to halt and reverse forest loss and land degradation by 2030. Among the six themes included in its scope are elements of governance such as <b>empowering communities</b> while <b>recognizing the rights of Indigenous Peoples and local communities</b> in accordance with relevant national legislation and international instruments; <b>redesigning agricultural policies and programs, and ensuring robust policies and systems are in place</b> to accelerate the transition to an economy that is resilient and advances forest, sustainable land use, biodiversity and climate goals.	Endorsers will take stock starting at COP 27 in 2022. No public information is available about the planned format or frequency	Halt and reverse forest loss and land degradation by 2030
<a href="#">IPLC Forest Tenure Joint Donor Statement</a>	Signed by 23 countries and philanthropic organizations, the signatories pledged USD 1.7 billion in 2021-2025 to <b>secure and strengthen IPs and LCs tenure rights and the role of IPs and LCs</b> as guardians of forests and nature. This includes providing support to indigenous peoples and communities, including for collective governance structures and management systems, and for mapping of community tenure rights and registration as well as support to national land and forest tenure reform processes and their implementation.	The signatories will annually report on the pledge progress, including updates on how funds are being spent. The first report will be published at COP 27	USD 1.7 billion by 2025
<a href="#">The Global Forest Finance Pledge</a>	12 countries pledged USD12 billion for forest-related climate finance between 2021-2025. Funding will be provided for technical and financial cooperation for capacity building, as well as for other activities that support and strengthen forest and land governance such as <b>clarifying land tenure and forest rights for Indigenous Peoples and local communities</b> .	No public information available about reporting plans	USD 12 billion by 2025

## How does this report assess progress?

We assess the state of forest governance and progress of governments across a range of “building blocks” that will be essential to create coherent, effective, equitable and enforceable governance for forests and forest lands by 2030.

Achieving the 2030 goals requires coherent, effective, equitable and enforceable legal and policy frameworks – that is, frameworks that take into account the varied needs and priorities of a country’s citizens, including its most marginalized. Achieving this requires capable institutions and inclusive processes, and mechanisms for policy development, implementation and enforcement.<sup>2</sup> Monitoring the implementation and impacts of laws and policies is also a key feature of a robust governance systems – including independent, third-party monitoring - enabling governments to respond and adapt laws and policies appropriately when challenges arise.

**Figure 1** illustrates the building blocks assessed in this report. To be “on track” to achieve the overarching 2030 forest goals, a critical mass of these building blocks must be – at least – initiated at scale by governments

*Figure 1. Building blocks for forest governance*



This report builds on and draws from previous NYDF Assessment reports on forest governance, complemented by updated datasets, where available, and by additional literature review. The Assessment Framework underlying this report draws from and is inspired by the Chatham House [forest governance and legality assessments](#), where policies and interventions are assessed for their existence, quality of design, and level of implementation. A recent Chatham House report on illegal logging and related trade also contributed valuable information.<sup>3</sup> Additional information came from multiple sources and reports from Forest Declaration Assessment Partner organizations and other institutions.

Illustrative examples and case studies have also been included from country-level assessments of progress,<sup>a</sup> in 2022. Though this report aims to assess progress globally, it contains relatively more information on tropical forests and developing countries, in part due to a trend in available data and literature. Future assessments will continue to aim for more comprehensive coverage globally.

<sup>a</sup> Cambodia, Cameroon, Canada, Colombia, Democratic Republic of the Congo, Dominica, Ecuador, Gabon, Indonesia, Kenya, Liberia, Republic of Congo, and Vietnam

## Findings

Establishing robust governance is at the core of government action to achieve the 2030 forest targets. However, despite some areas of improvement and with only eight years left to reach the 2030 goals, countries have made insufficient progress in improving forest governance systems and the rule of law. The lack of sufficient progress also shows in the numbers: At least 32 million hectares of commercial agriculture-driven tropical deforestation between 2013-2019 was illegal, as were at least 15 percent of timber exports over last two decades.<sup>4</sup> The UN Environment Programme has reported that illegal logging accounts for between 15 percent and 30 percent of global timber trade, and a larger 50 percent to 90 percent of trade from tropical countries.<sup>5</sup>

A few countries have made exceptional progress in reducing deforestation or keeping deforestation low, and good governance has been a key element of this success. For instance, Gabon reduced deforestation by 28 percent between 2018-2020 and 2021 as a result of implementing measures to combat illegal logging and enforcement of protected areas (See Theme 1 report on overarching forest targets). Indonesia also reduced deforestation following the implementation of moratoria and improved enforcement measures (See sections 1 and 3 below). In Brazil, the decline in deforestation rates between 2004 and 2012 has been partly attributed to the coordinated implementation of PPCDAm,<sup>b</sup> which included the creation of protected areas and effective monitoring systems.<sup>6</sup>

### **1. Legal, policy, and institutional frameworks and mechanisms for protection, sustainable use and management of forests**

*Achieving forest goals requires that countries develop coherent and effective laws and policy instruments governing forests and land use and that these are effectively implemented and enforced. This includes having processes and mechanisms in place to enable stakeholders to shape these laws and policies, and to allow civil society to support their implementation, and monitor their effectiveness.*

Governments are using a range of legal and policy instruments to influence forest and non-forest land use, such as moratoria, protected areas and environmental and social impact assessments (ESIA) and land use planning (**Table 2**). However, their impacts have been mixed. Where the instruments have been well designed through sufficient participation and well implemented, they have contributed to reduced deforestation and curbing illegalities in forests. For example, a timber export moratorium in Lao PDR led to a significant drop in trade and export of illegal timber, while Indonesia's moratorium on primary forest and peatland conversion contributed to reduced deforestation in Indonesia. In Brazil, the Amazon Soy Moratorium -initiated by civil society and companies, later supported by government- was found to have a substantial effect on deforestation rates, with rates on soy-suitable land declining after its adoption between 2006-16. Some of the success factors for the moratoria were high-level support, centrally coordinated implementation and strong enforcement (See case study in Theme 2 report on Sustainable production and development).<sup>7</sup>

**Table 2. Examples of common instruments to influence forest outcomes**

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<sup>b</sup> The Action Plan for the Prevention and Control of Deforestation in the Legal Amazon

**Moratoria**

Declaring moratoria on logging activities or concessions in forest areas is a common instrument that governments use to influence forest and non-forest land use. Moratoria can help to reduce deforestation and/or degradation if they are well designed and adequately implemented. Particularly, where the laws governing forests in a country are unclear or conflicting, moratoria can create the enabling conditions to strengthen enforcement efforts.<sup>8</sup>

A key success factor for moratoria is high-level support for the measure. In Indonesia, the Ministry of Forestry declared in 2011 a moratorium on primary forest and peatland concessions, but it was weakly enforced.<sup>9</sup> In 2016, an additional moratorium on peatland drainage was issued by the President and was much more successful. In this case, it was followed by a series of implementing regulations which enabled action to be taken, and stronger enforcement.<sup>10</sup> In Lao PDR, support from the Prime Minister was a key factor to the partial success of a timber export moratorium in 2016.<sup>11</sup> Illegal trades experienced a significant drop in exports after the moratorium was declared, but legislative loopholes left conditions for large-scale logging to continue<sup>12</sup>.

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**Environmental and social impact assessments**

Environmental and social impact assessments (ESIAs) can, in principle, have a significant positive impact on large-scale infrastructure projects and extractive industries. They are one of the first steps of exploring mitigation strategies for land use planning and project development. Based on the risks identified, decision-makers can develop management plans and set out mitigation measures.<sup>13</sup>

ESIAs are a regulatory tool with great potential, but are often poorly designed and weakly enforced. In most cases, they also suffer from poor coordination between multiple site-level assessments. For example, in Liberia, Guinea, and Brazil, there is evidence of overlapping concessions with varying levels of ESIA implementation and uncoordinated development, in areas with high road density and forest fragmentation.<sup>14</sup>

Before approving projects in mining, infrastructure, and other sectors that drive deforestation, most governments require project developers to conduct ESIAs. However, this requirement often does not prioritize forest loss, nor consider all the impacts a project can have. For example, in Malaysia, ESIAs for infrastructure projects only expect developers to consider potential local impacts within a limited spatial scale, without requiring assessment of any potential indirect risks<sup>15</sup>. In most countries, companies developing mining or infrastructure projects need only to present ESIAs when they apply for a license to operate, after an exploration has been completed. This reduces the potential of ESIAs to influence licensing authorities, and leads to less effective controls.<sup>16</sup>

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**Protected areas**

Governments worldwide use protected areas as a tool for both conservation and the sustainable use of forests, and more than 700 million hectares (18 percent of global forests) are classified as protected areas. This figure is increasing, but the last two decades have also seen a rise in governments removing the protection status of protected areas. Most of the almost 52 million hectares affected between 1892 and 2018 were downgraded since 2000. Governments have also tempered regulations for another 166 million hectares.<sup>17</sup> Many countries have also committed through the High Ambition Coalition to increase protected areas, in line with the goal to achieve a minimum of 30% land and ocean protected by 2030. Industrial-scale resource extraction and development (including infrastructure and mining) are responsible for 61 percent of protected area downgrading, downsizing, and degazettement (PADDD). 74 countries have enacted more than 4400 PADDD events since 1892. The emerging hotspots of PADDD are the United States and Brazil.<sup>18</sup>

One-third of protected areas are under intense human pressure. This pressure is caused mostly by informal and illegal activities by small- and large-scale actors.<sup>19</sup> Implementation of protected area legislation has varied across countries, and enforcement is often weak. If appropriately designed and gazetted, and properly enforced, protected area status can limit forest conversion and degradation, while supporting sustainable livelihoods, increasing forest carbon stocks and contributing to natural regeneration.

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To ensure that sustainable development and forest protection and conservation go hand-in-hand, an inclusive and equitable approach to land use planning and implementation is required. Most forest countries do have land use plans and regulations. However, the question is whether – and how – governments reconcile land uses and priorities that are not always compatible. Inclusive land use planning approaches consider these competing objectives and ensure an equitable approach to sustainable development, which incorporates, social needs, livelihoods, and environmental protection.

Some countries have adopted land use regulation and spatial zoning to balance conservation and development at both national and sub-national levels, such as in Southeast Asia, and in the Amazon. In Vietnam, the Law on Planning 2017 provides a clear principle on land use planning across national and sub-national levels that harmonizes cross-sectoral planning and priorities.<sup>20</sup> In Colombia, the territorial zoning regulation calls for the zoning of forestry reserves in the Amazon region.<sup>21</sup> In Central Africa, the Central African Forest Initiative (CAFI), is supporting DRC and Gabon in reforming land use planning to incorporate forest preservation.<sup>22</sup> As a result, a new land use planning policy was adopted in DRC in January 2020, and a Land Use Planning Law is being considered by Parliament.

While countries and territories representing 99 percent of the total forest area have legislation and policies aimed at sustainable use, management, and protection of forests,<sup>23</sup> the effectiveness and implementation of the laws and policies related to forests and forest lands are often insufficient. A 2018 assessment by Chatham House suggests that, across 19 major forest and consumer countries assessed, the quality of forest legal and institutional frameworks was no better than 'fair'<sup>c</sup>, on average. A number of significant forested countries like the DRC, Republic of Congo and PNG have shown little progress and scored poorly in terms of quality and implementation of legislation, and no countries scored as 'very good'.<sup>24</sup>

Lack of clarity, as well as overlaps and inconsistencies, are common issues of legal frameworks governing forests and land use in developing countries. There are considerable inconsistencies in sectoral laws, such as in Liberia and Suriname, where laws include robust protections for forests, including protected forest areas that cannot be converted. Yet, at the same time, agriculture and mining laws do not restrict access to any land for agricultural and mining concessions and allow miners to clear forested land for mining activities. Sectoral laws in Liberia also create contradictory institutional responsibilities. For example, under the Minerals and Mining Law, the Minister responsible for mines has authority to allow the clearing of trees and shrubs necessary for the mineral rights holders' activities outside the boundaries of their licenses. This contradicts the National Forestry Reform Law, which designates the Forest Department Authority as the entity responsible for all matters concerning the use of forest, meaning that any clearing of trees and shrubs requires the permission of the forest department.<sup>25</sup> In Indonesia, there are overlapping mandates between the central and provincial governments on issuance of permits for agricultural developments, which has reportedly facilitated corruption.<sup>26</sup>

Furthermore, while some developed countries and emerging economies recently developed policies and strategies to promote sustainable management and conservation of forests, the policies contain insufficient targets and lack sufficient details that would fully support their implementation. The EU's Forest Strategy published by the Commission in July 2021 aims to improve the quantity and quality of forests within the EU Member States' by promoting sustainable management of forests with accompanying financial incentives and developing a legally binding instrument for ecosystem restoration.<sup>27</sup> The strategy has, however, failed to address all aspects of sustainable forest management and lacks quantified targets.

In the US, President Biden signed an Executive Order in April 2022 to expand federal efforts to address deforestation and forest conservation, specifically to safeguard mature and old-growth forests as well as build in-country and international partnerships to tackle deforestation.<sup>28</sup> Although the Executive Order maps out the current administration's ambition to comprehensively address forest conservation, it lacks detail and targets to implement the main goals. Finally, the Forestry and Grassland Protection and Development Plan (2021-25), whose objective is to reach a forest coverage rate of 24.1 percent by 2025, includes measures to promote governance, promote the comprehensive reform of collective forest rights, and improve the reform of state-owned forest farms and state-owned forest areas.<sup>29</sup> Some conservationists argue, however, that the plan sets an insufficient goal of

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<sup>c</sup> On a scale of failing, weak, fair, good, and very good

protecting 18 percent of the country's land area by 2025, and that this target should be raised to 25 percent by 2030.<sup>30</sup>

There have been notable developments in the last three years as major tropical forest countries developed laws and policies to enhance traceability in the forest sector. However, there are ambiguities in these laws and policies which, if not clarified, would create obstacles for their effective implementation and enforcement. For instance, the Republic of the Congo promulgated a new forest law in 2020 to ensure more sustainable management of forests (see **Box 2**). The Forest Code Law No. 33-2020 provides for a process of verification of the legality and traceability of forest products and makes it compulsory for logging companies to “certify the administration of their managed concessions or the legality of the products that are exploited there,”<sup>31</sup> There have also been important developments in Vietnam, a major importer and processor of timber products, where the Timber Legality Assurance System Decree was issued in 2020 to ensure legality in the supply chain. The scope of the decree is, however, insufficient as verification of wood origin applies only to exporters.<sup>32</sup>

While some countries strengthened their legal frameworks and policies governing forests, major forest countries risk their previous achievements in reducing deforestation by amending and introducing laws that undermine forest protection. A 2019 assessment of nine major tropical countries<sup>d</sup> found that most countries assessed had made progress in strengthening their legal and institutional frameworks on forests over a period of five years.<sup>33</sup> Examples include the roll-out of national timber licensing systems in Ghana, enactment of a forest law in the Republic of Congo and Indonesia making the Forest and Peatland Moratorium permanent (see **Table 2**).

Indonesia has, for instance, seen a continuous reduction in deforestation since 2017, and a sizeable reduction of 0.26 million hectares (-25%) in deforestation in 2021 in comparison to 2020 (see the Theme 1 report).<sup>34</sup> The decline in deforestation has partly been linked to the implementation of legal instruments such as the Palm Oil Moratorium, the moratorium on primary forest and peatland conversion, improved fire monitoring and fire prevention efforts as well as enhanced law enforcement<sup>35</sup>

However, a 2021 study showed that Indonesia, as well as four other tropical forest countries – Brazil, Colombia, the DRC, and Peru – have rolled back social and environmental regulations in recent years.<sup>36</sup> In Indonesia, the government has made a series of reforms that have weakened safeguards on forest protection, such as the enactment of the Omnibus Law on Job Creation (**Box 1**).<sup>37</sup> Five provinces in Indonesia could lose all their natural forests by 2056 if the Omnibus Law on Job Creation is implemented.<sup>38</sup> The Indonesian government did not also renew the Palm Oil Moratorium that expired in September 2021. The moratorium had imposed a three-year ban on new licenses for palm oil plantations. With the moratorium no longer in place, the country risks losing 52 million acres (21 million hectares) of forest, an area about half the size of California.<sup>e</sup> There have also been reports stating that the “food estate program” is likely to transform nearly 2 million hectares of permanent forests into other land uses without contributing to food security locally.<sup>39</sup>

#### **BOX 1. INDONESIA'S OMNIBUS LAW ON JOB CREATION AS A POSSIBLE SETBACK FOR FOREST PROTECTION**

CASE STUDY

To facilitate economic investment and job creation, Indonesia enacted the Omnibus Law on Job Creation. The law amends 76 laws, including environmental protection and forest laws. Some key features include:

- The law removes the minimum requirement of 30% forest cover in Indonesian islands, leaving it up to each regional government to determine the forest area that should be maintained to prevent environmental degradation. Without the minimum requirement, widespread conversion of forests could occur.
- It has removed strict liability for businesses whose concession areas burned, making it harder to prove and prosecute companies that set their lands on fire for clearing. Previously, companies were liable for

<sup>d</sup> The countries assessed are Brazil, Cameroon, DRC, Ghana, Indonesia, Lao PDR, Malaysia, Papua New Guinea, and Republic of Congo

<sup>e</sup> This figure is based on calculations by Forest Watch Indonesia (FWI).

forest fires in their concessions even without proof of the company's fault – known as strict liability. According to Greenpeace, clearing forests for commercial purposes has led to 4.4 million hectares being burned between 2015 and 2019 in Indonesia and the removal of strict liability is likely to increase this rate of destruction.<sup>40</sup>

- It places new restrictions on those to be involved in environmental assessment processes and consultations related to land use. It stipulates that only those stakeholders directly affected by proposed land use activity will be relevant EIA process, neglecting wider community participation in most of the decision-making on land use in Indonesia.<sup>41</sup> The law has also changed the requirements for environmental decision making in land use, where announcements will be made through electronic, web-based means, which will exclude access for some stakeholders and communities.
- The law allows companies operating illegally inside forests to legitimize their operations by obtaining permits retrospectively and paying fines.
- Under the new regulation, plantation operators won't have to apply for forest conversion permit, and the once protected forests will be re-designated as "forest areas for food security."
- Article 110A and 110B in the omnibus law stated that every activity that is conflicting with the purpose of forest can still operate/be legalized as long as they provide taxes or revenue to the government<sup>42</sup> – a clause that will undermine any no-deforestation policies, including palm oil moratorium.

## **2. Demand side measures and international engagement to address deforestation abroad**

*Export demand accounts for about 25 percent of agriculture-driven deforestation.<sup>43</sup> In Asia and Latin America, export driven demand is much higher than the global average, where at least 35 percent of agriculture driven deforestation is due to export demand. Through consumption of imported products, residents of G7 countries, for example are responsible for, on average, forest loss of 58 m<sup>2</sup> per person per year.<sup>44</sup>*

*Demand-side measures to incentivize the sustainable use and protection management of forests within supply chains are therefore an important part of efforts to address deforestation. These need to be combined with other forms of international engagement (bilateral and multilateral cooperation and trade,) to transform current land-use practices.*

The proportion of illegal trade in wood-based products has declined in the past 20 years globally, in part due to the contribution of demand-side regulations aimed at reducing illegal timber trade. Conservative estimates for the volume of internationally traded timber products suggest that the volume of illegal exports has declined slightly, from 53 to 40 million cubic meters between 2000 and 2018 (based on analysis for 37 major timber exporting countries), while the proportion of illegal trade is estimated to have declined from at least 23 percent in 2000 to 8 percent in 2018.<sup>45</sup> One factor underlying the decline in this proportion has been the introduction of legislation that prohibits the trade in illegal timber and wood-based products and places due diligence obligations on operators. The US Lacey Act and EU Timber Regulation (EUTR) were the first to be enacted.

Evidence shows that both U.S. Lacey Act and the EUTR have had some positive impacts in curtailing illegal imports of timber. The Lacey Act was found to have contributed to reduced illegal imports into the US between 2008 and 2013.<sup>46</sup> The FLEGT/EUTR Fitness Check published by the European Commission in 2021 found that the EUTR (together with the FLEGT Regulation) had been moderately successful in prohibiting placement of illegally harvested timber in the EU market.

Australia, Japan, UK, China, and Vietnam, which together with the US and EU account for over 65 percent of illegal timber exports by volume,<sup>47</sup> as well as Malaysia, Indonesia, Switzerland,<sup>48</sup> have all enacted laws to ensure legality of timber imports and products in their markets. There are, however, considerable gaps in the design of some of these legislations. For instance, while Japan's Clean Wood Act aims to promote the use and distribution of legally harvested wood and wood products, it is not designed to crack down on distribution of illegally harvested wood and there are no penalties for trading in illegal wood and wood products.<sup>49</sup> China's Forest Law, which was amended in 2019 to include a ban on trade of illegally sourced timber, could have significant effect considering that up to 51 percent of China's tropical timber imports in the 2010s were from countries with documented illegal

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deforestation.<sup>50</sup> However, the scope of prohibited products covered by the law is unclear, and it remains unclear how the amended law will be implemented, and if the responsibility for compliance will sit with the company.

An assessment by Forest Trends shows gaps in implementation of EUTR, as companies subject to EUTR are indirectly sourcing timber from countries with a high risk of illegal logging while in the UK, the imports from high-risk countries have increased.<sup>51</sup> This has been attributed to inconsistent enforcement by member states as well as insufficient sanctions and penalties<sup>52</sup> (see Section 3).

Countries responsible for at least 48 percent of deforestation associated with international trade are enacting or recently enacted legal frameworks to address import of forest-risk commodities, but the measures are yet to be implemented. The UK, EU, and U.S., large importers of products associated with deforestation, have enacted, or are in the process of enacting legislation and other trade measures that would curb import of commodities from deforested land. The UK enacted the Environment Act in 2021, which prohibits the use of forest risk commodities and sets out due diligence requirements for businesses which are required to prove that their products have not been linked with illegal deforestation.<sup>53</sup> The implementing legislation for this act is still under development.

In November 2021, the EU Commission proposed a regulation<sup>f</sup> to prohibit the import of products linked to deforestation and ensure that only deforestation-free and legal products are placed in the EU market – thus, a broader approach than that adopted by the UK.<sup>54</sup> The details of the law are to be negotiated in the last quarter of 2022, with issues under discussion including provisions on human rights and the rights of indigenous peoples, the involvement of civil society in assessing country risks, and the scope and responsibilities of a proposed EU forest observatory.

A Bill for enactment of the Forest Act is also being considered by the U.S. Congress. If passed, it would prohibit the import of products made wholly or in part of specific commodities produced on land undergoing illegal deforestation.<sup>55</sup> The bill was introduced in the Senate in October 2021, and since then, there has not been much progress on passing it into law.<sup>56</sup>

Considering that approximately three quarters of the commodity-driven deforestation is due to domestic demand, stronger domestic measures are also of critical importance. One growing area of action in the timber sector has been in strengthening public procurement frameworks, to increase demand for legal and sustainable products and in reforming domestic markets through providing support and capacity building for SMEs. A recent report by Chatham House finds that 7 out of the 19 assessed countries have procurement policies relating to timber.<sup>57</sup> The report however highlights the effectiveness of the policies could be greatly enhanced if resources for training is made available and monitoring of compliance is enhanced.

Colombia is also implementing a strategy to standardize and monitor public procurement through a single virtual platform, including public procurement of legally sourced wood. The country has also developed a scheme wherein forest sector enterprises can undergo a voluntary process of legality verification, increasing their attractiveness to buyers and consumers in more demanding domestic and international markets.<sup>58</sup>

Experience from the EU's FLEGT action plan also shows that partnership agreements have contributed to more coherent legal and regulatory frameworks as well as improved transparency, accountability, and public participation in partner countries. An analysis by CIFOR finds that the FLEGT Voluntary Partnership Agreements (VPAs) have led to regulatory and legal streamlining, which has in some cases led to a decrease in illegal logging and trade.<sup>59</sup> Specifically, assessments find that through VPAs, monitoring systems have been strengthened, improving identification of irregularities in timber trade.

A 2021 study on the contribution of FLEGT VPAs in Cameroon, Ghana, and Indonesia also found that FLEGT VPAs have led to more coherent legal and regulatory frameworks as well as participatory policymaking in forest governance and that illicit timber trading activities could be more easily exposed.<sup>60</sup> Additionally, the implementation of FLEGT VPAs in Ghana,<sup>61</sup> Cameroon,<sup>62</sup> and Indonesia<sup>63</sup> has improved transparency and accountability, as more forest-related information has become available to the public and civil society. The Republic of Congo's Forest Code, which was

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<sup>f</sup> A regulation on deforestation-free products (“deforestation-free law”)

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passed with extensive civil society engagement<sup>64</sup> (**Box 2**) and Vietnam's Decree 102/2020/ND-CP enacting the Timber Legality Assurance System are both outcomes of FLEGT VPAs.<sup>65</sup>

FLEGT VPAs have also positively contributed to law enforcement in VPA partner countries. A 2022 Chatham House report found that Ghana's digital wood tracking system has been enhanced through the FLEGT VPA and that fraud can be traced and tracked.<sup>66</sup> In Cameroon, training was provided for ministry staff, prosecutors, customs officials, small and medium enterprises, and civil society regarding the country's timber legality assurance system.<sup>67</sup> and efforts have been made to increase resources and capacities for government and law enforcement staff.<sup>68</sup> However, the impacts of the FLEGT VPA in Cameroon have been limited. The traceability system is not yet operational, enforcement on the ground is weak, deforestation and conversion continue, and the forest legal framework lacks alignment and protections for IPs and LCs.<sup>69</sup>

### **3. Law enforcement: Detection, prosecution, and enforcing penalties on forest crimes and tackling corruption**

*Adequate law enforcement is a key component of forest governance. Forest crimes and illegal activities increase the likelihood of deforestation and forest degradation, deny governments revenue and undermine the rule of law.*

At least 32 million hectares of tropical forests were illegally converted to commercial agriculture between 2013-2019 and at least 15 percent of timber exports in 37 countries was illegal. A 2020 report by Forest Trends found that at least 69 percent of the conversion driving tropical forest loss due to commercial agriculture between 2013-19, was done in violation of national laws and regulations.<sup>70</sup> These figures are likely conservative.

Forestry crimes and illegal logging accounted for the largest share of environmental crimes in 2018, with the illegal trade in timber estimated to be worth USD 51-152 billion.<sup>71</sup> A new report by Chatham House<sup>72</sup> also suggests that the monetary value and quantity of illegally traded forest-based products are on the rise. In 2018, it was estimated that USD 7-30 billion of timber exports –between 5 and 23% of the annual market, were illegal. Illegal exports have increased from PNG, the Solomon Islands and Russia – especially from the eastern regions, where illegal practices are widespread, as in.<sup>73</sup> Illegal practices continue to dominate in some countries in central Africa which are exporting to markets in Asia, with illegal actors exploiting loopholes and out-manoeuvring existing systems.<sup>74</sup>

While many countries have laws, tools, and institutions to tackle crimes in forests, gaps exist in legal frameworks – or laws are non-existent – preventing effective enforcement. A 2021 study found that the penalties prescribed for forest crimes in six European countries<sup>9</sup> are too low to act as deterrents.<sup>75</sup> In countries such as Slovakia illegal logging is not defined in law; while in Romania the illegal transport of wood on public roads without documentation does not necessarily lead to criminal sanctions, regardless of whether the origin of timber is illicit or not.

Complex requirements in the laws and excessive bureaucratic procedures also make enforcement challenging. A key barrier in enforcement is the burden and standard of proof. In Belgium, when forest crimes are prosecuted under criminal law the burden of proof for failing to carry out due diligence lies with the public prosecutor.<sup>76</sup> In the US, while the Lacey Act provides for sufficiently dissuasive penalties, the high burden of proof required for criminal enforcement actions under the Lacey Act has led to a relatively low number of prosecutions.<sup>77</sup> Prosecutors in Romania are faced with challenges such as insufficiency of adequate and actionable evidence, the perceived triviality of forest crimes, and prolonged trial periods. When sanctions are imposed on forest crimes in the country, the sanctions are negligible under criminal law.<sup>78</sup> Further evidence shows that politicians with links to organized crime networks use their power to make important forestry cases hard to investigate.<sup>79</sup>

The EU Timber Regulations (EUTR) are unevenly enforced among key member states, and the sanctions applied in some member states are not sufficiently dissuasive. For example, Germany denied access of teak from Myanmar into its market due to issues with legality of the timber source. The German police and customs seized a total of 111 cubic meters of teak worth more than EUR 1 million from Myanmar being smuggled via Croatia.<sup>80</sup> The courts and enforcement authorities in the

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<sup>9</sup> The countries studied are Belgium, France, Bulgaria, Romania, Slovakia, and Ukraine.

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Netherlands have ruled in favor of tracing the lifecycle of wood from stump to shipping to determine the legality of teak from Myanmar and imposed penalties on noncompliant companies.<sup>81</sup> In France, breaches of the EUTR have been met with fines. However, the sanctions applied are not effective and dissuasive, and often applied only in cases of repeated shortcomings and after warnings.<sup>82</sup> <sup>h</sup> There is also evidence that Italian traders are not penalized for noncompliance with the EUTR.<sup>83</sup>

Enforcement has improved in some tropical forest countries. In Lao PDR, enforcement efforts since 2015 have led to the uncovering of unlawful timber-related activities, prosecution of over 45 cases of illegal timber harvesting, seizure of over 2500 cubic meters of illegally harvested wood and shuttering of over 1600 wood processing plants. Exports of illegal timber from Lao to China and Vietnam has also dramatically reduced as a result of enforcement of export bans and restrictions.<sup>84</sup> In Indonesia, the reduction of deforestation has been attributed partly to the strengthened enforcement on the moratorium on new licenses in primary forests and peatlands as well as enforcement of peatland management regulations.<sup>85</sup> Furthermore, enforcement efforts that started in Indonesia in 2018 led to various companies being investigated, sizeable volumes of timber being seized, and jail terms being handed down to those involved in illegal forest activities.<sup>86</sup>

At the same time, concerns have been raised about recent developments that have weakened enforcement efforts in Indonesia and Brazil. In Indonesia, the Omnibus Law on Job Creation ends the liability of companies for forest fires, instead requiring a permit holder to ‘prevent and control forest fires in its working areas’<sup>87</sup> (see **Box 1**). In Brazil, a historic slow-down in deforestation between 2004-12 has been attributed in part to increased budget for enforcement agencies. However, the budget for environmental enforcement was slashed by 27.4% in 2021.<sup>88</sup>

Corruption is widespread in many forest countries. Nearly half of the world’s forests are in regions which Transparency International finds to have rampant corruption.<sup>89</sup> For instance, a 2020 Forest Trends report links the increasing deforestation in the tropics, including the widespread levels of illegality in the Andean Amazon, to corruption and weak law enforcement.<sup>90</sup> Bribery has been documented in granting concessions in Lao PDR.

Systematic corruption has allowed the illegal tropical timber trade to thrive – in particular the trade in valuable species such as rosewood. Reporting has uncovered corrupt schemes to import illegal timber from the Congo Basin and Nigeria to China and Vietnam.<sup>91</sup> One such investigation by Environmental Investigation Agency (EIA) revealed approximately 1.6 million rosewood trees were illegally harvested in Senegal and exported through The Gambia to China between 2012-20, with involvement of the Senegalese army and high level Gambian officials, despite export bans in both countries.<sup>92</sup> Similarly, the Cameroon-Vietnam illegal trade in tropical logs has reportedly thrived due to corruption.<sup>93</sup>

#### **4. Tenure security, rights protection and empowering Indigenous Peoples and local communities**

*IPs and LCs manage at least half of the planet’s land<sup>i</sup> and these lands provide ecosystem services worth at least USD 1.16 trillion per year.<sup>94</sup> IPs and LCs are effective forest stewards.<sup>95</sup> A report by World Resources Institute found that deforestation rates were 2.8 times lower on average within “tenure-secure”<sup>j</sup> indigenous lands than outside of them.<sup>96</sup>*

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<sup>h</sup> This is based on an assessment of implementation of EUTR in 15 member states and the UK. The member states assessed are Austria, Belgium, Bulgaria, Croatia, Denmark, France, Germany, Hungary, Italy, Netherlands, Portugal, Romania, Slovakia, Spain, Sweden

<sup>i</sup> A report by WWF and partner organizations in 2021 consolidated georeferenced data indicating that at least 32 percent (43.5 million km<sup>2</sup>) of the world’s land is owned, governed, or customarily managed by IPs and LCs. This is almost certainly an underestimate as, despite significant advances, mapping and documentation of Indigenous Peoples’ and local communities’ territories remains incomplete in many countries. Other estimates incorporating non-georeferenced data suggest at least 50 percent of the world’s land is likely to be held by Indigenous Peoples and local communities.

<sup>j</sup> Tenure secure lands are those that are legally recognized by the government and protected from external threats and competing claims

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*Tenure security can be strengthened through the legal recognition of IPs and LCs' rights to land and resources, and with protection against encroachment from outsiders. Tenure security can be supported and enabled by laws that recognize a broad set of rights,<sup>k</sup> limited public interest exceptions, and access to mechanisms to enforce those rights. In addition, broader IP and LC rights include a guarantee of Free, Prior and Informed Consent (FPIC) for the development of projects (commercial, as well as conservation and restoration projects). Other measures for the empowerment of IPs and LCs include providing finance to support their communities and livelihoods, as well as strengthening their capacity to monitor and ensure response to illegalities taking place on their land.*

Over 140 countries have committed to recognize the rights of IPs and LCs in accordance with relevant national legislation and international instruments.<sup>97</sup> Financial resources totalling USD1.7 billion have been pledged by governments and organizations to support advancement of IPs and LCs' forest tenure rights<sup>98</sup> (see **Table 1**). For the proposed EU regulation on deforestation, the EU Parliament proposed including criteria on the existence and enforcement of laws related to the rights of IPs and LCs as part of the risk assessment for countries, while a proposed EU observatory would monitor land rights.<sup>99</sup>

Nevertheless, tenure insecurity is persistent in many countries. At least 50 percent of the lands and territories held by IPs and LCs globally are not legally recognized. A report by RRI assessing 42 countries covering more than half of global land area estimates that at least 1.49 billion hectares are held by IPs and LCs without legally recognized rights. In comparison to Asia and Latin America, Africa has the largest portion of unrecognized community lands. Almost 300 million hectares of community lands are estimated to remain unrecognized in the Central African Republic, the DRC, and Sudan alone.<sup>100</sup> The implementation of existing laws in DRC alone could increase legally recognized community forest tenure by 70 million hectares.<sup>101</sup> In Asia and Latin America, nearly a quarter of IPs' and LCs' land is not legally recognized (23 and 24 percent, respectively).<sup>102</sup>

In the last two years, the Republic of Congo and the DRC developed laws and adopted reforms to secure land tenure rights and to promote IPs and LCs rights, though these have yet to be implemented. The Republic of Congo recently passed a law allowing IPs and LCs to legally hold and manage their forests. The Forest Code 2020 grants forest management rights to forest dependent communities and requires that benefit sharing schemes are negotiated directly by affected communities. To ensure the involvement of IPs and LCs in forest governance, the Forest Code introduced the concept of FPIC in the Republic of Congo, and further requires that forest management plans are examined and approved by two multistakeholder committees composed of, among others, IPs and LCs.<sup>103</sup> Still, the implementing regulations have yet to be developed, despite the law having been enacted more than two years ago.

In the DRC, a law to protect and promote the rights of the Indigenous Pygmy peoples was adopted by the National Assembly in June 2021 and by Senate in 2022. At the time of drafting this report, the proposed law was awaiting presidential assent. The law is intended to address land rights, provide free education and assistance in courts, and to establish a national fund to fund activities aimed at promoting IPs and LCs rights.<sup>104</sup>

Several ongoing reforms in other countries also have the potential to recognize IPs and LCs' tenure rights and strengthen the protection of IPs and LCs rights. In 2019, for example, the Peruvian president pledged to grant titles to all communities in the country by 2021 but the goal has yet to be achieved. As of January 2020, around 40 percent of communities – or 887 out of 2268 – had formal titles to land and had been included in the public land registry.<sup>105</sup> Panama is in the process of drafting its national regulatory framework on Indigenous Peoples' FPIC. In Uganda, the Constitutional Court handed down a landmark judgement in August 2021<sup>106</sup> that serves to protect the rights of forest dwelling indigenous Batwa Pygmies. While recognizing the plight suffered by the Batwa for years, the court ordered the government to recognize the right of ownership of the land by the Batwa community.<sup>107</sup> The decision has, however, not been implemented. The government has since appealed against the decision and media reports indicate that the government does not plan to comply with the Constitutional Court's judgment. An official of the Uganda Wildlife Authority has been

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<sup>k</sup> A bundle of rights in the context of land rights includes the rights of access, use, transfer, and exclusion of outsiders. The size of these bundles varies depending on tenure type e.g., the bundle of rights under ownership or freehold tenure is commonly larger than the bundle under leasehold tenure or land designed by government for IPs and LCs

quoted stating that the status quo will be maintained and there is no plan to compensate the Batwa community in accordance with the court.<sup>108</sup>

Meanwhile, a number of major forest countries have weakened the legal protection of IP's and LC's rights, and there are numerous examples of human rights violations in and around IP's and LC's territories. The weakening of IP's and LC's rights protection has been highlighted in a recent report that studied the protection of IP's and LC's rights during COVID-19 period in five countries – Brazil, Colombia, DRC, Indonesia, and Peru.<sup>109</sup> In all five countries, there have been legislative and regulatory changes as well as practices that violate Indigenous Peoples' rights, such as exclusion of Indigenous People in decision-making, illegal mining and logging in indigenous territories, and increased violence against Indigenous People's rights defenders.

Violence against environmental defenders also continues to increase across the world. According to the Global Witness report, at least 200 land and environmental defenders were killed in 2021, with more than half of the killings taking place in Mexico, Colombia and Brazil.<sup>110</sup> A significant number of attacks against Indigenous People has also been recorded. In 2021, over 40 percent of all the fatal attacks targeted Indigenous People, despite them making only 5 percent of the world population.<sup>1</sup> Most of these attacks were in Mexico, Peru, Colombia, Nicaragua and Philippines. For example, four Indigenous leaders active in defending land rights were killed in Peru after receiving threats, which the government had failed to respond to.<sup>111</sup>

## **5. Transparency, public participation, and access to justice**

*The communities and Indigenous Peoples living in forest areas play a critical role in managing forests sustainably. Research suggests that, when granted control, these stakeholders are better suited to protect forests than companies or governments.<sup>112</sup> Civil society and the public also have a critical role to play in providing oversight over government decisions. It is therefore critical to include forest-dependent communities, civil society, and the general public in decision-making related to forests and forest lands, including shaping and implementing laws and policies. For IPs and LCs specifically, a proper process of Free, Prior and Informed Consent (FPIC) is essential before decisions are made related to their territories. Inclusive and participatory forest-decision-making requires access to information and transparency, which also increases confidence in the system and is fundamental in tackling corruption.*

*Access to justice is also a key component for the proper implementation of laws. Access to justice gives citizens, IPs and LCs and civil society a crucial mechanism to challenge government decisions, as well as to ensure their rights are respected. Having access to justice means that citizens have judicial and quasi-judicial systems available to them, they have legal standing to access those systems, and do not face unreasonable legal or financial barriers to accessing the systems.*

### *5.1. Transparency and access to forest-related information*

Improvements in transparency and accountability as some tropical forest countries have improved availability of and access to forest-related data and legal texts. A recent report by Chatham House highlights that transparency and accountability systems in nine tropical forest countries have improved.<sup>m</sup> Similar findings are supported by a CIFOR report assessing transparency and accountability in Ghana,<sup>113</sup> Cameroon,<sup>114</sup> and Indonesia.<sup>115</sup> Studies show that more forest-related information has become available to the public and civil society. Stakeholders have been provided with a greater role for monitoring legality and identifying irregularities in timber trade and regulations.<sup>116</sup> The improved transparency and accountability has been due to investment in

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<sup>1</sup> In Peru, four Indigenous leaders active in defending land rights were killed, after receiving threats, which the government had failed to respond to.<sup>1</sup>

<sup>m</sup> The nine countries are Brazil Cameroon, DRC, Ghana, Republic Oof Congo, Indonesia, Laos, Malaysia and Papua New Guinea



institutions and timber traceability systems as well as requirements under VPAs to publish and make laws more accessible.

In Latin America and the Caribbean, the Escazú Agreement<sup>n</sup> could greatly enhance public access to forest-related information and participation. The treaty guarantees implementation of the right of access to environmental information, public participation and access to justice in environmental matters in Latin America and Caribbean. Signatories commit to virtual, universally accessible clearinghouses for information related to environmental policy development and decision-making, such as legislative, administrative and policy measures, codes of conduct and good practices<sup>117</sup> The Agreement has been signed by 24 countries in Latin America and Caribbean, entered into force in 2021,<sup>o</sup> but is yet to be implemented by signatories<sup>118</sup> Notably absent, however, is Brazil, which hosts the largest share of forests in the region.

## 5.2. *Participation in decision-making*

More inclusive approaches to policy development, implementation and enforcement have been adopted by a growing number of countries. These positive developments reflect both growing capacity and expertise within civil society and recognition of this capacity by government. Developments has resulted in improvements in policies and laws, and enhanced accountability of government and the private sector in the Republic of Congo, Ghana and Cameroon.

The Republic of Congo's Forest Code, for example, was developed with extensive civil society engagement, allows for participation of civil society and IPs and LCs, and legally recognizes the role of civil society's independent forest monitoring<sup>119</sup> (**Box 2**). In Laos and Vietnam VPA processes led to increased participation of civil societies in forest policy discussion.<sup>120</sup> In Ethiopia, ongoing deforestation prompted the national government to establish multi-stakeholder forums to govern the forestry sector more effectively. Subsequent studies show that these institutions have improved participation and can address power imbalances among stakeholders.<sup>121</sup>

### **BOX 2. THE REPUBLIC OF CONGO'S NEW FOREST CODE**

#### **CASE STUDY**

In July 2020, after eight years of negotiations among various stakeholders, the Republic of Congo adopted a new Forest Code. The new law reforms the country's existing legislation on forestry and forest management. It introduces concepts of timber certification and verification of legality into the country's forest governance. It also strengthens the participation and position of indigenous and local communities, formally integrating the concept of Free, Prior and Informed Consent (FPIC). It includes provisions on community benefit-sharing in logging revenues, local development funds, and community forests.

The Forest Code also includes legal recognition of independent monitoring of forests by civil society and local communities and ensures that these stakeholders have access to justice to redress any violations. The emphasis on local stakeholder engagement under the Forest Code reflects the strong involvement and input of civil society organizations in its development process. According to ClientEarth, 65 percent of the inputs provided by civil society in drafting the Forest Code were either partially or completely adopted.

The Forest Code allows for participation of civil society and IPs and LCs in forest governance, such as in the commission in charge of adjudicating forest-concessions and as part of a multistakeholder committee that examines and adopts forest management plans. Furthermore, the role of civil society's forest independent monitoring is legally recognized.

<sup>n</sup> The Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters

<sup>o</sup> The Agreement has been signed by 24 countries but only 12 have ratified. The following countries have ratified: Antigua and Barbuda, Argentina, Bolivia, Ecuador, Guyana, Mexico, Nicaragua, Panama, Saint Vincent and the Grenadines, Saint Kitts and Nevis, Saint Lucia, and Uruguay

In Indonesia and Malaysia, new developments threaten to weaken public participation mechanisms as the countries have amended their legislations and disregarded public participation in forest-related decisions. The Indonesian Omnibus Law on Job Creation puts new restrictions on the people to be involved in environmental assessment processes and consultations related to land use. It stipulates that only those stakeholders directly affected by proposed land use activities will be involved in EIA process, neglecting wider community participation in most of the decision-making on land use in Indonesia.<sup>122</sup> The law has also changed the requirements for environmental decision making in land use, where announcements will be made through electronic, web-based means, which will exclude access for some stakeholders and communities.<sup>123</sup> Additionally, the implementation of the Food Estates Initiatives in Indonesia has been clouded by secrecy and lack of public participation. The government announced three megaprojects under the food estate Program.<sup>p</sup> These could lead to the conversion of 2 million hectares of forest to food estates,<sup>124</sup> but little information was made available to the public about these projects.

In Malaysia, the State of Sabah reportedly entered a secret carbon deal to lease two million hectares of rainforest for at least 100 years without public participation. The existence of the Agreement was made public by news media. To date, the government has not made the terms of the agreement public and neither have the affected communities been consulted.<sup>125</sup>

### *5.3. Access to justice for citizens and civil society*

There have been several recent examples of improvements in access to justice in the EU, Ecuador and India resulting in broadened criteria for standing, that is, the right to file a case before judicial and quasi-judicial bodies. In 2019, the Aarhus Convention Compliance Committee found that many of its Parties, such as the UK, Austria and EU had not remedied the legal or administrative limitations that restrict proper access to justice in their jurisdictions. Particularly, the EU was found to violate the Aarhus Convention by not allowing members of the public to challenge public interest decisions of EU institutions before the European courts. In October 2021, the EU adopted a key amendment to the Aarhus Convention regulation broaden the legal standing beyond NGOs, hence lifting the previous restrictions on standing.<sup>126</sup> In September 2022, the European Parliament voted on the proposed deforestation-free law and made proposals that would make it possible for Indigenous peoples and local communities to bring evidence and complaints against non-compliance with proposed regulations before European authorities and courts.<sup>127</sup> However, the proposed regulation needs to go through negotiations. It is unknown whether the proposals by the members of the European Parliament will be adopted.

Another key recent development took place in Ecuador, where in 2021 the Constitutional Court upheld the rights of nature enshrined in the Constitution to protect Ecuadorian rainforest. The court found that mining in protected areas violated the constitutional rights of nature and consequently, the government would have to revoke the mining licenses. The decision has implication not only on forests protection but also in broadening legal standing as relates to who can approach courts to protect forests (**Box 3**). Similarly, in April 2022, a court decision by the highest court in Tamil Nadu, one of India's 28 states, recognized the rights of nature and prevented a protected forested area in the state from becoming compromised. The court granted the forest rights to nature in order to invoke better protection and conservation efforts by government agencies.<sup>128</sup>

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<sup>p</sup> The planned new food estate programs announced by the Indonesian government in 2020 are in the island of Borneo island, another in New Guinea island, and a third one in North Sumatra.

### **BOX 3. RIGHT OF NATURE IN ECUADOR**

COUNTRY CASE STUDY

The right of nature is a legal concept that grants legal personality to ecosystems such that the ecosystem has the right to sue or defend itself against harm in a court of law. In practice, an ecosystem with a right of nature can be legally represented by a guardian, such as an NGO or community, to act on its behalf and its interest. An ecosystem could be endowed with legal rights, such as the right to exist, flourish, and naturally evolve without human-caused disruption.<sup>129</sup>

Ecuador was one of the first countries to recognize the rights of nature through its 2008 Constitution. In a decision delivered by the Constitutional Court in 2021, the Supreme Court found that a specific mining activity in the protected area of *Los Cedros* would violate the constitutional right of nature. As a result, the government will have to revoke the relevant mining permits in this case and future developments are likely to require much stronger precautionary measures before permits can be granted.

The decision is likely to have substantial positive impacts for the projection of forests in Ecuador. It creates an important precedent, giving concrete meaning to the 'right of nature' provisions in Ecuador's 2008 Constitution and allowing courts to restrict developments that may harm fragile ecosystems.

There have also been noteworthy court cases in Brazil that sought to address deforestation, showing that relevance of access to justice in providing oversight to executive decision-making. In March 2022, the Brazilian Supreme Court heard seven cases that were concerned about deforestation and the protection of the Amazon rainforest. The cases were brought by NGOs, civil society, and political parties and vary in their specific aim: Some cases, for example, call for the implementation of essential policies such as the Action Plan for the Prevention and Control of Deforestation in the Amazon region (PPCDAm) to meet the deforestation targets established under Brazil's Nationally Determined Contribution. Others challenge the government's failure to properly manage the Amazon Fund and request the reactivation of pending investments to combat and monitor deforestation in the Amazon Forest.<sup>130</sup> While final decisions are still pending, the Supreme Court ruled in early April that the Federal Government should resume the implementation of the PPCDAm.<sup>131</sup> Furthermore in July 2022, the Supreme Court, acknowledged the enormous increase in deforestation and subsequent climate change impacts. As a result, the court ordered the national Climate Fund and the Amazon Fund to be reactivated by the Federal Government. The ruling is the first worldwide to recognize the Paris Agreement as a human rights treaty.<sup>132</sup>

In the UK and Indonesia, governments are considering reviewing or have revised their laws in a way that limits access to justice. In the UK, for example, an ongoing expert review of the judicial review process could have implications on access to justice. Judicial review is considered an important means for environmental defenders and members of the public to challenge any public decision. It allows them to question decisions that are made unlawfully or may harm the environment. Through the current assessment, the government may revise the rules on judicial review. This could significantly limit the ability of members of the public to bring issues or claims of wrongdoing to the court.<sup>133</sup> In Indonesia, the Omnibus Law could have implications on access to justice. The abolition of environmental licenses for land-use activity will effectively close off opportunities for the public to file lawsuits against administrative decisions. This will prevent local community from challenging business activities in their direct environment.<sup>134</sup>

## Endnotes

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