Can Legality Verification enhance local rights to forest resources?

Piloting the policy learning protocol in the Peruvian forest context

Photo Credit: Adam Bauer-Goulden

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Introduction

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Introduction

This report, "Can Legality Verification Enhance Local Rights to Forest Resources? Piloting the policy learning protocol in the Peruvian forest context," reports on the testing of the application of the 11-step Policy Learning Protocol in Peru in 2015-16. The Protocol (Cashore et al. 2014) enables actors to draw from international policy initiatives in order to improve domestic forest governance and to advance domestic policy objectives. It is being developed to nurture durable, meaningful, and influential policy solutions to forestry and forest livelihood problems "on the ground". The Protocol can be applied within the context of single countries, as its design recognizes that international efforts to improve forest governance, or contribute otherwise to forest-related objectives, travel through different pathways of influence and interact iteratively at multiple levels within and between global, national, and subnational levels, as well as through private governance mechanisms.

The Protocol was developed through the work of the International Union of Forest Research Organizations (IUFRO) and Yale University's Governance, Environment and Markets initiative (GEM), in particular with the Climate Land Use Alliance (CLUA). It builds on the experiences and accumulated expertise of social scientists who in recent years have focused on two aspects that link global interventions to domestic forest policies and support practices:

1. Means-oriented policy learning, which focuses on the ways in which specific global interventions might achieve influence through policy coherence;
2. Careful consideration of the nature of specific resource challenges into policy instrument design and strategy (Rayner et al. 2010).

While the Protocol is designed to be generic, it places special emphasis on the ways in which stakeholders might develop insights to nurture a particular policy instrument, or set of policy instruments, towards achieving "on the ground" objectives. Hence the primary target audience of the Protocol testing are those who have an interest in and who attempt to influence Peruvian national policy processes.

The Protocol has been developed by engaging with policy practitioners in a process of collaborative learning (Cashore et al. 2014). A choice was made to test the Protocol in Peru in partnership with local collaborators. The project team started the process of problem identification by formulating a general aim for the project, namely to assess how international policy interventions might be leveraged to address two main problems: enhancing the livelihoods of forest dependent people in Peru; and reduce, or reverse, loss of forest cover in order to

promote biodiversity conservation and reduce forest-related carbon emissions. After the first workshop in Peru in June 2015, this general aim was further delineated to focus on the question how community legal ownership of, and access to, forestland and forest resources can be enhanced.
The Protocol is organized around three phases (getting ready, co-generating insights and implementation) and 11 steps, which should not be approached sequentially, but instead revisited iteratively throughout the project.

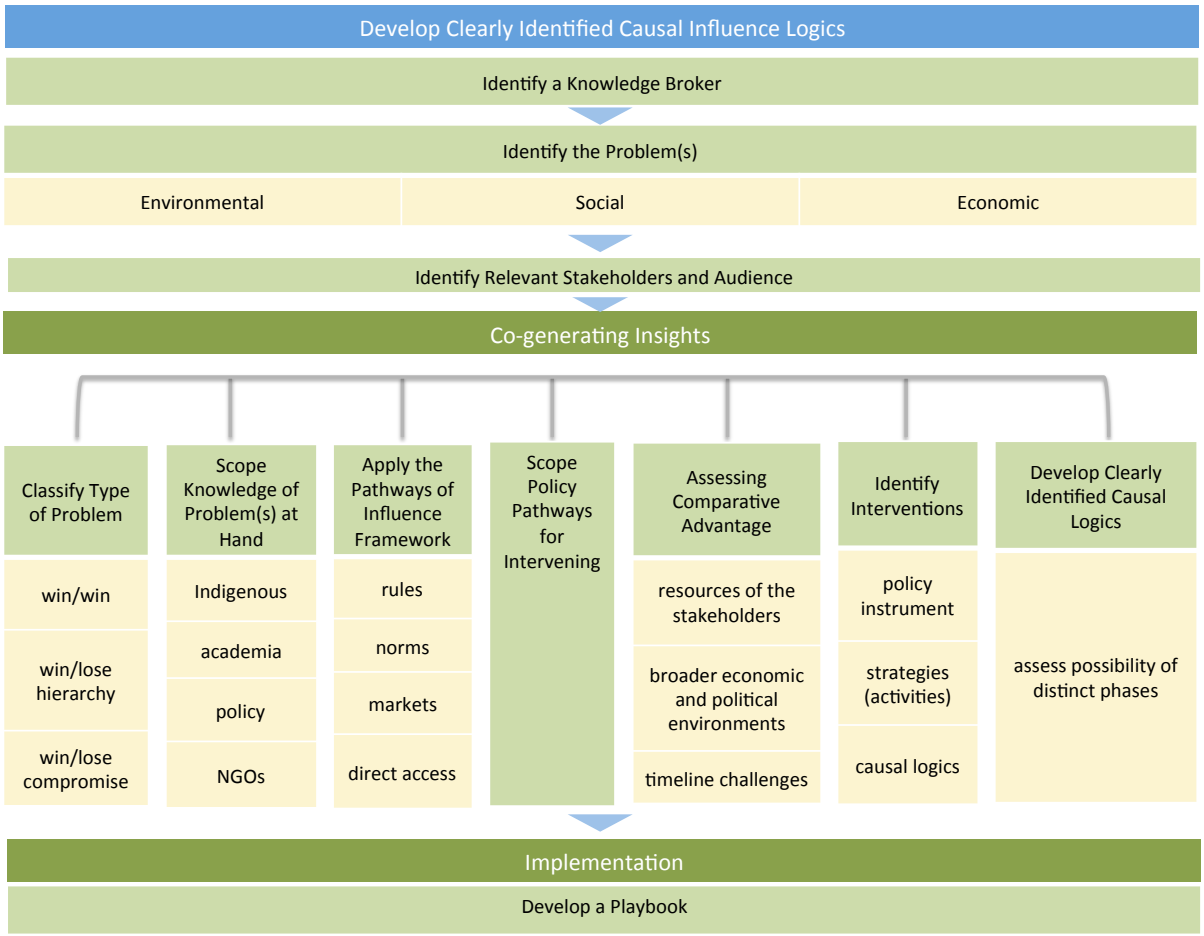

Figure 1: General overview of the protocol (Based on Cashore et al. 2014: 4)

The project is part of the work of the IUFRO unit "Forest policy learning architectures". A project team was established of people from the unit interested in and committed to this project; a smaller core team implemented the work. We undertook the following efforts designed to co-generate knowledge around these pathways:

1) On site workshops with academics and practitioners

Two policy stakeholder workshops were organized in Lima, one on June 25, 2015 which focused on identifying the specific "on the ground" issue to which we would devote our attention, and the other on October 22, 2015 which focused on identifying and discussing the global intervention with which we would apply the pathways analysis. These events played a central role in the data

collection process, providing valuable insights into forest policy issues and the diverse views of a broad range of stakeholders on these issues.

2) In person interviews

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

3) Literature review and document analysis

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

4) Sharing of draft analysis with stakeholders and scholars

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

This introduction to the report provides some relevant background on forests and forestry in the country, including how Peru's forest governance is linked to the country's engagement with and commitment to global environmental governance.

Forests and forest people of Peru

Peru is the third largest country of South America, bordering with Ecuador, Colombia, Brazil, Bolivia, and Chile, and has a total area cover of 128 million hectares. Of this area, 57.8% is under forest cover, or about 73.97 million ha (FAO 2015), which is the third largest area of tropical forest, following Brazil and the Democratic Republic of Congo. Of this, 88.9% is primary forest. These figures may vary somewhat, depending on which definition of forest is used (Saatchi 2011). After Brazil, Peru holds the second largest share of the Amazon rainforest.

The majority of Peru's forest is in the country's eastern region – either in Amazon basin or in the Andean foothills. Peru's Amazonian forests are mainly contiguous and comprise many different forest types. They are intersected by numerous rivers including the Amazon River and its tributaries the Ucayali and the Marañon, the Huallaga River, and the Napo River. These rivers remain the main transportation routes in the country's Amazon territory.

Urban centers in the region have expanded as in other Amazonia countries. The four major cities are Iquitos, Pucallpa, and Yurimaguas, in the northern Amazon and Puerto Maldonado in the

southern Amazon. The last three cities are connected by road to Lima, the country's capital. Iquitos, the capital of the Department of Loreto with a population of 600,000, has no direct road access from Peru's coastal area.
The Peruvian Amazon is still sparsely settled, and population density is low, except around the urban centers. In 2012, Peru recorded a total population of over 30 million. Close to 10 million lived in the Lima metropolitan area. The departments with Amazonia territory had populations as follows: Loreto 1 million; San Martin 0.81 million; Ucayali 0.47 million; Amazonas 0.47 million; Madre de Dios 0.13 million.[1] This is a total population of slightly less than 3 million, or 10% of the total population living in an area of 65 million ha, or more than half of the country's territory.

Peru has been suffering modest deforestation, although important fluctuations occur. According to the FAO (2015) Peru's forest area declined with an annual rate of 177,000 ha/year during 1990-2000, 133,000 ha/year during 2000-2005, 167,000 ha/year during 2005-2010 and 157,000 ha/year during 2010-2015.

Deforestation and forest degradation in the Peruvian Amazon is a complicated problem with no single cause (see Step 5). In an effort to stimulate the national economy, a lot of Peruvian policy towards the Amazon focuses on exploitative resource extraction. Conversion to agriculture and mineral extraction are consequently major causes of Peruvian deforestation (EIA 2015; Swenson et al. 2011). Illegal logging in Peru's Amazon forest is an additional problem. A report from the World Bank in 2012 estimates that illegal wood accounts for upwards of 80% of timber exports from Peru (Goncalves 2012). In 2014, OSINFOR reported evidence of illegal practices in 93.75% of the operations they audited (Guidi 2016).

The problem of illegal logging is closely linked to the contested legal titles of indigenous and non-indigenous forest communities. An important proportion of Peru's population is considered as belonging to ethnic indigenous groups, mostly based on different languages. In a study for the Economic Commission for Latin America and the Caribbean and the Ford Foundation, Ribotta (2010) estimates a total indigenous population of 6.5 million in 2007. An estimated 4.5 million of these live outside the Amazon region, either in the Andean highlands or on the coast. The study documents a total of 266,287 indigenous people living in the five Amazon region departments. These indigenous people speak 51 different languages, belonging to 14 different linguistic families. Although both indigenous communities and non-indigenous forest communities are legally recognized, many do not have legal titles to their own land, leaving them vulnerable to exploitation and without legal grounds to defend themselves and their land. National indigenous federations like AIDESEP (Asociación Interétnica de Desarrollo de la Selva Peruana) and CONAP (Confederación de Nacionalidades Amazónicas del Perú), fight vigorously for property rights to their ancestral land.

The forest sector of Peru

Peru, with its vast area of natural forests, has for many years sought to boost the forest sector as a contributor to national GDP. Substantial efforts to that end were made until the 1980s. For the next decade and a half insurgent groups led the country to the brink of civil war and severely hampered the forest sector. Controlling the most important transportation routes for forest products from the Amazon to the coastal regions, these groups greatly reduced logging and forest

product exports. This is reflected, for instance, in a low logging volume until the mid-1990s, after which export volumes began to increase again (FAO 2015).

In order to boost the forest sector and to comply with sustainable forest management (SFM) as a global norm, Peru has, like many other countries in the region, implemented substantial regulatory reforms. The country adopted its latest Forestry Law in 2011, and the regulations that implement this law were finally adopted in 2015. As in neighboring countries Bolivia, Brazil, and Ecuador, Peru has implemented new rounds of land titling, but reforms favoring forest communities have not progressed as far as in Bolivia and Ecuador (Pacheco et al. 2016; see also Step 2). Forest communities received communal titles under Peru's new titling system; however, the government's primary priority has remained to foster corporate investment in oil and mining in the Amazon region.

Since the 2000 Forestry and Wildlife Law (27308), Peru's legal code focuses on forest management in concessions that can only be held by legal entities that have financial resources and technical skills that go far beyond the capabilities of most forest communities.[2] FAO (2015) reports that by 2010, Peru had 27.48 million ha, or about a third of the country's forest estate under forest management plans, substantially higher than the 7.6 million ha reported by Mejia et al. (2015). Pacheco et al. (2016) estimate that smallholders and communities supplied 22% of the country's timber over the period 2008-2012. This suggests that communities have little option than to obtain forest incomes through extralegal means, and as such they contribute significantly to the lack of legality compliance in the forest sector.

Since 1992, land titling of rural properties in Peru is implemented under the Special Program for Land Titling (Programa Especial de Titulación de Tierras, PETT). This program has twice received Inter-American Development (IDB) Bank loans (1993-2000 and 2000-2014). A third loan phase started in 2015. Under phases 1 and 2, important progress in land titling was made. The IDB website on the project mentions that 83% of rural properties in the coastal region and 53% of rural properties in the Andean region are registered in Peru's cadaster (IADB 2016). No mention is made of Peru's Amazon region. PETT, the national government, and IDB pursue registration of individual properties, while avoiding granting collective communal titles over land. Despite PETT, and its financial support, until date 700 indigenous communities and a considerable number of non-indigenous communities remain without collective legal title. Farmers also still lack individual title. Between 2006 and 2015 only about 50 indigenous communities and not a single non-indigenous farmer community received title over their territory (IBC 2015).

Peru's commitments to international treaties with relevance for the forest sector

Peru is an active participant in global forest governance and related initiatives. The country is, for instance, a signatory to the International Labor Organization's (ILO) Convention 169, the United Nations Framework Convention on Climate Change (UNFCCC), Convention on Biological Diversity (CBD), the United Nations Convention to Combat Desertification (UNCCD) and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Peru is also actively engaged in implementing the UNFCCC policy on Reducing

Emissions from Deforestation and forest Degradation (REDD+). It is establishing a National Strategy and is a partner country to the UN REDD Programme, which supports developing countries in "getting ready" for REDD+. The country has also, under the CBD, developed a National Biodiversity Strategy and Action Plan. Finally, Peru is also an active partner in, and receives support from, FAO's National Forest Programme facility.

Participation in these global forest relevant initiatives implies that Peru is committed to implementing SFM principles. By signing the UNFCCC and applying for REDD+ Readiness support the country is committed under international law to implementing the REDD+ Safeguards and the REDD+ Safeguards Information System, defined at the UNFCCC Conference of the Parties (COP) 16, and reconfirmed at COP 19 in Warsaw. Similarly, by being a Party to the CBD and its Nagoya Protocol, Peru has committed itself to recognizing traditional knowledge and ensuring fair and equitable benefit sharing from biodiversity sources held in indigenous territories.

Peru was among the first countries to ratify the ILO Convention 169 on Indigenous and Tribal People (ILO 1989). This convention requires the recognition of the rights of indigenous and tribal peoples. This includes legal recognition and protection for indigenous and tribal peoples to live in historical continuity within a certain area, and to restore access to such an area if it has been invaded by others. The convention also recognizes the right of Indigenous peoples to be consulted in good faith before the adoption and implementation of legislative or administrative measures that may affect them.

Partly building on the indigenous identity and autonomy debate, Peru in 2011 adopted the Prior Consultation Law (Law 29785 on the right of previous consultation of original indigenous peoples recognized in the ILO Convention 169). However, this law does not require a process of Free Prior and Informed Consent (FPIC). Instead it simply provides a space of dialogue between the state and any communities affected by a project. According to AIDESEP (2015a; 2015b; 2015c) normally the state simply "informs" the community of what will happen, with most objections and demands subsequently disregarded.

Organization of the Report

In the remainder of the report, we follow the steps of the Policy Learning Protocol. We report on each step, showing how the project evolved as we worked through the Protocol during a one-year period.

Notes

1. The data on population and poverty unless otherwise specified are all from The National Institute of Statistics and Information (Instituto Nacional de Estadística e Informática).

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STEP 1

Identify a Knowledge Broker

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Introduction

An important first step of the "Getting Ready" phase of the Policy Learning Protocol is to identify a knowledge broker. The knowledge broker is an individual or a group of professionals that work together with the stakeholders to unlock knowledge and ideas in relation to a problematic situation in which the stakeholders are involved. The knowledge broker works "collating, collecting, disseminating, generating ideas for action that can be shared among a range of identified organizations and individuals" (Cashore et al. 2015).

In order to create an appropriate problem definition, the broker should have sufficient knowledge and expertise to understand the underlying policy process and the values and priorities of the stakeholders, maintaining the focus on the problem rather than traditional consensus-oriented dialogues (Cashore et al. 2015). Moreover, the knowledge broker must be able to incorporate a deep consideration of the problem context into the analysis.

In this Step 1 of the Policy Learning Protocol, we will provide a brief overview of the main stakeholders with an interest in the Peruvian forest sector (while the potential audience and participants for the project will be elaborated in Step 3), and then outline what is needed from a knowledge broker given that context. Finally, we will argue that the IUFRO unit "Forest policy learning architectures" is an ideal knowledge broker for this project.

Forests Stakeholders of Peru

Peru's forest-sector stakeholders include private sector actors, indigenous and non-indigenous forest communities, state agencies, universities and research institutions, and civil society organizations. Among the private sector there are forest companies and private entrepreneurs who may hold forest concessions (Mejia et al. 2015), and private owners of forest areas. Those private forest owners who exploit their forests usually work with forest companies or private forest entrepreneurs.

Peru's forest sector also includes an important number of small- and medium-sized entrepreneurs and companies who provide key services, but who largely operate either without following any administrative procedures, or who operate under the administrative cover of larger forest

companies or private entrepreneurs. Formal and informal companies and entrepreneurs typically are part of specific timber value chains.

Peru's rural communities are legally divided into two groups: indigenous communities (comunidades indígenas) and non-indigenous farmer communities (comunidades campesinas). IBC (Smith and Salazar 2015) provides a figure of 2006 indigenous communities in Peru's Amazon region; of those, 1880 are actually registered as such, and 1342 have already gone through the process of formal recognition of communal land titling. This means that 537 registered indigenous communities have not yet gone through the process and 126 communities are not yet registered. IBC (Smith and Salazar 2015) also provides a figure of 2400 non-indigenous communities located in the Amazon region that it identifies as ribereño communities, of which only 56 are registered as comunidades campesinas and of those only 31 have legal title over their communal territory. The situation of legal recognition and land titling of indigenous and non-indigenous communities is elaborated in more detail in Steps 2 and 5.

Indigenous communities organize in indigenous federations and the latter are organized in either AIDESEP or CONAP, both associations of indigenous federations. Both AIDESEP and CONAP are civil society organizations that play major roles in defining Peru's forest and environmental policies.

Both indigenous and non-indigenous farmer communities rely on forests and forest territories for daily subsistence. According to the estimates of Angelsen et al. (2014), rural communities in tropical forest territories derive between 25 and 30% of their income from forests and other natural resources. In general, non-indigenous farmer communities have more links with regional markets, and these links include involvement in timber extraction and trade. Some of the small entrepreneurs reside in communities, while community members often work for such entrepreneurs. While there are a few cases of formally established community forestry projects, these tend to be exceptions and most of the timber that is harvested from community territories or by communities members is logged and traded without any administrative approval, until it is legalized higher up the value chain.

Peru's state forest administration is a complex organization of different agencies that are located within different ministries and at different government levels: from national to regional, all the way to municipal level. Two key agencies are OSINFOR and SERFOR. OSINFOR (Organismo de Supervisión de los Recursos Forestales y de Fauna Silvestre) is an agency that is part of the Ministry of the President, and not of the Ministry of Agriculture, where SERFOR (Servicio Nacional Forestal y de Fauna Silvestre) is located. OSINFOR's main task is to assure that within the sector regulations are adequately implemented and followed. Hence its role is more supervisory than operational. OSINFOR is the agency with responsibility for monitoring compliance with the regulations for the implementation of the New Forestry Law of 2011. These regulations only entered into force in 2015. OSINFOR's efforts have recently met with resistance and public outcry from forest entrepreneurs since the agency began monitoring the implementation of the regulations through intensified combatting of illegal timber harvesting. The implementation of the new Forest Law Regulations has had a major impact on timber production and trade, for instance in Loreto.

SERFOR, on the other hand, is an agency that promotes the economic development of the forest sector. It is much newer than OSINFOR; it became operational in 2015. SERFOR focuses on promoting investment in the forest sector, including by promoting the expansion of forest concessions. OSINFOR and SERFOR thus have opposite roles, and different linkages, especially with private forest sector actors.

While OSINFOR and SERFOR are located within the ministries of the president and agriculture, policy and implementation responsibility for protected areas is entirely within the Ministry of the Environment (Ministerio del Ambiente, or MINAM). While in theory this should not cause problems - because Peru's vast forestry area is relatively clearly demarcated as either protected area, area suitable for forestry exploitation, or area for other land use, especially where it concerns indigenous and non-indigenous forest communities - both SERFOR and MINAM agencies have relevant competences that affect forest communities. Both SERFOR and the MINAM have also elaborated forest-based climate change mitigation programs. In practice, OSINFOR, SERFOR, and MINAM compete for authority and influence over Peru's Amazon forests and are viewed differently by forest stakeholders according to how well they serve their interests.

In addition to OSINFOR and SERFOR, the regional governments have their own Natural Resources and Environmental Management Agencies. The decision-making scope of these regional agencies has progressively increased over the years, and political tensions between the central government and regional governments is also reflected in how the latter define their own authority. For instance, the process of allocating communal titles has now been devolved to regional governments.

There are also a significant number of civil society organizations working on environmental issues. Some key civil society organizations, in addition to the indigenous associations AIDESEP and CONAP are, for instance SSPDA (Sociedad Peruana de Derecho Ambiental), AIDER (Asociación para la investigación y Desarrollo Integral), several organizations that focus on environmental conservation (e.g. Pronaturaleza, but also international conservation NGOs), others that provide assistance to indigenous groups (e.g. Instituto del Bien Común), and specialized organizations such as EIA-Peru (Environmental Investigation Agency). There also various timber and carbon certification bodies with an interest in Peruvian forests, such as the Forest Stewardship Council (FSC), the Rainforest Foundation, Verified Carbon Standard (VCS), and the Peru Carbon Standard.

Finally, there are development agencies, both multilateral, such as the World Bank and Inter-American Development Bank, and bilateral, such as USAID, the German International Cooperation Agency (GIZ), and others. Within Peru, GIZ's mandate is to advise MINAM, and not to work with indigenous organizations. (See also Step 3 for more detail on relevant organizations in Peru.)

Knowledge Broker in Peruvian Context

The main function of the knowledge broker is to collect, understand and interpret insights from different actors who have a stake in the problem. A knowledge broker in this context must be able to read the nuances of underlying motivations and the relationships between the actors identified in the previous section. This requires not only an historical analysis of the Peruvian forest sector (and analysis of evolution of laws regarding indigenous land rights from the 1960s to the present), but also a literacy of power dynamics that are not always explicitly stated. As deforestation is a global concern, a knowledge broker in this case must also be able to trace the influence of international forest instruments like REDD+ and those on illegal logging in Peru.

The knowledge broker must remain scrupulous and be transparent in the methodologies employed throughout the Protocol analysis. The knowledge broker may, understandably, have an interest in the problem (e.g. the IUFRO unit has an interest in slowing deforestation and improving indigenous livelihoods in the Amazon). The knowledge broker must recognize any potential sources of bias within the project team itself, and be transparent about the aims of the project.

The IUFRO unit "Forest policy learning architectures"

For this project, the knowledge broker is the IUFRO unit "Forest policy learning architectures", a group that includes the authors of this document as well as other researchers and analysts. As this is the first application of the Protocol, the IUFRO unit self-selected itself as the knowledge broker for this project. For this project members of the IUFRO unit with an interest and experience in either or both international forest policy processes and forest issues in Peru volunteered, or were invited, to work on the project, with the result that the necessary expertise and skills were represented in the team. Normally, however, the knowledge broker will be selected from a wider range of options.

The members of this team have a variety of backgrounds in academia and empirical practice that allow them to conduct the project jointly as a well-informed and balanced knowledge broker. The expertise of the working party is mainly in forest and environmental governance research. However, the vast experience and diverse primary interests of the team members contribute a varied range of skills and experience to the group. Among the roles that the members have undertaken as professionals are researchers, lecturers, policy advisors, consultants, and government and NGO professionals. A wide spectrum of academic disciplines and specialist knowledge provides the working party with the expertise and analytical capacity to apply the Protocol in a coherent and interdisciplinary way.

Several members of the team have in depth experience with the Peruvian forest sector and an awareness of different intercultural understandings in Peru, including rural-urban, highland-lowland, and rich-poor. This expertise provides the project team with a deep understanding of the complex and often obfuscated power dynamics present in the Peruvian context. The project team also includes some postgraduate students and early career researchers. This has two advantages. First, it provides invaluable training for a new generation of scholars able to address the problems facing Peruvian forest communities. Second, the presence on the project team of

members with less experience with problems in the forest sector in the Peruvian Amazon can provide fresh perspectives, potentially identifying variables that may be less obvious to those who have been working with the problems for several years.

Conclusions

The role of the knowledge broker within the Policy Learning Protocol is to engage with stakeholders to unlock knowledge and ideas in relation to a problematic situation in which the stakeholders are involved. The Peruvian forest sector has a considerable number of important stakeholders with different, often conflicting, interests. The knowledge broker needs to be able to grasp these different interests and identify how they shape relationships between stakeholders. The knowledge broker must be able to judge the influence of international forest instruments in Peru and evaluate how that influence might be harnessed and expanded to yield benefits for forest communities and forest conservation. For this project, the knowledge broker is the IUFRO unit "Forest Policy Learning Architectures", which is qualified by its collective expertise in forest and environmental governance research and vast experience with the Peruvian forest sector.

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STEP 2

Identify the Problem

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Introduction

Peru holds vast forested territories with a significant numbers of remote rural residents. The country also suffers from an increasing annual rate of deforestation (Saatchi et al., 2011; FAO 2015). Peru continues to suffer from significant poverty in cities and rural areas, in the latter case mostly of people in remote districts in the Andes, but also in the Amazon region. Peru's government has a stated commitment to promoting sustainable forest management, reducing deforestation and illegal logging and the protection of indigenous and community rights. This suggests potential opportunities for synergistic efforts to address persistent poverty and deforestation & forest degradation. This could be achieved, at least partly, through increased stewardship of forests by forest communities, and connecting forest communities to domestic and global markets for forest products and services.

In this Step 2 of the Policy Learning Protocol we identify the specific problem to be addressed. It is our intention to address this problem by drawing on global forest governance instruments to enable durable solutions to enhance sustainable forest management and improve forest livelihoods in Peru. In Section 2 below we note that different forest communities have very different lifestyles and seek different types of interactions with external actors, and continue the discussion of Peru's forest sector started in the Introduction and Step 1. Section 3 reviews the challenges related to land reforms, including forest land reform, and enhancing forestland ownership of indigenous and non-indigenous forest communities in Peru. Section 4 introduces the problem of illegal logging in Peru, and Section 5 then identifies and defines the problem to be addressed in this project.

Peru's forest communities, forest sector and global forest governance commitments

Step 2 of the Protocol notes that some problems and concepts are defined so broadly that they may mask important differences. It is important for the policy broker to ensure that these differences are brought to the fore and clearly understood at the outset. As we are working with forest communities in Peru we are aware of the variation of what the concept of "forest

community" entails. One is the recognized difference between indigenous communities and ribereño communities, which represents both a legal difference, and a difference in historical trajectories (see Step 3). We also recognize the existence of communities living in voluntary isolation, who have a subsistence-based lifestyle and have minimal interest in economic exchange with the outside world, and indigenous communities that have not been contacted. We also recognize that low levels of income from economic exchange is not a necessary defining feature of poverty, as low levels of income for some communities may coincide with low levels of malnutrition, obesity, alcoholism, crime, and mortality rates.

In many cases, however, equipping communities to engage with domestic and global markets for forest products and services can be an important step to addressing deforestation, poverty, and aspirations for improved livelihoods. However, we recognize that different forest communities are different socially situated actors, often with different needs and requirements. We do not, therefore, claim to offer universal prescriptions, nor do we believe these are possible; hence, we emphasize the importance of local stakeholder input when applying this Protocol so that any solutions are tailored to local needs.

Applying the Protocol also requires an analysis of domestic forest policy and its role in shaping the problem to be addressed. During the 1990s Peru changed its overall policy design to boost the forest sector, reflected in the 2000 Forestry and Wildlife Law (27308). The 2011 Forestry and Wildlife Law (29765) creates a mechanism for communities to engage in forest extraction through permits and authorizations for indigenous and non-indigenous communities to extract timber. As with forest concessions, these require elaborating forest management plans and annual operation plans. There is a payment per cubic meter for extracted timber, rather than a payment per area as is the case with forest concessions (Mejia et al. 2015). However, these permits and authorizations can only take place in production forest that has not been allocated in concessions, local forests (a particular forest category that has not yet been defined under the 2011 Forestry and Wildlife Law), or on communal land or private land (Mejia et al. 2015).

Since 1992, land titling of rural properties in Peru is implemented under PETT (see Introduction), which pursues registration of individual properties rather than the granting of collective communal titles over land. AIDESEP has lodged formal complaints against IDB-funded titling programs (AIDESEP 2015a; 2015b). IBC (2015) provides a recent update on the territorial status of rural communities in Peru. The study identifies a total of 10,419 rural communities, implying that these are village settlements with a number of individual households, and who occupy an area of land where community residents practice agriculture. The study identifies 2006 indigenous communities in the country's Amazon region, and 2400 ribereño communities (see Step 3 for the distinction between indigenous and non-indigenous, or ribereño, communities).

Of relevance to our study is that 1880 of the 2006 (72.3%) indigenous communities located in the Amazon are registered as indigenous communities, but only 1343 have completed a process of communal land titling (i.e. 537 registered communities have not yet completed this process, and 126 communities are not at all registered). Equally important is that these 1343 communities that have not completed land titling hold an estimate of 11.7 million ha of communal land. This

is an average of less than 9000 ha of communal territory per community (IBC 2015), and includes agricultural lands, fallow land, forest remnants and forests. The situation of ribereño communities is even more pronounced. Only 56 of the 2400 ribereño communities are registered as comunidades campesinas, while of those only 31 have gone through a communal land titling process. The average communal area is only slightly over 5000 ha (IBC 2015).

Both the land titling situation and the constraints of community access to forests with timber stocks suggest limited opportunities for communities to extract timber. An average area of 9000 ha, much of which is agricultural land, contains minimal amounts of timber or non-timber forest products that can be sold. Few communities are organized to operate as communal enterprises that can extract timber from vacant production forest. However, Pacheco et al. (2016) estimate that smallholders and communities supplied 22% of the country's timber over the period 2008-2012. This timber is mostly produced without using any of the legal mechanisms available for communities to extract timber. Rather, most of the timber extracted by communities is produced under the administrative authorization of a forest concession holder or timber traders who legalize it higher up the value chain. The current reality in Peru is that many communities consider that they have little option other than to obtain forest incomes through illegal operations, and as such they contribute significantly to the lack of legality compliance in the forest sector.

Recognizing forest tenure: Peru's national trajectory

The goal of protecting indigenous territories was first addressed in constitutional reforms in 1920 and 1933 which, together, stipulated that indigenous properties are imprescriptible (i.e. cannot be taken away due to a lapse of time) and inalienable. This means that the territories could not be taken away based on long-term use by any third party, or after a period of non-use by the rightful owner, and neither could they be given away by the rightful holder or otherwise taken by any third party. In 1974 the Velasco government enacted Legal Decree N° 20653, the so called "Law on native communities and agricultural promotion in the Amazon region and the Amazon Andean foothills", a legal decree that recognized for the first time communal customary ownership over territory by Amazonian indigenous communities (Chirif and Garcia Hierro, 2007). This decree can be seen as the beginning of efforts to create official land titling in Peru for forest dependent communities. At the same time, there was recognition that implementing this system would not be an easy process, as even when land was formally titled, many from outside, including colonists and loggers, continued to extract from these lands.

For these reasons, the 1979 Constitution of Peru upheld protection of communal lands against outside coercive acquisition, stipulating that lands held be recognized and that in addition to being imprescriptible and inalienable, indigenous and agricultural land could not be used for collateral. Prohibiting land from being used as collateral closed a legal loophole whereby land grabbers could acquire indigenous lands.

To implement the recognition of indigenous communities' territories, a specialized office, the National System of Assistance to Social Mobilization (SINAMOS), was created in 1971 and tasked with the restructuring of agricultural communities in the Andes. This office was charged

with identifying a more precise delineation of territories, and enhancing communal organization and governance. These efforts continued under the first and second democratically elected governments of Belaunde (1980-1985) and Garcia (1985-1990), which followed the military governments of Velasco and Morales (1968-1979). These democratically elected governments enacted a number of pieces of legislation to recognize and address autonomy and territory of agricultural communities. This legislation also benefitted the non-indigenous farmer communities of the Amazon lowlands.

Legal Decrees 20653 and 22175 initiated a process of formal recognition of indigenous settlements that had emerged from a diversity of historic socio-geographic processes (e.g. Barclay and Santos Cranero, 1980; Chirif and Garcia Hierro, 2007; Padoch and de Jong, 1989). This recognition process, however, took place mainly in the Andean foothills where colonist settlements had invaded indigenous communities that had extensive customary indigenous territories but no legal recognition. In addition to efforts by SINAMOS to recognize indigenous and non-indigenous forest communities, during the 1980s NGOs began assisting indigenous communities with land titling, especially in areas where those communities were threatened by invading colonists.

The Fujimori Government, which came in power in 1990, revised the country's constitution in 1993 by eliminating the protection of collectively-held territory, whether by indigenous or non-indigenous rural communities, with only the clause of imprescriptible retained. These changes in the constitution were detailed further in the *Ley de Tierras* (No.26.505), a law on private investment and economic development in national territory and agricultural and indigenous communities. This law changed the legal status of communities and their inhabitants as a settlement from a social organization to a corporate entity. The law also stipulated that with a two third majority vote of the communal assembly, communities can rent, dispose of, or engage in any other act related to the communal territory. This new law, which scholars and practitioners criticized for lack of consultation with or consent from communities, thus abolished the protection of communal territory as imprescriptible, inalienable, and not to be used as collateral.

In summary, historically communities that have been legally recognized tend to receive relatively small areas of territory, which limits opportunities for successful community forestry projects. Efforts to enhance land titling are underway, but many communities are concerned about the slow process and competing interests.

Logging, legality, and forest access in Peru

Illegal logging is now a persistent problem in Peru, as it is in many other tropical forest countries, but it has become a particular focus of inquiry and policy response since the turn of the century. Historical scholarship identified that the forest areas that have been logged have often been significantly larger than the areas authorized for logging by public authorities (Chirif, 1983). Concern over illegal logging increased following the enactment of Forestry Law 27308 in 2000. Under the 1974 Law, an informal system operated parallel to the formal system of extraction and marketing of timber (Cornejo, 2007). The 2000 law changed forest exploitation, abolishing the

small concessions of 1000 ha that had been created by the 1974 Forestry Law. There was widespread recognition in the forestry sector of a low-level of compliance with the 1974 law (Caillaux and Chirinos, 2003; Cornejo, 2007).

It was expected that the reforms under Law 27308 of 2000 would improve legality compliance within the forest sector. To support this law, the state and NGOs formed a Multisectoral Commission to Combat Illegal Logging. However, neither the new law nor the commission has had much effect on legality compliance (Cornejo 2007). Illegal logging in Peru has not declined significantly, either through forest legislation reforms or illegal logging measures, as forest entrepreneurs have adapted to the new regulations, policies, and to the institutional reforms intended to improve monitoring and compliance. Forest entrepreneurs are known to hold forest concessions, but to extract only a part of their timber from these concessions. Other timber is obtained from small extractors or communities, but recorded as being extracted from the forest concessions (Mejia et al. 2015; Urrunaga 2012). In addition, the forest sector in Peru has diversified. Besides timber value chains that supply international markets, important national timber value chains have developed. Mejia et al (2015), for instance, distinguish multiple timber value chains that originate in various locations in the eastern Amazon, and that supply the furniture industry and consumer markets in the major urban regions of Peru. Between 2009 and 2012, a total of 66% of the timber was extracted without following any required administrative procedure (Mejia et al, 2015). This timber is eventually legalized by medium or large traders further down the supply chain.

At the same time, the Trade Promotion Agreement that Peru signed with the USA in 2006, but that became active in 2009, and the 2008 amendment to the US Lacey Act prohibiting trade in illegally sourced plants, including wood products, provides an important obligation for Peru to achieve significant progress in reducing illegal timber from shipments to the USA (de Jong, 2016). Since the regulations on the 2011 Forest Law were adopted, with implementation beginning in 2015, OSINFOR has started a new campaign to combat illegal logging in the country (ElComercio 2015a). These efforts have met with resistance from many private actors in the forest sector and have led to public protests and even temporary occupations of government offices (ElComercio 2015b).

While many Amazonian forest communities engage in timber extraction, they have little opportunity do this on their own and using prescribed administrative processes. Current communal titles in the Amazon are an official recognition of the rights of the communities to their land; however, to many communities this recognition is incomplete, with titles often covering a small portion of the total land claimed or used by communities. In addition, legal titles do not provide any exclusive right of commercial use of forest resources. Even with a title, a community has to solicit authorization to extract timber. The legal provisions under the latest forest law that are aimed at facilitating communities' abilities to extract logs from their titled land or customary land have still not been clarified (Pacheco et al. 2016).

At present, communities wishing to engage in selective timber felling have few economic opportunities other than to collaborate with forest entrepreneurs who extract this timber illegally from legal or customary communal territories; an alternative is that community members themselves extract the timber and sell it to intermediaries. The complicated and time consuming process of gaining permissions to log often forces communities to turn to third party timber

companies or entrepreneurs to go through the process for them. The loggers can then take advantage of the communities. Logging may also create inequities within communities; in some cases a few loggers from the community may do all the logging and sell the wood directly to the timber entrepreneurs, who have access to markets.

The discussion highlights the need to be aware of some of the important differences between communities in Peru, and to avoid the risk of making universal generalizations that do not take into account the important economic, social and cultural differences between forest communities in Peru. With this in mind, we now consider the problem formulation.

Problem definition

This project will focus on two interrelated problems: enhancing the livelihoods of forest dependent people in Peru; and reversing the loss of forest cover and its negative implication for biodiversity conservation, forest-related carbon emissions, and the provision of other forest ecosystem services. This problem focus accepts that multiple causal influences shape these problems, and that solutions may vary from community to community depending on their local needs and relations with external groups.

Given the particular Peruvian context, explained above and in the previous steps of the Protocol, we target a factor that many have found to have a significant causal influence on sub-optimal outcomes for forests and their communities: the weak, and sometimes non-existent formal designations of land under community control. We recognize that the more variables we introduce into our problem formulation the more complex and difficult our causal analysis will become. We thus focus specifically on one clear problem, namely land titling. The problem we wish to investigate may be defined as:

> ***How can community legal ownership of, and access to, forestland and forest resources be enhanced?***

Securing legal title for the lands of forest peoples will address the two inter-related problems identified earlier (enhancing the livelihoods of forest dependent people; and conservation benefits, including for biodiversity and carbon stocks).

We hypothesize that international policy instruments can lead to expanded titling of land for forest communities, supporting and complementing the existing efforts of indigenous and *ribereño* communities and their supporters. We are interested specifically in how international forest-related processes may enhance the efforts of these communities to secure legal title to their customary lands. We wish to focus on international instruments as their impacts "on the ground" are currently poorly understood and under-theorized.

We recognize that depending on the specific local context, granting legal title over forestlands can have ambiguous outcomes on policy objectives aimed at improving rural livelihoods and reducing deforestation and forest degradation. So while we focus on the process of granting ownerships and access rights through legal titles and through adjustments of legislation, we are

also mindful that granting legal title relates to other forest-related challenges. In particular, we are aware that efforts to enhance legal title in forests may trigger important issue linkages, including equity issues such as the distribution of income from forest-related activities, and livelihood issues more generally. While we are aware of these issues, we have consciously avoided including them in our problem analysis in order to keep our causal analysis as clear and "untangled" as possible. The problem formulation we have adopted is thus just one possibility among many.

A range of potential international policies could help to address the challenge of enhancing secure land tenure for forest communities. It is not our intention in Step 2 to identify any one instrument at this stage. However, in general we are curious to understand how international policy processes:

- Interact dynamically with domestic policies and actors;
- Provide opportunities and constraints for enhancing the process of granting and expanding ownership and access rights, through legal titles and adjustments in forest regulations;
- Contribute to the recognition and protection of rights derived from communal forestland ownership and access rights;
- Support the legalization of the extraction and trade of timber that is produced by smallholder and communities or that is sourced from communal land, or land from which communities are legally entitled to extract timber.

This last point suggests that one possibility for our focus is international policies to address illegal logging. Other possibilities include REDD+ and Zero Net Deforestation (ZND). Key questions that will drive our analysis include:

- How might international policy processes help reinforce the forest tenure reforms of the last two decades and enable indigenous and ribereño forest communities to engage in sustainable forest management activities?
- How might international policy processes recognize, clarify and reinforce ownership and access rights of indigenous and ribereño forest communities?
- To what extent might international policy processes provide an opportunity for a more sustainable forestry entrepreneurship and ultimately improved livelihoods?
- How do global markets shape Peruvian forest policy?

In sum, the project will seek to unravel how international forest-related policy may affect the conditions that promote sustainable forest management, and in particular how enhancing Peru's forestland ownership and access rights of communities and the recognition and protection of rights derived from such enhancement can have positive impacts on two key sustainable forest management objectives: enhancing the livelihoods of forest dependent people, and reversing deforestation and forest degradation and related negative outcomes for biodiversity and forest carbon stocks.

Conclusions

In Step 2 of the 11-step Policy Learning Protocol we have narrowed our focus specifically on the processes through which indigenous and *ribereño* communities might gain legal ownership and access over their forestlands. We have defined the specific problem we intend to address as:

> ***How can community legal ownership of, and access to, forestland and forest resources be enhanced?***

We are interested in the causal relations between international policy processes (as the independent variable) and land titling (as the dependent variable). At this stage there are several possible international policy processes we can select.

We have noted some of the risks of developing and applying the Protocol. First, it is necessary to be aware that some concepts with which we will work may mask important differences. One such example is "forest communities". We are sensitive to the fact that while some forest communities may find the work we are doing helpful, others, particularly those communities who do not seek incorporation into market economies, may not.

Second, we have noted that our problem formulation could have been drawn more widely to encompass other important related issues, but that to have done so would have rendered our causal analysis more difficult, perhaps impossible. We acknowledge that there are other problem formulations we could have selected. Our approach has been adopted to enable clear causal analysis while remaining cognizant of the other salient variables that have a bearing on community land titling.

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STEP 3

Identifying the Relevant Participants for Co-Generating Insights

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Introduction

Step 3 is guided by scholarship on multi-stakeholder policy learning processes. This body of knowledge underscores the effectiveness of bringing together like-minded organizations and individuals to foster shared learning, avoid well intended but countervailing strategies, and, ultimately, identify synergistic efforts and opportunities for achieving shared goals and objectives.

In the following sections, we describe the overall approach to identifying the participants and audience for cogenerating insights on forest community ownership and access to forestlands within the broader context of forest biodiversity conservation and enhanced local livelihoods in Peru. Then, we present and discuss the most relevant forest community groups and organizations, government agencies, non-governmental and research organizations, and donors for the core stakeholder group for this process. We also discuss other actors that might contribute alongside and in addition to the core stakeholder group.

Approach

Through a review of the literature, organizations' web pages, media, and other documentation and through consultation with key informants with extensive knowledge of forest issues in Peru, we identify the principal actors working at multiple geographic scales and levels of governance whose primary mission is focused on enhancing forest community rights to land and forests, and human well being. We also identify the organizations and individuals working on, and involved in, broader issues of deforestation, forest degradation, and local livelihoods that directly or indirectly focus on forestland ownership and access rights for forest communities in Peru when this aligns with their primary goals. Finally, we identify actors with an obligation or potential interest in addressing forest community land and forest rights, but with limited focus on or involvement in the issue to date.

Results and Discussion

Numerous organizations and countless individuals focus specifically on addressing the challenges of insecure and unclear forest community land tenure and access in Peru, including native communities, federations and their associations; governmental agencies at national, regional, and local levels; Peruvian and international non-governmental and research organizations; and international donors and aid organizations, among others. In addition, many more organizations and individuals promote the recognition of forest community rights within broader portfolios, such as local livelihoods. Finally, there are private sector businesses who work within forests, or who trade in products extracted from the forest sector.

Indigenous forest communities

Indigenous, or native, groups work together at multiple levels in Peru for the recognition and security of their rights to land and ways of life. In particular, AIDESEP and CONAP are the primary umbrella organizations representing federations of indigenous communities in the Amazon region.

AIDESEP is a nonprofit organization encompassing 65 indigenous federations that represent more than 1,800 indigenous communities in the Peruvian Amazon (AIDESEP 2016). It is presided over by a National Council and is organized through nine decentralized sub-regional units. Its mission is to represent the immediate and historical interests of all indigenous peoples of the Peruvian Amazon, serve as a spokesperson for their problems, defend and promote respect for their individual and collective rights, and present alternative approaches to development that account for their worldviews and lifestyles.[1] Since its inception in the 1970s, AIDESEP has worked to advance the recognition and titling of indigenous communities and their ancestral lands and has been immersed in broader activities to safeguard their fundamental human rights. More recently, AIDESEP has been involved in the international climate change policy debates, disagreeing with specific elements of REDD+, and offering an alternative approach, designated as "Indigenous REDD+" also known as *REDD+ Indígena* or REDD+ Indígena Amazónico (RIA). This indigenous alternative to REDD+ incorporates the principles of territorial and human rights, self-determination, holistic forest valuation, and a global obligation to address climate change (Espinoza Llanos and Feather 2011).

CONAP is a nonprofit organization representing more than 30 indigenous federations in the Peruvian Amazon. Its primary objectives are to defend the collective rights of indigenous peoples and articulate their needs and problems at the national, political level through proactive participation in various forums (CONAP 2016). Like AIDESEP, CONAP has been active in the fight for indigenous people's rights and their sustainable development for several decades. While these two organizations have had differing views on policy priorities and government engagement, both include indigenous community land tenure and title in their core mission and activities. For example, both have fought vigorously for the fair and adequate incorporation of indigenous community human and territorial rights in ongoing climate change policy processes. Their combined efforts, along with those of other key stakeholders, ultimately led to the recognition of indigenous rights within the national REDD+ policy process and readiness

programs, including Forest Investment Program (FIP) financing for the titling of indigenous communities (US$ 7M), the support for community forest management (US$ 4M), and the support for indigenous governance (US$ 3.5M) (Shalita 2013).

Given their work on indigenous rights, AIDESEP and CONAP are important interlocutors for our project. Other indigenous and local community organizations or individuals dedicated to securing community rights and tenure also may emerge as important core stakeholder members through the implementation of this project in Peru. For example, the indigenous organization *La Central Asháninka del Río Ene* (CARE), representing 17 communities in the Peruvian Amazon, is dedicated to defending and promoting indigenous rights to land, resources, and quality of life and has worked extensively to address issues identified in the problem definition (Central Ashinka 2016).

Non-indigenous forest communities

In addition to indigenous forest communities a large part of the rural population in the country's tropical forest zones belongs to non-indigenous forest communities. IBC (2015) identifies these as *ribereño* communities, the term by which they are known in Peru. These communities have, in theory, the option to be legally recognized as *comunidades campesinas*. *Ribereño* communities of Peru are remote rural communities, whose inhabitants commonly have mixed indigenous and European ancestry. They live in very similar circumstances to indigenous communities, but choose not to be recognized as indigenous communities. Gasché and Vela (2012) suggest that both indigenous and non-indigenous forest communities should be identified as forest societies (*sociedad bosquesinas*), while Chibnik (1991) suggest the denomination of *quasi-ethnic groups*.

Arguably, *ribereño* communities are even more vulnerable than their indigenous counterparts. These communities inhabit recognized settlements, but their legal status is more ambiguous. Obtaining the legal recognition of *comunidad campesina*, a denomination that implies significant rights of self-determination, is even more difficult for communities located in Peru's Amazon region, proof of which is the low number of *ribereño* communities that are recognized as Amazonian *comunidades campesinas* (Smith and Salazar 2015). More commonly, *ribereño* communities are recognized as belonging to a certain municipality. Where this happens, these communities are governed by a village board and as a decision making body the communal assembly, but they also have a municipal authority, identified as the municipal agent (*agente municipal*). In these communities, individual village members may obtain usufruct rights over land they use for agricultural production, or in some cases, and after considerable effort, legal tenure over their land. Within communities, farmers or families demarcate individual holdings that are recognized and enforced by the community. However, these arrangements have minimal legal protection.

Government agencies and organizations

Multiple government agencies are involved in the awarding of land rights and forest access rights to forest communities in Peru. The process of land titling was a centralized governmental process; and while the policy and norms for land titling continue to be set at the national level by the Ministry of Agriculture, the authority to grant native land titles now rests with the regional governments as prescribed within the legal framework on decentralization (Laws No. 27867,

27783 (2002)). Decentralization and the specific shift from centralized to decentralized land titling have not been without significant setbacks. They have been impeded by a lack of capacity, financial resources, information, and clear rules, roles, and responsibilities.

The regional governments and their respective regional directorates of agriculture and natural resources and the environment have an extensive role in land titling and decisions on access to forest resources. Indigenous and non-indigenous forest communities seeking title to land or usufruct rights must first be recognized and registered. Their territory must be classified according to its soil and use types. Currently, these activities are to be carried out through the corresponding regional government and its regional directorate of agriculture. The existence of protected natural areas or forestry resources also must be determined prior to titling, which involves and is verified by the National Protected Natural Areas Service (*Servicio Nacional de Áreas Naturales Protegidas*, SERNANP) under the Ministry of the Environment (MINAM) and the National Forest and Wildlife Service (*Servicio Nacional Forestal y de Fauna Silvestre* (SERFOR) under the Ministry of Agriculture (*Ministerio de Agricultura*, MINAGRI), respectively. SERFOR has a role in promoting the expansion of forest concessions. Land titling processes are coordinated by the Ministry of Culture (*Ministerio de Cultura*) and are audited by the National Comptroller's Office (*Contraloría General de la República*) through its Regional Internal Control entities. Recognized native communities and their land titles must be registered with the National Superintendence of Public Registers (*Superintendencia Nacional de Registros Publicos*, SUNARP), which also provides guidance on titling requirements. Given their direct roles in community forestland titling, these government agencies are key candidates for the core stakeholder group.

Other governmental agencies that may be involved in the granting of forest access rights and land titling process and which, therefore, may be additional key participants in this process include the Commission for the Formalization of Informal Property (*Comisión de Formalización de la Propiedad Informal,* COFOPRI); the National Institute for the Development of Andean, Amazonian, and Afro-Peruvian Communities (*Instituto Nacional de Desarrollo de los Pueblos Andinos, Amazónicos, y Afroperuanos*, INDEPA), now absorbed by the Vice-ministry of Inter-culturalism of the Ministry of Culture (*Viceministerio de Interculturalidad del Ministerio de Cultura*); the Supervisory Body for Forest and Wildlife Resources (*Organismo de Supervisión de Recursos Forestales*, OSINFOR), the Ministry of Energy and Mines (*Ministerio de Energía y Minas*), the Ministry of Foreign Affairs (*Ministerio de Relaciones Exteriores*), and the Office of the Ombudsman (*Defensoría del Pueblo*).

National and International NGOs, Advocacy Groups and Research Organizations

Numerous local, national, and international advocacy groups and non-governmental organizations (NGOs) regard forest community land ownership, tenure security, and forest resources access as part of their core missions. These include the Institute for the Common Good (*Instituto del Bien Común*, IBC), whose work centers on rural communities and the sustainable use and management of their communal territories and related common goods and services; the Environmental and Natural Resources Rights group (*Derecho Ambiente y Recursos Naturales*, DAR), which focuses on the promotion of good governance, including clear and secure land tenure and title, in support of sustainable development in the Peruvian Amazon; the Peruvian Society for Ecodevelopment (*Sociedad Peruano de Ecodesarrollo,* SPE), which promotes

sustainable human development through participatory means at national and international levels, with particular emphasis on land-use planning and administration, biodiversity and natural resource conservation, integrated research and production, and scientific training and development; and the Peruvian Environmental Law Society (*Sociedad Peruano de Derecho Ambiental*, SPDA), which promotes, facilitates, and defends the effective application of environmental policies and norms for local communities and individual citizens.

Countless other local and national organizations work towards forest community land title, tenure rights and access to forest resources. For example, in 2012, 15 civil society organizations - including the IBC, DAR, the Legal Defense Institute (*Instituto de la Defensa Legal*, IDL), Rural Education Services (*Servicios Educativos Rurales*, SER), the Andean Commission of Jurists (*Comisión Andina de Juristas*), the Peruvian Center for Social Studies (*Centro Peruano de Estudios Sociales*, CEPES), the Peasant Confederation of Peru (*Confederación Campesina del Perú*), the Ungurahui Clusters Working Group (*Grupo de Trabajo Racimos de Ungurahui*), the Amazonian Center of Anthropology and Practical Application (*Centro Amazónico de Antropología y Aplicación Práctica*, CAAAP), Peace and Hope (*Paz y Esperanza*), the Episcopal Commission for Social Action (*Comisión Episcopal de Acción Social*, CEAS), the National Coordinator of Communities Affected by Mining (*Coordinadora Nacional de Comunidades del Perú Afectadas por la Minería,* CONACAMI), Oxfam, and the International Land Coalition - joined together with the Peruvian Office of the Ombudsman in the "Securing Territories for Peruvian Communities" initiative to investigate, analyze, and report on Peruvian public policy regarding the recognition and titling of forest community lands. Together, they identified the gaps, overlaps, and inconsistencies in the Peruvian legal framework governing land titling for native and local communities, maintaining that the existing framework fails to provide clear and consistent procedures or mechanisms for land titling, producing uncertainty and fragility for forest communities, particularly in the face of private investments and interests in communal lands.

International organizations, such as the research organization Center for International Forestry Research (CIFOR), and the NGOs Conservation International (CI), the Environmental Investigation Agency (EIA), the Rainforest Alliance (RA), the World Wide Fund for Nature (WWF), and others have country programs and extensive efforts related to the problem definition in Peru. These organizations present opportunities for developing like-minded coalitions for this process, provided that a viable strategy for achieving multiple objectives is identified.

Donors

Additional actors with related core interests include international financial institutions and international donors that have identified territorial titling and tenure security as specific objectives and goals or important precursors to funding priorities, such as the World Bank (WB), the Inter-American Development Bank (IDB), the European Union (EU), the German International Cooperation Agency (GIZ), the Norwegian Agency for Development Cooperation (Norad), and the US Agency for International Development (USAID). These actors provide funds directly to indigenous communities, organizations, and federations, to advocacy groups and NGOs working directly with forest communities, and to governmental and non-governmental organizations with direct involvement in forest community titling and/or related objectives such as community forest management and biodiversity conservation.

For example, the Inter-American Development Bank has funded projects focused on land titling in Peru for many years, including most recently the "Rural Land Cadastre, Titling and Registration Project in Peru" (PTRT3). This project focuses primarily on the titling and registration of more than 700,000 individual land holdings, with a significantly smaller focus on securing title to about 450 indigenous communities in the Amazon and the Andes. Given the disproportional emphasis on titling of individual and community lands, the project has not been without its detractors, including AIDESEP, and recently entered into discussions to determine means for redirecting a larger portion of the funds to native community titling.

Conclusions

In Step 3, we have identified the relevant audience for generating collective strategic insights on the challenges of enhancing ownership over forest lands and access to forests to indigenous and *ribereño* communities in Peru, within the broader context of forest biodiversity conservation and enhanced local livelihoods. Indigenous and *ribereño* communities are represented and their interests are being addressed by numerous organizations and individuals focused on the challenges of insecure and unclear forest community land tenure and access to forest resources. Key organizations are AIDESEP and CONAP, both organizations that represent indigenous federations. There are also key governmental agencies, such as OSINFOR, SERFOR, and multiple other agencies within MINAM, MINAGRI, and SUNARP. Peru's regional governments all have directorates of agriculture and natural resources whose mandates are to address issues of interest within their jurisdiction. Multiple international non-governmental organizations, such as IBC, DAR and EIA-Peru, research organizations such as CIFOR; and international donors and aid organizations, such as the World Bank and GIZ, play important roles in enhancing forest community rights within broader portfolios focused on the problems of deforestation and forest degradation and depressed local livelihoods.

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STEP 4

Classify the Problem

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Introduction

Step 4 of the Policy Learning Protocol focuses stakeholder attention on how they perceive the problem definition in question, compared to other, related challenges. This step starts by asking stakeholders to reflect on how they might, based on their own interests, knowledge sources, and values, classify the problem in question according to three broad categories: Type 1: win/win; Type 2: win/lose, compromise, or Type 3: win/lose, hierarchy. A problem is identified as Type 1 "win/win" when a stakeholder evaluates that the very act of addressing the specific problem leads a diverse range of interests to be better off (for example, when a community of workers, businesses, municipalities and government agencies all work to stop fisheries depletion almost everyone wins). Type 1 problem conceptions are consistent with the way Elinor Ostrom (1968) and colleagues conceive of "tragedy of the commons" resource depletion challenges (see for example, Ostrom 1990).

In many cases, however, the costs and benefits of addressing one type of problem are weighed relative to those of other problems, with an expectation that there be "balance" between different objectives. For example, the common approach to sustainable development since the Brundtland Commission (WCED 1987) is to balance environmental, economic, and social challenges, although what the balance should be is a matter of subjectivity that varies between stakeholders. Hence Type 2 problems (win/lose, compromise) identify those cases in which evaluations are made that addressing the problem definition will have to result in some type of "compromise" with other, non-synergistic challenges. For example, protecting large swaths of biodiversity from extraction means that there are fewer places to conduct mining practices or logging. Such "land use" deliberations often result in a de facto compromise approach in which stakeholders might champion their own preferred problem definition, but most recognize that other, non-synergistic problems ought to be given attention as well. This type of conception can also lead to innovative policy interventions, such as *quid pro quo* land use agreements in which environmental groups and indigenous communities agree to allow some areas to be places for commercial activity and, in exchange, other areas are designated for biodiversity conservation or community management.

Finally, there exists a third, "Type 3" designation in which analysts or particular stakeholders recognize that there are tradeoffs among problems, but evaluate some problems as "trumping" others. In other words, Type 3 problems are hierarchical: certain problems are prioritized and must first be addressed before other problems can be tended to. For example, environmental groups often seek to designate endangered species as Type 3 problems, arguing that policies

must first ensure the viability of the species in question before other problems, such as economic development, are tended to. In addition, most governments and NGOs, at least in their rhetoric if not their policy decisions, give climate change a Type 3 designation. When determining their goal of meeting 1.5 degrees Celsius warming, for example, at UNFCCC COP 21 (2015), most governments rejected the idea that other problems could trump the scientific consensus about the need to curb greenhouse gas emissions.

For the purposes of writing a policy analysis, the role of the knowledge broker is to identify the problem as Type 1, 2, or 3, based on the problem definition in question, and the perspectives of key stakeholders. The policy broker must also be open to changing the initial classification as stakeholders learn more about the specifics of the problem (in step 4), and as stakeholders and analysts collectively and iteratively deliberate the available policy options in steps 5 to10.

Importantly, since even when following this type of analysis key differences about how to classify the problem will remain, the broker's role is to classify the problem according to emerging evaluations of the key stakeholders most closely aligned with the problem definition, but also to be open and honest about the bias in doing so. It also needs to be acknowledged that when problems are multidimensional different dimensions of a problem may be classified in different ways. That is, in theory stakeholders may assess one dimension of a problem as Type 1, yet another dimension of the same problem as Type 2.

This type of evaluation is inherently subjective, but ideally, it is based on objective information. In this chapter we use our data from one-on-one stakeholder interviews and stakeholder workshops and seek to capture which of these categories best captures how Peruvian stakeholders, explicitly and implicitly, view the problem identified in Step 2: *How can community legal ownership of, and access to, forestland and forest resources be enhanced?*

Content Analysis

As detailed in Step 2, our problem definition in this case is how to enhance community legal ownership of, or access to, forestland and forest resources for indigenous and *ribereño* communities in the Peruvian Amazon. Now, in order to classify the problem, we must first identify the relevant policy community according to our problem definition. Implicit in the problem definition is the need for indigenous and *ribereño* communities to be involved in making the decision to empower themselves through increasing security of land tenure; so clearly indigenous and *ribereño* communities are part of the policy community. However, we cannot limit the policy community to just these forest communities since (and this is also inherent in the problem definition) they currently hold little political power relative to other external stakeholders. It is, additionally, the broader policy community that is advocating for and deciding land-titling questions that are relevant to our case; this group includes those government agencies, NGOs and other organizations that are detailed in Step 3. Since the issue of how to enhance community legal ownership can be interpreted as part of a larger set of questions about social, environmental, and economic objectives in land management, our policy community for this case includes groups who have goals that are related to land and forest public administration, for example through reducing deforestation, but that are not involved with land tenure issues per

se.

An important caveat here is that based on interviews and dialogues with forest communities we, as the knowledge brokers, have concluded that land tenure security should be considered an essential component of community empowerment. As such, for our purposes, we are using land titling as a measurement of empowerment. In the process of identifying the policy community, we need to disentangle those stakeholders who are interested in land titling as a means of empowerment and those who view this as a causal process to achieve other objectives, such as reduced deforestation and forest degradation.

Implementation

From our one-on-one stakeholder interviews, we can begin to glean the overall perception of the problem of enhancing legal ownership of indigenous and *ribereño* communities to forestland and forest resources. Within the defined policy community, many seem to view the problem as a win/win between the objective of indigenous and *ribereño* empowerment and other related, causal objectives, such as reducing deforestation and forest degradation. This attitude was reflected further in the stakeholder workshops of June and October 2015, held in Lima, where we posed this question of problem classification. In that discussion, though limited, a strong response was that enhancing legal ownership could be a win-win type of problem. Some added that legal recognition of rights was not only a win-win, but it is essentially the only way to provide these communities with sufficient legal security over their land and give them equal standing upon which they can negotiate land management decisions. Others added that legal rights are only the first tool to help achieve solutions for other problems, such as illegal logging and drug dealing.

Yet, it is evident in the discourse surrounding legal ownership over or access to forestland and forest resources that we observed from both our one-on-one stakeholder interviews and the stakeholder workshops that if we look beyond the like-minded policy community and ask if enhancing legal ownership to land makes most people better off, the answer is primarily no. Many speak of the interests of the extractive industries that are impinging on the rights of indigenous and *ribereño* communities, noting that these parties would "lose" if these communities were granted rights to the forestlands they utilize. A few responses at the stakeholder workshops directly reflected this sentiment, with some stakeholders arguing that the problem of enhancing legal ownership of forests was a win-lose (either hierarchy or compromise) since there are also other important, competing issues (e.g. extractive industries) that are related to economic development.

We know from previous analyses that land and forest use issues often fall into the category of Type 2 (win/lose, compromise) problems, where core interests have to compromise with competing interests. For this type of problem, we must ask: what is the proper balance of core interests? And who has the power to determine this balance? In the case of land titling in Peru, indigenous and *ribereño* communities do not have sufficient power in determining this balance, according to our problem definition. In such cases, resolving the problem ultimately requires the

involvement of those actors who hold political and economic power.

A problem can be classified as a Type 3 (win/lose, hierarchy) if there are certain values (like indigenous rights or economic development) that are agreed among the policy community as a priority and which trump all other problems. In our interviews and workshops, certain stakeholders seem to espouse these types of ideals. For example, indigenous rights groups are adamant that indigenous forest rights are an important priority; however, we found no evidence of a consensus among the larger policy community that any values or principles should be considered an overriding priority.

Conclusions

Before classifying the problem as Type 1 (win-win), Type 2 (win-lose, compromise) or Type 3 (win-lose, hierarchy), it's important to note that problem definition is inevitably a matter of interpretation and subjectivity, and different actors may have very different, socially situated perceptions. What one actor might frame as a Type 1 problem other actors might frame as Type 2.

This is exactly what the workshops and interviews showed - all three classifications were represented among Peruvian stakeholders. This process of making explicit that various actors classify the problem of community legal ownership and access differently is important, since the classification influences the manner in which an actor approaches the issue, and its relationships with and implications for others.

Even though the various stakeholders interpret the problem definition differently, we here conclude that *most* situations where forest communities seek more secure land tenure can be seen as Type 2 problems. We arrive at this conclusion because any gain in secure land tenure for a forest community can be regarded a loss for another actor (be that the state, a private forest owner, or maybe another forest community with overlapping claims to the land) who loses access to the land and to its resources.

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STEP 5

Scoping Knowledge of the Problems at Hand

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Introduction

Step 5 of the Protocol is a scoping exercise of a range of knowledge that can aid understanding of the problem definition that we agreed in Step 2: *How can community legal ownership of, and access to, forestland and forest resources be enhanced?*

One essential area on which Step 5 should focus, therefore, is the policy and legal history of land ownership in Peru. In section 2 below we therefore review a range of knowledge sources that shed light on communal land ownership and forest access rights for forest communities in Peru and some of the strategies that have been pursued for recognizing and protecting the rights of these communities. Specifically, we examine the scholarship on the development and status of indigenous and non-indigenous property rights over communal land in Peru, considering both recent advances and obstacles.

As noted in Step 2, while we are focusing specifically on land titling, we are also cognizant that there are other salient issues that have a bearing on the problem. Analyzing land titling issues leads to the introduction of a range of related issues such as income, equity, and sustainable forest management. Of particular importance is the role that forests play in rural livelihoods. Section 3 provides a synthesis of recent scholarship on this issue, including research from Peru.

Section 4 introduces an analytical framework for interrogating the causes of deforestation and forest degradation, noting that a universal theory of deforestation is, and is likely to remain, elusive. The causes of deforestation vary over time and space, so that knowledge on this subject will inevitably be context and situation specific. The framework presented here is thus indicative and suggestive, rather than comprehensive, and should be adjusted as appropriate on a case-by-case basis.

A key component of Step 5 is the identification of uncertainties and incomplete information in order to gain a more comprehensive understanding of the issues and the degree of consensus that exists around them, specifically regarding drivers and outcomes. This chapter concludes by identifying some of these uncertainties.

Peruvian Policy History of Indigenous Property Rights

The first policy related to community tenure in Peru emerged as part of the formal national policy agenda in 1974 following the installation of General Juan Velasco Alvarado as President.[i] The Revolutionary Government of the Armed Forces installed Velasco after removing the Belaúnde administration following widespread unrest over its decision to grant oil licenses to the International Petroleum Company in the northern Peruvian Amazon. Velasco's government championed a "Peruanismo" agenda aimed at supporting Peru's poverty-stricken populations, including agrarian reforms that expropriated property from wealthy landowners and returned it to "campesino" families, and the formal granting of land rights to indigenous communities in the Amazon.[ii] This legislation created a process for formally recognizing communal rights over traditional indigenous territories and emphasized land ownership rather than community concessions on public land as a means for community control. As explained in Step 2, as of 2015 there were 1343 indigenous communities in the Amazon region that had a formally recognized territory, but the average size of the territory is about 9000 ha per community (IBC 2015), and areas largely consist of agricultural lands, fallow and secondary forest lands, and some forest remnants. This implies that, except for a few communities that have larger forest territories of which they are owners, for instance the Matses in the north east bordering Brazil, in general indigenous communities in Peru do not have ownership of forest areas that allow them to derive significant income, for instance from selling timber.

The 1974 law was modified in 1978 when another military coup – this time following economic upheaval and massive inflation – installed a military government under General Francisco Morales-Bermúdez that gave in to the pressures of the International Monetary Fund (IMF).[iii] The law revised by the Morales government constrained the type of peoples, and the amount of land, that might come under community control. This law created two classes of communities: Amazonian indigenous peoples were categorized as "indigenous"; while coastal and Andean agricultural communities were classified as "*comunidades campesinas*" (Smith 1979).[iv] The communal land of legal indigenous communities has been protected by the imprescriptible and inalienable principles (see Step 2), which essentially implies that it is more difficult to trade or acquire land in indigenous communities. Inside *comunidades campesinas* it is not possible to hold individual title over land, but only usufruct rights, which can be withdrawn by the community board and community assembly. The revised law also allowed for communal reserves to be created in these areas. However, since this law has been created, only two communal reserves have been created.[v, vi]

Following this flurry of activity in the 1970s, community titling-related policies remained relatively unchanged until Fujimori took over power in 1990 from Alan García Pérez, whose tenure was marked by economic depression, high inflation, and nationalization of the banks. To address the new economic crisis, Fujimori's administration implemented a number of neoliberal reforms after being pressured to do so by international financial institutions.[vii] When Fujimori faced an opposition majority in congress, he staged a "self-coup" in which Congress was closed and the judiciary suspended, and created a "constituent assembly" in 1992. In 1993, this body

produced a new draft Peruvian constitution (Garcia Hierro 1995; Levitsky 1999).[viii] While there was some degree of public approval through the 1993 referendum, historians have asserted that the government continued its authoritarian approach (Levitsky and Murillo 2012), including violating the civil liberties of opposition leaders and reporters, politicizing The National Board of Elections, and reducing oversight of the armed forces, the latter of which resulted in tanks being sent into the streets of Lima during protests (Levitsky 1999). This historical legacy of authoritarian control is critical for understanding why advocates today seek to secure stronger indigenous control over their territory in order to resist incursion by oil, gas, and mining activities.

Indigenous peoples' right to territory remained recognized in Fujimori's 1993 constitution, which requires the government to respect the cultural identity of Indigenous Communities (Government of Peru 1993).[ix] However, at the same time the new constitution, and especially the Land Law of 1996 attempted to abolish the imprescriptibility and inalienability clauses that had been in place in the legislation until then. In addition, the Fujimori government moved to exercise greater national control over Peruvian forests through a constitutional amendment declaring that "all forests and natural resources" are patrimony of the state, and therefore, exploitation of any type of forest – public, private, or communal – is subject to state regulation.[x] This policy still holds, so accordingly, if a community wishes to use timber and non-timber forest products (NTFPs) for commercial aims, it must first apply for an appropriate permit. Sub-soil resources, such as oil, gas, or minerals, are also patrimony of the state and similarly require permits for exploitation (ACCA 2014; AFIMAD 2014; DAR 2014). There are no restrictions on subsistence use (Art. 17, Law N° 26821/(Peru, 1997)) over forest areas adjacent to title (or untitled) indigenous communities, *comunidades campesinas,* and *ribereño* communities.

Obstacles to Titling

Though some property rights are granted by law, the process for an indigenous community to formally apply for a title is long and resource-intensive. A community first must submit a formal application request. If approved, the community's general assembly must then meet to delineate property borders. Delineated land is classified as suitable for either agriculture or forestry by the Ministry of Agriculture (MINAGRI). A cadastral plan is created and the delineated area is checked to ensure it does not overlap with a protected area. Only then can the request be processed and the title granted. In practice, this process is slow and bureaucratic. The procedures not only require a rigorous understanding of the legal requirements, but also time and funding for travel to towns or cities where there are the relevant government administrative offices. Indigenous federations assist communities with these procedures, but the process has been lagging. Political and administrative decentralization has transferred titling authority to the regional governments who generally lack capacity to execute titling requests in a timely manner (FENAMAD 2014; IBC 2014; ORAU 2014; Regional Government of Ucayali 2014).

The process of decentralization, which was deliberated since the 1990s, but did not come into effect since the early 2000s, is progressing slowly and unevenly, with important differences between regions. Since 2007 authority for titling was handed for a period of four years to the *Organismo de Formalización de la Propiedad Informal* (Organization for the Formalization of Informal Property, COFOPRI), an agency that until then had only worked in urban areas. At present the regional governments are in charge of rural land titling, but are supported by the

Ministry of Agriculture in these efforts (Von Hesse 2014). However, commentators agree that regional governments still have limited capacity and funding to implement titling without support, such as the funds that are provided by the Inter-American Development Bank for this purpose. MINAGRI has responsibility for supporting the process, but also lacks capacity and resources. Land titling is also complicated by the number of state agencies that contribute to the process, for instance SUNAT, which needs to recognize the community as a legal entity, and MINAGRI, which needs to determine the designated land-use option of the titled land. There are currently a number of initiatives that aim to address these capacity challenges and to better define the institutional framework needed. For instance, the Norway-Peru-Germany Joint Declaration of Intent addresses titling indigenous communal lands prior to any REDD+ payments. The PTRT3 project is a land titling and registration project being funded by the Inter-American Development Bank, which is now entering its third phase.[xi]

Progress with titling of indigenous communities has been slow, and much of the titling that has occurred has been the result of pressure on the state by indigenous organizations (Smith 2003). From 1974 to 1984, titling in areas with colonizers led to indigenous titles that were too small for these communities to continue their traditional land management practices, such as rotating agricultural fields. This issue of communities being titled small tracts of land, smaller than their historic territory, remains a complaint today.

In the 1980s, led by the Coordination of Indigenous Organizations of the Amazon Basin (Spanish acronym COICA), indigenous activities began to push for recognition of "territory" that included all resources within their granted area, as opposed to just use of land and topsoil (Chirif, García Hierro and Smith 1991). As a consequence of this indigenous activism, the government began to grant larger tracts of land to larger indigenous titles and territorial units. However, many communities continue to push for an expansion of their existing territories. The PTRT3 project and the Norway-Peru-Germany Joint Declaration of Intent seek to title new communal lands and to expand small existing communal lands (IADB 2015).

Current Titling Statistics

The Rights and Resources Initiative (2014) calculated that by 2012, indigenous communities owned or controlled a total of 16.6 million hectares of land, or almost 23 percent of Peru's forestland. Furthermore, AIDESEP, the organization that represent a large group of indigenous federations in Peru, asserts that an additional 20M ha of land near communities ought to be recognized (Rights and Resources Initiative 2014). IBC (2015) has calculated that of the 2006 indigenous communities of Peru, 1880 are registered, but only 1343 have completed communal land titling, which means that 537 registered communities have not yet completed this process and 126 communities are not registered at all. The 1343 communities own a total of 11.7 million ha, a much smaller number than the Rights and Resources Initiative's estimate mentioned above.

Scoping Knowledge on the Role of Forests in Livelihoods

Forests make vital contributions to meeting the subsistence needs of forest communities. This has led to proposals to enhance the contributions of forests to rural livelihoods in order to meet two forest development goals, namely to improve the welfare of the residents of forest communities; and to pursue sustainable forest use and management and thus contribute to tropical forest conservation, or at least, to slowing down deforestation and forest degradation.

The two goals have spurred related scholarship that seeks to understand how forests contribute to rural livelihoods. We refer to this as the forest dependence literature. As well, related research and development work has aimed to develop methods and tools to boost forest incomes among rural dwellers and promote the sustainable use, and thus conservation, of tropical forests. We refer to this as the community forestry literature.

Scholars on forest dependence often quantify how much forests contribute to livelihoods, and also how forest incomes are located within the complex livelihood portfolios of rural dwellers. A significant step towards understanding the contribution of forests in livelihood strategies has been a portfolio of studies undertaken under the auspices of the Poverty Environment Network (PEN).[xii] The PEN initiative undertook research in 40 study locations in 25 countries across the globe and collected detailed information on environmental income, including forest income as part of the livelihood portfolio of more than 8000 households.

The study supports the findings of previous assessments, which estimated that overall, forests contribute about 25% to total household income (e.g. Wunder 2001), including forest benefits that are traded or consumed directly. The synthesis of the PEN study (Angelsen et al. 2014) reveals that total environmental income is approximately the same as the income from agricultural production. Across the 40 study sites, forest income contributed 21.8% to total household income, while non-forest environmental income contributed 6.4% to total income. The same study disaggregates these numbers per continent. In the case of Latin America, the contribution of forest income to total income is the highest (compared to Africa and Asia) namely 28.3%. Non-forest environmental income is 3.6%, the lowest of the three continents (Angelsen et al. 2014). The largest contributors to income are wood fuel and timber, poles, and construction materials. Food, on the other hand, represents 30% of the total portfolio of forest income.

While these figures are significant indicators of the importance of forests in rural livelihoods, important differentiations between wealth groups of forest dependent communities can be observed. These differences were first observed in Zimbabwe (Cavendish 2000) and the differences were confirmed in the PEN studies. Essentially, the lowest income groups among communities who rely on forest incomes derive a larger proportion of their subsistence income from forests, whereas the more wealthy groups obtain the highest cash incomes from forests, compared to the poorer groups (Angelsen et al. 2014). Essentially, the better-off households appear to have the resources to harness commercial economic opportunities to exploit forests. As a result of these differences, the wealthiest 20% of the total population derives an absolute income from forests and environments that is five times that of the poorest 20% of the sample.

A further issue that is debated in the forests and livelihood literature is the safety-net function of forests in rural livelihoods strategies. This issue has been reviewed by Wunder et al. (2014), also based on the PEN results. The overarching conclusion is that forests are not the primary resource or option that rural people will turn to when a household suffers from a subsistence shock, for instance crop failure, accident, or disease. The role of forests is more important, however, when a subsistence shock is shared by an entire community, region or even country, for instance when a climatic calamity occurs. Even in these cases, however, households will first opt for reducing consumption, and only as a second option will they try to make up for lost income by turning to exploit forests or other natural environments.

For Peru, several studies have focused on forests and livelihoods, and the role that forests play in livelihood strategies, including the local data of the PEN study. For instance, de Jong et al. (2001) calculated household income and the proportional contribution of forests therein among floodplain farmers in the lower Ucayali River (Loreto Region). Total annual incomes ranged between USD 1874 and USD 3040. Some of the key factors that explained variation were total area of land under cultivation, age of the settlement, market access, and dominant land type used for agricultural production. These were all riverine communities, and they relied heavily on fishing as a food source, with the result that income from natural resources exceeded the 28.3% calculated in the Angelsen et al. (2014) study. For instance, a group of farmers with a cultivated area between 0 and 5 ha had an average annual income of USD 1874, of which USD 1159 (62%) was from agriculture, USD 323 (17%) from fisheries, but only USD 271 (14%) came from secondary and primary forests. The group with largest average income of USD 3040 had a productive area of over 15 ha. The income from agriculture was USD 1798 (59%), from fisheries USD 352 (12%), and from forests USD 576 (19%). The absolute value and proportion of forest income was higher among the highest income group, which only partly concurs with the results from Angelsen et al. (2014).

These figures, however, are in contrast with those provided by Kvist et al. (2001). In their study among communities slightly upstream from the communities in the de Jong et al. (2001) study, but still in the Loreto Region, they estimate average annual household income in seven communities ranging from USD 1688 to USD 2944. More relevant, their results suggest that among all villages extraction incomes contribute 64% to total income (USD 1374 of an overall average of USD 2188), whereas agriculture only contributes 30% and other activities 6%.

The last source reported on here is a comprehensive study undertaken in the Ucayali Region of the income of 578 households in 26 communities, both indigenous and *ribereño* communities (Porro et al., 2014). The difference between the previous two studies is that the Porro et al. (2014) communities are more remotely located, and not connected to one of the major fluvial arteries of the region. The study calculated average household incomes of USD 4785, with a mean of USD 3049 and a standard deviation of USD 7180, suggesting a significant variation in income. Forest and fish resources contribute 38.8% and 8.1% respectively, and agriculture and livestock 23.0% and 9.9% respectively, to total household income. The other categories included wages (12.4%), business (5.9%) and others (1.9%). These figures differ from the Angelsen et al. (2014) study especially in the latter categories, which may be a result of their remoteness.

The average can be nuanced by disaggregating income structures. About a quarter (24%) of the households qualify as high forest dependent in the Porro et al. study, but this represents a

threshold of 66.6% of income contribution from forests. The majority of the 578 households had a balanced forest-agriculture wage income portfolio, implying that at least two of those contribute a minimum of 25% to overall income. Of relevance to this study is that market access and resource endowment, rather than ethnicity, are dominant factors that influence total income and proportion of forest income (Porro et al. 2014).

Scoping Knowledge on the Causes of Deforestation and Degradation

There is no "universal" theory of deforestation and degradation, and given how the causes vary over time and space, such a theory is likely to prove elusive. Mono-causal explanations blame forest loss on single factors, such as population pressure, the high demand for tropical timber or clearance for alternative land uses. Mono-causal explanations have been criticized for failing to take into account the often complex causes of forest loss and the variegated ways in which they may interact to produce deforestation in one space rather than another. But if mono-causal explanations are unsatisfactory, then so too is the view that the causes of deforestation are impenetrably complex with no clear causal patterns evident (Geist and Lambin 2002).

A viewpoint that lies between that of mono-causality and impenetrable complexity and which has attracted a measure of consensus from scholars and policy makers is that there are different interactions between multiple causal factors, with different synergies of causation apparent in different places at different times. Many analyses now distinguish between direct causes (sometimes referred to as proximate causes) and underlying causes. To Geist and Lambin (2002) proximate causes are 'human activities or immediate actions at the local level, such as agricultural expansion, that originate from intended land use and directly impact forest cover.' Direct (or proximate) causes involve forest conversion to other land uses and the deliberate modification of forests at the local level; the felling of a tree in a particular space is, after all, an essentially local act.

Underlying causes, in distinction, are 'fundamental social processes, such as human population dynamics or agricultural policies, that underpin the proximate causes' (Geist and Lambin 2002, 143). Underlying causes relate to the social forces and pressures that shape actors' behavior and which incentivize actors to fell trees. They may operate locally, but often operate from a distance. So, for example, underlying causes of deforestation include the international demand for agricultural produce such as beef, soybeans and palm oil (Boucher et al. 2011), while the clearing of forests to plant these crops is a direct, or proximate, cause. Likewise, tree felling in tropical countries to produce wood for international markets is a direct cause of forest degradation, which may in turn facilitate deforestation.

The Intergovernmental Panel on Forests was the first intergovernmental organization to adopt and work with the distinction between direct and underlying causes of deforestation and degradation. It developed a diagnostic framework to enable individual countries to trace the causal chains that affect their forests (Table 5.1). No order of importance was implied in the framework. The Panel noted that the correlation between underlying and direct causes of

deforestation is not always straightforward and the relative values assigned to forests and the alternative uses of forested land will change over time (United Nations 1996).

Eight types of underlying cause were identified (United Nations 1996). The first type is economic and market distortions, in particular the valuing of private goods such as timber that can be bought and sold and the undervaluing of the public goods values of forests. Second, policy distortions include building roads into forested areas that enable migration from those seeking to exploit the forests for commercial gain as well as from the rural landless poor. Other policy distortions included providing subsidies to actors to convert forests to other land uses and promoting forest colonization. Third, and of particular relevance to our work, insecurity of tenure refers to unclear property rights so that ownership of areas of forest is unclear, promoting open access and incursions from outsiders. Fourth, lack of livelihood opportunities refers to poverty and the lack of life opportunities that may lead the poor to exploit forests unsustainably, catering to short-term needs rather than the long-term viability of the resource base. Fifth, government deficiencies include lack of enforcement capacity resulting in limited compliance with laws and regulations, with transgressors often unpunished. Sixth, infrastructural, industrial or communications developments include shifts in the global prices of products, which may lead to forest clearance (for example, a rise in the price of agricultural produce leading to increased demand for agricultural land) and pressures for new land for urban expansion. Seventh, new technologies have accelerated land clearance. The invention of the chainsaw and its application to forestry in the early twentieth century revolutionized forestry and led to accelerated rates of tree felling. New technologies such as biofuels and genetically modified trees may also increase pressure on forest space. But technology is not necessarily a malign force in forests. New technologies may reduce wastage in wood processing, leading to reduced pressure for tree felling. Finally, demographic factors may affect forest use. While population increases in developing countries need not necessarily translate into deforestation, population hot spots in forested areas, perhaps due to colonization or road building, will increase pressure on forests.

The diagnostic framework was offered as a tool for countries to identify those causes of forest loss relevant for their national context. It was stressed that the framework was illustrative and that countries should add to and adapt the framework in line with national circumstances. The framework, it was suggested, could be used to identify those underlying causes associated with particular direct causes so that appropriate remedial policies could be designed. For example if a country is experiencing deforestation due to an increase in commercial palm oil plantations, then according to Table 5.1, the underlying causes may be economic and market distortions (column 1); infrastructural, industrial or communications developments (column 6); new technologies (column 7); or any combination of these factors.

Different underlying causes may combine and operate together. There may, therefore, be complex causal patterns that are difficult to disentangle. Eduardo Bedoya Garland argued in 1995 that the literature on the causes of deforestation in Peru offers no consensus, with explanations on the underlying causes including the technological characteristics of swidden and peasant agriculture, government economic policies, capital accumulation, and unequal relations between town and city. He considers one of the underlying causes of deforestation in the Upper Huallaga to be increased demand for cocaine, leading to more extensive agriculture in the region (Bedoya Garland 1995). Naughton-Treves (2003) attribute deforestation in Tambopata to the building of the Transoceanic Highway.

Table 5.1. Diagnostic Framework: Relationship between Selected Direct and Underlying Causes of Deforestation and Forest Degradation

Direct causes	Underlying causes							
	1	2	3	4	5	6	7	8
Replacement:								
By commercial plantations	X					X	X	
Planned agricultural expansion	X	X				X		
Pasture expansion	X	X				X	X	
Spontaneous colonization		X	X	X		X		X
New infrastructure						X	X	
Shifting agriculture:			X	X				X
Modification:								
Timber harvesting damage	X		X		X		X	
Overgrazing			X		X			
Overcutting for fuel			X		X			
Excessive burning				X	X			
Pets or diseases					X			
Industrial pollution					X		X	

Key

1 Economic and market distortions
2 Policy distortions, particularly inducements for unsustainable exploitation and land speculation
3 Insecurity of tenure or lack of clear property rights
4 Lack of livelihood opportunities
5 Government failures or deficiencies in intervention or enforcement
6 Infrastructural, industrial or communications developments
7 New technologies
8 Population pressures causing land hunger

Source: United Nations 1996.

Deforestation in Peru is modest, compared to other tropical forest countries, like Brazil and Indonesia. The 2015 FAO Global Forest Assessment gives a forest area for Peru of 73.973 million ha, or 57.8 % of the total land cover. This area declined from 77.921 million ha in 1990, to 76.147 million in 2000, 75.528 million in 2005, 74.811 million in 2010, to its current extent. This represents an annual deforestation rate of 0.2% (FAO 2015). The statistics produced by Peru's agencies calculate an annual decline of 110,000 ha between 2000 and 2013 (MINAM and MINAGRI 2015). According to BID and INDUFOR (2012) the main deforestation drivers are conversion to croplands (about half) and conversion to pastures (30 to 40%). RAISG (2015) reports that Peru contributes 9.1% of the total deforestation in the Amazon between 2010 and 2013, which puts it in fourth place. In addition to conversion for agriculture and pastures, RAISG

also identifies the increasing contribution of oil palm and cacao industrial plantations to deforestation since 2009. On the other hand, the contribution of smallholders to deforestation is suggested by the fact that for the last 10 years, over 90% of deforestation patches are smaller than one hectare (BID and INDUFOR, 2012).

The framework (Table 5.1) was designed before the emergence of illegal logging as a major international issue. Logging is a direct cause of forest degradation, and in Peru a significant amount of logging is illegal. Illegal logging may involve harvest in areas where the ownership of forest lands is uncertain, or where logging permits are lacking and/or where there are other failures in the implementation or enforcement of forest laws (column 5). These types of violations become more frequent as forest lands become more accessible through expanding road networks (column 6). But it should be stressed that these are generalized patterns, and the exact causes of illegal logging in Peru and elsewhere will vary between forest spaces and over time, with different actors bringing different subjectivities to bear on the debate.

Despite this 'subjectivities problem', accurate diagnosis of the causes of deforestation and degradation, of the insecurity of land tenure, and of the relationship between forest loss, forest tenure and Peru's legal frameworks, in so far as this is possible, is an essential part of step 5 if instrument selection is to meaningfully engage with the problem at hand. For example, and self-evidently, it would not be worth using timber legality verification instruments to enhance security of land tenure in those forest spaces where the underlying causes are, for example, agricultural expansion or government-backed industrial mining.

Illegal logging in Peru is caused by the weak presence or absence of the state. It also is related to the limited ways in which medium and smaller logging operations can access finance and their relations of economic dependence along the timber value chain. Medium and small operators rely on timber traders, or other informal sources such as pawnshops, for the financing of their operations (Mejia et al. 2015). This informal funding has important consequences for logging and how it takes place. Small and medium operators require a quick turnaround when delivering their timber to the traders, so that they can pay off their loans, which are short term and have high interest rates. Medium and small operators do not have the time to go through the strenuous process of obtaining the necessary permits. Rather they pay off forest officials or other state officials if they are caught with timber that is not sourced following legal procedures.

Small and medium operators also rely on the buyers to whitewash the timber, which happens farther along the timber value chain. Commonly, large entrepreneurs hold concessions and pretend that the timber they bought from small and medium operators originated from their forest concessions. In addition, timber traders falsify documents, often in cahoots with corrupt forest officials, that launder into legal supply chains timber that was sourced illegally.

The limited reach of the state, widespread criminality, and corruption are thus key intervening variables that contribute to illegal timber, and that compromise indigenous peoples, as they are enticed and even coerced to go along with these practices (Cornejo 2007; EIA 2012).

Discussion and Conclusion

This chapter has scoped some of the knowledge that can shed light on the problem to be addressed. We have scoped knowledge in three areas: community land titling in Peru; the role of forests in rural livelihoods; and the causes of deforestation and degradation. An exhaustive treatment of all areas of knowledge that may be salient to the land-titling problem in Peru has not been possible, and forest communities may wish to scope other areas of knowledge depending on the local socio-economic and cultural context and the problem they wish to address.

It needs to be recognized that the process of knowledge scoping will inevitably lead to the identification of uncertainties. Uncertainty is a condition that arises when a phenomenon cannot be accurately established, measured, or understood due to knowledge gaps. The identification of uncertainty suggests further areas for scientific and social scientific research if the use of this Protocol is deliver effective results. Uncertainties have been identified for all of the areas examined in this chapter.

First, for community land titling, key areas of uncertainty concerns the regulatory environment and state apparatus in Peru. This includes the government decentralization process, which has created jurisdictional uncertainties between the national government and the regions, a situation exacerbated by the number of government institutions involved in community land titling and low staff numbers working for MINAGRI.

Second, different studies have arrived at different estimates on the income that forest communities can yield from their forests. It was noted that these differences could be explained by the differences in the remoteness, with some communities better connected to the major fluvial arteries of the region. There are also uncertainties on the extent to which more secure tenure will lead to improvements in the household income of forest communities.

Third, there are uncertainties on the causes of deforestation and forest degradation, which even in one country such as Peru will vary significantly from area to area and over time. Academic scholarship has an important role to play in filling knowledge gaps on forest loss, but due to the dynamic and shifting nature of causal patterns some degree of uncertainty is always likely remain on this topic. The input of local stakeholders is vital to filling knowledge gaps on the causes of forest loss, although it should be recognized that different socially situated actors will have very different subjectivities on what they consider to be the most important causes.

Notes

[i] Law of Indigenous Communities and Agrarian Development in the Regions of Selva and Ceja de la Selva" (Law 20653/1974).

[ii] The "Law of Indigenous Communities and Agrarian Development in the Regions of Selva and Ceja de la Selva" (Law 20653/1974).

[iii] The government convened a constitutional convention in 1978 that prompted a return to Presidential elections. It also implemented a plan that favored neoliberal development policies.

[iv] Campesino communities in the Andes may and often do include Quechua and Aymara speaking communities which, it can be argued, represent Andean indigenous people. When we refer to indigenous people in this entire document, we refer to indigenous groups in the Amazon lowlands or Andean foothills, who command their own indigenous language and who have collectively agreed that they be recognized as indigenous communities. *Comunidades campesinas* were regulated by the Ley de Reforma Agraria (D.L. 17716) and indigenous communities by Law 22175, "Law of Indigenous Communities and Agrarian Development in the Regions of Selva and Ceja de la Selva". A third category of communities is *ribereño* communities. These are the non-indigenous farmers' communities of the Peruvian, Amazonian lowlands.

[v] The new administration limited this direction by narrowing, through constitutional amendments, communal rights to comprise only lands formally "gazetted" as indigenous. The reason for the constraining of formal trading of land was to protect outsiders from acquiring the land, even when economic development increased land prices (Chirif and García Hierro 2007).

[vi] The Moralez Bermudez regime followed with a new Constitution in 1979 that specified the conditions through which community forestry could be managed, which many asserted worked to undermine current and future development potential of lands designated under community forestry management. For example, the constitution forbids using indigenous and campesino community land for collateral, making it harder for these groups to obtain financing (Chirif and García Hierro 2007).

[vii] Including privatizing many of the industries that had been nationalized by the Velasco Alvarado's revolutionary government.

[viii] Following ongoing international pressure, and Fujimori's own apparent conclusions about enhancing legitimacy, the new 1993 Constitution reinstated regular elections and Congressional representation and was approved through a public referendum. While this takeover was condemned internationally, public opinion polls indicated that 80% of Peruvians supported these actions.

[ix] In 1997, under Alberto Fujimori's government, Law 26821 was passed that allowed indigenous communities to use natural and forest resources in their territory for subsistence purposes with no restrictions (Art 17, Law N° 26821/1997). This law, called the "Law for the Sustainable Use of Natural Resources" determines that Indigenous Communities have priority to explore natural resources within their land (Art. 18, Law N° 26821/1997).

[x] Provisions of the 1993 constitution include recognizing the right of indigenous communities to dispose of agricultural lands by excluding a clause, present in the previous constitution, which declared the inalienable and indefeasible nature of Tierras de Comunidades Nativas y Campesinas (Indigenous and Rural Community Lands) (Art. 89, Peruvian Constitution 1993) (For a discussion of the components of land rights, see: Schlager and Ostrom 1992). However, because forests legally belong to the state, they do not have the authority to dispose of forestlands. In these lines, a community does not hold the right to its subsoil or water resources (García Hierro 1995).

[xi] http://www.iadb.org/en/projects/project-description-title,1303.html?id=PE-L1026

[xii] www1.cifor.org/pen

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STEP 6

Applying the Pathways of Influence Framework

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Introduction

The previous chapters have focused on identifying, defining, and understanding the particular "problem definition", to which the application of the policy learning protocol in this project is devoted to addressing. They have also identified the key organizations and stakeholders who are expected to contribute to, and benefit from, insights that emerge from the protocol. Step 6 is focused on identifying four "causal pathways" through which global interventions might influence domestic challenges, and strategic implications that emerge. Step 6 then, acts as a pivot in the learning protocol: the previous steps gave purpose and direction, while steps 6-11 focus on "teasing out" causal knowledge and strategic implications from what is now known as the *"pathways of influence framework"*.

Since our purpose is focused on understanding how global interventions might be drawn on to influence domestic policy changes, the learning protocol should not be taken to replace existing domestic policy analysis efforts, nor does it systematically address a range of domestic factors that are key to explaining and describing Peruvian forest policy. Rather, the pathways of influence framework seeks to "add value" to existing efforts by carefully untangling the promise and pitfalls of international interventions within domestic contexts. For these reasons, Step 6 takes care to identify the four causal pathways: norms, markets, rules and direct pathways. To do this, we discuss each pathway and then provide examples to illustrate how the pathways have worked historically in Peru. This effort paves the way for Step 7, which provides deeper insight into how the pathways may be drawn upon to address our particular problem definition in the future.

The Pathways of Influence Framework

Bernstein and Cashore (2000) highlight four pathways with different influence logics: rules, norms, markets, and direct access. The framework incorporates current debates about the causes of "policy diffusion", i.e. the process through which countries adopt similar policies, creating some type of policy convergence. Some argue that policy diffusion is the result of economic globalization in which countries relax environmental and social demands in order to attract global capital. Others argue that convergence is owing to the generation of global norms, such as human and indigenous rights, that can lead to upward protection. Still others argue that policy diffusion occurs following "policy learning" processes, in which a range of actors, operating at

multiple levels of governance, learn about the potential of specific policy interventions to influence a particular policy outcome. Instead of resolving these debates, the pathways of influence framework focuses on better understanding the conditions through which each of these causes might be at play over time. And it helps shed light on understanding which problems are more likely to be influenced by active "policy learning" processes, and the implications of these findings for actively intervening.

Building on Bernstein and Cashore (2000), we maintain that by better understanding the 'causal influence logics' behind each pathway we will be able to harness them to countervail, or reorient economic globalization towards productive social and environmental outcomes. The framework seeks to uncover, through exploratory research, what appear to be the complex set of causal factors that explain influence and uptake in specific cases. As a result, it is a useful tool for exploratory work such as this study, as it expands the important, but often narrow focus of specific disciplines and practitioner communities, to generate conclusions about broad themes and historical processes that might have gone unexplored by more targeted research and approaches. The framework also does not prejudge outcomes, but, by focusing attention on four causal processes, allows for the generation of insights about how various factors might trigger one or more pathways of influence, and the implications of this for understanding better what types of interventions might have more likelihood of achieving durable influence than others.

The framework was developed to better understand and unpack complex processes in the emergence, evolution, and effectiveness of norms, rules, markets and capacity building/resources over time. While this approach accepts that efforts to develop "replicable hypotheses" are pretty much impossible over long periods of time, it also accepts that attention to historical processes can help understand the "causal influence logics" through which specific interventions might be nurtured in the future, and the potential, or likelihood, of different types of interventions in producing durable rather that short lived influences.

Hence, the better scholars and practitioners can collectively "puzzle through" these relationships, the greater likelihood that we can reorient well intended, but transient efforts to address global forest challenges towards influential and durable outcomes. This orientation requires attention to careful identification of "causal influence logics" as a way to explain the pathways through which successful interventions were travelled in the past, and to extrapolate from them ideas for traveling one or more pathways for nurturing a particular intervention – such as REDD+, legality verification or zero deforestation commitments in the future.

Cashore and Howlett suggest four ways in which policy changes can be distinguished, two of which lead to "durable change" and two of which might appear to trigger meaningful change, but which end up going back to the previous position. As part of an analysis one must consider the evidence in the past, or potential, of a policy intervention to trigger either classic paradigmatic, or progressive incremental change.

Table 6.1. Steps to Durable Policy Change

Durability	Number and Size of Steps	
	Few, Large	Many, Small
Durable Change a new equilibrium is established	 Classic Paradigmatic ✔	 Progressive Incremental ✔
Non-Durable Change change is temporary; goes back to original position	 Faux Paradigmatic ✖	 Classic Incremental ✖

From Cashore et al. Protocol for the Diffusion of Community Forest Management through Pathways of Influence.

In what follows, we provide a brief overview of these pathways and offer examples from the field of global forest governance (Cashore, Elliot, Pohnan et al. 2015).

International Rules Pathway

The rules pathway focuses attention on the role of binding agreements in shaping lower level policy responses. At the international level, this requires considering international global forest-related policies and multilateral environmental agreements (MEAs) such as the Convention on Biological Diversity (CBD) or the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). It also focuses attention on rules that regulate economic activity, such as efforts on the part of environmental groups and regulated businesses to "green" the World Trade Organization (WTO) and the General Agreement on Tariffs and Trade (Esty 1994). Likewise, as we discuss below, regional and domestic rules of the European Union (EU) and the US aimed at curbing imports of illegal timber (e.g. the EU Forest Law Enforcement and Governance and Trade, FLEGT, have sent multiple ripple effects across global supply chains. So, too, have rules governing global and international efforts to develop the climate change mitigation policy "reduced carbon emissions from deforestation and forest degradation" (REDD+). Recognition of these dynamics are important since they can have important influences on domestic policies which can, in turn, significantly influence forest management practices. For example, as we discuss below, the US-Peru Free Trade Agreement called for the inclusion of

domestic forest practices (Cashore, Bernstein, Atyi et al. 2011). However, the US-Peru FTA also encouraged Peru's national leaders to establish land concessions in the name of development opportunities in the Peruvian Amazon that led to massive unrest by indigenous communities asserting that their land rights were being ignored. Hence, the rules pathway focuses attention on opportunities that can be created at "higher levels" to influence, shape, and promote community legal ownership of, and access to, forestland and forest resources, but also to rules that may have unintended, or countervailing effects.

Norms Pathway

The norms pathway focuses attention to the role of deeply engrained values and ideas about appropriate behaviors that often precede any self-interested calculations. Norms are important for building collective support for, and trust in, existing or new governance arenas (Habermas 1981). Scholars within international relations often point to norms against slavery or colonialism as powerful examples that have greatly influenced domestic and global policy decisions. While the influence of norms is all around us, they tend to be ignored by those focusing on building the latest policy instrument or global response. To really uncover the role of norms then, practitioners and scholars need to "stand back" and reflect on broader trends that often go unnoticed. Undertaking such an effort, Bernstein has found that the norm of neoliberalism has given primacy to market mechanisms over other policy interventions (Bernstein 2001), regardless of their merits in addressing actual global challenges. Other pathways can also influence norms; some market mechanisms that were often assumed to only influence the markets pathway have also had profound normative influences in the generation of problem definitions and instrument design (Cashore, Elliot, Pohnan et al. 2014). For example, the norm of High Conservation Value Forests (HCVF) developed within the non-state market-driven Forest Stewardship Council (FSC) deliberations (Hamzah, Nik, Efransjah et al. 2007) is now used widely within national forest policy deliberations that have influenced national-level forest practices and reforms. At other times, market mechanisms may come to embrace emergent norms. Many argue that powerful norms regarding forest livelihoods, indigenous rights, and subsidiarity governance principles, explain why governments promoting REDD+ must include, rather than bypass, considerations of the livelihoods of local peoples.

The norms pathway does not imply a top-down approach to norm generation. By their very definition, norms are not only highly durable, they are much more difficult to change than are rules. For example, the norm against slavery is now so strong that it will arguably never change, although "modern slavery" is still a problem around the world. Likewise, the USA is in the midst of changes in norms surrounding gay marriage. These norms could not have been predicted before hand with certainty so it is useful to think about the process or "causal change" through which the norm both changed and became entrenched in domestic rules. While this norms pathway is often the least attended to by environmental and social activists and organizations, in part because of the difficulty of changing norms, this pathway also carries the highest transformative potential when successful.

Another strategy to consider is bringing new norms into existing powerful organizations that wield considerable influence. Arguably internalization of these norms is a more productive pathway than traditional rules-based approaches that might lead to watered-down agreements or

entrenchment of existing interests. Hence, efforts focused on championing norms within powerful organizations, rather than traditional approaches in contesting the organizations themselves, may be a more fruitful path for creative and durable influences.

Norm-driven causal logics can also occur, as Risse (Risse 2000) and Weible and Sabatier (Weible and Sabatier 2006) suggest, through particular kinds of multi-stakeholder deliberations. The importance for the norms pathways is that it offers clues for the ways in which deeply engrained values, such as community rights, change by understanding "causal logics". Sabatier finds that "deeply held" norms are almost impossible to change through stakeholder dialogues, but "beliefs" about "cause and effect relationships" (such as at what level to set speed limits to reduce traffic deaths) are much easier to change. The reverse is also true however; though more difficult to change, such norms are also more durable. Hence, it is hard to imagine a world in which slavery will again be regarded as appropriate because the norms against slavery are so strong they permeate the thinking of government officials, individuals, businesses and NGOs – even though "just" 150 years ago there was no such normative consensus.

Markets Pathway

The markets pathway focuses attention on causal mechanisms that create behavioral and policy changes owing to some type of market incentive or disincentive. Several strategic insights have emerged from assessing specific interventions under the markets pathway. For example, research has found that while NGO boycotts of certain products are often useful for agenda setting (Sasser, Prakash, Cashore et al. 2006), they are often short lived unless matched by efforts to institutionalize markets by providing reinforcing and ongoing signals (such as forest certification) (Elliott 2005) or by interacting with other pathways. The markets pathways can include various mechanisms, from procurement policies that favor third party certification, eco-labeling, legality verification requirements enacted by consumer countries, and the use of boycott campaigns directed by NGOs.

As we discuss in more detail in Step 7, a range of international interventions can be used to travel market pathways from forest certification and boycotts to legality verification (LV) and REDD+. The question that the markets pathway forces us to assess is how to understand better the strength of the market pathway and its durability. For instance, while boycotts were championed in the 1980s to address tropical deforestation, they had limited influence especially once international attention waned. It was in part for these reasons that some NGOs turned to global certification systems as a way to institutionalize within global supply chains ongoing demand for responsibly produced timber. The markets pathway does not tell practitioners and strategists what particular intervention is most useful at a particular point in time. Rather, it identifies questions they will want to ask, and overall trends they will want to consider, when deliberating over specific interventions and strategies to nurture them.

Direct Access Pathway

Finally, the direct access pathway focuses attention on the role of external influences in shaping capacity building, technology transfer, resources, and, as a result, altering domestic power dynamics among differing interests and sector-level policy networks. Recognition of this direct

access pathway focuses attention to better understanding how the variety of direct access initiatives might influence other governance arenas, including their policy decisions and outcomes. Bernstein and Cashore (2000) focus on international influence within domestic settings. The same orientation can be applied to thinking about national level influences on subnational and local governance arenas. Especially intergovernmental and non-governmental global organizations working on development in developing countries have devoted many efforts to traveling this pathway.

The direct access pathways also points significant attention to the causal role of capacity building through technology. While most direct access efforts focus on technology as a way of bypassing politics and governance, the pathways framework calls for more attention to the interaction of technology and governance (Auld, Cashore, Balboa et al. 2010). One example comes from tracking supply chains to influence market mechanisms. Domestic organizations are often provided resources and technology to better track internal products, which can be expected to help facilitate the development of supply chain tracking. The question then emerges how such efforts might endure and become "sticky", rather than having to depend on a constant supply of external funding.

Examples of the Pathways of Influence in Peru and Beyond

International Rules Pathway

A number of international organizations have generated guidelines and principles that may directly or indirectly promote indigenous and/or community rights through the international rules pathway. For example, Principle 1 of the International Tropical Timber Organization's (ITTO) Voluntary Guidelines on the Sustainable Management of Natural Tropical Forests is dedicated to "Forest governance and security of tenure" (ITTO 2015: 22). Principle 6.1 stipulates the need to "Address the local livelihood needs of people, including indigenous peoples and local communities" (ITTO 2015: 26). Article 8(j) of the Convention on Biological Diversity (CBD 1992) states that signatories to the convention "shall, as far as possible and as appropriate …encourage the equitable sharing of the benefits" that arise from the use (i.e. commercial exploitation) of traditional knowledge on biodiversity. In the CBD's Working Group on Article 8(j), indigenous peoples argue that the benefit-sharing principle should include recognizing traditional and customary rights to land. The Indigenous and Tribal Peoples Convention No. 169 (ILO 1989) stipulates that indigenous and tribal peoples have the right to decide their own priorities for development according to their lives beliefs, institutions and spiritual beliefs. The United Nations Declaration on the Rights of Indigenous Peoples (UN 2008) is an instrument that includes the provision that no development, relocation, nor storage/disposal of hazardous materials should take place on lands occupied by indigenous peoples without receiving their free, prior, and informed consent (FPIC). Consent must be free (made without coercion or intimidation), prior (to the implementation of any development), and informed (made with full knowledge of the benefits and costs of the development).

The World Bank has produced a set of operational policies, including on indigenous peoples (OP 4.10) and forests (OP 4.36). OP 4.10 includes the requirement of borrowers to pay "particular

attention to the customary rights of the Indigenous Peoples, both collective and individual" (World Bank 2005). Recognition may include "full legal recognition of existing customary land tenure systems" and "conversion of customary usage rights to communal and/or individual ownership rights" (World Bank 2005). The Bank's operational policies on forests (OP 4.36), first issued in 2002 and updated in 2013, note that for a forest certification system to be acceptable to the Bank it must require "recognition of and respect for any legally documented or customary land tenure and use rights as well as the rights of indigenous peoples and workers" (World Bank 2013). The International Finance Corporation, the member organization of the World Bank Group that deals with voluntary private sector governance, also has a set of safeguard policies for investors. The Equator Principles provides a set of voluntary guidelines for banks involved in the financing of development projects.

The United Nations Convention against Corruption, a global legally binding instrument, states that Parties shall take measures to promote the active participation of community-based organizations in decision-making processes and ensure that they have effective access to information (Article 13). The Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests (VGGT), adopted by the UN Committee on World Food Security, seek to improve governance of land tenure via direct access and rules pathways. In terms of direct access, it seeks to strengthen the capacity and operations of and collaborations between indigenous peoples and all other stakeholders concerned with tenure governance. The guidelines also recommend that states should establish policies and law to promote sharing of spatial and other information on tenure rights for use by indigenous peoples and other stakeholders (FAO 2012).

Norms Pathway

International rules that relate to indigenous peoples' rights simultaneously reflect the growing norm in international politics that indigenous rights should be respected and upheld, while also giving further expression to this norm, and how it can be implemented by different actors. Despite the voluntary, soft, and non-binding nature of many of these rules, they can shape the behavior of a range of actors, "traveling" beyond their intended target audience to influence others. For example, while the World Bank policies apply only to internal staff, due to the Bank's authority and economic power they have also influenced lending policy by regional development banks. The ITTO rules relate only to ITTO projects, but once internalized by a government they can influence other projects in a country. The Equator Principles can be used to pressure transnational corporations with a declared corporate social responsibility commitment, including those that may not have adopted the Equator Principles.

The emerging norm in international environmental politics that nature has rights draws from both legal jurisprudence in the United States and Andean notions of Pachamama and the rights of Mother Earth. According to the proponents of this norm, local communities and indigenous peoples are best positioned to secure the rights of nature as they are intimately bound to local place and ecosystems. Two South American countries have adopted this norm in their legal systems, namely Ecuador in 2008 and Bolivia in 2010. Critical to Ecuador's adoption of this norm was action by the US-based Community Environmental Legal Defense Fund (CELDF), which collaborated with local Ecuadorian groups, helping them to influence the constituent assembly drafting Ecuador's 2008 constitution (Humphreys 2016). Also, after the government of

Ecuador commenced oil drilling on Kichwa indigenous lands without free, prior, and informed consent, the Kichwa people took the government to the Inter-American Court of Human Rights, winning the case in 2012. Notions of Pachamama also resonate in Peruvian culture. There could be land tenure gains for Peruvian indigenous people in promoting this norm and giving it greater political and legal visibility.

Markets Pathway

In the Peruvian forest sector, eco-labeling is a prominent market instrument. Silas (2014) showed the effects of eco-labeling on enhancing sustainable land management at the micro level. This market-based conservation strategy seeks to translate a growing environmental and/or social movement into an economic mechanism that encourages improved management and harvesting practices. It belongs to a genre of "global governance systems" aimed to bring together private sector players, NGOs and consumers based on the idea that all participants will voluntarily agree to regulate their conduct to achieve a common end goal. Transparency and peer pressure, often linked to issues made apparent through boycotts are key elements in promoting such mechanisms (Sethi and Emelianova 2011).

In Peru, The Forest Stewardship Council certification is perhaps the most important eco-label. First conceived of in 1993, FSC promotes forest stewardship practices through an accreditation program of forest management certifiers. The FSC approach is to set standards which companies must comply with to access a consumer base. FSC-certified forest management is strongly linked to decreased deforestation and forest degradation and sustainable forest management, a fact which has also been used by organizations pressuring for the boycotts and bans of non-certified timber (Damette and Delacote 2011). Focused primarily on timber, it allows NTFP on a case-by-case basis (Guillen et al. 2012).

Overdevest (2010) showed how FSC is playing a pivotal role in ratcheting up industry-related forest standards as well as those of rival industry-sponsored certification initiatives. However, the success of market mechanisms, such as FSC, depends on effective governance institutions to achieve durability in the long run (Marx 2010), and the impacts of forest certification are often still unknown (Visseren-Hamakers and Pattberg 2013).

Development of non-timber forest products (NTFPs) is also a market instrument used to improve livelihoods of communities. The global trade in NTFPs is significant (Walters 2001) and continues to grow. NTFPs provide economic incentives to decrease deforestation as well as ensure sustainable forest management. Protective legislation exists in Brazil, Peru and Bolivia to this end (Ortiz 2002). Marketing of Brazil nuts has arguably contributed some to reducing deforestation in Peru and has introduced new market incentives to this end (Guillen et al. 2012). As a consequence, Brazil nut productivity has become increasingly linked with reserve viability over the long term in part because of the economic attractiveness and stability as well as in comparison to the alternatives such as cattle ranching.

Boycott campaigns against illegal timber are a further example of market mechanisms in Peru and elsewhere; although, this technique is often less successful at achieving durability than those described above. In 1999, senior officials were fired and a state of emergency was declared in

Peru's Amazonian departments of Madre de Dios and Tahuamanu in response to rampant illegal logging. Accusations were made that loggers had murdered indigenous leaders to access mahogany (Blundell 2004). In response, Friends of the Earth-UK launched the boycott campaign "Mahogany is Murder" against mahogany. UK trade fell by up to 95%. However, this did nothing prevent mahogany imports in other countries and actually mahogany trade increased in many countries, such as the USA (Gullison 2000).

Direct Access Pathway

The direct access pathway in Peru is primarily comprised of NGO technical assistance and projects. These projects often link the direct access and markets pathways, as they aim to commercialize community-harvested timber or NTFPs by building community institutions to manage activities, supporting the permitting process, and helping communities access markets. These projects have common elements of working through participatory processes and providing support where there is little government support, and they tend to require a lot of technical and financial support for the community. They usually involve collaboration between NGOs and indigenous communities to develop a management plan, as well as any documents needed for a permit.

The International Land and Forest Tenure Facility, for instance, provides financing and technical assistance to build capacity of organizations to provide land tenure related services. In Peru, the facility has focused on strengthening the capacity of FENEMAD (Federación Nativa del Río Madre de Dios y Afluentes) to lead processes that secure tenure of indigenous territories.

Conclusions

The Pathways of Influence Framework presents a way of using pathways to generate insights about how various factors may influence outcomes and what types of interventions may achieve durable influence. By looking individually at the rules, norms, markets and direct access pathways we are able to see how these pathways function both simultaneously and sequentially with other pathways. We assert the importance of historical processes in understanding the "causal influence logics" through which specific interventions might be nurtured in the future, and the potential of different types of interventions in producing durable rather that short-lived influences.

International processes and instruments can work through different pathways. In turn, the different pathways interact with transnational and national economic processes in various ways. An intervention is more likely to generate durable change if it operates through two or more pathways.

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STEP 7

Scope Interventions for Following Pathways

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Introduction

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

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

Categorizing the Potential Interventions

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

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

Table 7.1. Potential Global Processes and Instruments to Support Community Forest Control in Peru

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

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

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

- **REDD+**: A dominant window for forest-related international financing and capacity building that has developed major livelihoods and safeguards elements for indigenous

and local communities alongside its primary focus on reducing carbon emissions from forests.

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

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

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

REDD+

Background in Peru

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

However, Peru, like other countries navigating REDD+ readiness, is running into some obstacles in its implementation of small-scale REDD+ projects. First, the country tends to have limited capacity for enforcement and implementation of land-use regulations, especially at the local level. Recent decentralization, intended to empower local governments and make local enforcement more efficient, has seemingly further stressed these limitations (Scriven 2012). Local

governments in many areas of the Peruvian Amazon are short on staff and resources to effectively enforce existing policy, leading to bribery and corruption (Scriven 2012).

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

Link to Communal Access and Legal Ownership of Land and Forests

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

Pathways Analysis

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

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

Linking the norm of indigenous rights to REDD+ gives the Peruvian government an opportunity to prevent unwanted indigenous conflict, like the Bagua incident in 2009 that garnered international attention. At Bagua, demonstrators and police were killed in the northern Amazonian town when police clashed with indigenous people who were protesting against laws allowing for the exploitation of natural resources on ancestral land that had been passed without the free, prior, and informed consent of indigenous people on the land under dispute (Amnesty

International 2014). The government's desire to avoid conflict is not necessarily an internalization of the norm of indigenous rights per se; instead it likely comes from a desire to maintain good international trade relations. Yet, their incentive to avoid conflict might help explain their support for the norm of indigenous rights, since it is consistent with their own domestic agenda. As such, linking the norms and markets pathways could actually strengthen the overall influence on indigenous land rights of the REDD+ policy option.

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

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

Zero Net Deforestation

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

Background in Peru

In Peru, there have been some attempts to work with ZND. However, given that ZND is more of a concept with many competing ideas about implementation, rather than a single mechanism, it is difficult to identify programs backed by real efforts to implement ZND on the ground. Here, we present the principal efforts of ZND in Peru at this time.

During the Copenhagen COP of the UNFCCC in 2009, Peru pledged to achieve a deforestation rate of 0% by 2021. Before the UNFCCC COP20 in Lima, the Minister of the Environment at the time reaffirmed the government's commitment to achieve the zero-deforestation goal. Some indigenous communities, like the Tres Islas and Infierno communities of Madre de Dios, are being supported by Rainforest Alliance to become ZND zones, but all of these areas are also preparing for REDD+ or FSC certification.

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

Link to Communal Access and Legal Ownership of Land and Forests

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

Pathways Analysis

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

Rules: Domestic policy responses to this normative principle could vary depending on the instrument options that can be drawn from the ZND framework. Taking Paraguay as an example, in response to ZND commitments, the Paraguayan government approved a law in 2004 that prohibited deforestation in one of their regions (Región Oriental) for five years. The law has been extended several times. The most recent extension in 2015 prohibits deforestation until 2018. However, deforestation in the region is still a problem because enforcement capacity for non-compliance is low. Similar to Paraguay, rule of law in Peru is weak, meaning that the creation of new domestic rules could have little effect on practice on the ground.

Norms: The second possible causal logic is one of fostering norms as a way to pressure governments to create or reform policy to adhere to the ZND principles. Companies and countries that signed on in support of WWF's ZND pledge were not committing to any particular goal, making the commitment easy with little or no cost at all to the signatory. The ease of signing led to many signatories, and the endorsement of the signatory organizations was published and available online, fostering seemingly wide support of the principle. Such a display of support creates "social pressure" on governments to create policies in response to demands related with ZND principles of environmental protection and forests conservation.

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

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

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

Legality Verification

While illegal logging has long been a domestic issue in many forested countries, it was not until the gradual rise in international cooperation on forests following the 1992 United Nations Conference on the Environment and Development (UNCED) that political space opened for

'illegal logging' to be identified and framed as an international issue (Gulbrandsen and Humphreys 2006). It first appears in an inter-governmentally negotiated document from the second session of the Intergovernmental Panel on Forests in 1996 (Humphreys 2006). Illegal logging has since been addressed in other international processes, such as the 1998 G8 Action Programme on Forests and, more than a decade later, in the UNFF negotiated Non-Legally Binding Instrument on Forests (renamed the United Nations Forest Instrument in 2015). The most relevant international policy processes on illegal logging for Peru are discussed below.

EU FLEGT and EUTR

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

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

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

Another significant outcome of the FLEGT initiative is the European Union Timber Regulation (EUTR), which was adopted in 2010 and came into force in 2013. The Regulation prohibits illegally harvested timber and products derived from such timber from being placed or traded in the EU. It leaves the definition of illegal logging to the timber-producing country, but goes beyond the FLEGT definition to include international conventions:

> In the absence of an internationally agreed definition, the legislation of the country where the timber was harvested, including regulations as well as the implementation in that country of relevant international conventions to which that country is party, should be the basis for defining what constitutes illegal logging (Article 14 of the EUTR Preamble).

The EUTR includes the following key provisions:

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

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

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

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

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

include illegally obtained plants and products made thereof. Supported by a diverse coalition of environmentalists, the 2008 amendment produced the world's first ban on trade in illegally sourced timber and related products.

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

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

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

Lawson and McFaul (2010) examined the effects of the LAA, FLEGT, and other illegal logging trade measures on timber and timber product exports from countries with or suspected of having high levels of illegal wood production and found that since coming into force exports of illegally sourced wood and related products had declined. They also found that related timber product prices had risen, reported rates of illegal logging had decreased, and certification in these timber exporting countries had increased, attributing these changes, in part at least, to the enforcement of new trade measures. In another study on the impacts of illegal logging trade measures, Prestemon (2015) analyzed the effects of the 2008 Lacey Act Amendment on import prices and quantities of timber products (i.e. tropical hardwood lumber and plywood) entering the U.S. from nine 'suspected illegal fiber source countries', including Peru. Utilizing trade data from 1989 to 2013, and accounting for explanatory and control variables, his models demonstrate a 40% increase in import prices and a nearly 80% decrease in quantities imported to the U.S. from the countries studied since the advent of the Lacey Act Amendment. These results indicate that the LAA may have affected producers' incentives given the "backward shift in export supply of

these products from these countries" (Prestemon 2015, p. 43). Prestemon suggests further study should be conducted to account for the extent to which, if any, illegal timber and related products have been diverted away from the U.S. and toward internal, domestic markets or to other countries without such trade measures.

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

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

Australian Illegal Prohibition Act

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

Public Procurement Policies

One demand-side measure that governments may take is adopting a public procurement policy of purchasing only timber that has been legally sourced. By September 2014, at least 26 countries had adopted a national timber procurement policy that requires the purchase of timber from legal and sustainable sources. These countries were primarily in the EU, with other countries including China, Japan, Mexico, and New Zealand. Government purchases of timber represent only a small share of the global market. Nevertheless, government support for legal timber can provide market signals and encourage suppliers to increase their efforts in exercising due diligence (Brack 2014).

The acts and regulations considered in this section prohibit the import of wood products produced in violation of the laws of their country of origin. They furthermore require that imported wood products be accompanied by declarations of their origins and their legality and/or proof of "due diligence" to ensure their legal origin. Like timber certification schemes, these initiatives aim to make timber supply chains transparent to external actors and hence subject to external surveillance and control.

Pathways Analysis

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

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

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

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

Conclusions

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

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STEP 8

Assessing Comparative Advantage

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Introduction

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

The Pros and Cons of REDD+

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

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

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

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

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

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

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

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

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

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

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

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

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

The Pros and Cons of Zero Net Deforestation

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

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

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

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

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

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

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

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

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

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

The Pros and Cons of Legality Verification

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

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

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

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

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

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

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

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

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

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

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

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

Conclusions

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

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

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

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

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

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

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

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STEP 9

Identifying Instruments and Interventions to be Pursued

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Introduction

In Step 8 we assessed the comparative advantages of three key policy interventions that address deforestation and forest degradation. Legality Verification (LV) was identified as being a logical choice for this learning analysis for a number of reasons. First, LV is in a relatively nascent stage – particularly with respect to Peru – and hence decisions made in the next few years can be expected to have significant influence in shaping its impact. Second, by focusing on helping to improve enforcement of domestic laws, it offers a way for global forces to reinforce, rather than challenge, domestic sovereignty over policy development. Third, owing to its emphasis, in the first instance, on the markets pathway, LV also presents potential support for, and synergies with, other global and national policies focusing on reducing deforestation and forest degradation. As such, we are curious about assessing the causal pathways, and strategies that result for LV to not only enhance forest community land titling and tenure security through durable policy changes, but also provide leveraging benefits for reducing forest degradation and deforestation.

In Step 9 we examine LV in detail, both in its current applications and various forms, as well as its theoretical implications for further developments in Peru. We utilize Howlett and Cashore's (2007) modified taxonomy of policy measures, which builds on Hall's (e.g., 1993) work on policy change that distinguished between abstract and concrete policy means and ends. This taxonomy is particularly useful in this analysis as it allows us to disentangle LV according to distinct features, namely abstract goals (e.g., environmental protection, economic development) and implementation logic (e.g., coercive command-and-control, voluntary markets), objectives that operationalize goals in general terms (e.g., saving habitat, increasing harvest levels) and through mechanisms (or instruments) (e.g., tax incentives, public enterprise), and specific settings (e.g., optimal size of riparian zones, preferred level of harvesting) and calibrations (e.g., who qualifies for tax incentives, how harvest limits are set) that specify precisely how and what is required to operationalize objectives in specific real-world situations (Figure 9.1).

In this step, we draw on this classification framework to theorize how Peruvian stakeholders could play a role in international negotiations on LV to enlarge its potential contribution to enhancing community forest ownership and access. For this, we zoom in on a specific strategy that has emerged from our analysis, namely incorporating social safeguards in legality verification

Table 9.1. A Modified Taxonomy of Policy Components

		Policy Content		
		High Level Abstraction	**Programme Level Operationalization**	**Specific On-the-Ground Measures**
Policy Focus	**Policy Ends or Aims**	**GOALS** What general types of ideas govern policy development? (e.g. environmental protection, economic development)	**OBJECTIVES** What does policy formally aim to address? (e.g. saving wilderness or species habitat, increasing harvesting levels to create processing jobs)	**SETTINGS** What are the specific on-the-ground requirements of policy? (e.g. considerations about the optimal size of designated stream-bed riparian zones, or sustainable levels of harvesting)
	Policy Means or Tools	**INSTRUMENT LOGIC** What general norms guide implementation preferences? (e.g. preferences for the use of coercive instruments, or moral suasion)	**MECHANISMS** What specific types of instruments are utilized? (e.g. the use of different tools such as tax incentives or public enterprises)	**CALIBRATIONS** What are the specific ways in which the instrument is used? (e.g. designations of higher levels of subsidies, the use of mandatory vs. voluntary regulatory guidelines or standards)

Modified from following Hall (1993) and Cashore and Howlett (2007)

Legality Verification Policy Components

As introduced in Step 7, multiple policies aimed at addressing illegal logging and related trade directly impact the forest sector in Peru, including the amended US Lacey Act (USLA), the US-Peru Trade Promotion Agreement (TPA), and the European Union Timber Regulation (EUTR). The EU Forest Law Enforcement, Governance, and Trade (FLEGT) program is another intervention that might be harnessed for durable, on-the-ground policy solutions in Peru. As of December 2015, Peru had not entered into FLEGT negotiations with the EU, but was listed as a country "preparing to negotiate" a Voluntary Partnership Agreement (VPA) (EU FLEGT Facility 2015). In the sections that follow, we examine the components and trajectory of these four policies in particular, as well as the broader, theoretical implications of LV, utilizing Howlett and Cashore's (2007) modified taxonomy of policy components (Figure 9.1). We focus special attention on the existing and potential links to forest tenure and land rights and LV's potential for producing durable solutions for forest community titling and tenure security in Peru.

Goals and Instrument Logic

Legality Verification is a relatively new policy instrument focused specifically on reducing illegal logging and associated trade. It emerged in part due to slow progress at the international level, for example within the United Nations Forum on Forests, and with forest certification and 'good forest governance' initiatives, particularly in the Global South (Cashore and Stone 2012). The major policies that incorporate LV share the common goal of decreasing forest degradation and deforestation that result from illegal logging. While the USLA and the EUTR focus on a somewhat more narrow problem definition of illegal logging and its associated trade, the US-Peru TPA and the EU FLEGT program and voluntary partnership agreements (VPAs) address a comparatively broader suite of goals that focus on improvements in forest governance. FLEGT program guidance also calls for the need to address concerns for the adverse impacts of illegal logging, deforestation, and forest degradation on forest-dependent communities (EC 2007).

Legality Verification primarily looks to markets in general, and global value chains of forest products in particular, as the 'means' to address illegal logging and associated trade, deforestation, and forest degradation. Because it reinforces state sovereignty by focusing on reinforcing compliance to governmental laws, it also links these market forces to reinforce, rather than replace "command-and-control" regulations in the forest sector, particularly in timber producing countries in the South. The EU FLEGT program and the US-Peru TPA also draw on the "direct access" pathway, as their agreements call for the US government and EU to provide technical and financial support as another 'means' for furthering goals of enhanced forest governance and reduced forest degradation and deforestation. Overall, LV is increasingly becoming established as an international norm for timber traded in developed country markets. It is a policy instrument that relies on international formal rules-regulated markets and increasingly involves direct access to support governance reforms at the local level for producer countries. It thus operates through all four of the pathways of influence introduced in Step 6.

Objectives and Mechanisms

In general, LV policies aim to increase legal timber supplies and reduce the extent and impact of illegal logging through demand-side mechanisms or instruments that provide an economic incentive for legally sourced timber. To accomplish this, they prohibit illegally sourced timber from entering the marketplace and/or require LV of traded timber, aiming to strengthen demand for legally sourced timber and related products, in turn reducing the demand for illegally sourced products. Once the price deflation is removed from illegal timber, these efforts are expected to result in increased prices for legal timber and related products. By weeding out illegal timber, some studies indicate that total timber exports decrease and import prices increase as these policies are put into place (see e.g. Prestemon 2015, Lawson and McFaul 2010). In timber producing countries, LV policies are expected to lead to economic incentives for legally sourced timber through increased revenue-sharing among legal timber suppliers and the state as a result of enhanced control of timber harvest and exports and reduced trade in illegal timber (Wiersum et al. 2013). Nevertheless, until recently (Cashore et.al 2015), these objectives and mechanisms have been focused largely on the industrial forest sector and on international trade, such that impacts on domestic markets, artisanal and 'informal' forestry, and local forest communities are

limited at the abstract and programmatic level, or have been addressed, as discussed below, through fine-tuning or adjustments to policy settings and calibrations at the ground-level.

Going beyond economic incentives for increased legal timber supplies, FLEGT (specifically, through its VPAs) and the US-Peru TPA (specifically, through its Forest Annex) formally aim to promote the objectives of good forest governance, in part through increased transparency, clarity, capacity, and participation in related policy and program developments. These two policies link the demand-side LV requirements and market access incentives to financial and technical support for partner countries' progress toward agreed improvements in forest sector governance. By incorporating 'good governance' components, both policies may directly and indirectly affect local forest communities, particularly through conditions for public participation and informed consent. Additionally, FLEGT operates through an international rules pathway by outlining objectives to 'strengthen land tenure and access rights specifically for marginalized rural communities and indigenous peoples [through] political dialogue with key target countries to instigate forest sector governance reforms' (EC 2003).

Settings and Calibrations

On-the-ground requirements ('settings') and the specific ways in which LV is applied ('calibrations') range from import and trade requirements to complex systems that include a verified chain of custody, legality certificates, and independent monitoring. The USLA and EUTR do not prescribe how legality is determined, recognizing that determination of these policy settings is a sovereign decision of the producing country, but instead prohibit illegally-sourced wood from entering and moving within the marketplace, putting the onus of legality verification on the timber importer or trader, and creating penalties and fines for noncompliance, enforced through the courts. Under the USLA, third-party LV or forest certification have been offered as one way to demonstrate 'due care', but others have noted that these types of documents do not necessarily provide a complete shield, since they provide "document-based" rather than the Lacey Act's "fact-based" requirements. In the EU, FLEGT-licensed timber is considered to be in full compliance with the EUTR requirements for 'due diligence', adding incentives for suppliers to incorporate LV through the VPA process.

The VPAs negotiated under the FLEGT program are bilateral agreements on the technical details of legal verification, including an agreed definition of legality, establishing a legality standard and chain of custody, implementing a verification system, and creating a license issuing authority in the partner country and independent monitoring (EC 2003). The process also integrates best practices of 'good governance' (e.g., transparency, clarity, openness, participation). For example, multi-stakeholder participation in the VPA process in Indonesia has added clarity to the definition of 'legality' in the forest sector and has led to revisions of the state-based forest legality assurance system (i.e., SVLK), including independent oversight of the forest sector and expanding its application to domestic markets. Through the VPA process, the government of Indonesia committed to protect and promote community rights through 'social safeguards' as noted in Article 12 of the VPA. And, both parties commit to long-term monitoring of VPA impacts, including those related to local livelihoods and vulnerable groups (EU FLEGT Facility 2015).

Turning to another example, the EU-Ghana VPA process took an approach in which both parties agreed to a legal framework and licensing scheme with the aim of creating an environment in which all exports of timber from Ghana to the EC would meet legal verification standards. The VPA explicitly draws on the direct access pathway by providing resources to monitor, minimize, and mitigate the adverse effects of timber legality programs on local livelihoods, particularly in newly designated protected areas and forest concessions - although 'social safeguards' are not specifically defined or designed (Beeko and Arts 2010; Wiersum et al. 2014). Early on, participatory practices were incorporated in the VPA process and included a few forest-dependent communities as well as industry representatives with the intention of developing a broad coalition of supporters (Turnhout and Van Heeswijk 2013). However, given the major focus on timber produced for export, local producers and markets are largely left vulnerable to the resulting changes in policy and programs, particularly since Ghana has agreed to apply the licensing scheme to the domestic timber market as well. Moreover, "the tenure system [in Ghana] has been a major bottleneck for promoting legal small-scale and community forestry, reducing illegal logging, and limiting deforestation despite broad agreement that reforms are necessary" (Hajjar 2015). While little of the wood for export comes from small-scale or community forests, the tenure system continues to be an important stumbling block towards full implementation of the FLEGT licensing scheme.

Bollen and Ozinga (2013) reviewed the VPAs with Ghana and Indonesia, as well as the Republic of Congo, Cameroon, the Central African Republic, and Liberia and found "explicit mention of recognition and respect of community and customary rights in all VPAs" particularly in terms of access and user rights. They indicate that these "VPAs provide, at least on paper, a tool to strengthen local communities' tenure rights, specifically by formalizing the customary practice during the planned legal reform process" (idem). Nevertheless, in practice, the positive impacts to small-scale and community forests have been limited to date.

Through the US-Peru TPA, Peru agreed to enhance its forest sector governance with technical and financial support from the US. Specifically, Peru agreed to establish an auditing system to track producers and exporters of timber products to the U.S., to verify their compliance with relevant laws, permit U.S. participation in verifications, and provide verification of such information to the U.S. on request. Additionally, the U.S. can request written verification of legal origin for any incoming shipment from Peru, on the basis of which the U.S. may deny entry of the shipment and any future shipments from the enterprise involved. Peru also agreed to strengthen the criminal and penal codes as they relate to environmental crimes, which is associated with rapid legal reforms (i.e., 99 Legislative Decrees issued by Pres. Alan Garcia with special executive functions in 2008), some of which were highly contentious given their potentially significant impacts on indigenous communities and forest resources (e.g., D.L. 1090, 1064 redefined forest resources and patrimony, opening up some 45 million ha forest to decreased protection and potential conversion). Indigenous groups and others protested these reforms on numerous points, including the lack of free and informed consent as agreed to by Peru in its ratification of the Indigenous and Tribal Peoples Convention (ILO 169). Protests ensued and eventually turned violent, which ultimately spurred the repeal of the most contentious reforms, and later a more participatory and transparent policy process that produced more durable reforms, including the 2011 Forestry and Wildlife Law and its 2015 Regulations. Despite some progress toward enhanced forest governance associated with agreements made through the TPA, including the establishment of the Ministry of Environment, OSINFOR, and the National

Forest and Wildlife Service, as well as legal reforms and establishing a chain of custody (still in progress) and a timber tracking system (still in progress), questions persist as to the overall impacts on forests and forest dependent communities that have resulted from this agreement.

Discussion and Conclusions

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

Over time, LV may have positive impacts on certain segments of Peru's forest sector – particularly, those related export markets. Because LV policies tend to focus on the end forest product, rather than management practices or tenure security or clarity, they can indirectly reinforce land rights, particularly where they are clear and uncontested, but also might weaken or take them away, particularly where they are unclear, insecure, and/or contested. Moreover, LV has the potential to marginalize informal rights and practices, or make them illegal outright, resulting in significant socioeconomic impacts to forest-dependent communities. The problem of insecure tenure for forest communities arises from a tension between two often-competing notions of property rights: the system of law established by the state, under which the government has the sovereign right to determine the laws of land ownership and how land may be acquired and transferred between owners; and the customary and ancestral land rights of forest communities. The two different notions of property are not necessarily incompatible; legal title may be granted that recognizes and upholds community claims to customary lands. Often, however, the two conflict, with state ownership of land, or private property rights recognized by the state, colliding with the land claims and differing concepts of 'ownership' of forest communities based on traditional and customary use.

From the standpoint of forest communities and their supporters, focusing on LV is not without its risks. In principle, the LV process could weaken the land tenure claims of indigenous communities, focusing narrowly on national systems of law and reinforcing and perpetuating the legal status quo at the expense of forest communities. Yet, stakeholders might make efforts to mitigate this risk, for example through the international rules, direct access, or norms pathways. For example, and as argued above, safeguard rules can be built into FLEGT VPAs that strengthen the claims of forest communities. Furthermore, international safeguard policies, such as those from the World Bank, also emphasize the land claims of indigenous peoples and local communities. For forest communities, therefore, a key challenge is how to invoke international

rules in LV processes in order to leverage change in national legal systems so that customary claims to land are translated into legally recognized claims.

Legality Verification may provide a lever for strengthening domestic resolve to address forest tenure in Peru, drawing on both markets and norms pathways. However, given the persisting issues with land titling in indigenous and non-indigenous forest communities as well as informal operators active in the sector, we posit that LV is not likely to have significant influence on these issues without some modifications to LV's current settings and calibrations. This is because the original problem definition behind the creation of LV did not directly incorporate the problems of forest dependent communities or tenure security. These limitations certainly are not indicative of instrument failure, but may indicate the need for significant adjustments to better address the range of impacts related to illegal logging and associated trade. Consequently, we suggest that 'safeguards' specific to legal security of forest tenure and use might be added to LV to avoid adverse social and economic impacts in Peru, particularly on forest–dependent communities.

Safeguards encompass measures taken to protect someone or something or to prevent something undesirable from happening (Mirriam-Webster). They appear with increasing frequency in policy guidelines of international organizations (e.g., the World Bank, the United Nations Environment Program) and in one form or another in several of the VPAs. As introduced in Step 7, social safeguards relevant to forests have been developed through international rules, including the 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP), REDD+ safeguards, the FSC Principles and Criteria framework, and World Bank operational policies. Safeguards typically encompass minimum standards, as well as best practices. They can range in scope (i.e., narrow to broad) and focus (e.g., legal security for forest users, capacity building, benefit sharing and compensation) and be implemented through legal reform, financial incentives, education, among other mechanisms. "It is unlikely that a single social safeguard mechanism will address all potential social impacts," but rather a coherent set of tailor-made mechanisms for specific target groups should be designed and incorporated in LV planning and implementation (Beeko and Arts 2010).

Safeguards might be added to LV policies through multiple paths. In addition to the international rules pathway, forest communities and their supporters could strengthen the norm of LV by lobbying for the inclusion of safeguards in other international declarations (e.g., FAO Committee on Forestry) and recognition of social safeguards by international organizations and agencies. The norms pathway can also be harnessed at the domestic level to influence ministries and government organizations to support safeguards. Markets can be harnessed to provide 'incentives' to uphold social safeguards in exporting and importing countries. And, through direct access, civil society and aid organizations can promote the integration of social safeguards with LV (e.g. through a model similar to support for forest certification).

If social safeguards that encompass legal security for all forest users were attached to LV in Peru, they might serve as a lever for advancing community land titling and security, providing not only demand-side incentives, but also direct technical and financial support, particularly if their implementation were focused on the remaining community forest land claims which may eventually add stability and security to the forest sector. Peru is more likely to support legality verification when the standards (and safeguards) are viewed as reinforcing, rather than detracting from, national sovereignty. If LV + Safeguards ultimately helps the government of Peru to

address its domestic concerns, including communal forestland titling, then a broad-based coalition of support is more likely to develop.

Safeguards might be added to the USLA and the EUTR, for example, through verification of clear title or tenure in the broader LV requirement, though these changes may be difficult or at least slow to affect, given their intentionally narrow focus and international scope. Additional safeguards might also be added to the US-Peru TPA, but given the slow progress with existing commitments and changes in administrations in both countries since the initial signing, it may be difficult to renegotiate the treaty anytime soon. Safeguards should certainly be integrated into any future VPA negotiation; the earlier in the planning process the better for affecting real change on the ground. These negotiations typically take some time, particularly in complex spaces, but meaningful change usually takes time, particularly in terms of building consensus among a broad range of stakeholders.

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STEP 10

Developed Clearly Identified "Causal Logics" (Linking Means to Ends)

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Introduction

In step 10 we explore, empirically and theoretically, the influence of international legality verification and the central problem identified in Step 2: How can community legal ownership of, and access to, forestland and forest resources be enhanced? Following Step 9's focus on "safeguards" as a possible way to guide instrument design and choice as a global mechanism that might help foster community rights to resources, we here focus analytic attention on how LV, and its inherent 'causal logics' might operate in practice in the Peruvian context. We then assess how these insights may help inform, and offer strategic insights for, existing policy proposal efforts in Peru that are designed to draw on LV as a way to enhance community ownership and rights. This is an important exercise. Overall two themes emerge. First, it appears that, without modifications, efforts to enhance LV in Peru have, and may continue to pose, significant obstacles for forest dependent communities. Second, policy modifications to LV in Peru could reverse these trends. However, they require attention not only to the content of policy, but also to their role in generating coalitions of support that united diverse organizational interests.

We proceed in the following steps that draw on, and are inspired by, the pathways framework. First, we review the past influences of the global legality verification regime within Peru. Second, we discuss insights from international scholarship theorizing legality verification's causal logics in both producer and consumer countries, and implications for strategy that result. Third, and following this analysis, we then review current proposed modifications for promoting legality verification in Peru that are designed to enhancing community forest rights and access. Fourth, we identify strategic implications for promoting these efforts in ways that might lead to durable and influential impacts.

Evidence of Past Influence of Global Legality Verification in Peru

The idea of reducing illegal logging through some type of legal verification of forest products trade has influenced tropical forestry considerations in general (Constance L. McDermott, Irland, and Pacheco 2015, Bueno and Cashore 2016), and the Peruvian policy agenda and policy decisions specifically (Mejia et al. 2015) for almost a generation. For example, in 2000, Peru

implemented Forestry Law 27308, which was designed, in part, to reduce the incidence of illegal timber in Peru's timber production and trade processes. Subsequently government agencies and concerned civil society organizations formed the *Multisectoral Commission to Combat Illegal Logging* (Cornejo-Arana 2007) resulting in a number of related analyses and proposals for action (AIDESEP 2007, Environmental Investigation Agency 2012, Caillaux and Chirinos 2003).

These efforts were influenced and reinforced by increasing international efforts to curb illegal logging, many of which trace back to the global debates and plans of actions on illegal timber that were proposed during three ministerial meetings on Forest Law Enforcement and Governance (FLEG) in Bali, Yaoundé and St. Petersburg between 2001 and 2005. In fact, Peru joined the National Forest Programme Facility initiative, coordinated by FAO, which acted as the conduit through which the emerging global FLEG efforts would be developed in Peru. These discussions drew on the rules pathway (by identifying international legal commitments), as well as the market pathway (through economic incentives that might be developed), and through direct access (by discussing the role of capacity building and technology transfer). Similarly, the very focus on illegality helped to reinforce, and catapult, "illegal logging" as a normative commitment, on many countries' domestic agendas. In fact, the norms pathway was increasingly reinforced not only in multiple analyses and policy proposals (Caillaux and Chirinos 2003, Cornejo-Arana 2007) (AIDESEP 2007, Environmental Investigation Agency 2012), but was also widely taken up in public narratives, becoming a topic that gained frequent media coverage (Winkel et al. 2016).

These efforts reflected a range of perceptions about why illegal logging was important to address. These include views that illegal logging "destroys natural populations of valuable timber species like mahogany and tropical cedar", "has detrimental impacts on indigenous communities", "persists because illegality is condoned and supported by a corrupt forestry administration", "is costing the state important amounts of money"; and "is a threat for the Trade Promotion Agreement with the US" (Winkel et al., 2016, table 2).

Owing to both domestic and international influences, especially the US Lacey Act and the Forest Governance Annex to the US-Peru Trade Promotion Agreement (TPA), legality verification has remained on the agenda of the Peruvian forest administration until today. For example, in 2011, the Ministry of Agriculture launched its National Anti-Corruption Plan of the Forest and Wildlife Sector (MINAGRI 2011).

In 2014 a number of new initiatives were undertaken aimed at increasing efforts to combat illegal logging. First, Peru created the function of High Commissioner in Themes to Combat Illegal Logging (*Alto Comisionado en Asuntos de Lucha Contra la Tala Ilegal*), which was created to continue the work of the multi-sectoral commission established in earlier years. Second, and related, a number of ad-hoc working groups emerged in Peru to address illegal logging at the national or regional level.

Third, and most important, Peru's revenue and customs agency, SUNAT, in conjunction with Interpol and the World Customs Organization,[1] created "Operation Amazonas" (OSINFOR 2015), which was designed to intercept and confiscate Peruvian illegal timber exports –

[1] http://www.interpol.int/es/Centro-de-prensa/Noticias/2014/N2014-139/

especially those designated for Europe and the US. These initiatives coincided with well-publicized efforts on the part of environmental groups, such as the Environmental Investigation Agency (Urrunaga et al. 2012), to focus on particular aspects of illegal logging most germane to Indigenous communities, namely to stop poaching of timber on lands under the territory, or claimed by, Peruvian Indigenous communitie, and to speed up the titling process (Urrunaga et al. 2012): "This delay in official legal recognition exposes Indigenous communities to invasion of their territories by illegal activities, including illegal logging that not only puts forests at risk but community members as well (Environmental Investigation Agency 2014)."

Following enhanced efforts to address illegal logging, Operation Amazonas's impact was strengthened when OSINFOR took up responsibility for verifying the origin of timber destined to the US and other foreign markets (OSINFOR, 2015), resulting in reductions of illegal exports. For example, during OSINFOR operations in 2015, the agency found that one shipment of timber from Peru that had arrived in Houston, USA, as well as another that was ready to begin its travels to the USA from Iquitos had fake documents of origin. They found that the timber in the shipments could not have originated from the concessions noted on the documentation. As a result, the Houston shipment was blocked from entering US domestic markets. The second shipment was abandoned in Tampico in Mexico before ever reaching the US, with the ship's owner eventually declaring bankruptcy.[2]

At the same time as Peru was ramping up its efforts to reduce illegal exports that had left Peru for foreign markets, the national government also initiated new steps to address logging operations domestically. New forest regulations were initiated in 2015, and more resources were applied to enforce them.

Current Effects of Efforts to Weed out Illegal Timber

Together, these interventions had a dramatic effect in the latter half of 2015 and curtailed Peruvian logging operations and timber exports. In fact, some in the forest sector argued that the regulations that particularly focused on eliminating illegal timber were excessively rigorous and incriminated all those who one way or the other engaged in production and trade of timber that did not comply with all regulations. In response, forest workers publicly protested the new forest regulations, asserting that they were excessively affected by the regulations and their daily subsistence was being threatened.[3]

The crack down on illegal timber by OSINFOR under the "Operation Amazonas" reportedly resulted in the loss of 1,500 forest-sector job losses only in December 2015, and a total stop of shipments destined for export markets.[1] It was further argued that the current approach threatens the economic viability of Peruvian forestry firms. In an effort to reverse these effects, forest worker organizations held marches in Pucallpa and Iquitos and occupied government buildings.[4] And, in January 2016, Rolando Navarro, the head of OSINFOR was replaced, supposedly

[2] E.g. http://www.jornada.unam.mx/2016/02/24/estados/030n1est

[3] See, for instance http://diariolaregion.com/web/este-es-un-acto-desesperado-del-sector-forestal-de-loreto/

[4] http://diariolaregion.com/web/madereros-y-policias-se-enfrentan-en-paralizacion-del-sector-forestal/

because of pressure from businesses groups, generating criticism from environmental groups working in illegal logging (Environmental Investigation Agency 2016).[5]

Hence, the story to date about LV's influence in Peru is clearly a contested one: seemingly well-intended efforts to promote forest regulations and enforce them have also led to significant unrest among the forest sector. In addition, those who focused on forest dependent communities and enhancing forest livelihoods also argued that they, too, would now be required to conform to additional and costly regulatory requirements.

What we can say is that efforts to promote LV In the Peruvian context, especially highlighted by "Operation Amazonas", followed the rules pathway, because actions by SUNAT, Interpol, WCO and OSINFOR were guided primarily by the USA Lacey Act and the Forest Governance Annex to the USA Peru TPA; and the market pathway, owing to US importers who are more reluctant to acquire timber from Peru, fearing they may be risking importing illegal timber. Both of these influences, in turn, have reduced operations of Peruvian forest operators who directly, or indirectly, benefited from logging or processing "illegal timber."

Theorizing Legality Verification's Causal Logic

In addition to assessing LV's causal logic from past experiences in Peru we can also draw from scholarly empirical, conceptual and theoretical work on its past, present, and future influence in timber producing countries. One approach, offered by Cashore and Stone (2012), is that there appears to exist two distinct phases through which LV influences and gains uptake: an emergence phase in which removing illegal timber from global value changes by tracking "legal timber" is paramount; and a second phase in which legal timber tracking become so habitual, that not tracking and verifying legality is "unthinkable". Cashore and Stone posit that the first phase requires careful strategic thinking so that the economic benefits for firms being asked to participate in LV are deemed by managers to be higher than the costs of compliance. This is because as long as the economic rents associated with reducing illegal timber outweigh costs of participation, legal producers will have a vested interest in helping build supply chain tracking of legal timber.[6] However, if LV is given too many costly requirements initially, there is a risk that the coalition of firms needed to participate in tracking systems may decline, kneecapping LV's emergence. However, Cashore and Stone posit that once routinized, LV can be given greater responsibilities because at this point, costs will be borne by consumers, not firms. Under this second phase, standards would gradually be raised to the level demanded by international markets, particularly in the USA and Europe, but also progressively in Asia.

[5] http://caretas.pe/Main.asp?T=3082&id=12&idE=1243&idSTo=369&idA=74305#.Vvtdnr59670

[6] To be sure, these calculations may be quite different for firms operating in different countries (Gan, Cashore, and Stone 2013). Hence, analysts will need to reflect on the costs of compliance for firms in specific countries. It seems, for example, that many forest management companies in the United States (Cashore and Stone 2014) and the European Union saw benefits in weeding out illegal logs because it focused mostly on (illegal) competitors in other countries. However, the calculus for firms operating in Peru could very well be different, especially if there are concerns that owing to existing or future laws, existing forest practices might be rendered "illegal"

If plausible (and certainly Cashore and Stone argue that much of the empirical evidence is consistent with this theory), two strategic implications emerge in the Peruvian context. First, strategists should think about 'progressive incremental' steps that might be fostered to 'ratchet up' LV over time. Second, maintaining alliances of very different organizations, from indigenous rights groups, to environmental groups, to industry actors, becomes key. It is not enough to simply identify a preferred policy objective or policy setting, but it's crucial to assess how these interventions might facilitate, or debilitate, the types of coalitions needed during early phase processes (i.e. before and once LV becomes routinized).

Political scientist David Vogel (1997) has noted the importance of these diverse coalitions, often referred to "Baptists and bootleggers" coalitions (Yandle 1983) – owing to the different motivations for supporting the US policy prohibiting alcohol - Baptists for moral/normative reasons, and bootleggers because their market would disappear if the prohibition was lifted. Political scientists find that these coalitions are important to successfully influence legislatures and policy makers to initiate preferred policy outcomes, and that the generated policy decisions are usually quite durable, rather than short lived (Cashore and Stone 2012).

For our purposes the Baptist and bootleggers coalition is a metaphor focusing strategists to think about policy efforts that unite groups with disparate organizational objectives. Hence the Baptists and bootleggers metaphor has been used to explain why Canadian forest companies supported a global forest convention (as a way to increase rules on less regulated competitors) and why environmental groups and firms in highly regulated forestry regions might support high standard certification systems as a way to create pressures on competitors to improve their operational forest management.

Cashore and Stone offer that it is the presence of Bootleggers and Baptists coalitions internationally and domestically that largely explains support for LV: i.e. legal firms support these efforts because illegal logging is deflating prices, while environmental groups support the efforts because they see this mechanism as improving some of the worst forestry practices. Likewise, government agencies might stand to benefit in a number of ways, including improving tax revenues, helping to improve the 'rule of law' and promoting 'good forest governance' in general.

If these types of coalitions explain support, then it is crucial that any modifications to instrument choice, or policy settings, are developed in a way that maintains these disparate coalitions. Failure to do so could undermine the entire project, and especially efforts to better improve tracking of legal timber.

Domestic Opportunities and Constraints to Enhancing Communal Access and Legal Ownership of Land and Forests

What then, can we say about the potential of LV to support community access to and ownership of land and forests in Peru? This is an important questions since we know that community access was not the main reason behind the emergence of LV, just the way community rights were not initially behind REDD+ efforts in 2007. We also know that if LV is given additional

requirements, strategists must ponder the implications of these changes for maintaining support for LV among business and environmental actors and government agencies. We also know from the above analysis (see step 9) that if safeguards are not carefully identified, then there is the risk that informal activities on the part of communities, who have long practiced management, may be rendered 'illegal', or that community activities that are currently considered 'illegal' by the national government, but contested by local communities, will be enforced. In both cases, the damage to communities could be, many argued in our stakeholder learning groups and interviews, devastating to local communities' livelihoods.

To incorporate these issues, section 4 identifies creative solutions that organizations may want to consider in the Peruvian context to better link LV to local rights. Section 5 then reflects on how this solution might be developed in ways consistent with LV's causal logics.

Towards Community-Forestry Sensitive Legality Verification

Two synergistic solutions were advanced, or offered, by stakeholders during our policy learning deliberations that sought ways to modify LV's efforts in Peru so that they would be synergistic with, rather than detract from, longstanding efforts to enhance community access to and ownership of land and forests.

Context

Pacheco et al. (2016) estimate that, at present, communities and smallholders in Peru contribute about 22% to national timber and wood production. However, under current laws and regulations, much of this volume is illegally produced, for two reasons. First, members of communities undertake small-scale timber extraction operations, but do not follow the prescribed administrative procedures. This is owing to the requirements for conducting logging operations that communities, unlike large-scale industrial forestry operations, do not have the expertise and resources to comply with. This timber is commonly bought by traders who legalize it along the trade chain, for instance when it is included in timber for which authorizations have been acquired to be logged from forest concessions.

Second, timber can also be deemed illegally harvested through a process in which communities agree with operators to have the operators request timber licenses on their behalf. In these cases, communities receive a payment for the rights to harvest the timber, often below market value. In addition, forest entrepreneurs often log outside authorized forest areas, but communities or village authorities are often left legally responsible and punished for breaking the law (Alvarez 2009)

Rendering Informal Community Practices Legal: Analyzing Creative solutions

Drawing on the stakeholder learning efforts[ii], as well as our empirical and theoretical reviews, we identify two related efforts that, taken together, and consistent with the causal logics, work to reinforce, rather than detract from, enhancing community land rights. Both of these efforts have the ultimate goal of increasing the amount of timber that Peruvian forest-dependent communities produce, in a manner that would be defined as legal, and would therefore be given priority in international demand, as well as within Peru.

Historical context

The titling of communal lands in Peru has been a challenge since the process began in the 1970s. Scholars and practitioners have asserted that for the most part, land titling has not been high on the Peruvian public policy agenda. Temporary spikes do occur, but usually owing to international donor funding, and concerted efforts by indigenous organizations themselves, who have been championing the goal of completing the titling process for 663 indigenous communities. In recent years responsibility for communal land titling has been devolved to regional governments. However, these governments have also been criticized for not prioritizing efforts to complete land titling, and they equally have made little progress with granting new communal land titles.

Following a decade of relatively slow progress, communal land titling in Peru is again receiving attention owing to donor support and, related, as a condition to receiving funding from Norway and Germany for the implementation of the national REDD+ strategy.[7] However, even if this titling process will progress as foreseen, some argue that this will not result in a significant increase, vis-à-vis industrial concessions, in forestland that is either owned, controlled or reserved for exclusive access by forest communities. This is part because, even when titling is advanced, current Peruvian law grants community titling only of agricultural land, some of which may contain forest remnants. Current legislation does not allow that forestland is included in land to be titled as communal land. When forestland is to be included in communal lands, than its status has to be changed to agricultural lands first.

Current Proposals in Peru to Enhance Community Rights to Resources through Legality Verification

As a way to foster access to forest resources, two complementary proposals have been circulating, under the auspices of the Trinacional-PROFONANPE,[8] for legal and policy changes so that indigenous and *ribereño* communities can have greater access to forest land. One group of proposals is focused on enhancing community ownership and rights to land, the second on changing administrative procedures in order to make legal logging easier.

One proposal is to include a new category of land use under a land-use planning process to which the entire Peruvian territory would be subjected. At present there are five categories of land use (*capacidad de uso mayor de tierras*), two of which are 'major use category agricultural lands' and 'major use capacity forest lands'.[iii] The Trinacional-PROFONANPE proposal is to designate a land-use category that can be called 'major use capacity indigenous lands' or 'major use capacity communal forestry lands'. This designation would be applied to an aggregated cluster of communities, most likely of a single ethnic identity, for the region in which the land-use planning is being implemented.

A second, related proposal is that in areas where indigenous and *ribereño* communities hold title or usufruct rights over a restricted area of agricultural land, but are located within the vicinity of

[7] http://www.minam.gob.pe/notas-de-prensa/se-lanza-en-nueva-york-la-alianza-entre-peru-alemania-noruega-y-el-bid-para-los-bosques-y-el-clima/
[8] http://www.programatrinacional.com/Programa-Trinacional.

significant forest areas, areas of such forestland could be designated as municipal conservation reserves. These reserves are one category of designated nature areas. The reason to designate forestland in an area where forest communities reside as a municipal conservation area is because it is a category under the related legislation that is the most flexible of all the conservation reserves that are possible under the law in Peru, and allows for municipal governments to designate the areas and design a governance structure over the area that could give a major role to forest community authorities or designated community members in the reserve's management.

The land-use category of indigenous lands or communal forestry lands would not grant any explicit right over forests to communities, as the communities still would have to follow the same process of requesting permits and all the additional administrative steps to be able to extract timber. However, a designation as indigenous land or communal forestry land under a land-use planning regime could very well be taken into consideration in subsequent administrative processes, as now happens when deciding on communal title (which only happens over agricultural lands), or conceding forest concessions (which only happens over forest lands). A land-use designation that recognizes the presence of indigenous communities could furthermore result in future decisions in the legal, policy or public administrative sphere that further increase opportunities for resident communities to benefit from the resources present in the indigenous territories or communal forest lands, which can lead to an increase of legally-produced timber, which will feed national and ultimately international supply chains.

A second key element of the proposal to increase the production of legal timber originating from forestland held by communities and produced by communities is to accommodate regulations that need to be followed in order to legally produce timber. There are two important options that have been considered by various actors who are trying to assist forest communities in Peru. One is a proposal made by AIDESEP under its program of *Veeduria Forestal*, which can roughly be translated as Forest Management and Monitoring. AIDESEP has proposed establishing a procedure in which community members would be allowed to log small amounts of timber, up to a maximum volume to be agreed, and the approval of such logging would be approved by the communal assembly and the village chief. This is a procedure which is similar to those that are now followed in northern Bolivia, where forest communities are legal owner of over half of the region's forest territory, and community members are allowed to log a small amount of timber a number of times per year. In order to undertake such logging, community members only need to request a permit from the region's forest authorities, but for which no other technical intervention are necessary (de Jong et al., 2014). AIDESEP is reportedly elaborating an amendment to the forest law and regulations to allow such communal logging to happen.

A complementary proposal from Trinacional-PROFONANPE is to modify the process of preparing a forest management plan and subsequent logging operation plan. The alternative suggestion is to replace the highly technical procedure by a process in which the various elements of preparing a management plan and annual operation plan are based on communal decision making, relying on the intrinsic knowledge that community members hold on the environment in which they reside. The procedure required under law to prepare a forest management plan includes making a forest inventory and a detailed logging plan that takes into consideration the multiannual logging cycle, which needs to be spread evenly over the forest area for which the management plan is prepared. Under the Trinacional-PROFONANPE proposal,

this process would entirely rely on local knowledge among community members, based on which a well-elaborated plan is to be made on how forest logging is to be implemented. Such a communal forest management plan would include defining whether logging is a desirable activity, the short, medium and long-term desired outcome, and how the latter needs to be translated into an actual logging scenario.

Certainly proposals for communal logging need careful reflection and possible testing to define the precise procedures and assure proper implementation, as well as to ensure that unscrupulous entrepreneurs do not find ways to interfere in communal logging. Having said this, the two proposals seem to have significant promise because if adopted and implemented, they will result in, by their very design, legally recognized timber from communities. These in turn, are expected to enter export markets, because they would meet the requirements of international legality verification instruments reviewed above. This could thus lead to an important increase in legally produced timber in Peru, and if carefully monitored, could significantly reduce the presence of illegal timber in the country's timber export chains. For these reasons these plans, we reason, could significantly enhance communal access and control over forestlands, and thus contribute a solution to the problem that we identified in Step 2.

Pathways and Causal Logics: Generating Cross-Coalitional Support for Community-Forest Legality Verification in Peru

Rather than only focusing reflections on creative solutions, the learning protocol, including the pathways of influence framework and the emphasis on identifying 'causal logics' behind an intervention such as legality verification, focuses attention on the types of strategies that might be needed to find domestic and global support for policy innovations. To identify key questions in this regard, we first reflect on the role of the four pathways (rules, market, norms and direct access) in general, and then, drawing on the 'causal logics' noted above, zooming in on the ways in which "Bootleggers and Baptists" coalitions might be nurtured as a way to help draw support for, and implementation of, the proposals reviewed in section 4.

Pathways, Causal Logics, and Coalition Building

One of the clear findings from our analysis is that enhancing communal access and ownership of land and forests linked to global legality verification instruments can be fostered through all four pathways. Following the rules pathway, Peru has signed the PTA with the USA, which binds the government to comply with the Forest Governance Annex that requires that any timber prepared for sale to the USA meets national legal requirements. Importers in the United States, equally, must comply with the Lacey Act, when importing timber from Peru. What is important about these international rules pathways is that they also work by creating clear incentives along global value chains for products to meet legal standards – hence they work synergistically with the markets pathway. Similarly, the EU Timber Regulation requires that European timber traders follow the prescribed procedures to ensure that timber imported from Peru complies with the relevant national legislation and regulations. Likewise, the norms pathway is important in several respects. It helped generate an emphasis on "illegal logging" as a problem. Also, efforts to generate support for communities can be expected to receive a boost by those championing these

normative concerns in international and domestic forums. And, we expect the direct access pathways to play a strong supporting role: the resources, knowledge, and expertise needed to shape legality verification toward enhancing community control – both in terms of engaging in the political process, but also in the implementation of these plans – is hard to underestimate. Whether, when and how sufficient resources will be allocated during this 'critical juncture' will, we expect, strongly influence the extent of the market and rules pathways in causing durable change.

However, even if these pathways are travelled, they do not necessarily guarantee that legal timber extraction by communities, or from forestlands controlled by communities, will become a priority option to reduce illegal timber that is designated for export. Certainly safeguards in legality verification instruments, a suggested in step 9, is one way to address this challenge. Peru is a country that is sensitive to global governance trends, including those that relate to international environmental governance. Illegal timber has been addressed in multiple forums and through targeted policy initiatives inside the country. The latter reflects commitments or positive resonance among Peru's forest governance actors, be it government agencies, civil society organizations or representatives of communities, and also the country's adoption and recognition of the values of sustainable development, climate change mitigation, reducing deforestation, reducing biodiversity loss and defending human rights especially of vulnerable groups in society. If safeguards would become a widely accepted norm, also in efforts addressing timber illegality, it is highly plausible that Peruvian actors could draw from safeguards clauses in international instruments to further the agenda of producing legal timber by communities or from communally controlled or reserved forestlands.

However, these efforts seem insufficient. Legality verification instruments which have been expanded with safeguards are unlikely to influence Peru's national timber sector through market pathways, as it is difficult to imagine how such instruments can lead private sector actors to voluntary choose sourcing timber from communities, as opposed from privately held forest concessions. For these reasons the next section turns to reflect on how coalitions of support for the proposals above might be fostered, drawing on LV's causal logics.

Nurturing Durable Domestic Coalitions

What is an important, but often lacking attention, is to reflect on how the 'casual logics' of LV might help identify strategies for coalition building that make the difference in terms of whether proposals are even considered in the policy process, and whether they have enough support to ensure adoption and implementation. This is an important question. With adequate support, for instance from government actors who could be obliged under revised legality verification instruments that incorporate safeguards to facilitate communal participation in the timber sector and expand communal control over forestland, sourcing legal timber from communities or communal controlled forest lands might turn into an attractive option for relevant parties involved in timber production and trade. Drawing on the causal logics discussions, we argue that great care should be placed in reflecting on the ways in which communities might generate Baptists and bootleggers type coalitions for their policy proposals reviewed in section 4.

Certainly there appears, on the surface, to be a strong rationale for doing so. Production of legal timber by communities or from communally controlled forestlands that would result from the

proposals above could supply *legal* timber to traders who export to US, EU and other markets requiring LV. This, in turn, might lead to collaboration agreements with communities, likely through the mediation of organizations such AIDESEP, or other organizations representing or supporting communities. Certainly this is not an obvious alliance: communal support organizations and AIDESEP are not enthusiastic about collaborating with the private sector, and organizations that collaborate in communal forestry projects do not easily seek such alliances.

However, we note that similar alliances emerged in the US context where, environmental and timber associations – who often held different positions on environmental regulations and forest certification systems, recognized their mutual self interests in supporting bans on imports of illegal timber. The trick, in the Peruvian context, is to find ways to maintain, and simultaneously address, the sometimes different objectives of the timber trade and forest dependent communities. Certainly such a coalition is consistent with Cashore and Stone's first phase of LV, which focuses attention on developing policy interventions that not only address 'on the ground' problems, but which create incentives for legal operators to promote, and track, legal verification of wood products. Given these alliances did emerge US context, and the potential 'win win' scenario, it seems this is a plausible pathway forward.

Building such coalitions can draw on the four pathways for creative ideas, while attention to the 'causal logics' can help strategists decide what to include in LV efforts itself, and which policy options might be, for strategic reasons, better placed outside of LV efforts.

To be sure, such collaboration would equally require much organizational support and training for communities to assure that they will be able to engage with timber companies on fair and equal terms. This requirement for training and capacity building to increase production of legal timber by communities or from communal controlled land could turn into drawing influence from the international legality verification regime via the direct access pathway, if such support for communities could be mobilized.

For these reasons the proposals of the previous section will likely require a "progressive incremental" phased approach, with relatively modest standards during early phases of their implementation. This could be accomplished, for example, by gradual testing and implementation of the proposed alternative timber extraction modalities, which could allow for modifying standards and procedures as implementation unfolds. This constitutes a process during which consensual, but required procedures are proposed, tested and adjusted iteratively. We expect a similar approach will be needed for the proposal above in defining a new land use category (that would provide some degree of exclusivity to communities over forest land, or with using the municipal conservation area option to the same effect). This testing and gradual implementation of the various elements of the proposed strategies to produce legal timber by communities and as a consequence enhance communal access and ownership of land and forests is also relevant for deciding the standards for legal timber. These standards would need to be flexible during the early stages, and some leniency will be necessary to make sure that a rigorous application of standards will not impede the progress of the proposed schemes.

The Broader Policy Landscape

We note that producing legal timber by communities or from communal controlled forestlands cannot, by itself, address the range of forest related issues facing Peru. And, in fact, attending to other issues simultaneously, such as broader scale corruption challenges, seems key if LV's full potential is to be realized. Certainly, the issue of corruption is on the agenda of many actors, including government agencies (MINAGRI 2011) – with much of the focus on some of these practices that appear condoned by political actors and interests. More specifically for our case, efforts will be needed to reduce the type of corruption that includes awarding false certificates, and ignoring illegal harvesting and forestry practices, which constitute key hurdles to eliminating illegal timber from Peruvian supply chains. These outcomes might be achieved through innovative monitoring of the forest administration, better training, but also through changing the incentive structures for the forest sector administration's personnel, such that progress towards more legal timber will also benefit the forest administration employees. Second, with many arguing that Peru's forest sector reputation has been damaged internationally, it appears that there is now a strong incentive for the government and forest sector, consistent with the above proposals emphasizing community involvement, to develop its own legality verification mechanism as a way to counteract, or address, these concerns. Such an approach, if it had broad coalition support in Peru, could make it easier for the Peruvian forest sector to meet demands from importers in the US and Europe and elsewhere who seek assurances that timber they buy from Peruvian traders meets national legal requirements. Such an approach could, we reason, possibly become part of a progressive preparation for the eventual signing of a VPA with Europe.

Conclusions

The problem that we identified in Step 2 of the Protocol: "How can community legal ownership of, and access to, forestland and forest resources be enhanced?" can conceivably be linked to global efforts to eliminate illegal timber from international trade chains. One possible option to link the problem with international legality verification instruments is by trying to increase the amount of timber that is produced legally by communities or from forestlands that is controlled by communities. This could support a stagnated process of land titling of indigenous communities, but it could also create opportunities for indigenous and non-indigenous communities to obtain rights over forestlands that cannot easily be titled as communal lands. The momentum for such an endeavor in Peru is starting to build, with the country's forest sector eager to increase timber from verified legal sources, without which, many argue, Peru runs the risk of much of its timber becoming excluded from the international timber trade. The proposed options detailed above focus attention on the potential role of "Bootleggers and Baptists" coalitions of communities and timber traders in persuading policy makers to permit enhanced, albeit sensitive eco 'selective logging' operations on forest land controlled, or managed, by indigenous and *ribereño* communities.

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

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

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Notes

[i] For example during this time no timber left through the port of Iquitos.

[ii] These ideas were discussed during meetings with members of PROFONANPE and AIDESEP in March 2016.

[iii] These categories are not dictated by the regulations that define the process of land-use planning, as those only provide a general framework of how categories are to be defined. Instead, land-use categories can be defined through a public process that involves all relevant stakeholders, including input from the local population.