Forest governance and climate-change mitigation

Key messages

1. Five factors give rise to a lack of forest law compliance: failings in the policy and legal frameworks, insufficient enforcement, a lack of information, corruption, and market distortions.

2. In many countries the policy and legal frameworks need reform, including by eliminating inconsistencies and contradictions and by harmonizing forest-related laws with those in other sectors.

3. Compliance with forest laws can best be achieved as an outcome of forest governance reform processes that enjoy the support of all stakeholders.

4. The successful mitigation of climate change through reductions in deforestation and forest degradation (REDD) requires effective forest governance.

5. REDD cannot be achieved without clarifying rights to land, forests and carbon.

6. Efforts to improve forest governance should address, as a starting point, the most critical elements for the successful implementation of REDD.

7. REDD initiatives should build on the lessons already learned through forest law enforcement, governance and trade initiatives.

Over the last decade, much has been said and written about illegal logging and other forest-related crimes. Recently, however, such issues have assumed added significance. There is a strong possibility that, in coming years, large investments will be made in forests to mitigate climate change. The extent to which countries, communities and landowners attract such investments will be determined, in large part, by the way in which they govern their forests.

The best ideas for improving forest governance come from the people who battle illegality on a daily basis: local communities and civil-society watchdogs, government officials, and timber merchants trying to make an honest living. Between August 2006 and July 2008, the Food and Agriculture Organization of the United Nations (FAO) and the International Tropical Timber Organization (ITTO) jointly funded and convened five workshops – in Southeast Asia, West Africa, Central Africa, the Amazon Basin and Mesoamerica – to promote a multi-sectoral dialogue between countries on improving forest law compliance. In total, these workshops brought together 291 stakeholders from 46 countries with the aim of identifying deliverable actions to increase progress on the ground.

Participants in the workshops comprised representatives of the three broad groups that have a stake in ensuring good governance in the forest sector:

- **government:** representatives of forest agencies, the judiciary system and other departments and ministries
- **civil society:** representatives of community groups and social and environmental non-governmental organizations (NGOs)
- **the private sector:** representatives of companies and industry and trade associations.

This policy brief summarizes the main findings of those workshops and highlights the lessons learned from experiences on the ground. It also sets out the key elements of an approach to forest law compliance and governance that will ensure the optimal role of forests in mitigating climate change.

The ability to attract climate-change mitigation investments will depend, in large part, on the quality of forest governance.

The causes of poor forest law compliance

MESSAGE 1 Five factors give rise to a lack of forest law compliance: failings in the policy and legal frameworks, insufficient enforcement, a lack of information, corruption, and market distortions.

A lack of forest law compliance and good governance (see box below for definitions) can have far-reaching environmental, social and economic consequences, leading to political instability, increased income disparity, and the loss of biodiversity and habitats.

Although the extent of illegal forest activities is notoriously difficult to quantify, their economic cost is likely to be large. The World Bank estimates, for example, that illegal logging alone causes annual losses in global market value of more than US$10 billion and in government revenue of as much as US$5 billion.[1]

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[1] World Bank (2008). *Forest Sourcebook,* World Bank, Washington, DC, United States.

Defining forest illegality and forest governance

Forest illegality occurs when wood and other forest products are harvested, transported, processed, bought or sold in violation of national laws. The illegal conversion of forest to other uses – deforestation – may also be categorized as forest illegality.

Forest governance can be described as the modus operandi by which officials and institutions acquire and exercise authority in the management of forest resources. Good forest governance is characterized by predictable, open and informed policymaking based on transparent processes; a bureaucracy imbued with a professional ethos; an executive arm of government accountable for its actions; and a strong civil society participating in decisions related to the sector.[2]

Workshop participants generally agreed that there are five dimensions to insufficient law compliance and governance in the forest sector.

1. *Inconsistent forest policy and legal frameworks*: problems arise when laws (both within the forest sector and between sectors) are incoherent, unrealistic and unenforceable and fail to address forest land tenure and use rights. Excessive regulations can mean that the transaction costs of legal operations are prohibitively

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[2] There are many definitions of governance; the publication *FLEGT beyond T,* by Wageningen International (2008), explores the meaning of governance in the forest law enforcement, governance and trade process.

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high, making it impractical for many forest users to adhere to the law. This is particularly the case for community-based and small and medium-sized enterprises, which are often poorly equipped to comply with convoluted administrative procedures.

2. *Insufficient enforcement capacity* is often due to institutional weaknesses coupled with a lack of transparency and accountability in the implementation of the policy and legal frameworks. Deficiencies in coordination between forest law enforcement and judicial bodies decrease the risk of being caught and prosecuted. The enforcement of regulations to promote efficient industrial capacity is often weak, leading to a disproportionate demand for logs that drives illegal forest land conversion, logging in

national parks and other protected areas, and the over-harvesting of production forests.

3. *Insufficient monitoring* of the forest resource and the supply chain makes it difficult for forest law enforcement agencies to know when illegality occurs. Accurate information is needed on production activities, silvicultural operations, timber and other forest product flows, and the volume of cross-border and other trade. Local stakeholders often lack the capacity to monitor forest harvesting and trade and to use existing information effectively.

4. *Corruption* in the private sector, government institutions and among local decision-makers is linked to a lack of transparency in policy implementation, the marginalization of rural people, and a lack of public

scrutiny. Of particular concern is corruption related to the allocation of forest-use rights, including timber licences and forest concessions. Poorly or irregularly paid law enforcement staff might be tempted to 'top up' their salaries by illegal means.

5. *Market distortions for wood products* can occur in domestic and export markets where there are ready outlets for low-priced illegally harvested products. In some regions, the uncontrolled cross-border trafficking of timber and non-timber forest products exacerbates this problem. International and particularly domestic markets often provide inadequate incentives for producers who can demonstrate the legality and sustainability of their operations; they struggle, therefore, to compete with illegal operators.

Views of stakeholder groups

Table 1 summarizes the extent to which workshop participants believed the five general factors identified above apply in their respective regions. With the exception of the Amazon Basin, all workshops highlighted flawed policy and legal frameworks as a major issue for forest law compliance and the achievement of sustainable forest management (SFM).[3] Insufficient enforcement capacity was rated highly as an issue in the West African and Mesoamerican workshops, while a lack of information and knowledge was seen as an important factor in the West African and Southeast Asian workshops. West African participants identified corruption as a major problem; in contrast, this issue was not raised by participants in the Amazon Basin workshop.

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[3] The aim of SFM is to maintain and enhance the economic, social and environmental value of all types of forests for the benefit of present and future generations. The criteria that need to be considered in the assessment of SFM are: the extent of forest resources; forest biological diversity; forest health and vitality; the productive functions of forest resources; the protective functions of forest resources; the socioeconomic functions of forests; and the legal, policy and institutional framework.

A broader, cross-sectoral approach is often needed to eliminate the incentives that stimulate illegal forest harvesting.

Table 1 Workshop assessments of the main factors contributing to insufficient forest law compliance, five regions

	Central Africa	West Africa	Amazon Basin	Mesoamerica	Southeast Asia
Inconsistent policies/ legal framework	Identified as a major obstacle	Identified as a major obstacle	Policies and legal framework need to be harmonized	Identified as a major obstacle	Identified as a major obstacle
Insufficient enforcement capacities	Limited capacity (training, funds)	Identified as a major obstacle	Institutions need to be strengthened	Identified as a major obstacle	Lack of independent oversight, lack of funds
Lack of data, information, knowledge	Information generally not available	Identified as a major obstacle	Identified as a major prerequisite for SFM	Lack of information, particularly at community level	Identified as a major obstacle
Existence of corruption and bribes	Identified by some countries	Identified as a major obstacle	Not identified as an issue	Identified by some countries	Political interference recognized
Market and price distortions	Considered an issue for timber exporters	An issue at regional level	Not identified as an issue	Regional approaches needed	Not identified as an issue

Solving the problems

MESSAGE 2 In many countries the policy and legal frameworks need reform, including by eliminating inconsistencies and contradictions and by harmonizing forest-related laws with those in other sectors.

Improving the policy and legal frameworks governing the forest sector requires the full assessment of the underlying social, economic, cultural and political causes of non-compliance and, in light of such an assessment, the modification of the framework. Such modification will be most successful if it is done transparently using participatory processes, if it eliminates ambiguities between commercial and traditional resource use, and if it secures customary and Indigenous rights.

Efforts should be made to eliminate inconsistency and conflict between the laws governing the forest sector and those governing other sectors. It has also become clear that a broader, cross-sectoral approach is often needed to eliminate the incentives that stimulate illegal forest harvesting and to address the institutional weaknesses that both create such incentives and allow actors to pursue them.

MESSAGE 3 Compliance with forest laws can best be achieved as an outcome of forest governance reform processes that enjoy the support of all stakeholders.

Almost inevitably, views on forest law compliance vary between stakeholders. Table 2, for example, shows that each stakeholder group in the workshops identified a different (although overlapping) set of underlying causes of poor forest law compliance and forest governance. Dialogue is needed to reach consensus among stakeholders and to identify priorities for action that are supported by all parties.

In all workshops there were calls for greater public participation in the development of forest laws and policies, but how this might be achieved is often unclear. Setting up inclusive mechanisms and processes that give voice to local communities and allow poor and marginalized groups to participate is a complex challenge but is generally related to effective decentralization. Participatory approaches should help promote transparency, improve the effectiveness of subsequent implementation, and ensure greater equity.

Ensuring maximum transparency in resource allocation and gathering the data needed for effective resource assessment and monitoring are best done locally. This requires awareness-raising about laws and regulations at the local government and community levels, as well as improved planning, implementation and resource monitoring. In four of the five regions in which the workshops took place, recent shifts towards decentralized management and control have occurred that have had beneficial effects for forest law compliance.

Regional and transboundary collaboration can often play a useful role, including through the creation of regional policy platforms for forest law compliance and governance, the development of regional standards, and the promotion of markets for forest products from demonstrably legal sources.

Table 2 Main causes of poor forest law compliance and governance, by stakeholder group*

Stakeholder group	Causes identified	Observations
Governments	• Lack of adequate land-use planning • Flawed policies • Lack of institutional capacity • Lack of technology • Lack of data and information	The main issues recognized were the lack of capacity, technology and access to the forest
Civil society	• Inadequate land-use policies • Poor enforcement capacity • Institutional weaknesses • Corruption • Lack of participation • Lack of data and information	The main issues recognized were a poor legislative framework, a lack of enforcement capacity, and corruption in the forest sector
Private sector	• Market failures and price distortion • Lack of data and information • Corruption	The main issues recognized related to various forms of distortion with respect to the economic use of the forest

* Combined results of the Central and West Africa, Southeast Asia and Mesoamerica workshops.
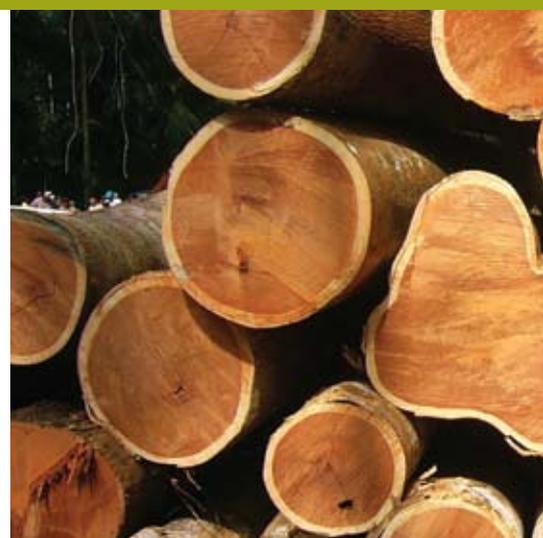
Forest governance and REDD

Deforestation and forest degradation constitute the second most important contributor to global warming (after fossil fuels) and, in many countries, are the largest source of greenhouse gas emissions. Proposals have been made under the United Nations Framework Convention on Climate Change (UNFCCC) and its Bali Action Plan to include measures to reduce emissions from deforestation and forest degradation (REDD)[4] in the scope of a post-2012 climate-change regime. Such proposals involve considerable compensation mechanisms to encourage REDD: according to some estimates, investments of up to US$20 billion per year could flow to the forest sector through REDD.

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[4] The term REDD is used here to include what many define as 'REDD+': i.e. reducing deforestation and forest degradation, promoting afforestation, reforestation and forest restoration, and sustainably managing existing forests, all of which could be included in REDD measures.

MESSAGE 4 The successful mitigation of climate change through reductions in deforestation and forest degradation (REDD) requires effective forest governance.

There is concern in some quarters, however, that a rush to implement REDD will undermine efforts to improve forest governance and promote the legal timber trade by circumventing stakeholder consultation processes; it could also provide additional scope for illegality in the sector.[5] Rushing into REDD without taking forest governance into account could be counterproductive for another reason, too: risk-averse carbon investors will avoid countries with a reputation for poor forest law compliance and weak institutional frameworks.

In countries wishing to take advantage of potential REDD mechanisms, therefore, forest law compliance and good governance assume even greater importance. From the start they should be taken into consideration by initiatives to support countries' readiness for REDD.

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[5] FERN (2009). *Is REDD undermining FLEGT?* Briefing Note 5, Moreton-in-Marsh, United Kingdom.

Three phases to REDD implementation

Should REDD form part of the post-2012 climate-change regime, its introduction at the country level is likely to take place through a phased approach similar to that promoted by the World Bank's Forest Carbon Partnership:

- Phase 1 (the preparation or readiness phase) would involve the development of a REDD strategy, including extended national dialogue between all stakeholders, institutional strengthening, and demonstration activities. *In this phase, all major issues related to forest law compliance and governance need to be addressed.*

- In Phase 2 (the policy and measures phase), countries would access predictable REDD finance based on agreed criteria, with the continuation of funding to be based on results. *In this phase, the outcomes of forest law compliance and governance processes would be an essential part of the criteria on which REDD results would be measured.*

- In Phase 3 (the implementation phase), REDD would become a national instrument that rewards performance on the basis of quantified forest emissions and removals against agreed reference levels. *In this phase, the demonstration of forest law compliance would be an ongoing part of the REDD monitoring process.*
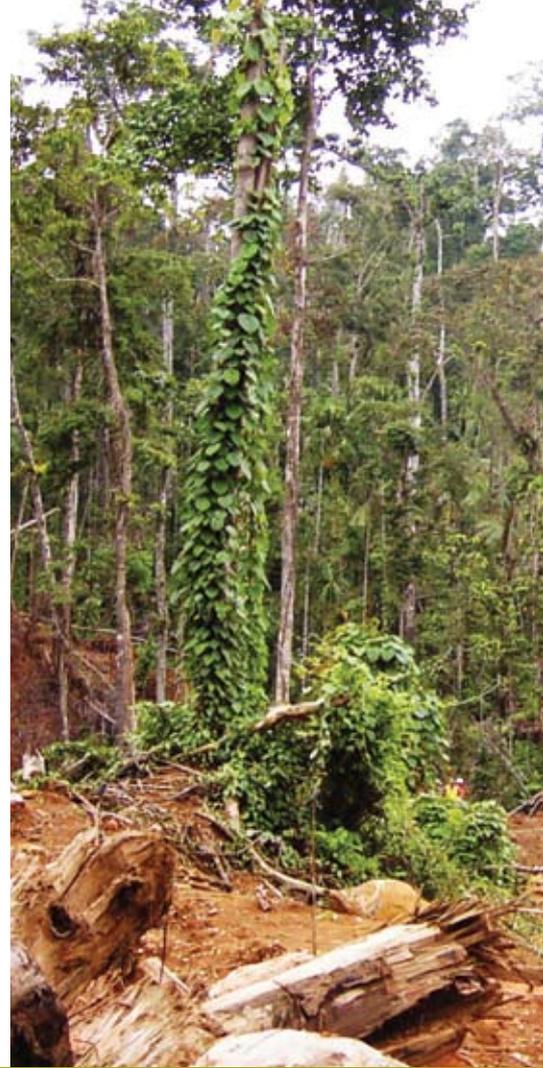
MESSAGE 5 REDD cannot be achieved without clarifying rights to land, forests and carbon.

Nearly 1 billion people live in or near forests and rely on them for all or part of their sustenance. Many of these people do not have legal tenure and, therefore, are often forced to act illegally to maintain their livelihoods. Without tenure they also lack an incentive to manage the forest sustainably and are more likely to contribute to continued forest degradation.

There is a risk that poorly planned REDD initiatives will benefit only a few (primarily wealthy) elites and reinforce existing social and economic disparities. In the long run, this would undermine the success of REDD. Clarifying Indigenous and other local claims – and ensuring that REDD revenues are directed to those holding legitimate rights to the forest and the carbon stored within them – is therefore vital for long-term success. Moreover, care should be taken to ensure that REDD initiatives do not disadvantage poor and vulnerable local people (e.g. by reducing employment prospects by limiting sustainable forest harvesting) because this, too, would ultimately undermine their success.

Care should be taken to ensure that REDD initiatives do not disadvantage poor and vulnerable people because this would undermine the success of such initiatives.

MESSAGE 6 Efforts to improve forest governance should address, as a starting point, the most critical elements for the successful implementation of REDD.

In many countries, improving forest governance is an immense task, but it can be made easier by identifying the most critical elements for the successful implementation of REDD (and other forest-based climate-change mitigation and adaptation options). The list of elements and priority actions below has been compiled based on discussions at the FAO/ITTO workshops and under the UNFCCC.

Clarify land use, tenure and access

- Accelerate processes to reform land tenure and clarify rights to land and carbon.
- Conduct land-use planning and zoning using a participatory approach.
- Establish capacity to provide support services for SFM.

Enhance forest law compliance and enforcement

- Increase capability for the enforcement of forest laws and the control of forest degradation, and institute safeguard measures.
- Build capacity in communities and NGOs to understand and interpret forest-related laws and their enforcement provisions.
- Strengthen the judicial system to ensure its effectiveness and independence.

Reform institutions within forestry, agricultural, and other sectors

- Clarify roles and responsibilities, build capacity, and strengthen institutions.
- Improve transparency, control corruption, and promote ethical approaches.

Develop and implement a national REDD strategy

- Develop an action plan[6] for addressing the many interrelated social, political and economic drivers of deforestation and forest degradation at the national level.
- Organize stakeholder consultations at the national level and in key forested areas.
- Design transparent financial structures for the performance-based implementation of the REDD strategy that allow an equitable distribution of benefits.
- Establish REDD infrastructure (for carbon accounting and credit handling, etc.).

Establish emissions-reference scenarios and an effective monitoring system

- Assess historical and future emissions levels and develop options for a credible reference scenario.
- Develop a transparent emissions monitoring system, and include provisions for independent monitors and certifiers.

Improve the legislative framework

- Reform legislation to encourage SFM and reconcile conflicting laws.
- Strengthen the role of social and environmental safeguards.
- Remove financial incentives that encourage unwanted forest land conversion.
- Reform the tax regime (e.g. to remove perverse subsidies/tax incentives).

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[6] This action plan should be sufficiently broad to encompass the reduction of deforestation and forest degradation and the promotion of afforestation, reforestation, forest restoration and SFM, all of which, ultimately, are likely to be included in REDD (i.e. REDD+).

MESSAGE 7 REDD initiatives should build on the lessons already learned through forest law enforcement, governance and trade initiatives.

From discussion at the workshops it is clear that almost all tropical countries are more aware now of the problem of forest-related crime than they were a decade ago; most are trying to do something about it, with varying degrees of effectiveness. Several international initiatives are assisting in awareness-raising and the coordination of action (see box below).

The key lessons learned from these efforts to promote forest law compliance and governance are entirely applicable to REDD and should be taken into account. Countries that improve their forest governance, clarify tenure arrangements, improve institutional performance and transparency, and openly address illegality will benefit more from future REDD investment than those that do not.
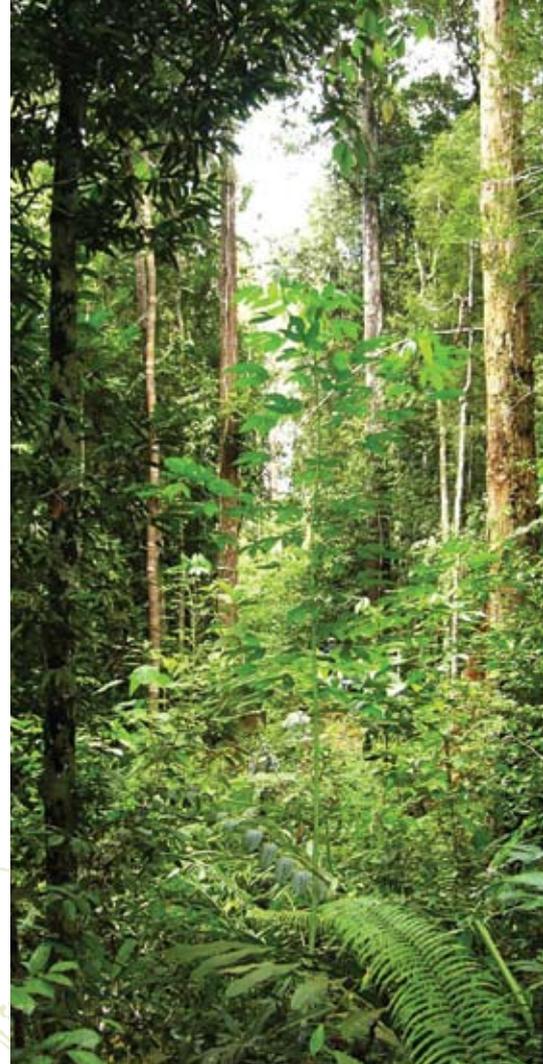
Main international forest governance initiatives

Forest Law Enforcement and Governance Program of the World Bank: three regionally based ministerial conferences in Asia, Africa and Europe, and North Asia were organized between 2001 and 2004 to harness high-level political engagement, achieve public recognition of the fundamental governance challenges facing forestry in those regions, and obtain commitments to improve the rule of law. Similar processes have been initiated in Central America and the Amazon region.

The *Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan* sets out the European Union's (EU) contribution to addressing illegal logging, with particular emphasis on trade. The FLEGT Action Plan specifies the creation of voluntary partnership agreements between the EU and timber-producing-country governments which commit both parties to developing a timber-licensing scheme under which only legally produced, licensed timber will be allowed into EU markets.

The *FAO/ITTO Initiative on Forest Law Compliance and Governance* developed best-practice guidelines to address law compliance in the forest sector and organized five regional workshops (on which this policy brief is based) to encourage the exchange of views between forest stakeholders on forest law compliance and governance issues, challenges and solutions.

For more information please contact:

Eva Muller
Chief, Forest Policy Service, FAO
Eva.Muller@fao.org
www.fao.org/forestry

Steven Johnson
Communications Manager, ITTO
Johnson@itto.or.jp
www.itto.int