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# How Can Global Legality Verification Initiatives Enhance Local Rights to Forest Resources in Peru?

A Strategic Playbook

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Photo Credit: Adam Bauer-Goulden



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# *How Can Global Legality Verification Initiatives Enhance Local Rights to Forest Resources in Peru?*

## *A Strategic Playbook*

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## 1. Introduction

Given the sheer amount of global initiatives that have been developed over the past decades to address environmental and social challenges, one of the most important questions facing governmental agencies, international organizations, businesses, and non-governmental organizations (NGOs) is to understand how international policy innovations might be able to address, and help nurture, environmental and social stewardship in a specific domestic context. There is arguably not a more important focus for these questions than on the promotion of sustainable forest management, where, in an era of increasing global commodity value chains, questions arise on the process through which local peoples might be empowered to participate in, help steer, and benefit from, responsible resources management.

This playbook is designed to shed light on these questions by assessing the potential of a leading global intervention known as “legality verification” (LV) to reinforce, rather than detract from, ongoing efforts on the part of communities to seek enhanced legal ownership of, and access to, forestland and forest resources. LV is unique in that, in its original conception, it draws on market incentives by tracking legally produced forest products across value chains in the hopes of reducing markets for “illegal” timber. However, unlike global certification systems, this effort is designed, for the most part, to foster domestic compliance of state policies and approaches, rather than introducing non-state global standards.

To accomplish our task, we identify key insights, ideas and strategies that emerged from our application of a “Policy Learning Protocol” in Peru in 2015 and 2016, which was designed to identify strategies that a range of domestic and international actors might want to consider employing, as a way to encourage, through a series of sequential steps, meaningful changes “on the ground” (as documented in Cashore, Visseren-Hamakers et al., 2016).

This approach offers a different way to think about organizational strategy than traditional “cost-benefit” approaches – that, while important, are often criticized for being focused on the short term and/or lead to temporary, rather than durable results – by emphasizing the importance of untangling four distinct “policy pathways” through which international policy instruments can, and do, influence domestic policies and practices. Similarly, the Protocol recognizes that generating insights about these pathways, and whether they are countervailing or synergistic, requires the co-generation of knowledge among stakeholders, rather than being applied in a “top-down”, “here is your answer” approach. Instead, the Protocol emphasizes “diagnostic questions” through which collective strategies might emerge. The protocol also recognizes that most global interventions rarely have direct influence, but rather interact with domestic processes to help to build support for, or “tip the scales” towards, and particular desired outcome.

Below we identify the key aspects of such learning, and policy innovations that emerged from our application of the Protocol. The purpose is not to provide definitive answers, but instead to highlight key questions, observations, approaches and specific strategies that,

taken together, appear to hold promise in helping to create durable, “on the ground” reforms.

Following this introduction, we highlight these lessons in sections 2-4. Section 2 introduces the four distinct pathways through which international legality verification initiatives influence Peruvian forest policy. Section 3 identifies two distinct strategic logics through which governments and NGOs must navigate: one that occurs during a starting or “emergence” step, and a second potential “entrenched” step that appears only once the emergence effort is successfully navigated. Drawing on these insights and specific interventions that were offered throughout our various learning efforts in Peru, section 4 presents concrete ideas that seem to offer promise in nurturing global legality verification efforts towards fostering durable and enhanced community legal ownership of, and access to, forestland and forest resources in Peru.

## **2. Four Pathways of Influence**

The Policy Learning Protocol identifies not one, but *four* pathways through which international efforts might influence domestic policy and practices. Disentangling these pathways is key for strategy and long-term influence, since each pathway works differently: sometimes they are synergistic, but other times one pathway countervails another. This means that strategists, if they are to draw on international initiatives, must be very careful to identify what pathway or pathways they seek to travel, and to theorize, based on these future strategic efforts, what they expect to occur. In other words, the pathways framework expands existing “evidence-based” efforts currently dominating the world of forest governance, to think about nurturing futures that have yet to unfold, but that will only do so if strategic decisions align with carefully thought-out theories about steps unfolding in the future.

The *Rules Pathway* focuses attention on the role of binding agreements in shaping lower-level policy responses. Recognition of these dynamics is important since they can influence domestic policies, which can, in turn, significantly influence forest management practices on the ground. The “causal influence” of the rules pathway relies on coercion and/or compliance incentives that the national government takes seriously. This means that strategists must adjudicate whether such an approach is viable - such as the US-Peru Trade Promotion Agreement (TPA), which provided enhanced market access - or whether such an emphasis might only result in “rules on paper” with limited opportunity for changes on the ground.

The *Norms Pathway* focuses attention on the role of deeply engrained values and ideas about appropriate behaviors that, sometimes, depending on the strength of the norm, precede any self-interested calculations. Norms are important for building collective support for, and trust in, existing or new governance arenas. Norms emerge, and diffuse, in a multitude of ways. For instance, “indigenous rights norms” have been initiated within countries, but then found their way to global processes, and have then “boomeranged” to reinforce the original domestic norms. Hence, the norms pathway does not imply a top-down approach, but rather focuses on the ways in which norms operating

globally might help reinforce, or place attention on, specific issues within particular countries. Norms have causal influence when they are synergistic with other pathways and/or when they are so strong that they trump self-interested motivations (think, for example, of anti-slavery norms). While changing norms is much slower and more difficult to travel than other pathways, for the same reasons this carries the highest transformative potential when successful.

*The Markets Pathway* focuses attention on causal mechanisms that create behavioral and policy changes owing to some type of market or economic incentive or disincentive. The markets pathway can include various mechanisms, from procurement policies that favor third-party certification, eco-labeling, legality verification requirements enacted by consumer countries, and boycott campaigns by NGOs.

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

This differentiation of different pathways generated significant discussion among various stakeholders involved in our project about how international influences have affected Peruvian forest policy. In one example, stakeholders discussed how the US-Peru TPA, which contained provisions for environmental stewardship, attempted to follow the rules pathway, reinforced by market incentives. However, these provisions actually fostered unrest, as indigenous communities felt they downplayed their own concerns for greater access to resources.

Taken together, these pathways help stakeholders and scholars think not only about past events, but also to ponder how future strategies might enhance the impact of international policies on the ground, as discussed below. Similarly, the pathways can help stakeholders learn about strategies that might create durable, instead of short-term results. For example, application of the pathways framework has found that boycott campaigns are unlikely to lead to durable results on their own, but as a trigger for more institutionalized efforts, such as certification or legality verification, they could be rather useful.

### **3. Two steps: Emergence and entrenchment**

Application of the pathways framework to the intervention of “legality verification” followed expectations among scholars about what pathways would be dominant initially to generate the strongest coalitions of stakeholders to support tracking timber, and what might occur once legality verification was routinized across value chains linking Peruvian producers and traders to markets in the European Union, the United States, and elsewhere.

In the first phase, strategies on the part of all stakeholders, we theorize, need to be consistent with nurturing policy settings and standards in a way that appeals to distinct organizational objectives of legal timber operators, indigenous communities, and environmental groups. In particular, firms that view support for legality as being in their economic self-interest, are more likely to support, and help build, critically important supply-chain tracking systems for legal timber. However, if firms view the costs of compliance as higher than the rents that accrue from weeding out illegal timber, they may vacate the coalition in general, and support for supply-chain tracking in particular – in effect “knee capping” the system before it has a chance to become institutionalized.

Recognition of this emergence phase points stakeholders and strategists towards issues such as supply-chain tracking systems, which - if drawing on the latest and efficient technologies, thereby reducing costs of compliance for participating firms and managers - would be expected to increase the interest, and participation, of business interests. In this sense, nurturing technological innovations during the first phase is expected to directly, and positively, support the potential future influence of legality verification and, more broadly, to help foster “good forest governance”.

For these reasons we also theorize that a second step, when tracking and implementation of legality has become routinized as part of daily practice, might offer increased possibilities. The logic here is that once removing support for LV is no longer considered a viable option, the systems could then incorporate a broader range of issues, since strengthening the standards would then result in higher prices (a positive result for forest-dependent communities), rather than increases in costs to firms and community managers.

Given Peru is squarely in the first phase of “emergence”, two themes emerged from our means-oriented learning about the current impacts and potential of LV to reinforce community rights to forest resources.

*First, it appears that, without modifications, efforts to enhance LV in Peru have, and may continue to pose, significant obstacles for forest-dependent communities.* In fact, as LV has emerged in Peru and gained traction, the story of influence is a contested one: seemingly well-intended efforts to promote forest regulations and enforce them have also led to significant unrest in the forest sector, which fears negative economic impacts. In addition, those who focus on forest-dependent communities and enhancing forest livelihoods also argued that they, too, would now be required to conform to additional and costly regulatory requirements.

*Second, policy modifications to LV in Peru could reverse these trends. However, they require attention not only to the content of policies, but also to their role in generating coalitions of support that could unite diverse organizational interests.*

Reviewing a number of domestic proposals being initiated by stakeholders and that are being offered as a way to focus LV towards enhancing community legal ownership of, and access to, forestland and forest resources, we draw on the pathways framework in

general, and the “causal logics” in particular, to assess the conditions through which widespread support might occur. Accordingly we theorize that an emphasis not only on desired standards, but also in generating coalitions of “Bootleggers and Baptists” (i.e. groups with diverse interests including indigenous communities, environmental groups, and business interests), might generate strategic insights for fostering uptake and durability of results.

Some stakeholder input during our application of the Policy Learning Protocol in Peru was consistent with these insights. Specifically, attention was placed in thinking about how increasing the supply of legal timber produced by communities, or from forestland that is controlled by communities, might help contribute to increasing the production of legal timber in Peru. Hence, if there was a way to link community production of legal timber to existing domestic forest sector manufactures and traders, LV might be able to help reactivate a stagnated process of land titling of indigenous communities while creating opportunities for indigenous and non-indigenous communities. This, in turn, could be expected to help improve the international image of Peru’s forest sector as being overrun with illegal logging. In fact, the momentum for such an endeavor in Peru is already starting to build, with the country’s forest sector apparently eager to increase timber from certified legal sources, without which, many stakeholders argue, Peru runs the risk of being excluded from that part of the international timber trade requiring legality verification.

The hypothesis behind generating coalitions of communities and the timber sector is that, owing to the diverse support, policy makers are more likely to look favorably on these changes. Navigating these coalitions requires careful attention both to the potential of different global pathways, and to whether stakeholders find themselves in the emergence or institutionalized phase. During the emergence phase, we theorize that strategic decisions must be taken that give priority to the markets and rules pathways, but which can draw on supporting roles of the norms and direct access pathways. In particular, generating norms about the plight of forest-dependent communities may serve to help shape the content of LV requirements themselves, while the direct access pathway, through which resources and technical knowledge about legal and sustainable forest management are provided, will play critical roles in influencing whether, if there is interest, indigenous peoples may participate meaningfully in the development of, and support for, LV that reinforces community rights.

What is important, and what has emerged from our Protocol 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.

It is in this context that creative ideas emerged, to which we devote section 4 below.



#### 4. Strategic ideas for organizations and instrument choice

The application of the Policy Learning Protocol in Peru lead to the following two concrete strategic ideas for nurturing global Legality Verification efforts to enhance community legal ownership of, and access to, forestland and forest resources.

##### ***International instruments: Social safeguards in a future Peru-EU FLEGT VPA***

In step 9 of our application of the Protocol in Peru (see Cashore, Visseren-Hamakers et al., 2016), we examined the pathways through which Peruvian stakeholders could draw on international LV initiatives to increase their potential to enhance community forest ownership and access. Drawing on the pathways framework we theorized that if social safeguards encompassing *norms* promoting “legal security for all forest users” were incorporated in international LV rules, they might serve as a lever for advancing community land titling and security. We reasoned this could occur because they would not only nurture the *markets pathways* through demand-side incentives, but also help stakeholders travel the *direct access* pathway by generating technical and financial support – especially if focused on helping communities apply for, and gain, remaining community forest land claims. This result, in turn, we theorized, could be quite durable, as it could be expected to bring additional stability and security to the forest sector.

We further theorized that the Peruvian government is more likely to support international *rules* on LV when the standards (and safeguards) are seen as reinforcing, rather than detracting from, national sovereignty. Specifically, if “LV + safeguards” ultimately helps the Government of Peru address existing domestic issues, including communal forestland titling, then the conditions would be in place for a broad-based coalition of support. To be sure, generating policy approaches globally, and reinforcing domestic sovereignty is often a difficult “balancing act”. What the Protocol does is to identify strategies for walking this tightrope in ways that place attention on coalition building on the one hand, and important substantive outcomes on the other hand.

Through this policy learning process, we identified the incorporation and implementation of social safeguards in a future FLEGT VPA between Peru and the EU as a prospective strategy for enhancing forest community rights, and thus implicitly propose for Peruvian forest policy stakeholders to support the development of such a VPA. Peru is identified as a country “preparing to negotiate” a VPA by the EU FLEGT Facility, but has not yet entered in to official negotiations to develop a VPA. Our Protocol urges negotiators to take an expanded and long-term strategy approach. While several LV policies affect the forest sector in Peru, their relatively narrow focus on timber trade (e.g., the EU Timber Regulation, US Lacey Act) or their broader applications (e.g., the US-Peru TPA) represent potential challenges in incorporating social safeguards *ex post facto*. Learning from earlier VPA processes in other countries, and how they came to include social safeguards, allows us to identify promising ideas while limiting potential pitfalls.

For these reasons, the VPA process, by fostering cross-country and stakeholder collaboration, provides more opportunities for influencing the outcome than many other international and bilateral policy processes. On the other hand, stakeholders in other

countries have argued that implementation of social safeguards, especially for indigenous communities, has often fallen short of its intended objectives.

How then, might stakeholders help promote the inclusion of social safeguards in a future Peru-EU VPA? One idea is that Peruvian stakeholders could build on the potential for multiple benefits from enhanced community rights by developing a national coalition of like-minded actors, keen to include social safeguards in a future VPA. This group could also link to international coalitions, for example including NGOs and development cooperation agencies, who have experience in earlier VPA processes in order to learn from these experiences and receive support (through the direct access pathway of our Protocol). South-South learning with stakeholders from other VPA countries could also contribute by exchanging information and experiences.

These coalitions could together help promote discussions with government agencies about social safeguards in ways that “nurture” the VPA development and implementation process to think about how to include social safeguards in ways that might reward both forest dependent communities and their supporters, as well as the domestic forest sector, including loggers, manufacturers, and timber exporters.

We also theorize that, if the coalitions could be institutionalized, rather than seen as a “one-off” effort, they could help inform, and nurture, any future agreement towards their stated goals. Considerations for such an institutionalized process would include formal membership requirements, the role of different organizations, and how to avoid powerful (economic) actors from dominating the process. A first step in this regard - if, and only if, stakeholders are convinced that the Peruvian government is willing to develop a VPA with social safeguards through a multi-stakeholder process - would be to promote a multi-stakeholder Peru-EU FLEGT VPA process that would be charged with developing the agreement, and helping nurture implementation.

Given the problem definition and approach of the Protocol, key members of the coalition would need to include communities (AIDSESEP, CONAM, PROFONANPE), government (MINAM, OSINFOR, SERFOR), the private sector (Cámara Nacional Forestal, Asociación de Exportadores), and civil society. There could also be a possible role for international development organizations as a way to generate global learning and support for developing the coalition. This coalition could develop its own plan of action, and carefully draw on various global, international or regional legality verification efforts to mobilize influence to implement its strategy.

What emerged from our application of the Protocol is that it is critically important for Peruvian stakeholders aiming to influence a future VPA’s impact on communities to deliberate over just what kind of safeguards would be necessary to ensure the LV does indeed support community ownership of, and access to, forestland and resources. Would safeguards that aim to “do no harm” suffice, or are those that aim to “do good” preferred, given the focus on land tenure? Insights could be gleaned not only from existing VPAs, but from other policy processes that include safeguards, both in Peru and internationally, such as REDD+. An important aspect of this question of the types of safeguards needed

is the avoidance of so-called “whack-a-mole” effects, in which certain safeguards might harm other important societal efforts. Perhaps synergies can be nurtured with other societal issues, for example by not only promoting social, but also environmental safeguards in the VPA process. These issues could be addressed and supported through the coalitions discussed in the above.

***Domestic production: Increase legal timber production by communities***

Following Step 9’s emphasis on the working, and approach, of global initiatives, Step 10 of our main analysis turned attention to the way in which domestic initiatives might be adapted to help link LV to enhancing community rights to resources.

As a result, we applied the pathways framework to what appear to be promising proposals to increase legal timber and enhance communal rights that were suggested by the national indigenous federation AIDSESEP, and the Peruvian trust fund for national parks and protected areas, PROFONANPE, during the application of the Protocol in Peru, namely to: 1) increase exclusive access to communities over forest areas to harvest timber; and 2) simplify procedures required to harvest timber.

*Enhance right over forestlands*

A first proposal to enhance rights over forestlands is to broaden the Mayor Land Use Capacity categories of Peru’s Regulations on Land Classification. A new land-use category to be proposed could be called ‘Major Use Capacity Indigenous Lands’ or ‘Major Use Capacity Communal Forestry Lands’. This new land-use category designation would be applied to an aggregated cluster of communities, possibly but not obligatory of a single or related ethnic identity, or of *ribereño* communities. The new land-use category would not grant property rights, but instead would specify that the area under the category is designated exclusively for community or smallholder forest exploitation.

Another, related proposal is to expand the number and area of “municipal conservation areas” adjacent to or surrounding indigenous and *ribereño* communities. Municipal conservation areas are less restricted in use of natural resources. Hence, communities and municipal governments, likely with appropriate coordination with Regional Government’s forest administration, could, in cooperation, devise municipal conservation area management plans that include communal timber exploitation.

In both of these cases, the policy reforms would, it is expected, help generate community production of legal timber – a key conditions for creating the types of durable coalitions of communities and the forest sector discussed above.

*Simplify forest planning requirements*

The second proposal, to simplify production of legal timber from forests reserved for community forestry, is to accommodate regulations, which need to be followed to exploit timber, to community conditions, in order to legally produce timber without jeopardizing sustainable logging. In this regard, AIDSESEP, under its program of *Veeduria Forestal* (which can roughly be translated as Forest Management and Monitoring), proposes

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. AIDSESP is reportedly elaborating an amendment to the forest law and regulations to allow such communal logging.

A complementary idea for policy change, proposed by PROFONANPE, is to modify the highly technical process of preparing a forest management and subsequent annual logging operation plan with a process emphasizing intrinsic local community knowledge. Such a communal forest management plan would include defining where logging is a desirable activity, the short, medium and long-term goals and the species and volumes to be logged. To be sure, these proposals would need careful reflection and testing to refine precise procedures and implementation so community organizations are directly involved, and recipients of, economic activity.

The point is that these approach, many stakeholders believe, offer potential for removing bottlenecks that many local communities face in participating in, and benefiting from, the forest economy.

## **5. Conclusions**

The Policy Learning Protocol was applied as a way to generate insights among, and for Peruvian stakeholders and their partners interested in drawing on LV for enhancing community ownership of, and access to, forestland and forest resources. What is important, and has emerged from our framework and learning deliberations, is that for the above insights to be influential and effective, it is imperative that community-focused stakeholders, and their allies, develop strategies and activities consistent with the causal logics at play, so that they can be nurtured in productive and relevant directions.

By generating attention on the shape of the global mechanisms (LV), and domestic policy reforms that might draw on this international attention, two complementary approaches emerged through the application of this Protocol: at the international level, it will be imperative to establish meaningful safeguards so that community rights are reinforced, rather than detracted from; and at the national level, domestic policy reforms will need to be undertaken to foster, and enhance, legal timber production by communities and/or on community-controlled land.

These two ideas are complementary. Depending on the types of safeguards included in a potential future VPA, these safeguards don't necessarily guarantee more legal timber production by communities and/or from community-controlled land, and thus communities benefitting from LV. Combining the safeguards with proactive work towards increasing legal timber production by communities will ensure community benefits from LV and can lead to increased supplies of legal timber. Also, the suggested legal and policy reforms could actually be proposed to become part of a future VPA process, since legal reforms are often part of VPA negotiations.

Application of the Protocol has highlighted important approaches to make strategic choices often downplayed by traditional “cost-benefit” approaches. First, an emphasis on desired standards and policies must be matched by attention to the types of coalitions that might be generated to foster support. Second, and related, whether policies are short-lived or durable depends on nurturing, progressive incrementally, markets, rules, norms, and capacity building efforts whose causal influences change depending on the step on which one is situated. Third, institutionalized efforts to foster long-term, means-oriented policy learning offer great promise in generating broad-based coalitions towards desired social, environmental, and economic outcomes. Fourth, and as a result, policy analysis tools are most appropriate for generating strategic ideas and questions, rather than imposing “top-down” rules that ignore historical junctures, norm change, and political processes.

What is clear is that after 30 years of efforts, many actors aiming for durable sustainable development are, following ongoing deforestation and “land grabs”, frustrated with the pace and scale of change. The Policy Learning Protocol offers one new way to overcome these challenges in the hope of promoting meaningful and durable results on the ground.

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