



# Justice in the forest

Rural livelihoods and forest law enforcement

**Marcus Colchester**

with Marco Boscolo, Arnaldo Contreras-Hermosilla,  
Filippo Del Gatto, Jessica Dempsey, Guillaume Lescuyer,  
Krystof Obidzinski, Denis Pommier, Michael Richards,  
Sulaiman N. Sembiring, Luca Tacconi,  
Maria Teresa Vargas Rios and Adrian Wells

The Center for International Forestry Research (CIFOR) is a leading international forestry research organization established in 1993 in response to global concerns about the social, environmental, and economic consequences of forest loss and degradation. CIFOR is dedicated to developing policies and technologies for sustainable use and management of forests, and for enhancing the well-being of people in developing countries who rely on tropical forests for their livelihoods. CIFOR is one of the 15 Future Harvest centres of the Consultative Group on International Agricultural Research (CGIAR). With headquarters in Bogor, Indonesia, CIFOR has regional offices in Brazil, Burkina Faso, Cameroon and Zimbabwe, and it works in over 30 other countries around the world.

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*Justice being taken away, then what are kingdoms but great robberies?*

St Augustine, *The City of God*

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Tel.: +62 (251) 622622; Fax: +62 (251) 622100

E-mail: [cifor@cgiar.org](mailto:cifor@cgiar.org)

Web site: <http://www.cifor.cgiar.org>

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# Abbreviations and acronyms

|          |                                                                                               |
|----------|-----------------------------------------------------------------------------------------------|
| AAC      | annual allowable cut                                                                          |
| AFH      | Agenda Forestal Hondureña                                                                     |
| AFLEG    | Application des Legislation Forestières et la Gouvernement en Afrique                         |
| AIDSEP   | Asociación Interétnica de Desarrollo de la Selva Peruana (Peru)                               |
| AMAN     | Aliansi Masyarakat Adat Nusantara (Indonesia)                                                 |
| Anon.    | Anonymous                                                                                     |
| ARD      | Associates in Rural Development (USA)                                                         |
| BC, B.C. | British Columbia (Canada)                                                                     |
| BROC     | Bureau for Regional Oriental Campaigns (NGO, Russia)                                          |
| C\$      | Canadian dollars                                                                              |
| CD-ROM   | compact disk - read-only memory                                                               |
| CED      | Centre pour l'Environnement et le Développement                                               |
| CEO      | chief executive officer                                                                       |
| cf.      | compare                                                                                       |
| CGIAR    | Consultative Group on International Agricultural Research                                     |
| CIAD     | Centre International d'Appui au Développement Durable                                         |
| CIFOR    | Center for International Forestry Research                                                    |
| DC       | District of Columbia (USA)                                                                    |
| DEA      | Drug Enforcement Administration (USA)                                                         |
| DFID     | Department for International Development (UK)                                                 |
| DPRD     | Dewan Perwakilan Rakyat Daerah (Regional People's Representative Assembly, Indonesia)         |
| ed.      | editor                                                                                        |
| eds.     | Editors                                                                                       |
| e.g.     | for example                                                                                   |
| EIA      | Environmental Investigation Agency (UK)                                                       |
| ELSAM    | Lembaga Studi dan Advokasi Masyarakat (Institute for Policy Research and Advocacy, Indonesia) |
| ENA-FLEG | Europe and North Asia Forest Law Enforcement and Governance                                   |
| etc.     | etcetera, 'and so on'                                                                         |
| EU       | European Union                                                                                |
| EUCAMP   | East Usambara Conservation Area Management Programme (Tanzania)                               |
| FAO      | Food and Agriculture Organization of the United Nations                                       |

|        |                                                                                                                     |
|--------|---------------------------------------------------------------------------------------------------------------------|
| FCMP   | Forest Conservation and Management Project (Tanzania)                                                               |
| FERN   | Forests and the European Union Resource Network                                                                     |
| FLEG   | forest law enforcement and governance                                                                               |
| FLEGT  | Forest Law Enforcement, Governance and Trade                                                                        |
| FoE    | Friends of the Earth International                                                                                  |
| FSC    | Forest Stewardship Council                                                                                          |
| FWI    | Forest Watch Indonesia                                                                                              |
| GDP    | gross domestic product                                                                                              |
| GEF    | Global Environment Facility                                                                                         |
| GFW    | Global Forest Watch                                                                                                 |
| GoT    | Government of Tanzania                                                                                              |
| GPS    | Global Positioning System                                                                                           |
| ha     | hectare(s)                                                                                                          |
| HKm    | Hutan Kemasyarakatan                                                                                                |
| ICRAF  | World Agroforestry Centre                                                                                           |
| IDRC   | International Development Research Centre (Canada)                                                                  |
| IHSA   | Institut Hukum Sumberdaya Alam (Indonesia)                                                                          |
| IICA   | Instituto Interamericano de Cooperación en la Agricultura (Inter-American Institute for Cooperation on Agriculture) |
| IISD   | International Institute for Sustainable Development                                                                 |
| ILO    | International Labour Organization                                                                                   |
| IMF    | International Monetary Fund                                                                                         |
| Inc.   | Incorporated                                                                                                        |
| INET   | Indigenous Network on Economies and Trade (Canada)                                                                  |
| INSAN  | Institut Analisa Sosial (Institute of Social Analysis, Malaysia)                                                    |
| IRENA  | Instituto de Recursos Naturales (Institute for Natural Resources, Nicaragua)                                        |
| ITTC   | International Tropical Timber Council                                                                               |
| ITTO   | International Tropical Timber Organization                                                                          |
| IUCN   | The World Conservation Union                                                                                        |
| LLC    | limited liability company                                                                                           |
| Ltd    | Limited company                                                                                                     |
| MAO    | Movimiento Ambientalista de Olancho (Honduras)                                                                      |
| MARENA | Ministry of the Environment and Natural Resources (Nicaragua)                                                       |
| MEA    | Millennium Ecosystem Assessment                                                                                     |
| MOFEC  | Ministry of Forestry and Estate Crops (Indonesia)                                                                   |
| MoU    | Memorandum of Understanding                                                                                         |
| NEPAD  | New Partnership for Africa's Development                                                                            |
| NGO    | non-governmental organisation                                                                                       |
| No.    | number                                                                                                              |
| NTFP   | non-timber forest product                                                                                           |
| OAS    | Organization of American States                                                                                     |
| ODI    | Overseas Development Institute (UK)                                                                                 |

|          |                                                                                              |
|----------|----------------------------------------------------------------------------------------------|
| PFE      | Permanent Forest Estate                                                                      |
| PID      | Project Information Document                                                                 |
| PROFOR   | Program on Forests (World Bank)                                                              |
| PROMAB   | Programa Manejo de Bosques de la Amazonía Boliviana (Bolivia)                                |
| PSFE     | Programme Sectoriel Forêts (et) Environnement (Forests Environment Sector Program, Cameroon) |
| RF       | Rainforest Foundation (UK)                                                                   |
| RIIA     | Royal Institute for International Affairs                                                    |
| SCA      | Seneca Creek Associates                                                                      |
| SDR      | Special Drawing Rights                                                                       |
| SFM      | sustainable forest management                                                                |
| SGS      | Société Générale de Sécurité (in English, just SCS)                                          |
| SKEPHI   | Sekretariat Kerjasama Pelestarian Hutan Indonesia                                            |
| SLDF     | Sierra Legal Defence Fund (Canada)                                                           |
| SOLCARSA | Sol del Caribe, S.A. (Nicaragua)                                                             |
| St       | Saint                                                                                        |
| TFD      | The Forests Dialogue (USA)                                                                   |
| TFF      | Tropical Forest Foundation                                                                   |
| TNC      | The Nature Conservancy                                                                       |
| UBC      | University of British Columbia                                                               |
| UK       | United Kingdom                                                                               |
| UN       | United Nations                                                                               |
| UNCTAD   | United Nations Conference on Trade and Development                                           |
| US       | United States (of America)                                                                   |
| US\$     | United States dollar                                                                         |
| USA      | United States of America                                                                     |
| USAID    | United States Agency for International Development                                           |
| vs.      | versus                                                                                       |
| WALHI    | Wahana Lingkungan Hidup Indonesia                                                            |
| WBI      | World Bank Institute                                                                         |
| WHO      | World Health Organization                                                                    |
| WRI      | Wood Resources International LLC (USA); World Resources Institute                            |
| WRM      | World Rainforest Movement                                                                    |
| WSSD     | World Summit on Sustainable Development                                                      |
| WTO      | World Trade Organization                                                                     |
| WWF      | the global conservation organisation                                                         |
| Yasa     | Yayasan Alam Sumatra                                                                         |



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# Preface

The last five years have witnessed a dramatic growth in international concern with illegal forestry activities. That concern is undoubtedly warranted. Illegal forestry activities cause massive environmental destruction, deprive governments of billions of dollars in lost revenues, unfairly favor those in a position to pay large bribes, and generally undermine the rule of law.

Nevertheless, before we run off and start looking for ways to enforce existing forestry laws more vigorously, it is important to consider how that might affect poor rural households. Recent studies suggest that many forestry laws and regulations can discriminate against small producers and that a large number of people depend on small-scale illegal forestry activities to survive. It is possible that enforcing these laws might potentially harm poor people. It is also possible that some government authorities would selectively target small producers, truck drivers, and forestry workers—rather than the big players who are responsible for most of the real problems. Given that, it is important to understand what greater forest law enforcement might imply in different contexts and how to promote forest law enforcement and good governance in a way that can benefit the poor and help governments to achieve the Millennium Development Goals (MDGs).

These concerns led the Center for International Forestry Research (CIFOR) to commission exploratory studies drawn from six countries (Bolivia, Cameroon, Canada, Honduras, Indonesia, and Nicaragua) to help us and others think through how these concerns might play out in practice in different contexts. The studies were carried out by a group of about one dozen researchers from various institutions, whose names are listed in the author list. Luca Tacconi from CIFOR coordinated the studies and Marcus Colchester was responsible for summarizing and synthesizing across those case studies. The following report presents the results.

The case studies used for this synthesis were based entirely on material collected during previous studies by the researchers involved and analysis of the existing literature. They did not involve collecting new primary data and some of their data may by now be outdated. Although there has been some peer review of the studies, it has also not always been possible to fully verify the veracity of the information taken from various sources.

In any case, the main purpose of these studies has been to explore the types of relevant issues that arise in different contexts related to how forest law enforcement affects rural livelihoods.

Hopefully they will give the reader a general sense of why this issue is important, how different options might affect rural households, and what needs to happen in the future. The studies were not designed to produce definitive assessments of each specific case and make no pretense of doing so. It is particularly fitting that this synthesis is published as part of CIFOR's Forestry Perspectives series, since the series has been specifically designed to review the existing literature and share thoughts and perspectives on controversial issues and important emerging topics.

Some readers may be surprised to find that one of the cases focuses on how forestry laws affect First Nations in British Columbia in Canada. That case was included to see how developed countries may face similar issues relating to forest law enforcement and rural livelihoods. That being said, we fully recognize that Canada differs from the other countries studied in many significant ways. Canadian colleagues and the Province of British Columbia asked us for the opportunity to share some of their own thoughts and provide more updated information related to that. The reader can find that material included as a special appendix at the end of the report.

I would like to personally thank Marcus Colchester, Luca Tacconi, and all the researchers involved in this project for helping to highlight the significant issues that this document raises. Many thanks also to the Department for International Development of the United Kingdom and the Program on Forestry (PROFOR) housed at the World Bank for financing and providing encouragement and guidance for this study. Hopefully the study will serve to initiate a new generation of Forest Law Enforcement and Governance efforts that truly favor poor and marginalized peoples in both developing and developed countries. Anyone working on or thinking about forest law enforcement would be well advised to read it before doing anything else.

**David Kaimowitz**  
Director General, CIFOR

# Executive Summary

## **The forest law enforcement approach gains currency**

‘Forest Law Enforcement and Governance’ (FLEG) has emerged as a major policy response by international agencies and national governments seeking to promote good forest management. Spurred by reports that have highlighted the extent of illegal logging, the approach has also been justified as a way of promoting poverty alleviation—the central mandate of the development agencies, reaffirmed through their adoption of the Millennium Development Goals. FLEG is promoted as a means to curb forest loss, halt illegal logging, restore a viable framework for sustainable forest management (SFM), capture lost revenues for the state and thus benefit the poor indirectly through higher state expenditure, improved benefit sharing with communities and SFM. The FLEG approach has gained coherence and widened its scope as it has developed, and now gives increasing emphasis to the need to combat corruption and promote ‘good governance’.

## **The social implications of FLEG have not been given much attention**

However, the direct impact of forest law enforcement measures on the livelihoods of rural communities has not been a central consideration in FLEG processes. In many countries, current laws related to forests limit the rights and livelihoods of forest-dependent communities. For various reasons, rural communities often have difficulties getting their rights of ownership, access and use in forests regularised. Existing enforcement processes often unevenly target small-scale users and may ignore the political economy surrounding illegal forest use. If these realities are not taken into account, there is a risk that the FLEG approaches may reinforce social injustice and further limit rural livelihoods.

## **This study is a first attempt to fill the gap**

This study was born out of a concern that a narrow focus on law enforcement could unintentionally harm poor and marginalised social groups by reinforcing current laws and policies that contribute to social exclusion. This report brings together several pieces of work carried out for CIFOR as part of a project on Forest Law Enforcement and Rural Livelihoods, supported by the UK’s Department for International Development (DFID) and the World Bank’s Program on Forests (PROFOR). It draws on a preliminary scoping study, five case studies carried out in Bolivia, Cameroon, Canada, Honduras and Nicaragua, and Indonesia, a literature

review and a range of interviews with key informants. This study does not pretend to be comprehensive—indeed the research highlights extensive gaps in existing knowledge, which will need to be addressed through further research. However, the preliminary findings already teach some important lessons that, if heeded, could help ensure that FLEG initiatives better serve the needs of poor rural communities. These general findings are, obviously, not equally applicable to every country studied, but suggest patterns to be investigated in developing nationally appropriate forest law enforcement responses.

### **The extent of forest-based livelihoods is often under-appreciated**

The lack of existing, reliable information about forest-dependent peoples, their numbers, livelihoods and circumstances is itself a symptom of their marginalisation in forest policy making. The case studies show that a wide range of social groups depend on forests, including indigenous peoples, other long-term residents and migrant farmers. Even in a developed country like Canada, forests are central to the livelihoods of indigenous peoples, both in terms of non-cash income and for cultural reasons. Forests are used intensively for game, non-timber forest products (NTFPs), farmland and forest fallows, fuelwood, timber extraction, environmental services, subsistence, barter and trade. Forest residents are often also engaged as wage labourers or as small-scale suppliers in local timber industries.

### **Laws related to forests are often contradictory and restrict livelihoods**

A very wide range of laws affects the way these peoples use forests. These forest-related laws include: customary laws and norms, which are far more widely applied than is often assumed; international laws relating to trade, human rights and the environment; national constitutional provisions; and national and local laws relating to land tenure, human rights, conservation, wildlife and forestry. In general, rights of ownership, use and access to forests by local communities are often not recognised in forest-related laws, which tend to treat forests as public lands or even ‘state-owned’ domains. Forest-related laws are frequently contradictory and incompatible, making the definition of what constitutes ‘legal’ forest use highly contentious.

### **Laws tend to be selectively applied in favour of large-scale forestry**

The extent to which all these laws are applied in practice varies widely, but commonly forest management laws that restrict forest access and use by local communities and give preferential access to large-scale forestry enterprises, are applied more vigorously than complementary measures that recognise community rights. Even where procedures do exist by which communities can apply for

secure rights in forests, these are commonly too onerous and costly to be widely used. Forest law enforcement initiatives tend to focus narrowly on the enforcement of forestry laws to the neglect of laws that secure rural livelihoods.

### **Laws tend to be framed to favour dominant interests**

An examination of the history of forest-related lawmaking shows that favourable laws recognising indigenous peoples' and local communities' rights to land and forests have resulted from strong social mobilisation and use of the courts, but that forestry laws have typically been heavily influenced by the timber industry lobby. In developing countries, international agencies have tended to push for laws that favour large-scale, highly capitalised forest industries, giving priority to sustainable forest management and the generation of state revenues, with much less emphasis on benefits for rural livelihoods. Community forestry has not been given much priority in forest policy making, but pressure from civil society and indigenous peoples has been crucial to the few gains that have been made.

### **Illegal forest use is enmeshed in political economies**

In countries where illegal forest use—such as illegal logging and bushmeat trading—is prevalent, it is not just an outcome of poor governance and corruption, but is an integral part of local and national political economies. Global demand for timber and burgeoning domestic timber markets are major drivers of illegal extraction. Where the rule of law is ineffective, elaborate and deeply entrenched patronage systems facilitate illegal forest use and are often closely linked to political networks that control and protect these lucrative activities. Profits from illegal forest use are woven into the fabric of society and keep existing political parties and processes in operation.

### **Local communities may be heavily ensnared in these webs of illegality**

Communities' lack of security in forests contributes to their poverty, conflicts over forest resources, subsequent repression and human rights violations. The extent to which large-scale logging enterprises benefit or harm local communities is poorly documented. In general, existing benefit-sharing schemes, designed to share some of the profits from large-scale logging with local communities, function poorly. Much small-scale forest use is either 'illegal' or hard to keep legal, in particular because requirements for community 'forest management plans' are onerous and local markets are flooded with cheap, illegal products, making legal produce uncompetitive. In some cases, the bureaucratic obstacles to regularising tenure, access and use rights facilitate the entry of 'fixers', who are members of illegal logging and poaching syndicates. In these situations, administrative decentralisation and community forestry schemes can result in communities getting further ensnared in these webs of illegality.

### **Crude forest law enforcement has reinforced social exclusion**

Forest law enforcement efforts can usefully be analysed in terms of ‘soft’ enforcement, where compliance is encouraged by providing positive incentives, and ‘hard’ or ‘tough’ enforcement, including the criminalisation of violators. Good baseline data on current enforcement measures are lacking. Hard enforcement is ineffective where there is a lack of strong penalties, weak institutional capacity, lack of independence in the judiciary or because those charged with enforcement may be complicit in illegalities. Laws designed to penalise individual criminals may not curb corporate misdemeanours or affect chief executive officers (CEOs) and shareholders. There is a tendency for crackdowns to target poor people and small-scale operators and avoid those who are well connected and politically protected. In some countries, mass expulsions of indigenous peoples and local communities from forests and protected areas have caused serious impoverishment.

### **Independent monitoring can encourage civil society engagement and transparency**

Independent observer projects, such as those carried out in Cambodia and Cameroon, have tended to focus on forestry laws, and have not been preceded by a scoping of the relation between law and livelihoods nor by wide civil society consultation. They have, however, encouraged transparency and provided an aperture for civil society engagement in forest policy making. In practice, monitoring has focused on large-scale violators, but very few prosecutions have resulted. Stronger terms of reference are needed in future projects of this type to encourage broader legal analysis, greater attention to livelihoods, increased transparency and more civil society engagement.

### **Trade-based approaches may ignore the social implications of enforcement**

Bilateral Memoranda of Understanding between the governments of exporting and importing countries to curb the trade in illegal forest products have stimulated vigorous national debates about forest law and policy. Although initial technical assessments have been unduly limited to forestry laws, ensuing discussions have helped identify existing contradictions with other laws and the need for reforms to favour rural livelihoods. However, market closure by importing countries may only shift illegal exports to less discriminating markets. Widespread enforcement of these market-based approaches will depend on ‘legal verification’ or ‘step-wise certification’, so that customs officials, procurement officers and retailers can discern which timbers are ‘legal’ and therefore acceptable. There is an evident risk that such measures may exclude consideration of the livelihoods of forest-dependent peoples and may thus encourage forest management systems that create poverty rather than alleviate it.

### **Future FLEG initiatives should be based on certain principles...**

In future, forest law enforcement initiatives should:

- Address the full range of laws that relate to forests and forest-dependent peoples and not just forestry laws;
- Adopt a rights-based approach, giving due attention to strengthening human rights networks, improving the independence of the judiciary and encouraging community access to the law;
- Be linked to governance reform programmes aimed at creating public accountability and transparency in the management of natural resources;
- Be developed through processes of broad engagement with civil society organisations and based on real commitment to reform from national governments.

### **...But must accommodate local and national realities**

This report also offers a wide range of suggestions—to be selectively applied taking account of local and national realities and circumstances—on how future FLEG initiatives could ensure:

- The correction of unfair legal frameworks through participatory law reform;
- Even-handed enforcement in order to level the playing field in favour of rural communities, including giving greater scope for customary forest regulation;
- Effective law enforcement through increased transparency and civil society engagement;
- Targeting of major abusers, not small-scale operators.

### **The links from illegal logging to forest law enforcement need to be logically demonstrated and agreed prior to action**

Seeking to halt destructive forest use, environmentalists and development agencies are pushing for urgent changes to curb deforestation and combat poverty. Although illegal logging certainly contributes to forest destruction, this study suggests that in some cases forest law enforcement may not be the most appropriate response. This is because ‘legal’ forest use may be just as damaging to forests and local communities as illegal use. Current legal frameworks are often inadequate or contradictory and do not ensure sound or socially just forestry. In summary, forest law enforcement and governance initiatives may provide scope for pro-poor reforms of forestry sectors, but they must be carried out in an inclusive, participatory, transparent and cross-sectoral way to ensure that they do not reinforce exclusionary forms of forestry that harm the tens of millions of people whose livelihoods depend on forests.



# 1. Global forest law enforcement initiatives: the context for this study

Concern about the extent to which illegal logging has been contributing to forest loss has grown sharply since the 1980s. As new data has become available, it has become clear that a very large proportion of the timber entering both national and international markets has been accessed, harvested, transported and traded in contravention of national law (see Box 1).

**Box 1. The extent of illegal logging: some examples**

| Country     | Estimates of illegal timber          | Source(s)                           |
|-------------|--------------------------------------|-------------------------------------|
| Bolivia     | 80-90%                               | Contreras-Hermosilla (2003)         |
| Brazil      | 80%                                  | Contreras-Hermosilla (2003)         |
| Cambodia    | 94%                                  | Contreras-Hermosilla (2003)         |
| Cameroon    | ‘over half of all logging licences’  | Contreras-Hermosilla (2003)         |
| Colombia    | 42%                                  | Contreras-Hermosilla (2003)         |
| Honduras    | 75-85% hardwood, 30-50% softwood     | Richards <i>et al.</i> (2003)       |
| Indonesia   | 80%                                  | Tacconi (2003)                      |
| Nicaragua   | 50% hardwood, 40-45% softwood        | Richards <i>et al.</i> (2003)       |
| Peru        | ‘at least 80%’                       | Chirinos and Ruiz (2003)            |
| Philippines | 46% of domestic consumption          | Contreras-Hermosilla (2003)         |
| Russia      | 35-55% of exports (varies by region) | FoE (2000); WWF-Russia (2002, 2003) |

Given this situation, previous efforts to improve forest management—for example, through developing coherent national forest programmes, reforming forestry laws, fiscal regimes and policies, agreeing criteria and indicators for sustainable forest management and promoting third-party certification—have begun to seem unrealistic. Reforms of frameworks may seem nonsensical or at best marginal if a large proportion of the trade is not working within the framework anyway (see Box 2 over).

National efforts to enforce forest-related laws have a very long history, but concerted efforts to focus international attention on the problem of illegal logging only commenced in the mid-1990s

with the discussions at the Intergovernmental Panel on Forests and the Intergovernmental Forum on Forests. During the 1990s, various non-governmental organisations (NGOs) published reports exposing the threats to forests and forest peoples posed by inadequately regulated transnational forestry corporations (e.g. Marshall 1990; SKEPHI 1990; Colchester 1991, 1994a, b, 1995, 1997; WRI 1995; Sizer 1996; Dudley *et al.* 1995; EIA 1996; FoE 2000; WRM and Forests Monitor 1998; Glastra 1999; Sizer and Plouvier 2000; Global Witness 2000; Forests Monitor 2001). At the same time, detailed in-country monitoring, for example by Global Witness in Cambodia and the Environmental Investigation Agency (EIA) and Telapak in Indonesia, uncovered the illegality of large-scale logging in great detail.<sup>1</sup> The work in Cambodia led to the agreement of the World Bank-funded Cambodia Forest Crimes Monitoring Project.<sup>2</sup> The same approach was later extended to Cameroon in 2001 with the support of the World Bank, European Union (EU) and bilateral agencies.<sup>3</sup>

## Box 2. Illegal forest activities

Violations of indigenous peoples' rights, public trust, and public or private ownership rights may involve acts against constitutional, civil, criminal or administrative law.

Violations of forest management regulations and other contractual agreements in either public or private forestlands are acts against forest legislation; this is the category that includes most of the acts that may be most appropriately referred to as 'illegal logging'.

Violations of transport and trade regulations include acts that violate forest legislation, but they may be related to legally or illegally harvested forest products. This category is referred to as 'illegal forest trade'.

Timber processing activities may be regulated by industry and trade-related legislation, as well as forest legislation. In this category, a violation directly linked to illegal logging is the 'use of illegally harvested logs'.

Violation of financial, accounting and tax regulations may involve acts related to legally or illegally harvested and traded timber. This category is referred to as 'illegal financial activities'.

The many different illegal activities may be linked to each other in different ways, but two of the most significant links are worth stressing here.

Violations of indigenous peoples' rights and of public trust may result in the establishment of forest operations that have a legal appearance. Timber extracted by these operations may seem legal to unaware traders and consumers, unless schemes aimed at certifying legality also assess whether due process is followed in the allocation of land to forest activities and in the allocation of forest concessions.

All violations can occur as the result, or at the prompting, of corrupt public officials. Corruption can affect the allocation of forest land, monitoring of forest operations, and law enforcement. Therefore, it can be one of the most significant factors contributing to illegal forest activities.

Source: Tacconi *et al.* (2003).

Intergovernmental policy-making processes have kept pace with these developments. The 1997 G-8 Summit in Denver (USA) agreed an Action Plan on Forests, which included a commitment to 'eliminate illegal logging' (EIA and Telapak 2003a, page 3). At the Birmingham (UK) summit the following year, the G-8 nations noted that 'illegal logging robs national and subnational governments, forest owners and local communities of significant revenues and benefits, damages forest ecosystems, distorts timber markets and forest resource assessments and acts as a disincentive to sustainable forest management.' In order to combat this problem, G-8 members committed themselves to: sharing information about the issue; assessing their own controls of the illegal trade; taking steps to implement their obligations under international agreements aimed at combating bribery and corruption in timber-related business deals; and assessing the extent of illegal logging and trade in illegally harvested timber and their capacity to develop and implement countermeasures.<sup>4</sup> The commitment to address illegal logging was reiterated at the G-8 Summit in Okinawa (Japan) in 2001, by which time the G-8 Action Plan on Forests had run its term.

In September 2001, a ministerial meeting held in Bali (Indonesia) launched a Forest Law Enforcement and Governance (FLEG) initiative in Asia. The declaration of this meeting emphasised the importance of good forest governance and committed participants to an action plan to intensify national efforts to combat illegal logging and promote international collaboration to achieve it. In 2002, the governments of the UK and Indonesia signed a Memorandum of Understanding (MoU) relating to joint efforts to combat illegal logging, which was followed by similar bilateral agreements between Indonesia and Norway, China and then Japan (Hugh Speechly personal communication).<sup>5</sup> The process was extended and formalised through the setting up of an Asia Pacific Task Force on Forest Law Enforcement and Governance in February 2003 (World Bank 2003).

In November 2001 and again in May 2002, the 31st and 32nd sessions of the International Tropical Timber Council (ITTC) adopted decisions to focus on forest law enforcement and undertake studies on the forest law enforcement situation in the Congo basin, with the aim of improving both conservation and forest concession management.<sup>6</sup> In March 2002, the United Nations Forum of Forests at its second session elaborated a Ministerial Message to the World Summit on Sustainable Development (WSSD), which called for immediate action on forest law enforcement. A similar message was echoed by the sixth Conference of Parties of the Convention on Biological Diversity in April 2002, which adopted a programme of work on forest biological diversity, including action to promote forest law enforcement and case studies on the effects of lack of forest law enforcement on biodiversity.<sup>7</sup> In June 2002, the Republic of Congo hosted a preparatory meeting for a planned regional ministerial meeting on forest law enforcement and governance, which was held in October 2003 in Yaoundé, Cameroon. The meetings

reaffirmed the need for a high-level commitment in Africa to build capacity for forest law enforcement, in particular in relation to illegal logging and hunting, associated trade and corruption.<sup>8</sup>

At the WSSD, a number of initiatives were announced on forests in which forest law enforcement was an important part. This included the announcement of an Africa Forests Partnership—an effort to integrate the FLEG approach with the pre-existing Congo Basin Initiative within the framework of the New Partnership for Africa's Development (NEPAD). The Asia Forest Partnership was also announced at the same time. Also following the WSSD, the EU announced a European Forest Law Enforcement, Governance and Trade Action Plan, which was formally endorsed by the EU Council of Ministers on 13 October 2003.<sup>9</sup>

In July 2003, US President George W. Bush announced a new international initiative to help developing countries stop illegal logging.<sup>10</sup> The 'Presidential Initiative', which has a clear conservation focus, aims to identify and reduce the threats to protected forest areas and other high conservation value forests in the Congo and Amazon basins, Central America and South-East Asia. Under the initiative, which otherwise makes little reference to rural livelihoods, community-based forest management and protection is to be promoted in the latter region.<sup>11</sup>

While efforts to promote a regional FLEG initiative in Latin America have yet to come to fruition, forestry ministers from countries in the World Bank's Europe and North Asia region have also announced a FLEG initiative. At a meeting convened by the World Bank and the Russian Federation in St Petersburg in November 2005, forestry ministers and officials from 44 countries, representing one-third of global forest cover, endorsed a Ministerial Declaration on Forest Law Enforcement aimed at combating forest-related crime. The Ministers committed themselves to review and update forest-related laws, improve enforcement and strengthen inter-agency coordination. The Ministers also adopted an indicative list of actions to accomplish these goals (ENA-FLEG 2005; IISD 2005).

The private sector has also become directly active in international efforts to curb illegal logging. The Forests Dialogue (TFD), an initiative promoted by the World Business Council on Sustainable Development, has held two international meetings on illegal logging, the second as a joint NGO-Private Sector preparatory meeting for the St Petersburg Ministerial conference (TFD 2005). A study for the American Forest and Paper Association, presented at the first TFD meeting in Hong Kong, found that 5-10% of global industrial roundwood production is illegal and is depressing world prices for wood products by 7-16%. This is costing US wood-products industries as much as US\$460 million per year in real dollar terms (SCA and WRI 2004). In short, awareness has grown that business and state interests alike are suffering the consequences of illegal logging.<sup>12</sup> But what are the implications for rural livelihoods?

## 2. Implications for rural livelihoods: the rationale for this study

*Illegal logging and bad environmental management equate to billions of dollars each year in lost revenue, billions that, instead, could be used by governments to build schools, to get rid of debt, or to lift millions out of misery and poverty.*

US Secretary of State, Colin Powell (22 April 2003)<sup>13</sup>

The main concerns behind the FLEG processes have been to curb forest loss, capture revenues for government exchequers and bolster the authority of state agencies. These are significant goals. The World Bank (2002) estimates that illegal logging results in an annual loss of around US\$ 10-15 billion in developing countries worldwide. Although it is anticipated that better governance, increased rent capture by the state and improved forest management can all benefit the poor indirectly, the **direct** impacts of illegal logging and forest law enforcement on rural livelihoods have not been a priority consideration to date.

For example, a recent regional review, *Forest Law Enforcement in Selected African Countries*, carried out for the World Bank/WWF Alliance focuses on the priorities of large-scale forestry operations and only gives consideration to rural people's livelihoods insofar as they are involved in timber extraction through benefit-sharing procedures (SGS 2003, pages 6-7). Likewise, the UK Government's international project on illegal logging, with an overarching goal to 'realise the potential of forests to reduce poverty' and main goal of achieving 'policies, processes and institutions that promote sustainable and equitable use of forests in the interests of the poor', in its inception paid little attention to rural livelihoods (DFID 2002a). Similarly, the initial 'Summary Action Plan' associated with the Indonesian-UK MoU on Illegal Logging includes no actions specifically designed to secure the livelihoods of forest-dependent communities (DFID 2002b).

Thus, there are grounds for concern that forest law enforcement initiatives are failing to take account of the rights and interests of forest-dependent communities and so could negatively affect rural livelihoods. This is because (Kaimowitz 2003, page 199):

- Existing laws often limit or prohibit ownership, access to and use of forest resources by indigenous peoples and local communities,

thus making their current or customary livelihoods impossible or illegal;

- Rural communities often lack the financial and technical resources and political connections required to regularise their use of forest resources;
- When enforcing forest-related regulations, state agencies may target poor people more vigorously and with less respect for due process and human rights than they target the wealthy and influential;
- Much illegal forest resource exploitation is actually carried out by, or with the connivance of, politicians and government agents. Measures such as law enforcement programmes that empower these officials and give them more resources could make it easier for them to act with impunity and further marginalise poor people.

This study constitutes a preliminary effort by CIFOR to: assess the implications of forest law enforcement initiatives for the livelihoods of poor rural communities; develop proposals for how to modify such initiatives so that they contribute effectively to poverty alleviation; identify knowledge gaps; and devise appropriate further research to fill these gaps and elaborate a more coherent policy response. This work has been jointly funded by DFID and by the World Bank-administered forestry programme, PROFOR, in recognition of the importance of securing rural livelihoods in forest law enforcement initiatives.

This paper consolidates four pieces of work carried out to this end for CIFOR: a preliminary scoping paper (Kaimowitz 2003); five case studies carried out in Bolivia (Boscolo and Vargas Rios 2003), Cameroon (Lescuyer 2003), Canada (Dempsey 2005), Honduras and Nicaragua (Wells *et al.* 2003), and Indonesia (Obidzinski and Sembiring 2003); a literature review; and interviews with some key actors in the field.

The country case studies were based on field surveys, literature reviews and drawing on existing or ongoing research by the co-authors. Because these studies were all conducted in very different circumstances and drew on research projects that had been devised for different ends, they do not conform to a common format. In summarising the materials, therefore, this synthesis report has sought to complement any gaps in the individual studies with additional information derived from further literature research or by referring back to the case study authors for additional insights. The draft case studies and synthesis report were then subjected to review during a workshop, in which particular attention was paid to assessing the validity and relevance of the draft conclusions and recommendations. Following revision of the case study papers and synthesis report, based on the comments in the workshop and the comments of external reviewers, the synthesis report was then also sent again for further peer review. A more detailed literature-based study on British Columbia was also commissioned in order to

assess and substantiate the Canadian case study, and its insights were incorporated into the synthesis report.

The country and regional case studies were not selected randomly, but were chosen to: make the most of existing, relevant research initiatives; include cases from all three tropical forest regions (Asia, Africa and Latin America); learn lessons from countries where forest policy reforms and forest law enforcement initiatives are underway; and include at least one case study from an ‘industrialised’ country, to encourage North-South balance and a two-way process of social learning. While three of the case studies examined national trends and practices, two case studies were more locally focused, the Nicaragua-Honduras study focusing on the Atlantic Coast and the Canadian case study focusing on British Columbia.

Taken together, the studies show, on the one hand, that a good deal of information already exists about how forest law enforcement initiatives affect rural livelihoods and yet, on the other hand, that there are major gaps in our knowledge about how poor people use forests, and how they are affected both by destructive forest use and by forest law enforcement. As such, the study recognises that these results are a ‘work in progress’: the results should be interpreted as indicative rather than definitive—as suggestions for future policy dialogue and research and not as hard-and-fast guidance.

Like earlier studies (Pendleton 1996, 1997b, 1998a, b), this study constructively questions the appropriateness of the law enforcement approach to address the main ‘harms’ that national governments and development agencies are seeking to remedy. If social injustice and forest destruction are the main ‘harms’ at issue, then it needs to be demonstrated first that **violations** of existing laws, rather than the laws themselves, are the underlying cause of these problems before law enforcement is adopted as the immediate policy response. The study shows there is a need to disaggregate law from the application of the law. Many laws exist only on paper and, where applied, are often unevenly put into effect for a host of political, economic and social reasons. Likewise, enforcement initiatives can take many guises, ranging from compliance through positive incentives, fiscal schemes and self-regulation, through market-based incentives and enhanced capacity of enforcement agencies, civil society vigilance and public transparency, to tough enforcement through penalisation and the criminalisation of violators. It is not clear that FLEG initiatives have always considered the full range of policy options available before adopting a certain approach (Pendleton 1997b). The aim of the report is not to identify culpability for any deficiencies in law, forest management or respect for rights, but to clarify under what circumstances forest law enforcement initiatives promote rather than prejudice the livelihoods of forest-dependent communities.

## Structure of the report

The study and the following sections of this report set out to answer a series of questions with the aim of elucidating the implications of forest law enforcement initiatives for rural livelihoods.

**Section 3:** Whose livelihoods depend on forests?

**Section 4:** How do forest-related laws relate to these people?

**Section 5:** For whose benefit were these legal frameworks primarily developed?

**Section 6:** How does illegal forest use affect communities?

**Section 7:** How much of what poor people do in forests is ‘illegal’? What are the effects on the poor of making their forest use illegal?

**Section 8:** What have been the effects of forest law enforcement on the poor?

**Section 9:** How can forest law enforcement initiatives be improved so they contribute to poverty alleviation at the same time as combating illegal forest use?

In each section, the report summarises the findings from each country case study, with complementary insights from the literature research and interviews, and then seeks to draw out common themes and contrasts. In the final section, the report draws preliminary conclusions from all this material and, somewhat tentatively, proposes means by which Forest Law Enforcement and Governance initiatives can help to ensure positive outcomes for the rural poor.



### 3. Forests and livelihoods

*When discussing the whole developing world at the same time, few permissible generalisations exist and almost every opinion is valid somewhere. The poor, even the so called 'poorest of the poor', tend to be a very heterogeneous group and exhibit a range of quite different interactions with forest resources. Hence proposals for interventions must be context-specific, providing reference to particular forests and socioeconomic and political conditions.*

Angelsen and Wunder (2003, page 18)

According to the World Bank (2002), 'more than 1.6 billion people depend to varying degrees on forests for their livelihoods. About 60 million indigenous people are almost wholly dependent on forests. Some 350 million people who live in or adjacent to dense forests depend on them to a high degree for subsistence and income. In developing countries about 1.2 billion people rely on agroforestry farming systems that help to sustain agricultural productivity and generate income.' These figures are only very rough estimates and efforts to come up with more precise statistics about the numbers of forest-dependent people have been frustrated, not just because accurate census data are lacking in many developing countries (Lynch 1991), but also because definitions of 'dependence', and of what constitutes a 'forest', are necessarily open to subjective interpretation (Angelsen and Wunder 2003, page 18).

This lack of information about who really uses forests presents a major problem to forestry policy makers and supportive development agencies that are mandated to adopt a pro-poor approach. Without clear data about how poor people make a living from forests, how many they are and what their situation is, it becomes all too easy to overlook their interests when designing policy interventions aimed at improving forest management or asserting forest law. The five case studies carried out as part of this review—in Bolivia, Honduras and Nicaragua, Cameroon, Indonesia and Canada—show very diverse patterns of forest use by poor people (see Box 3 over).

### Box 3. Measuring poverty in forests

‘Poverty is not a vice’, as a character in a Dostoyevsky (1955) novel remarked, nor is it an objective condition that can be readily discerned by disinterested observers. As the Chinese sage, Lao Tzu, is reputed to have observed, ‘To be content with what one has is to be rich’. A recent review notes: ‘Being poor is simply a conceptual category, a category one may place oneself in, or be placed in by others, one’s neighbours, one’s government or people on the other side of the world’ (Eversole *et al.* 2005, page 1). Yet, the alleviation of poverty is a universally acclaimed goal and the central mandate of development agencies.

Many different methodologies have emerged that are designed to measure poverty for comparative purposes, which have been reviewed in a previous CIFOR study (Angelsen and Wunder 2003). Elements of poverty that need to be considered include:

- Material wealth measured in terms of income, financial capital and purchases
- Subsistence measured in terms of non-monetary income
- Welfare measured in terms of health, nutrition and food security
- Empowerment measured in terms of control of resources and political participation
- Cultural security measured in terms of identity, institutions and freedom of choice.

Other approaches also emphasise access to public services, education, justice, respect for human rights and the degree of long-term security. Although subjective approaches to measuring perceived wellbeing are preferred in local participatory development contexts, these are hard to apply comparatively. Indeed, local perceptions of what constitutes wellbeing vary widely, even among individuals and social groups within single communities. They may also vary over time with the same individual. (Angelsen and Wunder 2003, pages 3-13.)

The risks of misdiagnosing poverty are heightened as the link between poverty and forests is a controversial one, with many policy makers blaming ‘poverty’ for deforestation while as many NGOs blame wealth (Colchester and Lohmann 1993, page 4; Angelsen and Wunder 2003, page 1).

#### **Bolivia**

In Bolivia, the majority of forests, which cover almost half the country, are found in the tropical lowlands and the subtropical valleys that lead to the highlands. About 1.4 million people in these parts of the country live in rural areas and make use of forests in their livelihoods to some degree.<sup>14</sup> Though numerically few, indigenous peoples (who number some 180 000 persons) claim rights over 22.4 million ha (42%) of the country’s forests. In addition, some 30 000 peasant farmers are engaged in the extraction of NTFPs from a further 10 million ha of forests, while 500 registered small-scale timber producers and an unknown number of unregistered ones make use of about 800 000 ha of forests. Small farmers who have long been resident in the inter-montane valleys make up a further 700 000 people and occupy nearly 8 million ha. Around half a

million colonists, many from the highlands, have moved down to the lowland forests in search of land. Considered to be the main agents of deforestation, they currently occupy over 3 million ha of forest lands. Finally, approximately 5600 persons are actually employed in the timber industries. In mid-2003, there were some 75 large-scale forest concessions covering 4.4 million ha (down from 22 million ha under concession only 7 years ago). With the exception of the concessionaires, almost all these forest users can be considered 'poor' (Boscolo and Vargas Rios 2003).

### **Honduras and Nicaragua**

In Honduras and Nicaragua, about 40% of the population lives in or near forests and most are 'poor' or 'very poor' in terms of the UN Human Development Index. The heavily forested Atlantic coast region examined in the case study is home to persistent poverty, which is ascribed to economic isolation and lack of investment. Between 1993 and 1998, standards of living in these areas actually declined, even though they rose in other parts of the two countries in the same period.

Forest users in Honduras and Nicaragua include indigenous peoples and migrant farmers; they also include increasing numbers of timber traders and large landowners. Local communities use forests for hunting, gathering fruit and medicinal plants, and to access land for farming and ranching. In addition, they use forests to get firewood and construction materials, mainly in young secondary forests, including agricultural fields under forest fallows. In some areas, small amounts of timber are extracted for traditional uses such as dugout canoes. Despite limited opportunities to operate legally, increasing numbers of local people are also involved in the commercial timber trade for at least part of the year. These include members of local forestry cooperatives and casual labourers, who work as manual sawyers, in transportation or processing. Many communities have also started to protect forested watersheds to safeguard water supplies.

The current mix of forest users along this agricultural frontier zone results from an originally indigenous population both incorporating and being dispossessed by successive waves of landless poor people, who have in turn been displaced by land concentration, agricultural intensification, land degradation and declining terms of trade further west. Settlers have moved east in three (often concurrent) waves: first as woodcutters who settled in the areas they had opened up to small-scale logging; second as landless farmers in search of land; and third as larger-scale farmers clearing forests for ranches and plantations (Wells *et al.* 2003, page 3).

### **Cameroon**

Colonial interventions into the settlement patterns and administrative systems of forest-based communities in Cameroon have created major changes in the way people live in and relate to forests. As

in many other parts of Central Africa (Pourtier 1989a, b; Witte 1993; Colchester 1994b), previously dispersed settlements (often organised around lineages) were resettled into concentrated villages along roads and rivers and subjected to the authority of government-appointed village chiefs. This has disrupted, but not wholly undermined, customary tenure regimes, which remain the main mechanisms regulating forest use by members of communities. Forests remain crucial to these rural communities, in terms of access to forest lands for hunting and gathering, subsistence and commercial farming, fuelwood collection and for cultural purposes (Lescuyer 2003, pages 9-12). 'Pygmy' peoples, who live primarily by hunting and gathering, number about 100 000 and barter and trade forest products, including bushmeat, with neighbouring farming communities with which they have long association (CED *et al.* 2003). The population of these farming communities numbers about 600 000 (Kai Schmidt-Soltau personal communication). In addition, the timber industry, which generates some 10% of the national GDP and as much as a quarter of total exports, offers employment to some 33 000 persons and provides indirect employment to another 50 000 (Lescuyer 2003, pages 9-12; Paolo Cerutti personal communication). All these people may be considered 'poor'; indeed, in 2003, Cameroon ranked 142nd in the Human Development Index (Lescuyer 2003, page 5).

### Indonesia

Areas classified as forests in Indonesia occupy some 70% of the national territory and are variously estimated to be inhabited by between 40 and 95 million people, of whom approximately 40-65 million are long-term residents living in communities governed to various extents by custom (Colchester *et al.* 2003, page 104).<sup>15</sup> These peoples have strong links with forests, use them for a very wide range of products and activities, and tend to regulate access to and use of forests in accordance with customary law (Colchester *et al.* 2003, pages 107-122). Extraction of a very wide range of forest products for subsistence, barter and trade has been integral to the economies of forest resident peoples for millennia (e.g. Sellato 2001). Other 'forest' residents include landless migrants who have settled in forests, government-sponsored 'transmigrants' settled in forest areas as peasant farmers and estate workers, artisanal miners and migrant workers engaged in the timber industries. The extent to which these groups can be considered 'forest dependent' varies widely from place to place and depends on definitions.

Small-scale logging of timber for sale has long been part of the livelihood activities of forest-dependent communities both on Java and on the outer islands (Obidzinski and Sembiring 2003, pages 4-5). Their involvement in logging intensified in the 1930s as markets for tropical hardwoods such as *meranti* and *keruing* developed, but since the 1970s, the national forest policy has sought to replace small-scale timber-harvesting activities with

industrial-scale operations. However, small-scale logging closely connected to local entrepreneurs, officials, senior members of the armed forces and politicians, remains a major source of income for many rural communities (Obidzinski and Sembiring 2003, pages 8, 16-19; McCarthy 2002). Compared to many other sources of cash, small-scale logging is lucrative and can be engaged in seasonally, when other sources of employment are lacking or family farms allow. Although there are no national statistics on the full extent of small-scale logging, studies in southern Aceh, Riau and Central and East Kalimantan all show that the numbers of people involved in forested districts are in their thousands and tens of thousands, and income from small-scale logging contributes very significantly to the aggregate income of forest villages (Obidzinski and Sembiring 2003, pages 16-19; McCarthy 2002; Casson and Obidzinski 2002).

### Canada

In Canada, the majority population is not generally considered 'poor'. Indeed, for five consecutive years between 1993 and 1998, Canada ranked first on the UN Human Development Index and it has since ranked among the top eight countries (Manuel 2003; Assembly of First Nations 1997a).<sup>16</sup> According to the Canadian Forest Service (2003), in 2000 'nearly 300 communities, described as being "heavily forest-dependent", had at least 50% of their employment in the industrial forest sector. As well, more than 800 Aboriginal communities are located within Canada's productive forest. Many of these communities continue to depend on the forest for traditional non-economic uses. All forest-dependent communities, however, rely on the forest not only for their economic wellbeing, but also for their environmental and social wellbeing, in some cases even for their survival.' The non-indigenous communities are not poor, though they suffered severe lay-offs when the logging industry was successively modernised from the 1940s to the 1990s (see below). Where people have employment, wages in communities linked to the forestry industry are relatively high and communities quite prosperous; however, the boom-and-bust nature of the industry has engendered a sense of instability (Marchak 1983; Burda *et al.* 1997; Markey and Roseland 1999; Ostry 1999; Hayter 2000; Parfitt and Garner 2004; MEA 2005).

The Canadian case study has thus given greater attention to the status of the country's indigenous peoples with a focus on British Columbia, since, although they are by no means the only Canadians who make a living from forests, indigenous peoples are the poorest people within the country (as measured by UN standards). According to figures provided by the Department for Indian and Northern Affairs, the living standards of indigenous peoples, referred to in Canada as 'First Nations' or 'Aboriginal peoples', who live on reserves in Canada would rank them 42nd on the UN Human Development Index and 63rd on the UN WHO index—on a par with the national averages in Costa Rica and Chile (Manuel 2003; Assembly of First

Nations 1997b).<sup>17</sup> Houses on reserves are ten times as likely to be crowded as those of the general population; 65% of reserve housing is judged substandard and one in four indigenous households does not have an operational bathroom. Half of indigenous children do not complete high school. Moreover, average earnings of indigenous people are half the national average and they are five times as likely to rely on social assistance. Rates of suicide are between eight (for women) and five (for men) times higher than the national average. Indigenous peoples are also land poor: although they comprise roughly 4% of the national population, they control only some 0.03% of Canada's landmass (Assembly of First Nations 1997b; Anon. 1995).<sup>18</sup>

Restricted access to land and natural resources, and assimilationist social policies are generally considered to be the main causes of poverty among Canada's Aboriginal peoples, both on and off reserves (Royal Commission on Aboriginal Peoples 1996; Milloy 1999; Wien 1999; Samson 2003; McMillan and Yellowhorn 2004, page 187; Cornell 2005). Although access to lands is problematic, the consumption of traditional foods is still an important part of indigenous culture in Canada, even for those living in urban settings, and forests continue to play a significant role in providing these, although this varies from place to place. Wild game, fish, vegetables, fruits and medicinal plants are both socially and nutritionally important to many indigenous communities and are used to cushion these communities against hardship in times of economic difficulties. Forests are also valued as prime areas to trap fur-bearing mammals, which remain a significant source of income in some communities (Brody 1981; Samson 2003; Barsh and Henderson 2003). Despite predictions that indigenous cultures and survival strategies were a thing of the past, in the process of being eclipsed by assimilationist policies and modern cash-based provisioning, in fact land-based economies have not been fully replaced by wage labouring. Studies show that traditional foods and bartered products have substantial cash equivalent values in many indigenous communities (Treseder *et al.* 1998, pages 23-25). In British Columbia, where over 1600 of Canada's 2300 'Indian reserves' are located (McMillan and Yellowhorn 2004, page 331), aboriginal peoples' dependence on forest products remains high (George *et al.* 1996; Royal Commission on Aboriginal Peoples 1996; Curran and M'Gonigle 1998; Tedder *et al.* 2000, 2002; Parsons and Prest 2003; MEA 2005), although the tiny reserves they have been granted only extend over 0.3% of Provincial Forests (Curran and M'Gonigle 1998, pages 37-38). Since 2002, as discussed below, measures have begun to be taken to provide the First Nations greater access to forest resources.

## Forest-dependent people

As these case studies illustrate, forests are indeed crucial to the lives of millions of people, many of whom have developed highly diversified livelihood strategies to use their forests in very different ways. It seems important to emphasise that these forest-based ways of life do not just provide people with material goods and services, but also with complex cultural repertoires that give their lives a sense of identity, purpose and meaning, which policy makers ignore to their peril. The wide range of different kinds of forest users that the case studies have picked out can be crudely illustrated in a simplified table (Table 1), which could be adjusted and applied to any locality to accommodate the various social groups that actually make use of specified forests.

**Table 1. A simplified typology of forest users**

| Social groups                     | Main uses of forests       | Secondary uses         |
|-----------------------------------|----------------------------|------------------------|
| Indigenous Peoples                | Bushmeat, farmland, peltry | Gathering, fuelwood    |
| Extractivists                     | Gathering, peltry          | Fuelwood, timber       |
| Long-term forest farmers          | Farmland, fuelwood         | Gathering, bushmeat    |
| Migrant small-holders             | Farmland, fuelwood         |                        |
| Small-scale commercial operators  | Timber                     | NTFPs                  |
| Large-scale land owners           | Farmland, timber           |                        |
| Neighbouring small-holders        | Fuelwood, water catchment  | Gathering              |
| Distant & urban users             | Fuelwood, bushmeat, timber | NTFPs, water catchment |
| Large-scale forestry corporations | Timber                     |                        |

## 4. Legal frameworks

Given the centrality of forests for millions of forest-dependent people, it is important, in the context of a proposed law enforcement approach, to ascertain the extent to which current legal frameworks actually accommodate these ways of life. Are forest-dependent peoples' rights to property, to livelihoods, to a healthy environment and to development adequately recognised in current laws?

Human activities in forests are organised around a plethora of norms and laws. Many indigenous peoples and other long-term forest residents continue to regulate their rights of ownership, use of and access to forests according to customary laws and institutions. Although international human rights laws and related jurisprudence increasingly recognise these rights, the extent to which they are recognised and accommodated in national constitutions, human rights systems and other laws varies greatly. More recent comers to forest areas also have their own customs, cultures and livelihood strategies, which often evolve into locally accepted and applied norms with surprising swiftness and vigour. Superimposed on these customary regimes are national land laws, forestry laws, and laws relating to wildlife and protected areas. State, provincial, district, municipal and other local laws also complicate the picture. In many countries, these laws are not only contradictory, but also present major challenges to forest-dependent groups. To date, forest law enforcement initiatives have tended to enforce forestry laws while taking little account of other forest-related laws, such as land-tenure laws and constitutional provisions, that may better accommodate rural livelihoods. The legal regimes in the countries examined in the case studies differ greatly in the extent to which they provide scope for forest-based rural livelihoods.

### *Indonesia*

In Indonesia, customary rights are recognised in principle in the constitution and through resolutions of the National Assembly. Customary rights to land are also recognised in principle in the Basic Agrarian Law, but subordinated to an unusual degree to state interests. On the ground, however, effective recognition of customary rights is deficient. Because regulations to regularise collective tenures under the Basic Agrarian Law are lacking, there are no generally accepted mechanisms in place to give legal



recognition to customary tenures. For administrative reasons, individual land-titling processes are also deficient. In the 43 years since the Basic Agrarian Law was passed, only 20% of individual smallholdings have been titled and this percentage is actually declining, as new land holdings are being established faster than titles can be issued (World Bank 2000; Lynch and Harwell 2002; Colchester *et al.* 2003). As a result of this combination of factors, the great majority of forest-dependent communities in Indonesia lack formalised rights in lands and forests.

Prior to 1967, access rights to state forests on the outer islands were tolerated within the context of customary rights. However, since 1967, rights of customary ownership in state forests have been denied, and communities' rights of access and use are strictly limited and subordinated to the interests of large-scale concessionaires (Obidzinski and Sembiring 2003, pages 12-15). Forestry and protected area laws, zoning processes and concession allocations have all been imposed from the top down, without consultation. This has contributed to:

- Unclear boundaries between concessions and community areas
- The enclosure of community lands and forests within concessions
- Conflicts over land rights and border delineation
- Denial of customary rights in forests
- Promulgation of government regulations aimed at criminalising and penalising unlicensed forest use, such as shifting cultivation, small-scale timber harvesting and even hunting and the gathering of NTFPs (Obidzinski and Sembiring 2003, page 12; Colchester *et al.* 2003).

Recent legal reforms gave powers to provincial and district authorities to issue small-scale timber cutting permits and also made provisions to grant leases in state forests to communities as 'community forests'. In 2002 and 2003, the central government attempted to restrict and then annul these local powers and reassert central government authority over forests. These issues are now subject to appeal in the courts, meaning there remains some legal uncertainty about the status of these permits and leases (Obidzinski and Sembiring 2003, page 15; Colchester *et al.* 2003; Jarvie *et al.* 2003; Heydir *et al.* 2003).

### **British Columbia, Canada**

In Canada, the constitution recognises the existence of aboriginal rights in land. In much of Canada, these rights have been limited and affirmed through treaties, which have extinguished indigenous peoples' land rights over large parts of their territories, while securing their rights to small reserves.<sup>19</sup> Many treaties have also recognised that indigenous peoples continue to have rights of access to and use of resources in their wider territories, even where they have given up their title. However, in British Columbia

(BC), the situation is somewhat different. Treaty making was only carried out in a small proportion of the province. The land rights of the majority of the indigenous peoples of the province have not been regularised by treaty or negotiated settlements, and indeed the majority of the province's territory is still claimed by indigenous peoples. Negotiations over these areas are ongoing, but progress is slow. In 2000, after protracted negotiations,<sup>20</sup> the Nisga'a settled their land claims accepting ownership title over some 8% of their lands, while surrendering their rights to the rest of their territory (McMillan and Yellowhorn 2004, page 231). By 2004, some 53 Aboriginal groups in BC were involved in settling their land claims with the BC treaty commission (McMillan and Yellowhorn 2004, page 232), but many other Aboriginal peoples have rejected this policy of extinguishment, demanding full recognition of their rights to their ancestral lands (McMillan and Yellowhorn 2004, page 187; Hudson and Ignace 2004, page 352). In the meantime, Supreme Court decisions have affirmed the principle of 'aboriginal title' in unceded lands and agreed that these rights in land must be taken into account by the provincial government (Ministry of Forests 2003). In Canada, land rights negotiations on 'Indian land' are a federal matter and the courts have agreed that these are not matters on which the provinces can legislate (Treseder *et al.* 1998; Stevenson and Peeling 2000; Peeling 2003).

The provinces, however, do have the right to legislate on and administer forests. In apparent contradiction with the unresolved land claims of the indigenous peoples, the Province of British Columbia considers 95% of the province to be 'publicly owned' land, 80% of which has been classified as forest land.<sup>21</sup> In accordance with the Provincial Forest Act, tree-farm licences were issued on these lands as if they were not encumbered with aboriginal title claims. Successive revisions of the forestry laws in the mid-1950s, mid-1960s, and then in 1978, 1994 and 2003 have encouraged the licensing of large corporate operators while discouraging small-scale loggers (Marchak 1983, 1995; Garner 1991; Hammond 1992; Hayter 2000, 2003; Bridge and McManus 2000). Since 2002, in particular, legal reforms have begun to be introduced that provide greater scope for community forestry. Indigenous peoples dispute the validity of these large-scale timber licences, as they have been issued without recognising the indigenous communities' proprietary rights in land and without seeking the consent of the peoples concerned. In response to Supreme Court rulings in favour of indigenous plaintiffs, in 2003, the Government of British Columbia and the British Columbia Ministry of Forests developed consultation procedures to determine if lands may be encumbered with aboriginal claims and if so 'if an infringement is justifiable' (Dacks 2002, page 247; Ministry of Forests 2003). Doubts have been expressed about the effectiveness of these procedures and new measures to remove this duty to consult have raised further concern (Clogg 2003).

The split between Federal and Provincial responsibilities introduces a tension into the search for resolution of land claims.

Whereas the Federal authorities have a constitutionally affirmed fiduciary responsibility to protect indigenous peoples' rights, the Provincial government also seeks to promote the interests of other citizens and secure the livelihoods of non-indigenous forest users. The situation continues to evolve, with laws under revision and court cases increasingly ruling in favour of the state's obligation to uphold aboriginal rights.<sup>22</sup>

### **Nicaragua and Honduras**

In Nicaragua, indigenous peoples' land rights are recognised in the 1987 Constitution, in the Atlantic Coast Region Autonomy Law and in more recent laws. However, implementation of the law is deficient and many indigenous communities remain without secure land rights (Wells *et al.* 2003).<sup>23</sup> Honduras has ratified the International Labour Organization's (ILO) Convention 169 on Indigenous and Tribal Peoples in Independent Countries, which recognises indigenous peoples' rights to their lands and territories (MacKay 2001a, b, c). Indigenous rights are likewise recognised under the constitution. Successful land claims have been secured by some groups such as the Tawahka, but many others still lack title.

Peasant farmers and smallholders in the eastern part of both countries lack secure rights in lands and forests under state control. Tenurial insecurity is especially great on the agricultural frontiers in eastern areas of both countries, where heavy competition over valuable resources has contributed to endemic violence. In Nicaragua, land titling under the Agrarian Reform Act, which was revised in 1986, has sought to regularise farm holdings. However, titling has been slower in the east of the country.<sup>24</sup> Land registration is long and expensive, sometimes up to half the initial land price, and households left without formal documentation as proof of title have sometimes been forced off their land by more powerful interests—especially in violent forest frontier areas. The Nicaraguan Forest Law of 2003, which replaced the 1993 Forest Regulation, defines national forest lands as land without owners. This definition is problematic given that, in 2000, some 75% of land in Nicaragua still lacked clear title. Under the 2003 law, local communities require a permit to exploit natural forests, though it is unclear what this means for subsistence uses. The ability of the poor to meet the transaction costs of securing and complying with permits will now depend on the implementing regulations and procedures under the new law.

In Honduras, the 1992 Law of Agricultural Modernisation returned forest property rights to land owners and municipalities, reversing a 1974 legislation that nationalised all forest resources. The 1992 law also conferred ownership rights to national forest land, which had been under agricultural use for at least 3 years before it was passed in 1992. This, however, has not benefited the poor, while it does appear to have resulted in widespread speculative land clearance by wealthy locals and outsiders, since they had the

economic resources to take advantage of the situation (Suazo *et al.* 1997). The 1996 ‘regulation governing the rights of people on national lands with forest potential’ limits access to national forests to so-called traditional uses, which do not include logging. Local people are theoretically able to participate in timber harvesting under the Social Forestry System. However, this programme lost momentum many years ago, so that it has become increasingly difficult (without outside help from a project or NGO) for people living on national forest lands to secure access and use rights to timber (Wells *et al.* 2003). The World Bank notes that in Honduras, clarifying ‘land tenure is the most critical issue for forests’.<sup>25</sup>

### Cameroon

In Cameroon, the constitution requires that ‘the state shall ensure the protection of minorities and preserve the rights of natives in accordance with the law’ (CIAD 2003, page 2). However, in reality the customary laws that *de facto* regulate access and use of forests are not strongly recognised. The 1974 ordinance that regulates land affairs provides for title to be granted to all land ‘developed’ (*mise en valeur*) prior to 5 August 1974. Because *mise en valeur* is usually interpreted as meaning land clearance for the establishment of permanent crops, securing land titles of areas used by local communities and ‘Pygmies’ for hunting, gathering and even shifting cultivation is very difficult (CIAD 2003). In general, the links between laws on paper and the reality on the ground is tenuous. Most communities in the forested southern part of the country lack land titles (Kai Schmidt-Soltan personal communication).

Under the revised Forest, Wildlife and Fisheries Law, adopted in 1994, all unoccupied (i.e. untitled) lands are held to be state-owned lands (CED *et al.* 2003, page 1, citing Article 6 of the 1994 Forestry Law and Articles 1-6 of the July 1974 Ordinance regulating lands). The law also provides for forests to be zoned. In those areas classified as Permanent Forest Estate (PFE), shifting cultivation is forbidden and local use of forest resources is restricted (Lescuyer 2003, page 13). Areas classed as PFE are those considered free of occupation. Occupied (farmed) areas and roads are separated from PFE by buffer zones designed to provide room for agricultural expansion. In non-permanent forests, areas designated community forests are not formally gazetted and are left to be managed according to traditional rules. Community forests are granted as 25-year leaseholds to legally incorporated communities which develop simplified management plans.

So far, southern Cameroon has been zoned in this way (Lescuyer 2003, page 13).<sup>26</sup> Zoning processes are designed to be participatory. However, due to the way the procedures are interpreted by officials, the short time given for consultations and the lack of accessible information provided, zoning often overrides local land use systems, curtails customary rights and denies compensation to those who lose food crops or access to hunting reserves and forests

(Lescuyer 2003, pages 14-15). Although negotiations do not usually deny all community interests, the areas allocated to communities most often embrace areas far smaller than their actual forest use activities. ‘Pygmies’ are especially affected by this zoning, being given the least opportunity to argue their case even though they make the most extensive use of forests (Lescuyer 2003; CED *et al.* 2003; CIAD 2003). However, a new national programme on forestry and the environment (PSFE), which has yet to be enacted through laws, seeks to secure ‘traditional’ land ownership, with particular emphasis on indigenous peoples (Kai Schmidt-Soltau personal communication).

The forest law also strictly regulates hunting and NTFP gathering by local people, limiting access and use to subsistence (i.e. non-commercial use), protecting listed species, and prohibiting the most commonly used hunting techniques (steel-wire traps and guns). Although provisions are made in the law for establishing community hunting territories and for gaining forest concessions for licensed sport hunting, in practice these have proved hard to secure (Lescuyer 2003, page 17).

### **Bolivia**

Of the countries examined in the case studies, Bolivia has the most progressive legal framework in terms of its accommodation of rural livelihoods in forests. The constitution recognises the multiethnic character of Bolivia and the inalienable collective property rights of indigenous peoples. Bolivia has also ratified ILO Convention 169. The Agrarian Reform Law of 1996 provides for the legal recognition of indigenous territories and the titling of claims by small farmers and rural communities. However, the complicated procedures adopted for surveying and demarcating titles and for resolving conflicting claims (*saneamiento*) have delayed effective implementation of the law (Griffiths 2001, page 42; Boscolo and Vargas Rios 2003, page 3).

The 1996 Forest Law treats all untitled and unclaimed lands as public lands subject to the jurisdiction of the Forestry Superintendency, and also regulates timber extraction on private, communal and indigenous lands.<sup>27</sup> The law extended access rights to previously excluded groups, introduced a more transparent process for awarding new use rights and was designed to prevent overlapping use rights. Under the law, industrial forestry concessions are awarded to private companies by public auction, while local community groups may also gain small-scale concession rights after acquiring legal personality and developing an approved management plan. Annual operating plans are also required (Boscolo and Vargas Rios 2003, pages 4-5).

## Summary

The case studies indicate that in several countries current legal regimes provide inadequate security to the livelihoods of forest-dependent peoples. Despite the existence of legal and constitutional provisions meant to secure rights, other laws (notably conservation, forestry and wildlife laws) contradictorily limit or deny these rights. In practice, because of the way laws tend to be selectively applied, those forest-dependent peoples who can be objectively considered 'poor' enjoy minimal legal security. In all the regions examined, customary systems that regulate ownership, access and use are either largely ignored or are actually denied. In Bolivia and British Columbia, this situation is beginning to change, following effective court appeals, but recognition of First Nations' rights in forests has yet to substantially change forest policy or the Forests Act. In the other countries, in effect, the livelihood repertoires of most forest peoples are technically 'illegal', making them extremely vulnerable to interventions by outsiders, be they forestry officials or those promoting illegal forest use.

## 5. Setting the frameworks

*In every case the laws are made by the ruling party in its own interest; a democracy makes democratic laws, a despot autocratic ones, and so on. By making these laws they define as 'just' for the subjects whatever is for their own interest, and they call anyone who breaks them a 'wrong-doer' and punish him accordingly.*

From Plato's *Republic*<sup>28</sup>

Forest-related laws tend to provide little security to forest-dependent peoples. The question is: how is it that these people's interests have been marginalized in lawmaking? This section briefly summarises the origins of the contradictory laws outlined in the previous sections.

Legal frameworks are the result of a complex interplay of interests and processes. At least in democratic situations, laws are meant to reflect the will of the governed as expressed through their representatives in national and local legislatures. Laws are usually first crafted by technical experts and government officials before being submitted to legislatures for debate and approval. They are often then implemented in accordance with decrees and regulations that are decided on by executive power. All these decisions are subject to the influence of various interest groups in more or less transparent ways depending on their inclinations, administrative practice and political cultures. International forces may also play a significant role in the determination of national laws, through the influence of aid, trade, investment agencies, and the international obligations of countries that are party to treaties. Insofar as democratic processes are distorted by the undue influence of the wealthy and the powerful, laws tend to favour the interests of the rich over those of the poor.

Summarising the political history of the crafting of forest-related laws is no easy task, since laws have emerged over long periods of time and different elements in the law have resulted from the interplay of very different forces. In all the countries studied, forestry laws have been revised within the past 12 years (Cameroon 1994, British Columbia 1995, 2003, Bolivia 1996, Indonesia 1999, Nicaragua 2003 and Honduras 1992); yet, as noted, they give very variable scope for the recognition and legalisation of forest-based rural livelihoods.

## Indonesia

In Indonesia, the Basic Agrarian Law of 1960 was passed at the height of the ‘Cold War’, when Indonesia was assertively non-aligned and had just re-centralised political powers after an unsuccessful and subverted attempt to govern through devolved powers (Kahin and Kahin 1995). The legislature was relatively insulated from both popular pressure and capitalist influences through the policy of ‘Guided Democracy’ and government opposition to ‘*nekolim*’ (neo-colonialism) (Robinson 1986; Legge 2003). Agrarian policy was thus defined through a nationalistic assertion of the value of *adat* (customary law) subordinated to an ideology of socialist reconstruction determined by state-directed development projects framed by economic multi-year ‘Plans’. Tenures in Indonesia were prone to state intervention and ill adapted to provide land security to either farmers or businesses in a free market context (Hooker 1978; Wright 1999; Lev 2000). The regulations required to implement the protections afforded to collective tenures were never drafted, in part because political changes soon gave a new direction to state development policies.

By contrast, the Basic Forestry Law of 1967 was drafted at a time when political space was even more restricted following Suharto’s assumption of power and the purge of all elements with alleged association with the Indonesian Communist Party. This context made popular assertions of the rights of forest-dependent groups unthinkable at this time of highly authoritarian rule (Crouch 1978; Elson 2001; Legge 2003).<sup>29</sup> The ‘New Order’ government passed a series of laws to encourage foreign investment in strategic industries, including logging and mining. The forestry law was thus drafted with the primary intention of providing an attractive investment climate for large-scale forestry operations. Community rights were subordinated to industry interests (Elson 2001).

A process of revising the Basic Forestry Law commenced in 1989, but made little headway. However, the economic crisis and the fall of Suharto, in 1998, created a new political context and, under heavy pressure from international financial institutions and with the partial engagement of civil society groups, a revised law was rapidly crafted and approved in 1999. However, despite efforts to introduce measures for the recognition of customary rights and for community forestry into drafts of the bill, civil society groups were outmanoeuvred by a shadow, parallel drafting process within the ministry. The final law made only weak provisions for securing livelihoods in forests, while still favouring the interests of large-scale corporations. However, the new act does provide for greater transparency and accountability in the allocation and management of concessions (Silva *et al.* 2002, pages 78-82; Chip Fay personal communication).

During the Post-Suharto period, the politically vulnerable central government was obliged to make concessions to widespread popular resentment of the undue powers of the executive. Social movements emerged, pressing for social justice and the recognition of custom.



This led to constitutional changes and new laws recognising human rights and customary rights, although these are yet to be given effect on the ground. A process of decentralisation was initiated by which a measure of authority over lands and natural resources was devolved to the 360 districts, each with its own administration and legislature. Efforts to set in train a reform of the Basic Agrarian Law and Basic Forestry Law reached its height in 2001, with the adoption of National Assembly Decree No. 9 concerning Agrarian Reform and Natural Resource Management by the National Assembly, which sought to resolve land and resource conflicts by recognising peasant and customary land rights through a new overarching law. Since then, the central government has reconsolidated its power base, reasserted the authority of the Jakarta-based executive over natural resources and largely ignored the decree of the National Assembly (Colchester *et al.* 2003, pages 246-262).

### **Bolivia**

In Bolivia, social movements for agrarian reform and the recognition of indigenous rights also emerged strongly with the ending of military rule in 1982. During the 1980s, assisted by international development agencies and voluntary organisations, a strong national indigenous rights movement came to the fore, which mobilised large numbers of people from disenfranchised communities to demand their rights through public demonstrations and marches. The sustained pressure for reform led the government to pass a Supreme Decree, in 1990, offering land titles to indigenous peoples and significantly influenced the reformed Constitution of 1994. The Popular Participation and Democratisation Law of 1994 and the Agrarian Law of 1996 were further expressions of this effective insistence by the governed for recognition of their rights (Boscolo and Vargas Rias 2003, pages 26-27).

The Forestry Law, on the other hand, sprang from a coalition of legislators, international development agencies (notably FAO) and state institutions, supported by some environmental organisations. Early drafts thus reflected technocratic planning, but were modified when other interest groups got involved. The private sector, in particular, lobbied for private property rights in forests, while social justice and indigenous groups demanded indigenous rights over their ancestral lands. By recruiting the opposing will of local governments, the central government was at first able to limit the private sector's influence while agreeing to share decision-making power over forests with locally elected governments. However, once the bill was debated in parliament, the industry lobby was able to strengthen its hand, leading to further opposition by other interest groups. The final law, eventually adopted in 1996, offers something for everyone—40-year concessions that can be bought and sold in the market suited the private sector; the requirements for forest management planning and a politically independent enforcement agency suited the environmental and foresters lobby; while

exclusive rights for indigenous peoples to log in their territories and only pay tax on harvests and not on standing volume suited the indigenous rights lobby (Silva *et al.* 2002, pages 68-72). The law was acceptable to large-scale loggers because it 'introduced biases in favour of technologically advanced and innovative companies and against inefficient and technologically backward operators' (FAO 2001, page 98).

### **British Columbia, Canada**

Recognition of indigenous rights in Canada can be dated back to 1763 with the Royal Proclamation of King George III of Great Britain. The Proclamation was issued to secure the loyalty of 'our Indian nations and allies' by reassuring them that their land rights would be respected in areas ceded by the French (the St Laurence settlements, the Great Lakes, the Mississippi valley and all lands west of the Allegheny Mountains) (Jennings 1988; White 1991; Nichols 1998; Anderson 2000). This followed the colonial war to expel the French colonial power from Canada, in which Britain's Indian allies had played a crucial role.<sup>30</sup> Canada undertook to secure Indian rights when the constitution was 'repatriated' in 1982.<sup>31</sup> The resolution of Indian land claims remains a federal responsibility based on this historic, constitutional guarantee.

The evolution of Forestry Law in British Columbia is a central concern for the provincial legislature and government. In British Columbia, notwithstanding unresolved indigenous land claims, the majority of the province is, as noted, classified as Crown Land and as 'forest' (Pendleton 1996, page 43). The timber industry has always played a central role in the provincial economy, and produces about 50% of Canada's annual US\$ 6.5 billion timber exports to the USA in 2002 (*The Economist*, 1 February 2003). The 1947 forestry law formalised the concession system, granting long-term harvesting rights to those companies which promised to maintain certain levels of employment and which could install processing capacity. The trend was reinforced by the 1978 Forest Practices Act, which further enlarged licences. As Pendleton (1996, pages 44-45) notes: 'The system quickly concentrated harvest rights in vast tracts of land to a very few of the largest logging companies.' Rates of unemployment and poverty in non-indigenous forest-dependent communities rose (Markey and Roseland 1999; Ostry 1999; Hayter 2000; Larsen 2004). Later phases of modernisation reinforced this trend with single-industry towns forced to make cut backs due to downsizing (Markey and Roseland 1999; M'Gonigle *et al.* 2001; Barnes *et al.* 2001; Parkins *et al.* 2003; Larsen 2004). The reorganisation of the industry itself also led to substantial lay-offs, with the loss of 27 000 jobs between 1981 and 1991 (Dempsey 2005). By 2000, two companies controlled 25% of the annual cut, and 17 companies controlled 70% (SLDF 1998; Marchak *et al.* 1999, page 2).<sup>32</sup> A number of those who have studied this process have argued that one result was the development of unhealthily close connections between

politicians and forestry companies. Some allege that this led to bribery and corruption but, more evidently, there was a weakening of government control of harvesting (Mahood and Drushka 1990; Garner 1991; Pendleton 1996; Marchak *et al.* 1999; Hammond 1992), resulting from industry enjoying a 'policy monopoly' (Kemieniecki 2000, page 12), thus illustrating the 'capture theory' of regulation, whereby an agency is controlled by the industry it is designed to regulate (Marchak 1995, pages 85-116). Reviewing the available literature (and citing Marchak 1983; Hayter 2000, 2003; Bridge and McManus 2000), Dempsey (2005) concludes that:

*the legal regime surrounding BC forests, in particular the Forest Act, has privileged corporate access to BC's forests—in many ways, the forest industry is synonymous with large corporations... This corporate concentration and control has undermined the ability of others (communities, small enterprise, First Nations) to gain access to tenure, and the ability to practise non-industrial types of forestry on smaller scales.*

Since 2001, the BC government has embarked on a revision of its forest policy, leading to the Forest and Range Practices Act (2002) (Ministry of Forests 2004). According to the David Suzuki Foundation (Marchak and Allen 2003, page 4), this has involved 'dismantling of the Crown environmental regulatory system; intensification of industrial influence on legislation; and a claw-back of 20% of the annual allowable cut under tenure to large companies with compensation.'<sup>33</sup> Responding to pressure from the courts and from popular demands, the provincial government also passed a legal amendment, the Forest (First Nations Development) Amendment Act 2002, which offers First Nations small-scale cutting rights. These opportunities have been enthusiastically taken up by a small number of First Nations. Other First Nations, however, criticised the way the Act was unilaterally crafted by government with conditions that include a requirement that they suspend claims and uses based on Aboriginal rights. Marchak and Allen (2003, pages 25, 29, 31) observe that these arrangements may compromise treaty negotiations and result in First Nations securing cutting rights that overlap the land claims of other First Nations. Lack of clarity about how awards will be made or will relate to treaty settlements 'could lead to complications in areas where land claims overlap and have not been resolved' (Marchak and Allen 2003, page 31). In 2003, the forest laws were further amended in response to Supreme Court rulings and pressure from international trade disputes (see below).

## Cameroon

Like most countries with a colonial past, in Cameroon, land tenure laws are a complex and quite political issue. In 1896, the German colonial administration for Cameroon declared, in a Royal Land Ordinance (*Kronlandverordnung*), that all 'abandoned land', which

was not demarcated as private property (plantations, concessions, etc.) was to be considered state property. In the aftermath of the First World War, Cameroon became a protectorate of the League of Nations and later the UN, but was ruled by France in the east and Britain in the west. While the French administration preserved the centralised mode of land tenure laws, the British decentralised the administration and reasserted customary land tenure systems. Following independence and reunification, Cameroon had, for quite a while, a dual system (centralised laws with customary elements) to guarantee that the citizens were able to utilise all undemarcated lands. In 1974, the Cameroonian Government ended this dualistic system and reasserted central authority over land, declaring all land that had not been officially demarcated as private land to be state property (United Republic of Cameroon 1974). Since private land is taxed, hardly anybody outside towns has applied for private land demarcation, especially in remote areas.

In the past, these laws, which are now perceived by experts as a violation of common property laws (Fisiy 1992, 1996), did not have much impact, since they were hardly ever enforced. Commonly, development projects (roads, reservoirs, town planning, rural development, etc.) compensated people who utilised state-owned land without legal title but in accordance with customary land tenures, when the land was needed for other purposes. However, more recently, a number of donors have refused to finance these payments, perceiving them to be unnecessary expenses, since the land belongs officially to the government.

The centralised land tenure system may not reflect the interests of the Cameroonian citizens. The low level of resistance to or protest against these laws results from the fact that the content of laws remains unknown to most people (especially rural and indigenous peoples) and the highly centralised administration in Cameroon is resistant to changes which could undermine its inherited authority.<sup>34</sup>

The forestry laws overlie this centralised conception of land ownership. Since the 1990s, a new legal and regulatory framework has been introduced to improve forest resource use, with the dual objective of promoting economic development and promoting sustainable forest management (Lescuyer 2003, page 5). At the time the new law was enacted, the timber industry, dominated by French transnational logging companies, was generating US\$ 321 million per year—20% of the country's exports. Revision of the previous (1981) forestry law commenced with the FAO's Tropical Forestry Action Plan in 1988, but the main driver from 1989 was the World Bank, which made a revision of the law a condition for a forestry sector loan. Crafted mainly to respond to technocrats and foreign consultants, consultations over the early drafts were limited to government agencies, foreign logging companies and the international conservation NGO, WWF (Silva *et al.* 2002, pages 72-73).

Only with the passing of the draft bill to the legislature in 1993 did national companies and civil society groups get involved in the negotiations over the text. Civil society groups pressed for recognition of community rights in forests, and the local media and national enterprises denounced the way the law appeared to favour large-scale highly capitalised foreign loggers by allowing for massive concessions. They also objected to the export of raw logs, as this might deprive local entrepreneurs and the labour force of investment opportunities and jobs. Faced with this opposition, the President pushed the law through, but because he had a weak majority in parliament and yet needed continued World Bank support for the flagging economy, he introduced compromises to satisfy the various constituencies. The version of the law that finally emerged, as the 1994 Forest, Wildlife and Fisheries Law, reduced concession sizes from a proposed ceiling of 500 000 ha to 200 000 ha. It provided for a temporary ban on log exports over a 5-year transition period and it reduced concession periods from 40 years to 15 years (Silva *et al.* 2002, pages 73-74).<sup>35</sup> Although property rights were denied in state forests, some provisions were introduced to zone forests through a consultative process and permit community forestry (Silva *et al.* 2002, pages 73-74).

## Nicaragua

Forestry law in Nicaragua is dispersed across numerous statutes and executive decrees.<sup>36</sup> These laws reflect three distinct phases in the development of Nicaragua's forest sector. Before the 1980s, the government treated forests as an extractive resource, to be exploited in order to make way for agriculture and cattle. This approach favoured the interests of the large foreign companies (which dominated the forest sector at that time) operating concessions under minimum state regulation.

The revolutionary Sandinista government, which came to power in 1979, nationalised forests and created state-owned forest enterprises. The government also initiated a national programme of agrarian reform in favour of smallholder agriculture and, after a false start which antagonised the indigenous peoples of the Atlantic coast, adopted a policy of recognising indigenous rights. Forest-related laws were modified through at least 12 legal decrees, which led to the annulment of all prior concessions and the establishment of the Institute for Natural Resources and the Environment (IRENA), responsible for policy setting and regulation in the sector.

The change in government in 1990 resulted in the (re-)privatisation of state-owned properties. The new government re-opened mining, forestry and fishery concessions to national and international private entities, in a drive towards market liberalisation. This led to the appearance of old and new actors on the forest scene. Some companies were returned to their former owners, while others were privatised and handed over to the workers. Extensive areas of forest were also transferred to ex-Contras and the military as

part of the peace process. A new forest regulation, established by Executive Decree in 1993, was designed to rationalise existing laws and required private sector operators and forest owners to manage forests according to supervised forest management plans.

In 1996, an alliance of private sector and civil society actors tabled a proposal for a consolidated Forest Development and Promotion Law. However, discussions were postponed almost indefinitely by the National Assembly, given conflicts with laws on taxation, continuing lack of tenurial clarity (including failure to demarcate indigenous territories), as well as failure to fully implement Law 28 on Regional Autonomy of the Atlantic Regions.<sup>37</sup>

In January 2002, a new Legislative Power and National Assembly took office following the general election of November 2001. The Assembly's new Environment Commission committed itself to approving the forest law in 2002. Consultations during the first half of 2002 were held to iron out the controversial elements in the draft law, and involved environmental organisations, forest owners, the Forest Chamber, the National Council for Sustainable Development and staff of a variety of forestry projects.

The Law for the Conservation, Growth and Sustainable Development of the Forest Sector was finally approved in mid-2003 (Guillen 2002: Filippo del Gatto personal communication). The new law recognises the common property rights of indigenous peoples.<sup>38</sup> It also requires municipalities to participate in decisions to approve exploitation permits and the approval of the councils of the autonomous regions before granting permits in areas subject to indigenous rights. In these instances, indigenous people are entitled to 25% of fees.<sup>39</sup>

### **Honduras**

The evolution of forest legislation in Honduras closely reflects changes in social forces active at the national and international levels (Utting 1993, pages 139-141). The repressive military government of the early 1970s spurred the emergence of mass organisations, supported by the Catholic Church, student movements and left-wing political groups both inside and outside the country. In 1972, a reformist group of young officials assumed power through a military coup and introduced programmes of agrarian and forestry reform designed to accommodate popular demands. Accordingly, the 1974 forest legislation placed all forests (even on privately owned land) under state control, nationalised the timber export trade and established the Social Forestry System.

However, in the second half of the 1970s, the political complexion of the country changed dramatically. A powerful anti-reform movement, led by large timber companies and their national association, started to saturate the media with criticism of 'communist' policies and called for privatisation, especially of the lucrative export trade. While reformist groups continued to lose popular support, partly as a result of corruption scandals, the

pressure of the private timber sector was reinforced by the Reagan Administration in the USA, which in 1981 formally announced a series of policy guidelines which it expected the Honduran Government to follow.

In 1982, the new democratically elected government replaced the agrarian reform programme with a more limited land titling scheme and began the process of re-privatisation of timber companies which had been nationalised. In 1986, the lucrative export trade was re-privatised and a system of ‘tributary areas’ was established that effectively subdivided the country’s forest land among the different lumber companies. From the end of the 1980s, this privatisation trend was reinforced by the economic adjustment policies promoted by the World Bank and IMF. In 1992, the Agricultural Modernisation Law, which definitively returned all private and municipal forests to their prior owners, introduced an auction system (eliminating ‘tributary areas’), and transformed the public forest authority into a normative and administrative body.

Since 1995, there has been a notable increase in the participation and influence of a wide range of civil society groups, such as community-based associations, indigenous peoples’ organisations, NGOs and municipalities. Amongst them, particularly active have been the AFH (Agenda Forestal Hondureña), a joint private-public effort for planning and consultation on forest-related issues, and even more so the MAO (Movimiento Ambientalista de Olancho), a grassroots environmental protest movement, organised by a coalition of religious leaders, community members, environmental activists and others concerned with illegal logging and forest degradation in the Department of Olancho, the country’s main timber production area.

## Summary

This brief examination of the history of forest-related lawmaking shows how often these laws have been crafted by interest groups with little apparent commitment to the welfare of forest-dependent communities or based on the assumption that efficient industrial logging will bring social benefits in its wake. Favourable laws recognising indigenous peoples’ and local communities’ rights to land and forests have only come about where there has been strong social mobilisation or where communities have pressed for recognition of their rights in the courts, and governments have been obliged to accommodate some of their demands. Where such social mobilisation has been lacking, or made impossible by repressive state measures, rights are most often denied or only weakly recognised. On the other hand, forestry laws have typically been heavily influenced by the timber industry lobby, which has pushed for secure, long-term forest tenures. In developing countries, international agencies have tended to push for laws that favour large-scale, highly capitalised forest industries, giving priority to sustainable forest management and the generation of state

revenues, with much less emphasis on benefits for rural livelihoods. Community forestry has not been given as much priority in forest policy making, but pressure from civil society has been crucial to the few gains that have been made.



## 6. The political economy of illegal forest use

*It is generally accepted that solving the problem of illegal logging will take more than just strengthening enforcement capacity and trade restrictions. The problem does not exist in a vacuum, but is inextricably tied to other economic, social and political problems.*

American Forest and Paper Association<sup>40</sup>

A key finding of this review is that, where illegal forestry operations are prevalent, this is not so much an accidental outcome of poor governance and ill-regulated international trade in forest products, as an integral element in the political economy of these countries (cf. Smith *et al.* 2003). This implies that tackling forest-related crimes and other offences does not so much require a ‘crackdown’ on illegal activities as a comprehensive overhaul of the institutional and legal frameworks which regulate access to and use of forest resources.

### **Indonesia**

In Indonesia, small-scale logging operations have been structured around power networks based on patronage since the earliest records, and over time have become an ingrained element in the country’s economic and political life. As the timber trade has expanded and pressure on forests intensified, the extent and penetration of these networks has also increased, even though their relative importance may have decreased with the expansion of large-scale operations. The imposition of forestry laws in colonial Java in the 1860s, on the ‘outer islands’ in the 1930s and in independent Indonesia in the 1970s, made such operations ‘illegal’, but could not curtail them, as key elements in the local hierarchies depended on them for personal income and revenues. Already by the 1930s, ‘illegal’ networks had emerged, at the top of which were timber firms and large-scale traders that secured profit-sharing agreements with the sultans. Chinese and Malay middlemen implemented the logging contracts by hiring local community and migrant loggers to cut agreed quantities of timber in the forest in exchange for advances in cash or kind (Obidzinski and Sembiring 2003, pages 4-6).

Following Indonesia’s independence in 1945, these networks intensified their operations and widened to include local government

officials and members of the security apparatus. The scale of these ‘illegal’ and quasi-legal operations also increased dramatically. During the 1950s and early 1960s, timber sales became an important means for political parties to amass funds and attract new members, including members of local government (Obidzinski and Sembiring 2003, pages 6-7). In the late 1960s and 1970s, the ‘New Order’ government under President Suharto perfected a system of governance based on patronage financed with illegal revenues, of which the timber sales were an important part (Elson 2001). Simultaneous cutbacks in the centralised funding of the security forces’ budgets and increasingly close ties between the military and the ruling party meant that timber operations became important to the revenue stream of the armed forces and thus vital to the maintenance of the political status quo. These ‘illegal’ arrangements were later given a greater appearance of legality with the passing of the 1967 Basic Forestry Law, which facilitated the handing out of large, capital-intensive logging concessions—often to top military leaders and Indonesian Chinese loggers—while eliminating the small-scale operations that had characterised the earlier phases of the industry and leading to the exclusion of local communities from forests (Obidzinski and Sembiring 2003, pages 7-8). Within this regime, illegal logging proliferated as the politically protected concessionaires had little incentive to follow regulations, and the close ties between the forestry ministry and the concessionaires meant that forestry officials had little incentive to enforce them.

During the ‘reform’ period since the fall of Suharto in 1998, the central government has sought to widen its political support by granting greater autonomy to the regions. As part of these reforms, the government initiated a policy of decentralising authority over forests to the provincial and district levels, permitting them to issue 10 000 ha and 100 ha concessions, respectively, thereby reinvigorating the political pattern of logging that the large-scale concession system had partly eclipsed from the 1970s to the 1990s. Small-scale concessions have proliferated as the newly empowered local government leaders have sought both to secure revenue for the administration and to position themselves personally at the centre of lucrative patronage networks. These small-scale concessions, however, are also rife with illegalities in the form of procurement of licences, under-reporting of production, manipulation of annual work plans, tax evasion, bribery and smuggling (Obidzinski and Sembiring 2003, pages 10-11).

### Cameroon

A somewhat similar pattern of ‘clientelism’ and patrimonial politics is ascribed to Cameroon, which has been classed by Transparency International as the most corrupt country in the world (Forests Monitor 2001, page 13).<sup>41</sup> Successive studies have revealed the very close links that exist between senior politicians, members of

the armed forces and forestry concessionaires that are known to be operating illegally (Forests Monitor 2001, page 13). After the World Bank-inspired reforms of the mid-1990s, which sought to secure more adequate revenue for the state from timber and to dismantle patrimonial timber politics and so required concessions to be auctioned to the highest bidder, concessions continue to be handed out in politically motivated ways contrary to these new procedures (World Bank 1998, cited in Forests Monitor 2001, page 14). Recent reports suggest the process is beginning to improve, but slowly (Global Witness 2003a).

### **Bolivia**

Most observers agree that the majority of illegal logging in Bolivia takes the form of harvesting in unauthorised areas, although compared to many other countries the scale of illegal activities is relatively small. These may be areas belonging to indigenous peoples, other private owners, public forest both under and without concessions, protected areas and forestlands being cleared for agriculture. A large proportion of the timber is then 'legalised' after harvesting, so that the timber can be transported and marketed. Certificates allegedly showing that the timber has been legally sourced are often taken out for other properties or concessions or are produced by fraudulent means (Boscolo and Vargas Rios 2003, page 22).

### **Nicaragua and Honduras**

In Nicaragua and Honduras, almost all timber is produced by clandestine or by fraudulently legalised means and is then sold to both local and overseas markets in the USA and the Caribbean. Illegally produced timbers also comprise a significant proportion of the regional trade. As in Indonesia, the illegal trade is deeply enmeshed in the local political economy in both Honduras and Nicaragua, and involves a wide range of state actors, including forest owners, forest squatters, migrants, community leaders, forest professionals, timber truckers, timber industrialists and public officials. Arrangements between these actors enable access to forest resources; provision of up-front capital and equipment; and transportation, processing and marketing, as well as accompanying formal and informal transactions to 'legalise' production and circumvent the legal and fiscal system. Timber traders and other intermediaries are instrumental in advancing funds and equipment to local communities, forest owners, local timber producer associations and individual sawyers (Wells *et al.* 2003, page 6).

The endemic corruption in both countries, as judged by agencies such as the World Bank Institute (2001) and Transparency International (2002), creates a ready environment for illegal logging. Forestry-related corruption occurs at both political and bureaucratic levels, whereby payments are made to speed up

regulatory and bureaucratic processes and to encourage officials to step outside their mandate, such as ignoring illegal acts (Wells *et al.* 2003, page 11). Logging companies and timber merchants nurture public-sector vested interests in order to gain disproportionate influence in decision-making processes, cut through red tape, and distort environmental monitoring procedures, through a combination of credit, bribes and intimidation. Forestry officials and field technicians become party to elaborate informal arrangements with traders and community leaders in order to fraudulently legalise production. This has knock-on effects on public institutions, regulations and values, including police force standards and public respect for the law (Wells *et al.* 2003, page 11).

Illegal logging in Nicaragua and especially Honduras also flourishes within the context of other criminal activities. Recent years have seen a significant increase in drug trafficking, principally of cocaine, through the region (Umanzor 2002; DEA 2000, 2001). In remote rural areas, a combination of timber, drugs, unemployed youth and arms has contributed to the serious weakening of civil governance. For example, the Sico-Paulaya valley in Honduras is part of a drug trafficking route and has become a refuge for people involved in criminal activities in urban centres (kidnappings, armed assaults, car robberies, etc.). This has generated significant sums of ready cash which can be conveniently invested in cutting and selling mahogany. One raid on an unregistered sawmill uncovered illegal timber, hijacked lorries, stolen goods and firearms, indicating links between illegal logging and organised crime. The gang leader proved to be a timber merchant (Wells *et al.* 2003, page 13).

### **British Columbia, Canada**

A recent global review of illegal logging has noted that there is no overall estimate of illegal logging or corruption in the forest sector in Canada. As noted below, a number of reports exist, however, that indicate at least some degree of timber theft, irregular scaling and reporting practices by forestry companies, as well as problems of non-compliance with existing regulations in terms of both logging and processing standards (Smith 2004).

In Canada, the unresolved legal dispute between indigenous peoples, whose rights in land are meant to be protected by the constitution, and logging corporations that gain access to the forests on the same lands under provincial forestry laws, highlights the difficulties enforcers face deciding what is 'illegal logging'. Aside from this issue (discussed below), forest-related crime in British Columbia is less central to the political economy, which (as noted above) has tailored laws to suit large-scale forestry operations. The most common violations reported by environmentalists and civil society surveys concern breaches of forest-related legislation, notably damage to streams due to clear-cutting right up to stream banks in contravention of the Federal Fisheries Act and due to road failures (Pendleton 1996; SLDF 1997; Forest Practises Board 2001;

Tripp *et al.* 1992; Anon. 2000).<sup>42</sup> However, more serious violations are also reported. According to the Sierra Legal Defence Fund (2001a, 2002), the police Forest Crimes Unit published estimates of total annual losses due to illegal logging of between C\$ 300 million and C\$ 1 billion per year between 1990 and 1995. These figures were contested by the Royal Canadian Mounted Police, which did however report in 1998 that at least C\$ 130 million was lost annually through timber theft in the Province (Smith 2004). These losses are mainly incurred through such practices as the routine evasion of stumpage fees and illegal cutting outside allotted areas (SLDF 2001a, 2002; Parfitt and Garner 2004), but illegal logging by organised gangs of tree rustlers using high-tech equipment (such as helicopters, propane lanterns for night operations and chainsaws fitted with mufflers) have also been reported in the local press, creating a market for black-market timber estimated by the provincial government in 2000 to be worth C\$ 100 million per year.<sup>43</sup>

## Summary

In developing countries, illegal forest use—such as illegal logging and bushmeat trading—is not just an outcome of poor governance and corruption, but is an integral part of local and national political economies. Patrimonial political systems thrive on the money and influence derived from both ‘legal’ and ‘illegal’ forest use. Profits from illegal forest use are woven into the fabric of society and keep existing political parties and processes in operation. Indeed distinguishing between ‘legal’ and ‘illegal’ production is problematic, especially if the extent to which laws are designed to protect the interests of local communities are taken into account. Illegally extracted timbers are commonly ‘laundered’ through a variety of means and thus given the appearance of legality as they reach the market. Elaborate and deeply entrenched patronage systems that facilitate such forest use are often closely linked to political networks that control and protect these lucrative activities.

## 7. Livelihoods, law and illegality

*In some countries, existing forest laws exclude local people from access to forest resources, forcing them to operate illegally to meet their basic livelihood needs.*

European Commission (2004, page 2)

As noted in section 4, the rights of most forest-dependent communities are either denied or only weakly recognised in the law. On the other hand, laws often favour the activities of large-scale forestry corporations, which are granted concessions to extract forest produce from the same forests on which the communities depend. This places communities in an awkward situation—at odds with both the laws of the state and with the private sector. To maintain their livelihoods, they are often obliged to operate in ways that are either technically illegal or, at least, legally ambiguous. Inevitably, this not only has an impact on communities' welfare, but also increases their vulnerability to being ensnared in the pervasive illegality common in forests, as described in the previous section. How do local communities cope with this situation?

### **Indonesia**

As already noted, the great majority of the activities of forest-dependent communities in Indonesia are technically illegal in terms of forestry laws, wildlife laws and protected area laws. And although land tenure laws notionally recognise customary rights in land, which are regarded as usufructuary rights, these rights are not given effective recognition. Indeed, according to existing forestry laws, the very presence of communities in the forest is often deemed illegal. Rural communities in Indonesia thus live with perpetual insecurity and are obliged to accept that livelihoods have to be pursued by quasi-illegal means (Obidzinski and Sembiring 2003, page 11).

At the same time, forestry laws in Indonesia have been applied to favour the interests of large-scale forestry operations. This has led to serious problems for the communities who also make use of and often claim rights in these same forests. Studies of community development in concession areas note that logging has polluted water supplies and reduced the land base of communities, leaving them insufficient land for subsistence. A study in South Kalimantan

revealed high levels of malnutrition among communities in concession areas. Benefit-sharing schemes, although obligated by law, have been top down, poorly implemented and involve inadequate participation (Colchester *et al.* 2003; Sellato 2001, pages 120-121; Anyonge and Nugroho 1996). An experimental DFID project aimed at reducing conflicts and meeting the needs of the poor in concessions failed because it worked through existing power structures and institutions without genuine community engagement. According to the final report of the programme (DFID 1999), because the present mechanisms of decision making about forests favour business interests at the expense of forest dwellers, experiments in benefit sharing were ineffective because they were not accompanied by tenure reforms or changes in power sharing. Surveys showed that communities targeted for benefit sharing by the project were no better off than those not so targeted. Most benefits were siphoned off by more powerful players.

Despite the laws favouring large-scale operations introduced by the Dutch and reaffirmed in the 1960s and 1970s through the Basic Forestry Law and its implementing regulations, 'traditional' small-scale manual logging operations have remained common in many parts of Indonesia. Communities often agree to such operations on their customary lands as they can benefit from them in three ways: first, because they are paid a small fee for each cubic metre of timber extracted; second, because they can gain employment in illegal logging camps; and third, because additional jobs are also created in the unlicensed mills that process the timbers. Jobs in the mills and camps fit relatively well with the mixed economy of rural communities, as the operators accept a high turnover of labourers who work seasonally, for periods of two to three months, when they can afford to be away from farms and homes (Obidzinski and Sembiring 2003, pages 15-18).

Since new laws were introduced authorising local government officials to grant small-scale forest-cutting permits, forest communities in Indonesia have also been willing—in the context of their chronic tenurial security—to allow such licensed small-scale logging on their lands, both as a means of gaining some income and of implicitly asserting rights over forests. Unlike the 'traditional' manual illegal logging operations, most of the harvesting in these new permits is mechanised. Even though the new logging licences imply lower tax payments, simplified bureaucratic procedures and smaller investments than required of the large-scale concessions, most communities lack the financial means, political connections, experience, market linkages and machinery required to apply for and carry out such small-scale operations themselves. Consequently, most of these permits are applied for by local entrepreneurs, often with connections to foreign (notably Malaysian) companies, after they have made profit-sharing agreements with members of local communities. Successive studies show that these small-scale logging operations, while ostensibly permitted, are rife with irregularities (Obidzinski and Sembiring 2003, page 11; cf. Colchester *et al.* 2003,

pages 214-216). This is encouraged by local officials, as it allows institutions and individuals at various levels of the bureaucracy, political establishment and security forces to ensure that they remain the main beneficiaries of logging. The revenue gained directly by local government is quite small, however (Obidzinski and Sembiring 2003, pages 16, 19-22). Moreover, although the payment per unit volume made to the communities by the entrepreneurs managing these small-scale licences is about two-thirds of that paid by illegal manual operators, the much greater volumes and pace of cutting achieved in these mechanised operations makes them attractive (Obidzinski and Sembiring 2003, page 11). Overall, though, the communities gain far less from these operations than other players and the costs borne by them in terms of social divisions and disputes and damage to resources important to forest-based livelihoods should not be underestimated (Colchester *et al.* 2003, pages 214-216).

Since the 1970s, Indonesia has experimented with social forestry and community forestry tenures for poor farmers, mainly in degraded forest areas (Poffenberger 2000; Campbell 2001). A recent review carried out by the World Agroforestry Centre found that while these tenures have improved farmers' incomes and environmental management, the burdens on communities in terms of developing management plans and complying with bureaucratic procedures are too complex for many to achieve without external assistance. By 2005, only some 0.2% of the national forest estate was under community tenure (Suyanto 2005; Colchester *et al.* 2005).

### **Nicaragua and Honduras**

Similar constraints operate in Nicaragua and Honduras to push local communities into the illegal timber trade. Some communities can gain rights in forests through the national or local forest authorities. However, these permits are often used as means to 'legalise' otherwise clandestine operations. Two sets of pressures draw communities into these illegal webs. In the first place, securing such permits itself requires the assistance of well-connected intermediaries, with the result that communities only gain a role in forest management through collusion with outsiders who offer help in order to gain access to resources and 'legalise' production (Wells *et al.* 2003, page 6).

Secondly, a variety of other legal and institutional constraints also leave local community organisations highly vulnerable to capture by illegal timber traders. These include: annually permitted cut volumes being set lower for community operations than for commercial ventures, making legal logging unprofitable by comparison; and unrealisable demands on communities to develop management plans and follow reporting systems that are too technical, costly, legally ambiguous and bureaucratically tortuous for communities to comply with. Even those communities that do



comply with these requirements with NGO assistance then find that the transaction costs incurred are so high that their products are uncompetitive in a market flooded with illegally harvested timbers. Some cooperatives have been driven into bankruptcy by this pressure. In these circumstances, communities either engage directly in illegal operations or allow outside intermediaries to take over the operations on their lands (Wells *et al.* 2003, pages 8-11).

Although it may be argued that some communities get entangled in these illegal networks under duress, this should not be allowed to obscure the fact that involvement in illegal logging does also provide important income generation and employment opportunities for the rural poor even though the remuneration is slight, many jobs quite temporary and payments often long delayed. The studies in Nicaragua show that indigenous communities, local cooperatives and forest owners receive between 5 and 10% of the timber's value, the rest being creamed off by the illegal logging gangs, truckers, traders and export companies. Incomplete data suggests that women and children in poor families gain least from the cash incomes that come from rural communities' involvement in illegal logging (Wells *et al.* 2003, pages 14-15). Such logging is also part of a downward ecological spiral that strips forests of the most valuable species, degrades forest habitats and leaves them vulnerable to clearance. The impacts are most likely felt by the poorest households, which are often the most forest dependent (Wells *et al.* 2003, page 18).<sup>44</sup>

## Cameroon

In Cameroon, it has proven difficult to abolish illegal activities in the forests. Illegal hunting and NTFP gathering persist for three main reasons: a clear but inapplicable legal framework which bans what has become customary (sales of bushmeat, use of shotguns and steel-wire traps); unclear measures for acquiring hunting licences; and the protection of illegal operators and traders through their connections with powerful political and military figures. The impacts on rural communities have been mixed. On the one hand, communities have benefited from the lack of effective enforcement, which has allowed them to continue their technically illegal livelihood strategies; on the other hand, this has also facilitated access to their hunting zones by non-native poachers and reinforced patron-client relations in forests (Lescuyer 2003, page 18; Simon Counsell personal communication).

The current law in Cameroon favours the hand out of large-scale logging concessions on what are considered state-owned lands. Technically, the legislation does require concessionaires to take into account the local populations. Forest management plans are meant to be based on socioeconomic surveys to accommodate local livelihoods, plan the delivery of services to communities and provide conflict-resolution mechanisms. Each concession was also expected to establish a timber-processing facility to generate

employment locally and provide community members with access to wood scraps, a requirement that was later dropped. By 2005, 48 forest management plans have been approved by the government (Paulo Cerutti personal communication), but it was not then clear how these measures will serve communities. On the other hand, the socioeconomic surveys have not been inclusive and are perceived as a constraint on the logger rather than as a means to benefit the local population (Lescuyer 2003, pages 19-20). Concessionaires also pay two taxes designed to promote benefit sharing. The local tax is, however, mostly embezzled by municipal councils and, where paid direct to communities, often appropriated by village elites, leading to community division. The Annual Forestry Fee is paid in three parts, 50% to the national treasury, 40% to the local councils and 10% to villages but also via the local councils. In general, the monies channelled through the councils have not been well spent. Most funds have been appropriated by local elites, but communities are now learning to challenge these processes with the result that councils are increasingly spending the funds on public works such as schools, water supplies, clinics and cultural centres (Lescuyer 2003, pages 21-23). Politically marginal sectors like 'Pygmies' benefit the least from such arrangements (Forests Monitor 2001, page 18; CED *et al.* 2003).

Since 1999, the scope for legal small-scale logging in Cameroon has diminished. Official policy encourages operators to regularise small-scale operations as 'community forests', but as these may no longer be subcontracted out and may only be exploited using light equipment, the option is not favoured by many small-scale loggers. The effect has been to transfer all small-scale mechanised logging into the illegal sector, which is in a phase of rapid expansion owing to a growing domestic market for timber and a national timber-processing capacity that greatly exceeds the production of legal concessions (Lescuyer 2003, page 26).<sup>45</sup> Job opportunities in these small-scale operations are considerable and more often than not the operators also invest a proportion of the profits in village-level projects. As in Indonesia, local officials overlook the illegality of such operations in exchange for regular payments, which may significantly exceed official wages (Lescuyer 2003, pages 27-28).

Community forestry is presented by the government as the main legal tool to alleviate poverty in Cameroon. However, widespread adoption of community forests has been hampered by: its limitation to degraded forest areas; the legally complex system for registering community organisations; difficulties in developing the required simplified management plans; and the relatively high costs involved. Most community forests have thus been established either with the assistance of NGOs or with the support of local loggers. Although several hundred community forests have now been registered and as many more applied for, there are doubts about the extent to which these are really benefiting rural livelihoods. Four main problems are identified: (1) the legal entities established to manage community forests are very often just a vehicle for local elites and

allow them to benefit in the name of community forestry; (2) local NGOs, often set up by government functionaries, have developed 'clientelistic' relations with the communities they supposedly serve; (3) monitoring of the operations is weak; (4) substantial bribes are needed to pay off local officials to set up the community forests and allow their continued operation. In practice, community forestry ventures operate in a grey zone between what is legal and illegal, and the benefits to the poor are uncertain (Lescuyer 2003, pages 29-32).

### **Bolivia**

In Bolivia, the more progressive legal framework that was introduced in the 1990s with the implicit aim of improving the livelihoods of the most vulnerable social groups has yet to deliver on its promises, although significant progress is being made. Before 1996, many indigenous peoples retained *de facto* control of their lands, but nearly all this area was classed as public land. Conflicts with cattle ranchers, farmers and timber extractors were common and many concessions overlapped indigenous areas. In some cases, indigenous leaders were threatened, kidnapped, tortured and even killed (Boscolo and Vargas Rios 2003, page 14). The Agrarian Law of 1996 was meant to provide a means of resolving these conflicts. However, since then, the actual titling of indigenous peoples' lands has proceeded slowly, owing to the complicated procedures for the demarcation and regularisation of land occupation (Griffiths 2001, page 42). Only 18% of the 22.3 million ha of forests claimed by indigenous peoples had been titled by July 2003 and cases of conflict and even violence were still being reported (Boscolo and Vargas Rios 2003, page 12).

Neither has the new forest law resolved the situation of rural families engaged in NTFP extraction, who have ended up being neither concessionaires nor owners of the forests they rely on. Indeed, the case study found that conflicts between them and other groups (notably indigenous peoples) have increased, especially in the north of the country (Boscolo and Vargas Rios 2003, pages 12-13). Efforts to regularise small-scale timber producers, by encouraging them to register as local community groups and then apply for access to municipal forests, have also had mixed results. By the end of 2002, some 53 community forestry associations had been created and 16 concessions awarded to them with authorisations to harvest an area totalling 420 000 ha (Boscolo and Vargas Rios 2003, pages 13-14). However, the study shows that the high costs of developing management plans, the complex bureaucratic process entailed in registering and gaining permits, the prohibition on processing timbers using chainsaws (which is felt to be unreasonable), and the high costs all this entails have discouraged compliance. In practice, it is found that for a local community group to comply with the regulations, the start-up costs are as high as US\$ 20 000, with annual recurrent costs then being US\$ 8000. Most operators lack the

financial resources, technical know-how and institutional capacity to fulfil these requirements, and state funding mechanisms designed to provide assistance to small-scale operators have not functioned effectively. Consequently, most small-scale operators have chosen to remain illegal, as it is simpler, cheaper, achievable and socially acceptable (Boscolo and Vargas Rios 2003, pages 18-19).

Efforts to regularise tenure and forest use on the agricultural frontier have also had mixed results. Under the revised forest law, farmers with titles are now allowed to clear forests for agriculture subject to securing a deforestation permit. Alternatively, to harvest trees on their lands they may apply for a permit after developing a forest management plan. However, because the latter is legally complex and costly to prepare and subject to a lengthy approval process, most farmers prefer to get a deforestation permit, although these are not cheap. To avoid this cost, some operators continue logging and transporting timber illegally, although legal harvesting is now more prevalent than unauthorised logging (Boscolo and Vargas Rios 2003, page 14). On the other hand, illegal deforestation carried out by both large and small farmers still considerably exceeds legal deforestation, owing to a complex of factors including lack of land titling and cumbersome and expensive bureaucratic requirements, such as the requirements to prepare a land use plan, a deforestation plan and pay taxes (Boscolo and Vargas Rios 2003, pages 22-23).

### **British Columbia, Canada**

During the early years of the logging industry in British Columbia, many indigenous people gained a living by hand-logging, a practice that was banned, however, from 1888 (Royal Commission on Aboriginal Peoples 1996). As noted, the provincial government has issued logging concessions in areas subject to unresolved land claims by indigenous peoples, without consultation and with quite severe impacts on community livelihoods (Royal Commission on Aboriginal Peoples 1996; Egan *et al.* 2001; Harris 2002; Hayter 2003). The Millennium Ecosystems Assessment (2005, pages 8-14, 25-29) notes that the denial of indigenous peoples' access to forests and natural resources has caused poverty and severe social pathologies, including high incidences of self-destructive behaviours. Community members have complained that intensive logging disrupts their livelihood strategies, ruins salmon runs, destroys trap lines and curtails access to traditional hunting grounds, while the employment opportunities offered to indigenous people by the logging industry are few.<sup>46</sup>

As Marchak *et al.* (1999, page 4) note, First Nations communities have generally been excluded from participation in the forest industry, and their lands have been taken over by forest and other companies—many of these communities are now demanding the return of ancestral lands and compensation for losses. Reviewing the available literature, Dempsey (2005) concludes that those First Nations residing in rural, forested locations have increased poverty and reduced wellbeing overall.

The combination of overlapping claims, the limited benefits received by communities and the perceived negative impacts on livelihoods has led to disputes between indigenous peoples, the provincial government and the timber companies. For example, in 1995 and 1997, the Nuxalk people appealed against the issuance of logging concessions on their customary lands and, when these were ignored, they staged public protests against the operations. Arrests and imprisonment ensued (Shaiman 1995; Jutta Kill personal communication). Likewise, when the indigenous-run Wil'dah'lax Development Corporation of the Gitksan people sought to extract timber from their customary lands, they were fined C\$ 160 000 for doing so. Similar incidences of protest logging have been recorded for the Okanagan and the Secwepemc communities, who insist on recognition of their rights in land, to timber and to their customary fisheries (Hudson and Ignace 2004, page 353; Hudson 2004, page 371; Ignace and Ignace 2004, page 396).

Unable to gain redress for their grievances locally, some indigenous peoples' organisations have taken their concerns to international trade bodies, arguing that by failing to recognise that concession areas are in fact encumbered with indigenous peoples' rights in land, the Canadian Government has in effect been subsidising the timber industry (INET 2002a, b, 2003), thereby giving it an unfair advantage in an international trade with the USA that is worth nearly US\$ 6.5 billion a year. The complaints were filed in the context of an ongoing dispute between Canada and the USA about the duties imposed by the USA on lumber coming from Canada, which the USA alleges is unfairly subsidised.<sup>47</sup> The so-called US-Canada Softwood Lumber Dispute was submitted to both the North America Free Trade Association and the World Trade Organization for dispute settlement and the submissions by the indigenous peoples were accepted as material for consideration in the arbitration processes (INET 2002a, b, 2003). Similarly, in 2003, the Heiltsuk First Nation and Greenpeace, representing several First Nations and environmental groups, petitioned the implementation body of the Convention on Biological Diversity to help end over-harvesting of Western Red Cedar in British Columbia.<sup>48</sup>

In response to criticism of the exclusionary nature of forestry laws, including from successive government commissions (Forest Resources Commission 1991; M'Gonigle and Parfitt 1994; Wouters 2000), from 1998 onwards the Provincial Government has moved to provide communities with increased access to forest resources, although the underlying land disputes remain unresolved. The 1998 Forest Statutes Amendment Act allowed communities to secure 5 year probationary tenures extendable for 25-99 years. Up to mid-2005, only a few dozen such licences have been issued and fewer made long term, largely because (according to critics) the 5 year tenure provides an insecure basis for collateral loans, stumpage rates are onerous, the paperwork complex and regulatory structures not adjusted to small-scale users (Egan *et al.* 2001; Bradshaw 2003; Clogg 2003). Further reforms adopted in 2003, allegedly in response

to the US-Canada Softwood Lumber Dispute, have been criticised for being pushed through without consultation with indigenous peoples and for only being open to those indigenous peoples who have agreed to participate in the official land claims process. Lawyer Jessica Clogg anticipates that the Act will be subject to a Constitutional challenge pointing out that the law means that 'if First Nations wish to acquire timber sales licences, they must essentially buy back their own trees by making the highest bid for the licence' (Clogg 2003, page 29).

### Summary

Communities' lack of security in forests contributes to their poverty, conflicts over forest resources, subsequent repression or litigation, and human rights violations. The extent to which large-scale logging enterprises benefit or harm local communities is poorly documented. In general, existing benefit-sharing schemes, designed to share some of the profits from large-scale logging with local communities, function poorly. In Canada, where law enforcement is more effective, the laws prevent most communities having access to forests, with significant implications for livelihoods. In the other cases reviewed, small-scale forest use is either 'illegal' or hard to keep legal, in particular because requirements for community 'forest management plans' are onerous and local markets are flooded with cheap, illegal products, making legal produce uncompetitive. In these other countries, the bureaucratic and financial obstacles to regularising tenure, access and use rights facilitate the entry of 'fixers', who are often members of illegal logging and poaching syndicates. Unable to regularise either their traditional systems of land use or their involvement in timber extraction, many local communities then tend to get caught up in the national and international patronage networks that control illegal logging and poaching. In this context, administrative decentralisation and community forestry schemes can result in communities getting further ensnared in these webs of illegality. Illegal forest use is as much the result of the inappropriateness of the laws themselves, as any tendency to criminality on the part of community members. At least as far as forest-dependent communities are concerned, the forestry laws are as much the problem as the solution.

## 8. Experiences with enforcement

*Laws are like spiders' webs: they catch the weak and the small, but the strong and powerful break through them.*

Scythian Proverb<sup>49</sup>

The drafting, passing and application of law needs to be distinguished from its actual enforcement. As noted above, laws relating to forests are very varied and are very unevenly applied. Framework laws are often not followed up with enabling regulations. Agencies that are meant to apply laws—to survey and register land titles, facilitate permits for community forests, or provide technical advice to local forest managers, for example—are often weak or poorly motivated. Similarly, there are many possible gaps and deficiencies in the processes of law enforcement. In many parts of the world, communities have existed in a legal limbo for decades. Their livelihood strategies may be technically illegal, but often laws are not applied, let alone enforced. Only when external situations change, such as when international agencies inject new funds into enforcement, do the ambiguities and injustices in the law tend to become practically apparent.

Forest law enforcement can be interpreted as having two parts. The first is the enforcement of forest-related laws and regulations to ensure their application, which may be done by encouragement, by providing appropriate incentives and by invoking, without exacting, penalties. The second involves the actual criminalisation of violators of the law through arrests, the filing of charges, court judgements and the imposition of punishments. Pendleton (1996) characterizes the two approaches as 'soft enforcement' and 'hard (or "tough") enforcement'.

As interpreted by this study, forest law enforcement potentially includes the enforcement of **all** legislation related to forests and forest-dependent peoples, including international laws, constitutional provisions, land tenure laws, human rights laws, employment laws, forestry laws, wildlife laws and protected area laws. We distinguish this from forestry law enforcement, in which only forestry laws are applied, often without much consideration of the wider legal framework in which these laws are implanted. What have the experiences of rural communities been with these kinds of enforcement, by either 'soft' or 'tough' means?



As the previous sections of this report have demonstrated, many rural forest-dependent communities are engaged in ‘illegal’ activities in forests because:

- national laws only partially accommodate their livelihoods and rights;
- laws are contradictory and create legal ambiguity and insecurity;
- laws that favour the interests of large-scale operators or state agencies are given greater weight than laws which secure community interests;
- bureaucratic trammels, political patronage systems and transaction costs make compliance with the law hard for the poor;
- corruption and the weak rule of law have created a general climate of law-breaking in forests;
- large and medium-scale logging operators also regularly break the law, often with impunity;
- illegal operations are profitable and find ready markets;
- they are poor and have few other options for making a living.

In these circumstances, the details of which, obviously, vary from country to country, law enforcement initiatives potentially pose a serious problem for forest-dependent communities. Unless appropriate measures are taken to protect their interests, even ‘soft enforcement’ can engender insecurity, sub-optimal investments in long-term land use and resource management, social and environmental degradation and further impoverishment. ‘Hard enforcement’ initiatives may lead to whole communities being criminalised, deprived of income and even their entire livelihoods, and thereby seriously impoverished. This section reviews the available information on the social impacts of forest law enforcement on rural communities. The following section, which concludes the report, then makes recommendations on how forest law enforcement can minimise these impacts and be reframed so that it favours the poor.

### **Indonesia**

In Indonesia, recent national forest law enforcement efforts have been triggered by a series of reports by local and international environmental NGOs, corroborated by studies carried out by agencies such as the World Bank and DFID consultants, which have exposed the extent of illegal logging in the country (EIA and Telapak 1999, 2000, 2002, 2003b; FWI and GFW 2002). These forest law enforcement efforts have focused on the application of forestry laws and associated regulations with almost no reference to other forest-related laws and policies.

These efforts have neither been preceded by assessments of the way rural communities use forests, nor by legal reviews to look at the full panoply of laws relating to them. Government agencies present illegal logging as a problem caused by localised networks of organised crime, thereby ignoring the fact that local government institutions and security forces have historically abetted, and often directly participated in, illegal logging.



Consequently, since the parties tasked with upholding the law are also the ones breaking it, effective enforcement is not achieved. Instead, the main targets of operations end up being local communities whose customary rights in forests are not recognised. Law enforcement operations have taken the form of ‘sweeping’ operations and raids by joint teams that include the military, customs and trade officials in areas where illegal logging is deemed to be out of control. Such operations accomplish little, since those coordinating illegal logging activities in the field are usually forewarned about the impending security operations, so illegal logging activities are halted in a timely fashion and those coordinating them temporarily disappear (Detikom 2003).<sup>50</sup>

This has happened repeatedly, for example, in the border area between Indonesia and Malaysia in Kalimantan. In 2001, following reports of extensive cross-border timber trafficking between East Kalimantan and the neighbouring Malaysian state of Sabah, Indonesian President Abdurrahman Wahid ordered a large-scale security operation in the area to bring the situation under control. However, district officials and entrepreneurs profiting from illegal logging received advance warning of the planned sweep and passed on the message to the operatives in the field. As a result, the only outcome of this high-level anti-illegal logging activity was the seizure of several units of heavy equipment and the arrest of several people found to be lingering in abandoned logging camps. Since these individuals were locally hired labourers with little knowledge of organisational matters, they were soon released. No other party was questioned, much less arrested, as a result of this security operation in East Kalimantan.

Following this fruitless experience, the Indonesian Government tried to find ways to improve the credibility and effectiveness of such operations. In the latter part of 2001, President Wahid issued Presidential Instruction No. 5 directing Indonesia’s forestry authorities and security apparatus to take stricter measures against illegal logging, particularly in conservation areas and national parks. However, the outcome of such operations has been the same, i.e. the organisations, institutions and individuals facilitating illegal logging activities remain essentially untouched, while the people providing labour for logging, most of whom are local or migrant workers, bear the brunt of such law enforcement efforts.

For example, an anti-illegal operation in West Kalimantan (undertaken in May 2003), code-named ‘*Wanalaga*’ and composed of a joint team of the police, army and forestry officials from Jakarta, met with strong protests by local communities against the security approach to illegal logging.<sup>51</sup> While protests of this kind may have been influenced, or even orchestrated, by district and provincial institutional and individual interests who profit from illegal logging, demonstrators’ reservations were largely directed at the long-established pattern of villagers being the scapegoat for forest law enforcement, leaving the key figures and institutions behind illegal logging essentially untouched.<sup>52</sup>

The people living or working in the forest can easily be found to be acting illegally, as forests continue to be treated as the exclusive domain of the central government authorities in Jakarta. This policy was re-emphasised with the introduction of Government Regulation No. 34 in 2002 that sought to reverse a number of the earlier decentralisation initiatives. In this context, rural communities become easy targets for law enforcement efforts seeking to combat illegal logging. As those residing in the forest, they constitute the most visible and tangible target. Those most responsible for instigating illegal logging activities (local government officials, forestry, security, private sector) remain largely invisible and unaffected.

The impunity with which these actors have operated is to a large extent due to the fact that, until recently, Indonesian forestry regulations did not envision any concrete legal sanctions against forest crimes. The first elements of such sanctions began to be put into place in 1985, but did not become operational until the introduction of the 1999 Forestry Law, nearly 30 years after the initiation of large-scale logging operations in Indonesia. Even with legal sanctions against forest crimes currently specified, the legal process (which is unclear, complicated and often subject to abuse) results in very few illegal logging cases being tried in court and even fewer convictions (Andrianto 2003). Corruption in Indonesian courts, with some members of the judiciary being implicated in illegal logging operations, is another reason why forest law enforcement in Indonesia has been largely ineffective (Yasa 2003; Rukka Sombolinggi, Aliansi Masyarakat Adat Nusantara, personal communication).

A more systematic and upstream approach to forest law enforcement is now being attempted under a joint agreement between the UK and Indonesian governments.<sup>53</sup> In April 2002, the two governments signed a Memorandum of Understanding (MoU) that commits both parties to work together to combat illegal logging and stop the trade in illegally logged timber between the two countries. The bilateral agreement for joint action by producer and consumer countries was the first of its kind<sup>54</sup> and has been introduced to complement the DFID-funded 'Multi-stakeholder Forestry Programme', which is designed to assist the broader, participatory aspects of forest policy reform in Indonesia. As conceived, the initiative was designed to promote market-led reforms to curb illegal logging while taking into account the needs of rural communities (John Hudson personal communication).

Under the MoU, DFID consultants and Department of Forestry counterparts have conducted a legal survey and multistakeholder consultation to try to ascertain what is 'legal' in the Indonesian context. This has highlighted the degree of uncertainty about what is and is not legal in Indonesia and reflects the tug-of-war for control of forest resources between the central government and district regents, and over the National Assembly Resolution calling for a new comprehensive natural resources law to recognise the rights of local communities (Hugh Speechly personal communication). Further elaboration of a 'Legality Standard' was then contracted to

The Nature Conservancy and led to a review of approximately 900 forest-related laws in Indonesia (SGS and TNC 2004; IHSA 2004). The resulting draft Standard, which included provisions to protect the rights and livelihoods of local communities (SGS and TNC 2004; Colchester 2004), has yet to be accepted by the Ministry of Forests.

While the main intent of the MoU is to restrict the international trade in illegally produced timber, the Department of Forestry's main request has been for help with equipment, training and funding for more forest rangers. For its part, DFID has been encouraging the Department of Forestry to sponsor micro-level studies to look at the role of illegal logging, but not other uses of forests, in local economies. By mid-2005, it was still not possible to point to any concrete impacts of the initiative on the ground. However, the initiative has created political space for a more informed debate about illegal logging, law enforcement and the implications of both for rural communities. As a result of the increased focus on illegal logging brought about by the MoU, UK-based timber traders suspended imports of Indonesian plywood, which is anticipated to result in merely shifting exports to East Asia without necessarily affecting the situation on the ground (Hugh Speechly personal communication; Dave Currey personal communication).

Confirmation of this risk became clear in early 2005, when a detailed field study by Telapak and the Environmental Investigation Agency (2005) exposed a massive illegal trade in *merbau* from West Papua to China. The trade, worth some US\$ 600 million a year, also involved complicit authorities and dealers in Malaysia, Singapore and Hong Kong. Telapak and EIA called on the Indonesian authorities to take action against the timber barons behind the trade.<sup>55</sup> In response, in March 2005, Indonesian President Susilo Bambang Yudhoyono issued an instruction to combat illegal logging (Presidential Instruction Inpres No. 4/2005), but the resulting actions in Papua, Kalimantan and Sumatra have been described by Indonesian civil society organisations as 'repressive',<sup>56</sup> have targeted local communities and have not yet led to the main agents behind the trade being brought to justice.

## Cameroon

In May 2001, the Cameroonian Government requested a Project of Independent Observation in Support of Forest Law Enforcement in Cameroon, and contracted the UK-based NGO Global Witness to carry out this task. The aim of the project, which was jointly funded by the World Bank, DFID and the EU, was to reinforce the government's own forest law enforcement efforts by submitting them to independent scrutiny (Global Witness 2002b, 2003a).<sup>57</sup> The project aimed to curb the loss of state revenues through illegal logging and thus improve the sector's contribution to poverty alleviation (Global Witness 2002b, page 20). However, an admitted weakness of the project is that it was not formally designed on a collaborative basis with national civil society organisations and focuses only on the application of the forestry laws. No efforts were made to scope

the relevance of these laws for the poor in the preparation of the project, nor were studies carried out of the other forest-related laws (Patrick Alley personal communication). In part this may be due to the fact that the main international NGOs that have been advocating a law enforcement approach in the region have been environmental and conservation organisations and not ones with a social justice or development approach (Kai Schmidt-Soltau personal communication). As in Indonesia, the Independent Observer has noted the great reluctance of the forest law enforcement officials to caution, charge and prosecute politically connected illegal operators and, indeed, the main difficulty confronting the project has been to get the government to divulge basic information about concession ownership and permits, which continue to be allocated to concessionaires in an opaque way (Global Witness 2002b, 2003a). In the field, government enforcement agents, when not scrutinised by independent observers, prefer to target smaller operators, sometimes to show their superiors that they are doing something and at other times for personal gain (Kai Schmidt-Soltau personal communication). Reports from the Independent Observer<sup>58</sup> and from external reviewers confirm that independent forest monitoring, at first resented by government officials as an unwelcome intrusion into their affairs, has had a significant impact in reducing irregularities within concessions (Global Witness 2005; Cerutti and Assembe 2005). However, increasingly, influential individuals have instead abused the new and ill-regulated Community Forestry areas, to extract timber in breach of the law (Global Witness 2005).<sup>59</sup> Civil society organisations have been insistent that any forest law enforcement and governance initiatives in the region must take more account of the rights and livelihoods of forest-dependent peoples, especially 'Pygmies', and should precede enforcement with reforms to regularise these peoples' rights (CED *et al.* 2003).

### **Nicaragua and Honduras**

In Nicaragua and Honduras, comparable internationally supported forest law enforcement programmes have not yet been applied, although the World Bank is engaged in forest sector reform in Honduras. Problems with current national forestry law enforcement efforts include the following: the potential benefits of operating legally do not outweigh the cost of the fines; enforcement and inspection systems are weak; there is a lack of financial and human resources in public administration—for example, in Nicaragua one 1.5 million ha area is patrolled by one forestry officer with two assistants and a secretary who have a single motorbike between them (Wells *et al.* 2003, page 13). A new forestry law was introduced in 2003 and subsequent attempts to slow down illegal mahogany extraction have obliged some indigenous communities to adopt diverse and experimental alternative development strategies with still uncertain outcomes (Brooks 2003). In Honduras, attempts to enforce the law are subject to death threats and the low salaries

earned by forest service employees do not justify taking the risks (Wells *et al.* 2003, page 13).<sup>60</sup> These difficulties are compounded by a lack of information, transparency and accountability. Forest inventories are incomplete or out of date. Consequently, forestry authorities lack the resources and data to control operations and enforce regulations. Likewise, civil society organisations find it hard to adopt a watchdog role, due to both lack of information and public access to it (Wells *et al.* 2003, page 13). However, indigenous groups in Nicaragua have been able to use international human rights processes to curb destructive logging on their lands and secure greater recognition of their rights—an approach that deserves much more emphasis by international development agencies (Box 4).

#### **Box 4. Forest law enforcement: using international human rights tribunals**

Another potential means for improving forest law enforcement and improving the lot of poor and marginalised communities is to encourage governments to adhere to their international human rights obligations under international law. Such mechanisms offer several advantages: they already exist; they are binding on state parties; international enforcement tribunals function (if slowly); and they are accessible to civil society plaintiffs. An example is the Organization of American States, which has relevant legislation on indigenous rights and is itself in the process of agreeing a proposed Inter-American Declaration on the Rights of Indigenous Peoples (MacKay 1999).

The Inter-American Commission of Human Rights has made a number of judgements on the rights of forest-dwelling indigenous peoples. One petition concerns the case of the Mayagna (Sumo) people of Nicaragua, whose lands were allocated by the Government of Nicaragua to a Korean logging company without the community being consulted. The indigenous petitioners to the Commission complained that Nicaragua had violated the American Convention on Human Rights, the American Declaration on Human Rights and other provisions of international human rights law because of its failure to take timely measures to secure the land and resource rights of the indigenous people of the community of Awas Tingni and active violation of those rights caused by government grants of logging concessions on Indigenous lands. In 1998, the Inter-American Commission on Human Rights found in favour of the indigenous people, affirming their rights to their land and noting that the *'State of Nicaragua is actively responsible for violations of the right to property, embodied in Article 21 of the Convention, by granting a concession to the company SOLCARSA to carry out road construction work and logging exploitation on the Awas Tingni lands, without the consent of the Awas Tingni Community.'*<sup>61</sup> Subsequent failure by the government to resolve the situation led to the case being heard by the Inter-American Court of Human Rights, which on 31 August 2001 again found in favour of the community, upholding their rights to their traditional lands, demanding reforms of the process the government uses to ascertain and secure indigenous lands and deciding that the government should pay US\$ 80 000 in reparations for damage, and legal costs, to the community (MacKay 2001a).<sup>62</sup>

### British Columbia, Canada

In British Columbia, as in many other parts of Canada, the timber industry first grew up as small-scale operations closely linked to the local communities that sprang up around them. Forest rangers, who had the responsibility of enforcing forestry laws, were part of the same rural communities and relations between the rangers and the logging firms were close and based on trust; 'soft enforcement' was the norm (Pendleton 1996). In these circumstances, as in other parts of North America today, minor violations and tree theft were tolerated as they were an accepted part of local community relations (Pendleton 1997a). Persistent violators were only challenged when this brought shame on the community or risked incurring greater penalties (Pendleton 1998a).

As one ranger recalls:

*'We were problem solvers and not out to get people. These people (loggers) are not crooks, they are decent and we all operated from the assumption of trust. The loggers would comply because they respected us, they knew us, we were part of the community. They rarely questioned us.'* (Pendleton 1996, page 42)

As another recalls:

*'I always had the hammer of shutting them down (stopping the logging) but it was well known that if you had to use the Act (Forestry Act) you weren't doing your job. We were all there to protect the right to log. It was a sign of failure if you had to use the hammer. I never saw myself as an enforcer, but as a contract administrator. It was a community norm.'* (Pendleton 1996, page 42)

As technologies changed, the organisation of logging and milling also transformed, especially in the 1950s and 1960s (Marchak *et al.* 1999). By the 1970s and 1980s, timber operations in British Columbia had expanded massively in scale and became concentrated in the hands of a few large firms. As Pendleton (1996, page 45) notes, '[t]he vibrant but transient network of small-community based logging was replaced by corporate employment.' Building on the culture of trust between operators and enforcers, the companies were encouraged to self-regulate in order to save costs. This resulted in abuse of the system to the point where the rate of ill-regulated forest clearance earned British Columbia the reputation for being the 'Brazil of the North' (Pendleton 1996, page 51).

Following a public outcry and a concerted protest by environmental NGOs and indigenous groups which focused on clear-cutting operations in Clayoquot Sound in the mid-1990s, the provincial forest department announced a 'tough enforcement' approach backed by the 1995 Forest Practices Code (Pendleton 1996; Kamieniecki 2000). Under the Code, timber could be seized, logging operations halted, clean-up operations demanded, criminal

charges laid and million-dollar fines levied, if serious violations of the forestry laws were detected (Forest Practices Board 1999; Kamieniecki 2000).

According to Pendleton (1996), ‘tough enforcement’ led to the following consequences:

- Relatively little change in corporate behaviour and a low rate of imposition of penalties, owing to little change in the culture among enforcement officers and continued reliance on self-regulatory mechanisms (see also SLDF 2001b, 2002);
- The criminalisation of individual forest workers, contract operators or engineers, rather than the exposure of corporations;
- Displacement of large logging operations from areas subject to intense public scrutiny to other areas;
- Disproportionate targeting of smaller operators in comparison to the larger operators (see also Dempsey 2005).<sup>63</sup>

As one ranger noted ruefully:

*‘We have always pushed the little guy around because they have no political clout. It has always been our way of convincing ourselves and the public that we are doing our jobs. Yet the real crimes... the real damage is committed by the big corporations. They are ones who need to be hammered! It will never happen in a meaningful way... they are too powerful.’* (Pendleton 1996, pages 97-98)

A survey of the Forest Service carried out by the British Columbia Government and Service Employees’ Union in 2000 revealed that they considered the existing legislation weak and enforcement ineffective. Employees considered that silviculture is not adequately inspected or monitored, field inspections are inadequate, staffing levels too low and too little enforcement follows once infractions are discovered.<sup>64</sup>

## **Bolivia**

In Bolivia, the Forestry and Agrarian Laws adopted in the 1990s—substantially in response to pressure from indigenous peoples’ and environmental organisations—were designed to regularise land ownership and overcome the corruption and inefficiency in the previous forest regulatory system. In particular, the Forest Superintendency was designed to free captured regulation by creating a new independent enforcement service, paid for from forestry taxes, unlinked from political patronage and undue influence from forestry enterprises. Loggers were required to adopt forest management plans, subject to the approval of the Forest Superintendency, which also issues Certificates of Origin for extracted timbers to allow proper tracing of the chain of custody. The new approach was adopted at the same time as a decentralisation of administration, which would give an increased



role to local governments in overseeing forestry activities. Although delays in the regularisation of land tenures and the obstacles to community adoption of a forest management approach has meant that many land conflicts remain unresolved and small-scale illegal activities continue (see sections 6 and 7), the extent of large-scale, ill-regulated logging has substantially diminished and transparency in the forest concession system has markedly improved (Boscolo and Vargas Rios 2003).

### Other experiences with forest law enforcement

Experiences with forest law enforcement initiatives in other countries confirm the findings from the case studies summarised above. In India, for example, successive forestry laws have denied and limited communities' rights in forests, turning people with customary rights into 'poachers' and 'encroachers'. These policies and laws, initiated during the colonial era, have been further centralised and strengthened since independence. Following the passage of the Forest Conservation Act in 1980 and insistence on its enforcement by conservation organisations, 'tough enforcement' policies are now being pursued. In May 2002, the Central Ministry of Environment and Forests issued a circular to all state governments to evict all 'encroachers' on forest land by the end of September that year. An estimated 10 million tribal forest dwellers face eviction from their ancestral lands as a result. State government efforts to enforce these rules have sparked widespread protests and conflicts (Sarin *et al.* 2003, page 4).<sup>65</sup>

Protected area laws have, ever since the creation of the first national parks in the USA in the nineteenth century, led to the mass exclusion of indigenous peoples and other local communities from their lands (Keller and Turek 1998; Burnham 2000). A recent global survey shows that, despite international agreement to halt the process of establishing protected areas through the denial of rights and forced resettlement of indigenous peoples, such processes continue in all parts of the developing world. Severe impoverishment is a common result (Gray *et al.* 1996; Colchester and Erni 2000; Kwokwo Barume 2000; Chatty and Colchester 2002; Nelson and Hossack 2003; Colchester 2003). Many protected areas have been established with minimal budgets, and consequently continued 'illegal' residence and livelihoods have been tolerated in these areas for lack of enforcement capacity. However, as funds for management and enforcement have been made available, through a combination of strengthened national resolve and international financial assistance provided by bodies such as the Global Environment Facility, application of exclusionary laws and regulations has intensified. Forced resettlement, restrictions on livelihoods, impoverishment and chronic insecurity have all resulted (Griffiths and Colchester 2000; Colchester 2003, pages 102-106; Griffiths 2005).



A statistical review of the social impact of protected areas in the Congo Basin and East Africa found that these have displaced tens of thousands of people and negatively affected the livelihoods of as many others in the areas to which they have been removed. Landlessness, unemployment, loss of income, homelessness, marginalisation, food insecurity, increased morbidity and mortalities, loss of access to common property and social disarticulation were all documented as results of these impositions (Cernea and Schmidt-Soltau 2003).

Narrow enforcement of protected area laws, leading to the exclusion and impoverishment of local communities, has been also carried out in ignorance of land tenure laws designed to protect the interests of local communities. For example, in Tanzania in the 1990s and early 2000s, where an EU-funded project (EUCAMP) first set up two national forest reserves and then sought to acquire community lands in a corridor linking the two; the project went ahead with its sectoral and exclusionary focus even though other aid agencies were simultaneously promoting new land laws and policies in the country (Alden Wily 2001). Owing to its narrow focus, the process of land acquisition pursued by the project did not accommodate communities' customary rights and uses, but limited compensation only to loss of crops and buildings, and not of land itself. This limited process of enforced land acquisition continued even after new land laws were passed protecting community rights. These later appropriations were eventually challenged in court, which ruled in favour of the communities, obliging the government to restore community rights and pay out several millions of US dollars in compensation (Alden Wily personal communication).

In Cambodia, some 85% of the population lives in rural communities and 63% depends on subsistence farming. These people, especially upland communities and indigenous peoples, are highly dependent on forest resources, 10 million ha of which cover some 60% of the country. Although a Land Law was passed in 2001 which provides mechanisms for securing land titles, including community titles for indigenous peoples, few rural people yet enjoy land security. Between 1994 and 1997, some 6.5 million ha of forest were allocated as concessions to logging companies, with the remaining 3.3 million ha being set aside as protected areas. While conflict has been frequent, local communities have been unable to prevent the logging of the forests they rely on, leading to severe impacts on their lives and livelihoods (ARD 2004b). Between 1995 and 1998, UK-based NGO Global Witness issued a series of detailed reports exposing the extent of illegal logging in the country (Global Witness 1995a, b, 1996a, b, 1997a, b, 1998). As part of a World Bank initiative to reform the forestry sector, between 1999 and 2003, Global Witness was contracted to act as an Independent Monitor of logging in the country. The results of these efforts in forest law enforcement have, however, have not met expectations. Global Witness (2004a) reports complicity of the very highest levels of the Cambodian Government in institutionalised corruption and illegal logging, including in protected areas.<sup>66</sup> International development agencies, however,

have overlooked lack of government compliance with conditions they have imposed on their loans, leading Cambodian NGOs to file a complaint with the World Bank's Inspection Panel (Global Witness 2004b). Global Witness also notes that the Forest Department selectively targets illegal community forestry operations, while avoiding the illegal but politically protected large operators, many of whom have connections with the army. Most 'crackdowns' have targeted community forest users who cut timber for shifting cultivation, building houses and local markets. 'Local people are the actual losers', they note (Patrick Alley personal communication).

Even in countries that have attempted to carry out forest law reforms in socially sensitive ways, problems of social exclusion are common. In Peru in 2000, for example, as a response to national protests about illegal logging and its negative impact on indigenous peoples, especially those in voluntary isolation, the government passed a new Forest and Wildlife Law, aimed at bringing the lawless forest frontier under control. The law sets out to establish a permanent forest estate, zone these forests, and institute a regulated mechanism for handing out concessions to exploit these forests subject to forest management plans and annual operational plans. The zoning process is meant to be done through a multistakeholder consultation processes to ensure that existing rights holders, such as native communities, are not imposed on by commercial concessions which are put up for public auction. However, these zoning processes have varied greatly in the extent to which they have accommodated the livelihoods of forest-dependent peoples.

In many departments, the zoning and concession auction process has been hastily pushed through in defiance of public protests, and has resulted in commercial logging concessions being imposed on indigenous peoples' and other local communities' lands. This has happened because the consultations were not appropriately inclusive and informed, used defective base maps without data of titled areas, ignored the existence of areas still in the process of being claimed and titled, and took no account of the fact that many communities have not yet filed claims or, in the case of non-indigenous groups, have a weak legal basis for doing so. Although officials recognise these are real problems, they say that the problem of overlapping concessions cannot be addressed until the concessions expire in 40 years' time, as the concessionaires have bid for these lands in public auctions and now have legal rights in the forests (Griffiths 2003). Indigenous organisations have spoken out against what they see as a discriminatory application of the law, whereby priority is given to regularising commercial concessions over indigenous land rights.<sup>67</sup> Critics do recognise, however, that at least in some places, notably Madre de Dios, where participation was more effective, the reform process *has* taken account of local land rights and has served to empower forest workers and small operators, while lessening the power of the illegal logging syndicates (Griffiths 2003).<sup>68</sup>

Similar concerns about the way forest law enforcement can negatively impact local communities when the major targets should be large companies have been voiced in the Russian Far East, where illegal logging is recognised as a growing problem. The Russian NGO BROCC, which has been targeting destructive logging for over a decade, notes (Lebedev 2005, page 6):

*Illegal logging is, for many forest communities, an expression of their low respect for and distrust of corrupt governments and legislatures, who collect taxes from them but do not return any benefits to the community level. Yet, these communities have a different approach to forestry: they take care of their community infrastructure, put the forest revenues to good use locally and, at the same time, preserve the forest ecosystems with their selective techniques. Thus illegal logging at the level of poor villages in the Taiga is not an issue at all. It is the large-scale commercial operations that are destroying Russian forests through illegal logging.*

## Summary

A problem revealed by all the case studies is that good baseline data on current enforcement measures are lacking. Based on a review of the available information and literature, it seems that hard enforcement is ineffective where there is a lack of strong penalties, weak institutional capacity, lack of independence in the judiciary or because those charged with enforcement may be complicit in illegalities. Laws designed to penalise individual criminals do not curb corporate misdemeanours or affect CEOs and shareholders. There is a tendency for crackdowns to target poor people and small-scale operators and avoid those who are well connected and politically protected. In some countries, mass expulsions of indigenous peoples and local communities from forests and protected areas have caused serious impoverishment.

Independent observer projects, such as those carried out in Cambodia and Cameroon, have tended to focus on forestry laws, and have not been preceded by a scoping of the relation between law and livelihoods, nor by wide civil society consultation. They have, however, encouraged transparency and provided an aperture for civil society engagement in forest policy making. In practice, although this has not been written into terms of reference, monitoring has focused on large-scale violators, but very few prosecutions have resulted. Stronger terms of reference are needed in future projects of this type to encourage broader legal analysis, greater attention to livelihoods, increased transparency and more civil society engagement.

Bilateral memoranda of understanding between the governments of exporting and importing countries to curb the trade in illegal forest products have stimulated vigorous national debates about forest law and policy. Although technical assessments have been unduly limited to forestry laws, ensuing discussions have

### Box 5. The social implications of market-based reforms: some dilemmas

Supporting forest law enforcement efforts by regulating or limiting the trade in illegally produced timbers is an option favoured by many governments and environmental groups. By impounding shipments of illegally harvested timbers, refusing imports at the point of entry or by adopting procurement policies to exclude purchase of illegal timber, these supporters of enforcement target large-scale violators instead of cracking down directly on those with their hands on the chainsaws. Such an approach apparently implies economies of scale in enforcement efforts and the creation of incentives to loggers and would-be exporters to clean up their act. Advocates of this approach also anticipate that timber values will be raised, if illegal timbers are excluded from the markets, thereby making legal production competitive.

However, the success of such an approach is predicated on the ability of coastguards, customs officers, procurement officers or retailers to know which timbers are illegally sourced and which are not. On a pilot basis this can be achieved through community, NGO and private company ‘watchdogs’ learning about illegal activities and warning buyers or officials to avoid such products. But for routine inspections and purchasing, a system is required that can establish the legality of all timbers ‘from stump to shelf’. This in turn implies some form of ‘verification’ or ‘certification’ of both harvests and the chain of custody.

Current certification systems, such as that of the Forest Stewardship Council (FSC) already require full compliance with all applicable national and international laws,<sup>69</sup> but also make further requirements of social and environmental performance. Very few tropical timber producers measure up to such high standards. Some NGOs, like the WWF and TNC, are now piloting schemes of ‘legal certification’ and ‘step-wise certification’, assessing production against a much more limited set of standards. This way, they hope, companies can be rewarded for ‘taking a step in the right direction’ and may then be encouraged later to comply with the higher standards that certifiers such as FSC require.<sup>70</sup> Other NGOs, however, have criticised similar partial certification as ‘greenwash’.<sup>71</sup>

The risks are that certifying just for legality may not only legitimise operations that have negative impacts on rural communities and indigenous peoples, but also entrench socially unfavourable laws and practices. This may make future transition to socially beneficial approaches more, not less, difficult. Critics also argue that providing rewards to companies that do less, may discourage them from a transition to higher standards. Why do more when you are already getting paid for less?

Responding to these concerns, environmental NGOs like TNC and WWF have adopted ‘legality standards’ that include requirements to observe laws that protect community rights and livelihoods (TNC 2003; SGS and TNC 2004; Colchester 2004; Nusa Hijau 2005).

helped identify existing contradictions with other laws and the need for reforms to favour rural livelihoods. However, market closure by importing countries may only shift illegal exports to less discriminating markets. Widespread enforcement of these market-based approaches will depend on ‘legal verification’ or ‘step-wise certification’, so customs officials, procurement officers and retailers can discern which timbers are ‘legal’ and therefore acceptable. There is an evident risk that such measures may exclude consideration of the livelihoods of forest-dependent peoples and may thus encourage forest management systems that create poverty rather than alleviate it (see Box 5 on facing page).

## 9. Ways forward

*If tackling poverty is one of the aims [of forest law enforcement]—and I believe it must be—then we need to make sure that ill-considered legislation does not criminalise the activities of the poorer forest-dependent groups.*

Hilary Benn, UK Minister for International Development (2001, page 4)

The case studies, literature review and interviews all concur that, in many countries, forest-related laws offer relatively little security to poor rural communities and indigenous peoples. Despite international laws and constitutional provisions protecting customary rights, the rights of indigenous peoples and the property rights of the poor, and even despite constitutional rulings in the courts, land tenure laws often offer such peoples little security, are often not applied or are contradicted by other forest-related laws.<sup>72</sup> Forestry laws, in particular, tend to favour state control of forests or even hand outright ‘ownership’ of forests to state institutions (cf. Kaimowitz 2003). Wildlife laws tend to make customary use of natural resources illegal or hard to gain permits for.<sup>73</sup> Protected area legislation is frequently exclusionary and provides relatively few options for community ownership, management and control of forests.<sup>74</sup> For reasons of maximum revenue generation, ease of administration and to promote economies of scale at all levels, forestry laws and regulations tend to favour the allocation of rights to exploit forest resources to large corporations or enterprises.<sup>75</sup> Even in countries where pro-poor land and forest laws have been asserted, mainly due to concerted pressure from political movements and action in the courts, such laws tend not to get implemented with as much vigour as laws favouring more highly capitalised operations.<sup>76</sup>

Illegal logging is indeed a serious problem, especially in countries where the rule of law is less effective, but it is not a new phenomenon. On the contrary, the studies show that illegal logging is historically rooted in the political economy of many countries, with multiple connections to those with power and influence. Forest resource theft and illegal logging are often culturally condoned by forest industries and the communities they relate to. Even where illegal forestry operations primarily benefit the rich, involvement in such exploitation makes significant contributions to the livelihoods of poor rural communities. The simple curtailment of all illegal

logging and other forms of use of and access to forest resources is bound to impact the poor. Even closing down the excess processing capacity that is putting so much pressure on forests to yield more than permitted, may well lead to significant job losses and thus hardship (John Hudson personal communication; Tacconi 2003). On the other hand, as the British Columbia case suggests, where the rule of law is more effective, illegal forest use may be relatively limited, but a cost is that the livelihoods of forest-dependent communities may be restricted and poverty among First Nations still a problem.

Given the generally skewed nature of much forest-related law and the political frameworks in which the law is applied, crude forest law enforcement initiatives can entrench the *status quo* and further impoverish indigenous peoples and other marginalised groups.<sup>77</sup> Since in many countries illegal logging is carried out with the complicity or direct involvement of forestry officials, politicians, security forces and even, in some places, the judiciary, providing more resources for law enforcement is likened to asking the fox to guard the hen coop. In these circumstances, politically ‘captured’ enforcement agencies tend to target the poor illegal forest users and not those who are rich and politically protected, who are able to carry on evading the law with impunity.

Unfair and unrealistic laws not only entail illegality, they may also provoke resistance by the poor when they are applied and enforced. The extent to which people can resist the application of the law varies greatly from country to country, place to place and between ethnic groups, but resistance, whether overt or covert, is inevitable. There is a serious risk, therefore, that clumsy forest law enforcement could intensify conflicts, encourage anti-state sentiments and ensuing repression, and thus worsen, not improve, governance.<sup>78</sup>

A recent two-volume study of ‘Conflict Timber’ carried out for USAID (Thomson and Kanaan 2003; Jarvie *et al.* 2003) identifies two types of ‘conflict timber’: ‘In the first, timber and other forest products are harvested and sold specifically to finance armed conflict, resulting in loss of lives and displaced populations’. Typically, timber is traded or even bartered for arms. Examples cited include Liberia and Burma. ‘In the second type, conflict over forest resources, and in particular timber, erupts between or among stakeholders with rival claims to control or ownership’ (cf. Global Witness 2003b). An example examined in detail is Indonesia, where exactly such a situation is widespread throughout the archipelago. The study notes that ‘conflict timber’ is fostered in circumstances of:

- Poor governance
- Government complicity in illegal extraction
- Loose financial oversight, which creates incentives for corruption
- Ambiguous or contradictory laws relating to land and natural resource tenures
- Lack of rule of law
- Overhasty devolution and political decentralisation.<sup>79</sup>

These are exactly the same conditions that forest law enforcement and governance (FLEG) approaches are seeking to address. It is therefore imperative that interventions are designed to address the sources of conflict in a crosscutting manner and not focus on one or two elements alone, thus risking exacerbating the very conflicts that the approach is aimed at resolving.

Government observers note that the international FLEG process did not start in a coherent form, but that it has built coherence gradually. An initial emphasis on environmental considerations and sustainable forest management was only later complemented with a concern for the poor. Correspondingly, the realisation has grown that law enforcement must be complemented by a critical review of existing legal frameworks and that law enforcement by itself is not effective in the absence of good governance (John Hudson personal communication). Yet, on the ground, there is considerable scepticism about whether FLEG initiatives really will tackle corruption (Paula Vandergeert personal communication; Longgena Ginting personal communication).

## Recommendations and suggestions

Given that a narrow and legalistic law enforcement approach to forests risks being unfair (it will hurt the poor), unfeasible (if the laws are contradictory) and highly conflictual (the conflicts generated may outweigh any benefits), a more nuanced approach to forest law enforcement is called for. This study concludes that four basic principles should be central to any FLEG initiative (and see Box 6 over).

### *Basic principles*

Forest law enforcement initiatives should:

- Seek to address the full range of laws that relate to forests and forest-dependent peoples, and not just forestry laws;
- Adopt a rights-based approach to forest law enforcement (Colchester 2001) with due attention paid to strengthening human rights networks, improving the independence of the judiciary, promoting legal literacy among rural communities, and providing legal aid;
- Be linked to governance reform programmes aimed at creating public accountability and transparency in the management of natural resources;
- Be developed through processes of broad engagement with civil society organisations and based on national governments' commitments to reform.<sup>80</sup>

### *Suggested elements for FLEG initiatives*

Just how FLEG approaches are applied in any particular locality, country or region will have to vary to accommodate local circumstances. FLEG initiatives should seek to ensure:



- The correction of unfair legal frameworks through participatory law reform;
- Even-handed enforcement in order to level the playing field in favour of rural communities, including giving greater scope for customary forest regulation;
- Effective law enforcement through increased transparency and civil society engagement;
- Targeting of major abusers, not small-scale operators.

Elements that may be considered for inclusion might include the following, to be adopted selectively on a case-by-case basis.

### **1. Correcting unfair legal frameworks**

Given the fact that current legal frameworks relating to forests and communities are so often legally contradictory or in effect make current livelihood strategies illegal, forest law enforcement initiatives might:

- Note that laws are broadly accepted when society has a sense of ownership of those laws and considers them just, which means they have to be part of the process of constructing them (Yvan Biot personal communication);
- Where necessary, include mechanisms for the participatory reform of laws to eliminate ambiguities, secure indigenous and customary rights to land,<sup>81</sup> and provide rural communities with rights of access to and use of forest resources (cf. Kramme and Price 2005, page 5);
- Encourage governments to ratify and apply effectively international human rights covenants and conventions (cf. CED *et al.* 2003, page 5);
- Include careful participatory assessments of how forest-dependent groups do use forests and the extent to which laws secure such activities or make them illegal, and assess the extent to which the law is actually applied on the ground (Kai Schmidt-Soltau personal communication);
- Assess the impact of commercial forestry activities on rural livelihoods and ascertain the extent to which forestry operations provide real benefits to the poor, or provide accessible mechanisms for adequate compensation for losses incurred and mechanisms for redress in case of disputes (Paula Vandergeert personal communication; Kai Schmidt-Soltau personal communication).

### **2. Even-handed enforcement**

The studies show that problems arise most commonly for forest-dependent groups when forest-related laws are enforced unevenly, with priority being given to laws that favour large-scale commercial interests, while less attention is given to laws that protect the rights of indigenous peoples, the land tenure of rural communities, community forestry and human rights. Moreover, as FAO (2001,

## Box 6. A broader approach to FLEG

Recent forest law enforcement and governance debates have shown an encouraging willingness among participants to deal with the social implications. For example, the 2003 communiqué of the European Union's Council notes that illegal logging is a complex problem that requires a multidisciplinary approach and that the EU Forest Law Enforcement Governance and Trade Action Plan must incorporate sustainable development and poverty reduction objectives. To this end the EU notes the need *inter alia* to:

- o strengthen land tenure and access rights especially for the marginalised, rural communities and indigenous peoples;
- o strengthen effective participation of all stakeholders, notably of non-state actors and indigenous peoples, in policy making and implementation;
- o increase transparency in association with forest exploitation operations, including through the introduction of independent monitoring;
- o reduce corruption in association with the award of forest exploitation concessions, and the harvesting and trade in timber.<sup>82</sup>

In like vein, the Ministerial Declaration of the African Forest Law Enforcement and Governance in October 2003 (Declaration Ministerielle 2003) included phrases that recognised:

- o the importance of forests for the livelihoods of the poor;
- o their right to participate in forest management;
- o the need for civil society engagement and independent monitoring in forest law enforcement;
- o that current laws are ill adapted to local realities and don't take into account the interests of the rural poor.

It therefore committed the participating governments and donor agencies *inter alia* to:

- o involve local communities in decision making in order to promote transparency and equity, reduce corruption and the undue influence of privileged groups;
- o encourage and promote the participation of the rural population in forest and game management;
- o take all interests into account, notably customary and traditional laws and practices like traditional hunting;
- o ensure coherence between forestry and land tenure laws;
- o analyse land tenure policies and laws, and make sure that property rights, including forest-related traditional knowledge, are respected;
- o harmonise fragmented laws and policies to promote good governance;
- o involve local communities in applying the law.

The 2005 St Petersburg Declaration on Forest Law Enforcement and Governance in the Europe and North Asia region (ENA-FLEG 2005) echoes many of these considerations. It notes that:

- o forests are critical to the livelihoods of hundreds of millions of people and vital to meeting their energy needs;
- o illegal forest use by the rural poor is often related to lack of access to resources.

### Box 6. A broader approach to FLEG (*continued*)

Among other measures, the Ministers committed themselves to:

- o review and update forest legislation;
- o recognise the rights of forest-dependent communities by taking into account their customary laws and practices and traditional knowledge;
- o promote the participation of indigenous people and the local population in forest management to encourage community development and conservation;
- o engage indigenous people, local communities, private forest owners, NGOs and industry in the formulation and implementation of forest laws and policies.

page 95) has noted: ‘people will only adopt legal alternatives to the extent that these exist.’ In order to protect the interests of rural communities and help them regularise their use of forests, therefore, forest law enforcement initiatives might:

- o Insist on even-handed enforcement of all forest-related laws;
- o Incorporate strategies for the effective participation of communities in designing and applying enforcement strategies and laws;<sup>83</sup>
- o Simplify the bureaucratic, fiscal, management planning and legislative requirements for securing tenures and permits for community access, use and marketing of forest resources.<sup>84</sup>

### 3. Effective law enforcement

The case studies and interviews confirm that many of the rural poor favour forest law enforcement initiatives so long as this means securing the rights of rural communities and indigenous peoples and restraining the exploitative and destructive operations of large-scale operators. To this end, forest law enforcement initiatives might:

- o Improve interagency coordination;
- o Review, and where necessary overhaul, the judicial system to ensure a transparent, just and efficient judiciary;
- o Ensure maximum transparency about forest resource allocations and complete data sets about land use, land claims and land titles;
- o Develop baseline data on current forest law enforcement measures, both in terms of the existing legal measures available and the extent to which they are actually applied;
- o Include mechanisms for monitoring the impacts of the forest law enforcement initiatives on the rural poor;
- o Undertake extensive awareness building among rural communities about how they can benefit from law enforcement, regularise

their rights and participate in planning and implementation (Patrick Alley personal communication);

- Provide mechanisms for community and NGO monitoring of compliance, including the encouragement of community mapping and the use of GPS devices to geo-reference violations;<sup>85</sup>
- Involve independent observers provided with clear terms of reference that ensure they have full access to information in a timely manner;
- Depoliticise the appointment of senior forestry and natural resource management officials and enforcement agents;
- Ensure vertical information flow and accountability between the different tiers of government.

#### **4. Target the major abusers of forest-related laws**

Given that forest law enforcement initiatives tend to be skewed by political realities to target those who are weakly protected and avoid those with greater political connections, measures need to be built in to resist this (Lily de la Torre, Racimos de Ungarahui, Peru, cited in Griffiths 2003, page 31). To this end, forest law enforcement initiatives might:

- Overhaul criminal laws and penal codes so that enforcement can target corporations, shareholders, senior company officials and chief executive officers and not just individual forest users;
- Develop new laws that set out the legal obligations for corporate responsibility;
- Improve financial sector and money laundering laws and regulations to discourage banks from lending to companies dealing in illegal forestry activities;
- Target those agents which are dealing in illegal timbers in bulk through intervening in large-scale transportation, processing and international trade;<sup>86</sup>
- Promote regional cooperation to avoid cross-border laundering and illegal timbers merely being diverted from one regulated entrepôt to another less regulated one;
- Encourage governments to adopt procurement policies that prohibit the use of illegal timbers.

### **Closing reflections**

In his studies of environmental law enforcement in Canada and the USA, Pendleton (1996, 1997b, 1998a, b) has emphasised the importance for reformers of first identifying the ‘harms’ for which remedies are being sought before hastily assuming that a ‘law enforcement’ approach is the appropriate solution. In general, FLEG proponents justify their approach principally as a way of curbing forest destruction, alleviating poverty and increasing state revenues. As this study indicates, it is, however, not immediately apparent that the enforcement of existing laws will remedy these ‘harms’. In

some cases, a major part of the problem of forest mismanagement lies in the inappropriateness of the laws themselves. In other cases, part of the problem lies in the contradictions between laws, and in yet others in unevenness or iniquity in the bureaucracy and judiciary, which skew the application and enforcement of laws away from the worst violators while penalising and creating insecurity for the poor. And in some cases, forest law enforcement may increase rents to the state, but may simultaneously intensify pressure on forests and livelihoods.

It is internationally agreed that destructive forest use—whether by logging, unjustified conversion, over-hunting or the extraction of other forest products—needs to be curbed. ‘Illegal logging’ certainly contributes to this destruction, but before law enforcement is adopted as the remedy of choice, thought also needs to be given to whether the ‘legal logging’ with which it is then substituted is, in practice, any more or less destructive. In Russia, Cameroon and Indonesia, civil society actors are voicing doubts about the forest law enforcement approach, exactly because the current ‘legal logging’ regime is seen as destructive of forests and of the livelihoods, rights and welfare of forest communities (CED *et al.* 2003). For example, the Indonesia Environment Forum, WALHI (2003), views the discourse on ‘illegal logging’ as diverting attention away from the environmental destruction and human rights abuses in the concession system. NGOs and academics in Russia have been equally cautious. Concerned that top-down forest law enforcement under the new Forest Code could speed up forest loss, they have called for legal reform, public control and transparency, and mandatory certification, as the first steps in any national FLEG process (Petrov 2005; IUCN 2005, page 22). The actual impacts of large-scale forestry operations on the livelihoods of forest-dependent peoples need to be better known and understood before law enforcement approaches can be confidently promoted as compatible with poverty alleviation.

This study indicates that both legal and illegal logging are integral parts of the countries’ political economies and that the laws of these countries tend to be shaped by the vested interests that dominate the political economy. Lawmaking is dominated by those who can exercise the strongest influence over the executive and legislature, which, in many cases, means that forest industries are able to shape forest-related laws in their favour. In this context, calls for legal reform imply asking the rich to dispossess themselves. The case studies suggest that this can come about if there are strong social movements pressing the powerful to relinquish their control of land and forest resources in favour of those who are currently excluded. Legal and governance reform can be more effective if there are transparency, mechanisms of accountability and effective pressure from opposing powers in civil society or the legislature. Investment in building up civil society capacity would be vital if forest law reforms are to make headway.

In summary, forest law enforcement and governance initiatives may provide scope for pro-poor reforms of forestry sectors, but they must be carried out in an inclusive, participatory, transparent and cross-sectoral way to ensure that they do not reinforce exclusionary forms of forestry that harm the tens of millions of people whose livelihoods depend on forests.

# Endnotes

<sup>1</sup> [www.salvonet.com/eia/cgi/forests/forests.cgi?a=3&t=template\\_search.htm](http://www.salvonet.com/eia/cgi/forests/forests.cgi?a=3&t=template_search.htm)

<sup>2</sup> <http://www.globalwitness.org/campaigns/forests/cambodia/monitoring.php>

<sup>3</sup> <http://www.globalwitness.org/projects/cameroon/en/>

<sup>4</sup> <http://usinfo.state.gov/topical/econ/group8/summit98/98summit/forests.htm>

<sup>5</sup> A bilateral agreement with the EU is now also under negotiation.

<sup>6</sup> [www.itto.or.jp](http://www.itto.or.jp) and ITTO Tropical Forest Update 12(1) [www.itto.or.jp/newsletter/v12n1/index.html](http://www.itto.or.jp/newsletter/v12n1/index.html).

<sup>7</sup> <http://www.worldbank.org/html/extdr/gc/governance/governance.htm>

<sup>8</sup> Earth Negotiations Bulletin, 13 October 2003.

<sup>9</sup> EU Council Conclusion on Forest Law Enforcement, Governance and Trade, 13 October 2003. See also Brack *et al.* (2002).

<sup>10</sup> [www.whitehouse.gov/news/releases/2003/07](http://www.whitehouse.gov/news/releases/2003/07)

<sup>11</sup> [www.whitehouse.gov/infocus/illegal-logging/piail.html](http://www.whitehouse.gov/infocus/illegal-logging/piail.html)

<sup>12</sup> See Fripp (2005) for a more detailed summary of global actions on illegal logging and related trade.

<sup>13</sup> Cited on [www.whitehouse.gov/infocus/illegal-logging/piail.html](http://www.whitehouse.gov/infocus/illegal-logging/piail.html)

<sup>14</sup> For a detailed case study see Henkemans (2001).

<sup>15</sup> See also references on page 321 of Colchester *et al.* (2003). Customary communities (*masyarakat adat*) are often referred to 'indigenous peoples' in international discourse.

<sup>16</sup> See also [http://www.undp.org/hdr2003/pdf/presskit/HDR03\\_PKE\\_HDI.pdf](http://www.undp.org/hdr2003/pdf/presskit/HDR03_PKE_HDI.pdf)

<sup>17</sup> See also [http://www.undp.org/hdr2003/pdf/presskit/HDR03\\_PKE\\_HDI.pdf](http://www.undp.org/hdr2003/pdf/presskit/HDR03_PKE_HDI.pdf).

<sup>18</sup> This statistic refers to lands set aside under the Indian Act as 'reserves' for the exclusive use of First Nations. The government has also created special administrative regimes in the Arctic to accommodate indigenous peoples, the largest of which is the Nunavut Territory which, while predominantly inhabited and governed by indigenous persons, is a public territory governed by a public government (Russell Diabo personal communication). According to the Government of Canada (2005), some 44% of

aboriginal people have not been to high school compared to 19% as the national average. Only 23% of aboriginal people have post secondary training compared to 43% for the nation as a whole. Infant mortality among aboriginal children is 20% higher than the national average and unemployment rates on reserves are more than two times higher than the national average the national average and four times higher for aboriginal people off reservations. Suicide rates are 3-11 times higher than Canadians in general. The government announced a C\$ 5 billion 5 year plan to address these inequalities.

<sup>19</sup> The policy of extinguishing indigenous rights in order to recognise them has been criticised by the UN Human Rights Committee as contrary to the International Covenant on Civil and Political Rights (MacKay 2001b; cf. Samson 2003). Technically, First Nations are not the owners even of reserve lands, which are Crown lands held on behalf of Aboriginal peoples in fulfillment of the State's fiduciary obligations (McMillan and Yellowhorn 2004, page 328).

<sup>20</sup> Nisga'a began asserting their land claims in court in the 19th century.

<sup>21</sup> The Act also has the effect of making it illegal for First Nations to harvest timber in large parts of their traditional territories without licence.

<sup>22</sup> Wildlife in Canada is understood as having no private owner until captured or killed and is thus managed by the Crown (the state) on behalf of all citizens (Treseder *et al.* 1998, page 1). In areas where treaties or the more recent 'Comprehensive Claim Settlements' have affirmed aboriginal rights, co-management arrangements have sometimes followed whereby access and use of these resources is jointly regulated by state agencies and indigenous communities (Treseder *et al.* 1998, page 1). However, in areas where treaties or negotiated settlements have not been agreed, the relationship between state regulatory laws and bodies and indigenous resource users is unclear and conflicts are not uncommon (Goddard 1991; Samson 2003). Indeed, even in treaty areas, conflicts between aboriginal resource users and state authorities regularly arise because of divergent views about the interpretation of treaties (Fumoleau 1975; Treaty 7 Elders and Tribal Council *et al.* 1996; Asch 1997). In common with other provinces in Canada, in British Columbia, wildlife ownership is vested in the provincial government under the 1979 Wildlife Act.

<sup>23</sup> The law for the demarcation and recognition of indigenous territories has never been passed.

<sup>24</sup> It is not yet clear whether this is because of its classification as national forest land, or due to remoteness, lack of resources and competing claims in forest frontier areas.

<sup>25</sup> World Bank institutional response to study questionnaire, 16 December 2003.

<sup>26</sup> Technically the zoning process is a draft exercise and is still subject to review.



<sup>27</sup> Jurisdiction over these forests is shared with other line ministries, notably the Ministry of Sustainable Development.

<sup>28</sup> Cited in Reiman (1998, page 149).

<sup>29</sup> As many as half a million people are thought to have died in the state-sanctioned killings that followed Sukarno's fall from power.

<sup>30</sup> The Royal Proclamation was never seriously enforced, but the principle of legal recognition of indigenous rights in land was nonetheless soundly established. Many earlier colonial charters had also recognised indigenous rights in land, however.

<sup>31</sup> Prior to 1982, some of Canada's foreign affairs, including treaty making between the Crown and First Nations, remained, technically, the affair of the British Crown. These powers were devolved to Canada by the Act of 'Repatriation'.

<sup>32</sup> Marchak *et al.* (1999, page 2) note that by 1999, 'ten companies each control over two million cubic metres of AAC. Their combined share represents nearly 68 percent of the total volume committed to corporate licences.'

<sup>33</sup> According to Dempsey (2005, citing SLDF and Forest Watch 2002, page 11; Hoberg 2001b; Hoberg and Paulsen 2004), the revised forest law has raised further concerns among environmentalists and First Nations.

<sup>34</sup> Thanks to Kai Schmidt-Soltau (personal communication) for drafting the preceding three paragraphs.

<sup>35</sup> An auction system was introduced in 1995 with the Application Decree of the 1994 law (Paolo Cerutti personal communication).

<sup>36</sup> These include the general Law on Exploitation of Our Wealth (1958), the Law on Conservation, Protection and Development of the Forest Wealth of the Country (1967), the Emergency Law for the Rational Use of Forests (1976), regulations to prevent forest fires (1972), the constitutional Law of the Nicaraguan Institute of Natural Resources and Environment (IRENA, 1979), the Decree Creating the Ministry of the Environment and Natural Resources (MARENA, 1994), the 1993 Forest Regulation and the 2003 Forest Law.

<sup>37</sup> Under Law 28, the Councils of the Autonomous regions secured the right to approve all concessions located in these areas. Until that point, approvals had remained the exclusive domain of central government.

<sup>38</sup> In accordance with Law No. 445, of 2003, on the Common Property Regime of the People and Ethnic Communities of the Autonomous Atlantic Regions and the Rivers Bocay, Coco and Indio Maíz.

<sup>39</sup> Article 50.1<sup>a</sup> of the 2003 Law for the Conservation, Growth and Sustainable Development of the Forest Sector.

<sup>40</sup> Seneca Club Associates and World Resources International 2004, Executive Summary page 6.

<sup>41</sup> In 2005, Transparency International classed Cameroon 137th out of 158 countries. See: <http://www.transparency.org/cpi/2005/cpi2005.sources.en.html> (8 Dec. 2005).

<sup>42</sup> See also [www.bcgeu.bc.ca/forests\\_000619.html](http://www.bcgeu.bc.ca/forests_000619.html)

<sup>43</sup> Gangs target old-growth forests. Prince George Citizen, September 5, 2000, Final Edition.

<sup>44</sup> A study in Eastern Honduras (McSweeney 2003) offers empirical evidence that rural households involved in the sale of forest products are more likely to be the poorer ones, e.g. the ones with less land and lower-quality homes, often young families who have not accumulated sufficient capital or labour. For such households, forest product sale is likely to be attractive because of its relatively low entry costs.

<sup>45</sup> Most of this excess capacity is in the form of small-scale mills serving the domestic market (Paolo Cerutti personal communication).

<sup>46</sup> Royal Commission on Aboriginal Peoples (1996) Vol. 1 and personal communications between Jutta Kill and indigenous interviewees (A. Manuel; H. Hammond; Head Hereditary Chief Nuximlacy; Hereditary Chief Qwatsinas; J. da Silva). Cf. Hudson and Ignace (2004, page 351).

<sup>47</sup> Ironically the imposed duties have only served to squeeze Canadian producers into greater efficiencies based on economies of scale, thus driving out smaller producers and making Canadian timber even more competitive than US producers. (A simple lesson in economics. The Economist, 1 February 2003, page 49.)

<sup>48</sup> <http://www.sierraclub.ca/bc/media/item.shtml?x=23>

<sup>49</sup> Cited in Reiman (1998, page 101).

<sup>50</sup> Graft mars crackdown on illegal logging. Financial Times, 14 January 2002; Malaysians charged with forestry violations. The Star, 14 May 2003; Illegal Logging Melibatkan Mafia Internasional dan Oknum Pejabat. Pontianak Post, 19 June 2003.

<sup>51</sup> Masyarakat Protes Penertiban "Illegal Logging". Pemprov Kalbar Bantah Datangkan Tim Wanalaga  
*Sinar Harapan*, 13 June 2003

<sup>52</sup> Tolak Wanalaga, Massa Kepung DPRDs: Hotel Perdana Nyaris Sasarana Amuk Massa. Pontianak Post, 29 May 2003; Ironi Perbatasan Serwawak-Kalbar (5). Penertiban Kayu Illegal vs Masa. Detikom, 12 June 2003; cf. WALHI slams illegal logging probe. Jakarta Post, 15 December 2003.

<sup>53</sup> The DFID focus on illegal logging sprang from an acknowledgement that as much as 60% of the tropical timber being sold in the UK comes from 'illegal' sources, a concern for the government as the UK rates itself the world's third largest net importer of tropical timber (Benn 2001). Initial studies informing this approach at first placed almost no emphasis on the likely social impacts of a law enforcement approach (Brack and Hayman 2001), but this was modified following civil society expressions of concern (Benn 2001, 2002).

<sup>54</sup> [www.dfid.gov.uk](http://www.dfid.gov.uk)

<sup>55</sup> Timber smuggling ring exposed. The Guardian, 18 February 2005.

<sup>56</sup> Indonesian Civil Society Organisation's Position Paper for FLEGT. Prepared for FLEGT Consultation Meeting in Brussels, 16 September 2005.

<sup>57</sup> The project was modelled on the pioneering Forest Crime and Reporting Project in Cambodia supported by DFID and the World Bank (Benn 2002).

<sup>58</sup> In April 2005, Global Witness was replaced as Independent Observer by another London-based NGO, Resource Extraction Monitoring, with a reduced budget and more limited terms of reference (Paolo Cerutti personal communication).

<sup>59</sup> Also Global Witness' new report on slow progress in Cameroon's efforts to stop illegal logging. Press Release, Global Witness, 16 June 2005, [www.globalwitness.org](http://www.globalwitness.org)

<sup>60</sup> FAO (2001, page 98) notes that forest law enforcement efforts in the Philippines have led to the deaths of numerous forest guards.

<sup>61</sup> Inter-American Commission of Human Rights, Report No. 27/98 (Nicaragua), quoted in The Mayagna (Sumo) Awas Tingni Community Case, Judgment on the Preliminary Objections of February 1, 2000, Series C No. 66, para. 22.

<sup>62</sup> Caso de la Comunidad Mayagna (Sumo) Awas Tingni vs. Nicaragua. Corte Interamericana de Derechos Humanos, 31 Agosto 2001.

<sup>63</sup> See also Dempsey (2005) citing Wilson (1998); Kamieniecki (2000); Hayter (2000); Hoberg (2001a).

<sup>64</sup> [www.bcgeu.bc.ca/forests\\_000619.html](http://www.bcgeu.bc.ca/forests_000619.html).

<sup>65</sup> The eviction order was issued in furtherance of an order of the Supreme Court of India of 23 November 2001 based on the Interlocutory Application of an Amicus Curiae Brief through Writ Petition No. 202 of 1995 submitted by a conservation NGO. The Supreme Court Order restrains the Central Government from regularising alleged encroachments on forest lands in line with the Forest Conservation Act, 1980, and orders a time bound programme for the eviction of the alleged encroachers from forest lands (Indigenous Issues 09/2003, page 2, Newsletter of the Asian Indigenous & Tribal Peoples Network, [www.aitpn.org](http://www.aitpn.org)).

<sup>66</sup> World Bank facilitates transport of illegally cut logs in Cambodia. Press release, Global Witness, 10 February 2005; see also Global Witness (2002a).

<sup>67</sup> Concesiones Forestales se Convierten en una Nueva Amenaza para los Territorios Indigenas, Press Release, AIDSESEP, 31 October 2003, [www.aidesepe.org.pe](http://www.aidesepe.org.pe).

<sup>68</sup> However, even in Madre de Dios, forest zoning for concessions has only excluded areas titled or claimed by indigenous peoples. It has not taken into consideration the much more extensive areas used by indigenous communities for hunting, fishing and gathering, which are not amenable to titling under the Law of Native Communities. These areas, while encumbered by customary rights, have been

treated as vacant state lands suitable for zoning as production forests. Chirinos and Ruiz (2003, page 1) also note that illegal extraction of mahogany continues in isolated parts of Madre de Dios.

<sup>69</sup> FSC Principle No. 1 requires that ‘forest management shall respect all applicable laws of the country in which they occur, and international treaties and agreements to which the country is a signatory,...’

<sup>70</sup> Rainforest rescue. *Businessweek*, 27 October 2003; cf. Poynton (2002).

<sup>71</sup> Step wise approach to certification raises questions. Down to Earth Newsletter No. 59, November 2003; Rainforest Action Network Press Release 18 August 2003, criticises a WWF/TFF ‘certification’ of reduced impact logging: [www.ran.org/ran\\_campaigns/old\\_growth/indonesia/](http://www.ran.org/ran_campaigns/old_growth/indonesia/). Inoguchi *et al.* (2005, pages 32-35) also point out that certification procedures sometimes overlook community interests.

<sup>72</sup> This is the case in all five case studies. In Nicaragua, Honduras, Cameroon and Indonesia tenure is insecure. In Canada’s British Columbia, land claims remain largely unresolved and the claims process itself is contested. In Bolivia, although laws now permit titling, it is progressing slowly.

<sup>73</sup> This point comes out most clearly in the Cameroon case; it was not so evident in the other case studies.

<sup>74</sup> This is evident in all the developing countries studied. In recent years, Canada has begun to move away from this exclusionary approach to conservation (Dempsey 2005), but disputes remain (Cree win key victory in court battle over Wood Buffalo Park. CBC News Online, 24 November 2005, <http://www.cbc.ca/story/canada/national/2005/11/24/woodbuffalo-scoc051124.html> [7 Dec. 2005]).

<sup>75</sup> This theme is explored in section 5.

<sup>76</sup> In Bolivia, indigenous peoples have repeatedly protested about the slow pace of titling while extractive projects get prioritised. For indigenous peoples, concerns about the delays in land settlements in Canada see, for example, First Nations Strategic Bulletin 3(9), September 2005.

<sup>77</sup> This was reported for British Columbia in the 1980s and 1990s (Pendleton 1996) and is particularly evident today in Indonesia, Cambodia and Cameroon.

<sup>78</sup> Resistance is most clearly documented in British Columbia in the form of protest logging and public demonstrations, but blockades of imposed logging operations are widespread in developing countries including Malaysia, Indonesia, Peru and Cameroon. In Nicaragua, as in British Columbia, affected peoples have also taken their grievances to international tribunals.

<sup>79</sup> Pace Oksanen *et al.* (2003, page 10) who argue that ‘devolving forest resource ownership and management to local communities and removing excessive regulations which discriminate against the poor is a concrete means for empowering and increasing the political capital of the poor. Over-regulation of forest resources

and limited accountability of public officials encourage corruption, which usually harms the poor.’ See also ARD (2004a, b).

<sup>80</sup> Longgena Ginting (personal communication) emphasises that donor-driven law enforcement programmes have little chance of being effective. FAO (2001, pages 97-98) notes that attempts in Ghana to control illegal logging through export bans and a ‘crackdown’ were ineffective until complemented by concerted efforts to involve landowners and civil society.

<sup>81</sup> In Amazonia, NGOs emphasise the need for forest law enforcement initiatives to protect the rights of indigenous peoples in voluntary isolation (Griffiths 2003, page 31).

<sup>82</sup> EU Council Conclusion on Forest Law Enforcement, Governance and Trade, 13 October 2003.

<sup>83</sup> See also Inoguchi *et al.* (2005, pages 13-20).

<sup>84</sup> Deployment of this measure should be done very carefully. In the context of ‘capture’, where most community-based forestry operations have been effectively taken over by corrupt elites or criminal syndicates, simplifying community forestry permits may just make ‘legalising’ clandestine extraction even easier.

<sup>85</sup> Interview with a US Government official, who asked not to be named. Global Witness notes that civil society participation is crucial to effective monitoring and indeed note from their Cameroon experience that ‘monitoring cannot be done without it’ (Patrick Alley personal communication).

<sup>86</sup> Cf. The haze from an unlawful trade. Asian Wall Street Journal, 6 August 2003.

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## Appendix

# Comments from the province of British Columbia\*

These comments address two specific areas—British Columbia’s relations with First Nations and issues related to forest law enforcement—as well as offering some summary points.

### First Nations

The reality is that the British Columbia government is forging new relationships with First Nations, based on reconciliation, recognition, and respect. It is providing First Nation communities with the tools, training and skills development needed to create self-reliance, certainty and prosperity, and increasing their share of the allowable annual harvest, much of this through reallocation from large forest companies.

British Columbia recognizes that there have been challenges with the province’s relations with First Nations ([http://www.gov.bc.ca/arr/popt/the\\_new\\_relationship.htm](http://www.gov.bc.ca/arr/popt/the_new_relationship.htm)). In fact, the government opened its 2003 legislative session with a statement of regret which, among other things, stated:

*“It is up to us to accord First Nations the respect, support and social and economic opportunities to which they are entitled. Errors have been made in the past. Our institutions have failed Aboriginal people across our province.”*

*“... government deeply regrets the mistakes that were made by governments of every political stripe over the course of our province’s history. It regrets the tragic experiences visited upon First Nations through years of paternalistic policies that fostered inequity, intolerance, isolation and indifference.... These are the legacies of history that we must act to erase. They are sad reminders that it is always our children who pay the biggest price for society’s shortcomings.”*

Clearly the relationship between British Columbia and First Nations is far-reaching and complex, and goes far beyond forestry.

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\*Provided by Jim Snetsinger, Chief Forester, Province of British Columbia, Canada (January 2006).

At the same time, British Columbia recognizes the importance of the forest resource to First Nations—for economic, social and cultural reasons, and is involved in specific actions related to the forest sector. This includes government's goal to more than double First Nations' share of the allowable annual harvest to eight per cent.

The Forest (First Nations Development) Amendment Act, 2002 provides greater opportunities for First Nations to access forest tenures and provides transparency in providing those opportunities.

Since September 2002, the Ministry of Forests and Range has signed forestry agreements with 100 First Nations ([http://www2.news.gov.bc.ca/news\\_releases\\_2005-2009/2006FOR0003000019-Attachment1.pdf](http://www2.news.gov.bc.ca/news_releases_2005-2009/2006FOR0003000019-Attachment1.pdf)) to provide access to 15.7 million cubic metres of timber and to share forestry revenues of \$114.5 million. Currently about half of the First Nations in the province are involved, not a "small number" as stated in the report. Revenue-sharing funds can be used to support capacity, business development and any other meaningful initiatives.

Other actions British Columbia has taken specific to First Nations were overlooked in "Justice in the forest: Rural livelihoods and forest law enforcement". For example:

- Sections 43.5 and 47.3 of the Forest Act enable the Minister of Forests and Range to invite, without competition, an application from a First Nation or its representative for a Community Forest Agreement, Forest Licence, or Woodlot Licence in order to implement or further an agreement between the First Nation and the province. These direct opportunities are often provided through Forest and Range Agreements.
- The \$40-million Economic Measures Fund to support economic development projects involving First Nations has created opportunities related to oil and gas, tourism, forestry and the 2010 Olympic and Paralympic Olympic Games being hosted by British Columbia.

Aboriginal rights and title are enshrined in law in Canada, and the courts of Canada and British Columbia have duly applied these laws with the result of empowering First Nations in their negotiations and dealings with government.

Traditional Use Studies have been conducted for a number of First Nations across British Columbia, and where they exist, the Ministry of Forests and Range plans to work with First Nations to determine areas of interest and how they should be managed. Some of the information from these studies is confidential and remains with the appropriate First Nation.

Resources that are the focus of a traditional use by First Nations and have continuing importance are considered cultural heritage resources. Under British Columbia's Forest and Range Practices Act, cultural heritage resources must be conserved or, where necessary, protected.

British Columbia has a strategic land use planning process for public lands, which make up nearly 95 per cent of the province. It involves the public, stakeholders, and various levels of government, including First Nations. On British Columbia's Pacific Coast, the provincial government has been discussing land and resource management issues with First Nations for several years, and the government-to-government discussions are close to final. Almost 30 First Nations with traditional territories in the area have had an opportunity to present their interests and concerns, and discuss them with their communities.

Through its consultation process, the Government of British Columbia makes reasonable efforts to inform First Nations of proposed decisions, determine if aboriginal interests may be impacted and provide due consideration to the interests raised so these interests can be addressed.

Based on the strength of aboriginal interests and how they might be impacted, the province will seek workable accommodations that balance the aboriginal interest with other public interests and management objectives. For example, harvest block boundaries or road locations may be adjusted to address cultural use concerns.

A statutory decision maker must be satisfied that affected First Nations have been adequately consulted and where appropriate, aboriginal interests have been accommodated prior to making a decision.

## Forest law enforcement

While illegal logging is a global issue that must be addressed, it is not a significant issue in British Columbia. This is largely due to comprehensive monitoring and enforcement not, as stated in the report, the result of tailoring laws to suit large-scale forestry operations.

The British Columbia government and BC Crime Stoppers estimate that timber theft and vandalism cost British Columbia \$10 million to \$20 million a year. Since the total value of government revenue from legal harvesting is more than \$1.2 billion annually, this illegal activity is miniscule. Canada used this estimate in its Report on the Implementation of the G8 Action Programme on Forests, made to the G8 Kyushu-Okinawa Summit of 2000 ([www.g8.utoronto.ca/summit/2000okinawa/forest6.htm](http://www.g8.utoronto.ca/summit/2000okinawa/forest6.htm)).

"Justice in the forest: Rural livelihoods and forest law enforcement" cites statistics that are much higher but come from sources that are not substantiated.

It is worth noting just some of the independent checks on British Columbia's forest management system that apply to both large and small operators and government itself:

- Compliance and enforcement staff use their knowledge and judgment to set an initial risk rating for activities based on what could happen, its likelihood and the possible negative impacts.



They then factor in additional elements such as a company's operating record, to set a final risk rating. About 3,000 high-priority sites were identified in 2002/03, and more than 80 per cent were inspected. Even with the focus on operations that are more likely to present a risk, compliance rates at all sites—large and small companies—exceed 85 per cent. Most involved compliance, not enforcement, actions that are not as serious.

- Provincial laws control the movement of all timber in the province through timber marking and transportation regulation, and the Ministry of Forests and Range works with police to investigate illegal logging.
- Under the Forest and Range Practices Act (which succeeded the Forest Practices Code of British Columbia Act), government must establish and maintain a Forest Practices Board (Section 136), an independent agency that must conduct audits of forest practices and publicly report results (Sections 214 and 215)— [www.fpb.gov.bc.ca/](http://www.fpb.gov.bc.ca/)
  - o The Forest Practices Board's independence and auditing responsibilities help to ensure that forest companies of all sizes and the government meet their forest stewardship responsibilities.
  - o The prevailing finding in board reports is that there is a high level of compliance with forest legislation by both forest companies and government.
- The Auditor General is an officer of the Legislature and therefore independent of government and makes impartial assessments of government accountability and performance, including the Ministry of Forests and Range.

The report correctly notes that British Columbia has a low rate of imposed penalties—this is due to a high rate of compliance. Statistics reporting compliance and enforcement activities are available in the annual reports for the British Columbia Ministry of Forests and Range Compliance and Enforcement Branch for the last nine years. [http://www.for.gov.bc.ca/hen/publications/publications\\_index.html#annual](http://www.for.gov.bc.ca/hen/publications/publications_index.html#annual)

The annual reports for the Compliance and Enforcement Branch list the compliance actions taken against major licensees in the province, identifying licensees by name. Infractions by small-scale operators are not similarly reported because they are harvesting smaller volumes.

## Summary

The report should show that its findings for British Columbia are different from the other case studies, and point out that the province has achieved the recommendations presented in Section 10: Ways Forward. Specifically:

- British Columbia's forest laws are wide-ranging, and enforcement is tough and fair. The province, like the rest of Canada, has a strong democracy, an independent judicial system and a free press.
- British Columbia's policy development is open and transparent, and British Columbians are directly involved in community-based land and resource management planning activities. By law, companies must invite and consider comments from First Nations and the general public before beginning forestry activities on public land.
- The British Columbia government is committed to increasing economic opportunities for First Nations in the forest sector by sharing forest revenues and increasing their access to the province's allowable annual harvest.

In 2003, Dr. Benjamin Cashore of Yale University was commissioned by the BC Market Outreach Network, a provincial Crown agency, to conduct an independent academic study that compared Canada's environmental forest practices regulations with those in jurisdictions around the world. The resulting report, *Global Environmental Forest Policies: Canada as a Constant Case Comparison of Select Forest Practice Regulations* (<http://www.ifor.ca/publications.htm#report>) provides strong evidence that forest practice regulations in British Columbia are among the toughest on earth.

After completing the study, Dr. Cashore noted that: *"British Columbia's comparatively stringent approach to forest policy regulation is worth sharing and can serve as a basis for a dialogue about the next and most appropriate steps in global forest management."*

In response to the Cashore report, the Government of British Columbia publicly accepted the challenge to be a leader in global discussions. British Columbia would welcome the opportunity to share what it has achieved so that other jurisdictions can find ways to address illegal logging and protect the livelihoods of forest-dependent people.

## Forest Perspectives Series

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Forest Law Enforcement and Governance (FLEG) has been justified as a way of benefiting the poor by improving state revenues from forests, but the direct social impacts have not been given much attention. This study constitutes an attempt to fill the gap. Based on reviews of community experiences in Bolivia, Cameroon, Canada, Honduras, Indonesia and Nicaragua, it shows how the extent of forest-based livelihoods is often under-appreciated. The laws that affect the way people use forests are often contradictory and restrict livelihoods. Moreover, laws tend to be selectively developed and applied in favour of large-scale forestry, while laws, which secure community rights in forests, are commonly absent, ignored or too onerous to be widely used. Lack of adequate legal protection of community rights makes much small-scale forest use 'illegal'. Illegal forest use, including by communities, tends to be enmeshed in wider political economies, so major players tend to be politically protected while local communities are vulnerable. Enforcement has sometimes focused narrowly on forestry laws to the neglect of laws that secure rural livelihoods. Crude enforcement measures have reinforced social exclusion and tended to target poor people while avoiding those who are well connected. Trade-based FLEG measures may also ignore the social implications. The study recommends future FLEG initiatives be developed in transparent ways, with broad civil society engagement. They should give special attention to the rural poor by addressing the full range of laws relating to forests, adopting rights-based approaches and promoting legal reform, rule of law and access to justice.

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