



# Barriers to legality in the forest sectors of Honduras and Nicaragua

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## Conclusions

- Loggers, industrialists, communities and individuals in both the public and private sectors of Honduras and Nicaragua face a number of both constraints to legality and inducements to act illegally.
- The legal and policy framework is the source of various failures in law compliance. This framework is sometimes confusing, inconsistent and difficult to comply with. In other cases it opens opportunities for arbitrary interpretation of rules and corruption. Penalties for breaking the law are usually negligible and therefore do not act as a significant deterrent.
- These effects are compounded by the lack of state capacity to prevent, detect and enforce the law. Funding and staffing of monitoring and enforcement agencies is inadequate. Full legal property rights are uncommon. Political and economic vested interests heavily influence state recruitment and promotion, negatively affecting performance and integrity. Communication and coordination between various government agencies are poor. High levels of corruption affect the judiciary and police.
- Forest sector monitoring and enforcement are also difficult due to inadequate knowledge of forest resources, who owns them, and how they change over time. Illegal logging goes undetected, and the information for successfully prosecuting major offenders is often unavailable.
- Poor detection, the difficulty of prosecuting offences, corruption and lenient penalties for forest crime, and other governance limitations, all create substantial incentives to operating in illegal ways.

## Illegal logging and trade: a major problem

Surveys and case studies in Honduras and Nicaragua show that illegal logging and trade of forest products are dominant in both countries (del Gatto, 2002, Alcocer, 2002, Nicambiental, 2002).

Illegal logging and trade result in important losses of government revenue, misallocation of scarce economic resources, damage to the environment and poverty impacts<sup>1</sup>. Since the government in both countries is a major owner of forests and simultaneously bears the main responsibility for the appropriate management of all forest resources — public, private or community controlled — the extent of illegal logging and trade points towards a fundamental breakdown in governance in the sector.

Thus, it is not surprising that most of the conditions that favour illegalities in the forestry sectors of Honduras and Nicaragua can be traced to weaknesses of the public forest administration and of other government institutions in both countries. As in most low-income economies, Honduras and Nicaragua share the common feature of a wide gap that exists between the responsibilities of the state and its capacity to discharge them.

This note examines the features of the socio-economic, political and institutional environment that work against governance in the forestry sector of these two countries. This is a first step for designing remedial action. The note shows that the problems of sector governance are similar, although they operate with a different force, in the two countries.

## Inadequate policy and legal framework

Many of the problems of law enforcement are created and even induced by inadequate government policy and legal frameworks in Honduras and Nicaragua. In both countries the legal system is affected by a number of problems that either compel some actors to act illegally and create powerful inducements to forest crime for others.

A notable obstacle to legality is the fact that

some of the main actors perceive the law as very eminently unfair and who therefore actively resist its application and opt to operate outside it. For example, in Honduras and Nicaragua, successive governments have ignored some of the traditional rights of local forest users who are de facto occupants of forest lands. In some cases, governments have gone so far as to ignore its own previous decisions by, for example, assigning harvesting rights to third parties on lands already granted to indigenous communities. Naturally, negatively affected populations resist such regulations and tend to operate outside the law (Box 1).

By these acts, governments and their laws contribute to increasing uncertainty of access and control of land and forest resources. Land tenure uncertainty precludes long-term forest management mandated by law, and favours conditions leading to violence and to settling conflicts outside the legal system. Clear forest land (and, in general agricultural land) property rights are a condition for eliminating disincentives to legality. Land tenure policies and regulations must give clear and stable signals to the main actors in the sector in order, to eliminate uncertainties that generate potent inducements to operate outside the law (see, for example, conflicts over involving indigenous rights communities in Puerto Cabezas, Nicaragua, by Ampié Bustos, 2002).

In both countries there are instances where laws and regulations over the management of forest resources require certain actors to comply with unrealistic rules. Thus, rural communities are asked to prepare detailed and highly technical forest management plans before they can use their forests, but are unable to deliver these plans with the level of detail and technical sophistication required by law (Colindres, 2002, Ampié Bustos, 2002). In other cases, individual and isolated farmers growing a few trees must obtain permits to transport their wood but while they are not required to do the same in the case of agricultural products. The difficulties in complying with these legal requirements and the perceived unfairness of a bias against forest products create powerful inducements to ignore regulations. On the other hand the forest administration does not have the capacity to control thousands of farmers each logging and marketing just a few trees. When there is strong resistance to compliance coexisting





### BOX 1. When the law is perceived as “unfair”

In Honduras, the AFE-COHDEFOR assigns forests to poor communities under the Social Forestry System. However these communities cannot legally harvest these forests. The allowable cut is administered by COHDEFOR which, after allocating to the community a maximum of 1000 m<sup>3</sup> in the case of pine forests and 200 m<sup>3</sup> from broadleaf forests, auctions the rest - but the communities hardly benefit from then proceeds of these auctions. It is hardly surprising that these occupants resist COHDEFOR decisions. Both communities and the parties winning the auctions have a potent incentive to harvest valuable wood as fast as possible, even if this means operating outside the law. The legal system is perceived as unfair by communities, and their resistance to compliance increases.

In another case, the COATLAHL cooperative has operated as an umbrella legal entity for more than 20 years until the government unilaterally demanded that each group in the cooperative must operate as an individual legal entity or lose their harvesting permits. Whatever the reason for this change, the communities involved perceived it as exceedingly unfair and arbitrary.

In Nicaragua, many forest-related conflicts arise because the government has failed to legalise and enforce traditional indigenous land property rights, particularly in the two autonomous Atlantic coast regions, thus creating conditions favourable for illegal logging.

(Del Gatto, 2002a; Guillen, 2002)

with an ineffective state enforcement capacity of the state, naturally the law naturally becomes unrealistic and irrelevant because it is unenforceable (Box 2).

Furthermore, the regulatory framework is sometimes confusing because of a proliferation of rules that are sometimes incoherent and therefore subject to arbitrary interpretation. In addition, laws are issued without their respective regulations and therefore implementation becomes uncertain because actors do not know how to comply with them. The proliferation of unclear rules increases uncertainty and the inducement to operate illegally (Nitaplán, 2002, Guillén, 2002).

Frequently, the laws also contain penalties that in many cases are “affordable” and, that is to say, not commensurate with the crime committed, involving costs that are substantially lower than the potential benefits of operating illegally. In these cases, “crime pays”. If the probability of being discovered is low – a highly likely event in both countries considering the weak inspection and enforcement systems — and that penalties are slight, the inducements to illegal acts are considerable.

There are several other cases of legal failure in both countries that either push certain actors to act illegally or create conditions that make operating illegally extremely tempting. Therefore, a first step in reducing illegal logging and illegal forest products trade is to create an adequate policy and legal framework. In the case of Honduras, a Parliamentary Commission is examining legal reforms to the forest sector considered for the first time aspects of the law affecting illegal logging and trade. In Nicaragua, a Forest Regulation has been issued under an Executive Decree rather than a forest law. However, the uncertainties deriving from the fact that an Executive Decree cannot overrule related laws,

have only exacerbated difficulties with compliance (Guillen, 2002). This is clearly unsatisfactory, both in encouraging development, Nicaragua is also now also in the process of reviewing its overall legal framework governing forests.

### Public administration failure

The quality of public institutions is critical to proper governance and progress (Easterly and Levine, 2002). However, government institutions in both Nicaragua and Honduras are weak. When the government is weak the incentive is greater to carry out illegal logging and other unauthorised practices because the probability of detection and punishment are low, while the rewards may be considerable.

The forest administrations of these two countries lack the necessary financial resources and staff to adequately manage their forests. The lack of financial resources is such that in some cases private parties that are supposedly under to be controlled of by the government voluntarily cover the costs of such control (Boxes 3 and 4). In these cases the propensity for bias and corruption is obvious. In other cases, as reported in Nicaragua, financing of the operations of the Public Administration (INAFOR) is financially dependent on payments for

### BOX 2 When the law is unworkable

In Honduras, the law requires communities and other stakeholders to develop forest management plans prior to forest utilization. However two problems arise. First, the government institution does not have the necessary resources to control implementation. Second, some communities do not have the technical capacity to produce these plans and the government generally does not have the capacity to provide the required technical assistance. Communities follow one of three options: first, they can depend on a technical assistance project, if available, for the preparation of the plan and guidance in its implementation. The problem with this option is that when external technical support is terminated, the tendency is to go back to the old ways, ignoring the law. Second, the community ignores the law and continues to exploit forest resources as before. Third, the community depends on a loan from an external intermediary to finance the design of the forest management plan. The incentive for the intermediary, which now has access to the community resource but is not directly accountable for its management, is to operate illegally, harvesting valuable wood first and abandoning the rest. The fact that the approval of a forest management plan can take three years adds another incentive to operate outside the law.

In Nicaragua, small producers are often compelled to ignore the law. Even small farmers growing a few trees in their farms need to comply with a number of administrative procedures, to obtain permits and so on, to market a tree. As expressed by one observer, “ the typical farmer, has no knowledge of administrative procedures, does not have a telephone, is far from the urban centre where the government administrative offices are located and mail does not get to his house. Compliance with administrative procedures is a great effort taking several days of work. Therefore a rural legal system based on elaborate procedures and a large flow of paper, is condemned to failure”.

(Del Gatto, 2002; Nitlapán, 2002)





### **BOX 3 When controllers are controlled**

Authorisations from AFE-COHDEFOR for inventories, harvesting permits, transport permits, etc., require approval by a technician from the institution. However, these technicians often cannot discharge this function because the AFE-COHDEFOR is unable to finance the costs of the field visits needed to carry out the assessments necessary for issuing the permits. Faced with this problem, communities and corporations often decide to cover the per diem and other "travel costs" of government inspectors. The potential for biased reporting on harvested volumes and species, sites involved, etc., is clearly very high in these situations.

(Del Gatto, 2002a).

issuing various permit payments. Therefore, INAFOR dedicates an inordinate amount of time and attention to this task, rather than to the detection of forest crimes and law enforcement. Some Nicaraguan municipalities are also more interested in bolstering their finances by charging municipal taxes and other payments for services, rather than in ascertaining whether wood is legal or not. A study of the El Castillo Municipality, in Nicaragua, revealed confusing procedures for sharing revenues between INAFOR and the Municipality is a confusing, procedure with the Municipality complaining that INAFOR has not transferred the 25% of revenues legally corresponding to it. These conflicts have resulted in the cash-starved Municipality either issuing its own permits (illegally and for a fee), or creating obstacles to those issued by INAFOR (in order to charge fines). The dispute has increased

### **BOX 4 Law enforcement and meagre resources in Nicaragua**

The INAFOR office in the Puerto Cabezas Municipality has with only one officer, two assistants and a secretary. Transportation depends on a single motorcycle. This team has to enforce the law both in this and Waspam Municipality. This is a total of more than 15,000 square kilometres (1.5 million hectares). They have virtually no capacity to monitor this vast area. Attempts to enforce the law run the risk of personal violence, including death. The salary levels clearly do not justify taking the risk.

(Ampié Bustos, 2002)

uncertainty and has pushed some actors to operate outside the law (Paniagua, 2002). A similar situation can be observed in Rosita (Pommier, 2002). When conflicts of awareness such as these arise, then the possibilities of widespread illegality and corruption increase.

In the agricultural expansion frontier areas, the presence of the government is virtually non-existent and powerful private interests de facto control the utilisation of resources. These areas are also safe havens for organised crime, including criminal groups involved in drug trafficking (Colindres, 2002). In Honduras, the increased flow of money created by the drug traffic has increased the capacity of illegal groups to access and exploit valuable forest resources.

In certain areas of Nicaragua the presence of armed groups after demobilisation makes government control of what happens in the forest areas virtually all but impossible. In these conditions, law enforcement is a dangerous and undesirable task for badly paid government staff.

In some cases the practices of the public forest administration are

### **BOX 5 Dead wood and widespread illegality in the Paulaya Valley**

During 2000 and 2001 AFE-COHDEFOR issued a number of utilisation permits to extract "dead wood" trees felled by hurricane Mitch or due to changes in land use. The institution authorized the extraction of some 8,700 cubic meters of mahogany, 93 per cent of which was supposed to be dead wood. However, evidence suggests that about 80 percent of the extraction was illegal. Permits were used by operators to harvest healthy trees, and then to 'legalise' the wood. Despite wide knowledge that this was happening in the Paulaya valley, this policy was unaltered for these two years, suggestively coinciding with the remainder of the political cycle

(Del Gatto, 2002)

aberrant. For example, land tenure insecurity often results in local populations illegally harvesting public forests as a mechanism for establishing occupancy and obtaining land title from the government (Colindres, 2002). Ironically, in these situations, an illegal act provides the basis for legalising land tenure.

In Honduras even agreements between government and communities are subject to arbitrary change and are therefore not trusted by the parties involved. For example, harvesting rights are not secure and provisions for change are unclear. Thus, the government can unilaterally repeal them for reasons that are not necessarily understandable to the communities affected. Naturally, communities tend to view these agreements as transitory and subject to arbitrary termination by government. In these conditions, long-term legal commitments to forest management are dismissed in favour of the more immediate, but illegal, capture of benefits from forest use.

The governance failure of the public forest administration is sometimes compounded by administrative confusion over who has responsibility and authority for what. In Nicaragua the responsibilities and authority of the central government are often in conflict with decisions taken in the autonomous regions. Frequently, there are overlapping functions between central and regional or municipal governments, and unclear administrative linkages between various Ministries or other state institutions with a role in law enforcement, such as the police and the judiciary. These conditions create opportunities both for corrupt public officials and corporate interests to "breach of the law, either unintentionally due to confusion of roles or unclear procedures, or intentionally by exploiting these incoherencies" (Global Witness, 2002).

Unfortunately, corrupt practices are prevalent in both countries. Transparency International rates Honduras and Nicaragua in 71st and 81st place in its 2002 survey of corruption perceptions of 102 countries (Transparency International 2002). Honduras is thus at the same level of Russia, the Côte d'Ivoire and Zimbabwe, and below Panama, El Salvador and Uzbekistan. Nicaragua is an even in a worse situation, at the same level with Venezuela, Guatemala and Albania. According to this index, Nicaragua is one of the most corrupt countries in Latin America, ranking just above Haiti, and the most corrupt country in the region, Ecuador. Recent surveys carried out by the Honduran government with the support of the World Bank confirm that corruption is widespread in this country, with the Judiciary and the National Police, both key to law enforcement in the forestry sector, being among the most corrupt institutions (WBI, 2001). These studies have resulted in the creation of a National Anticorruption Council, and the drafting of a National Anticorruption Strategy, which will hopefully lead to some





### BOX 6 Governments act illegally too

Authorizations to harvest forest resources, granted by local governments to various communities in Bilwi, Nicaragua, are in contravention of the Forestry Regulation 45-93. But this type of permit is issued and recognized by local authorities in charge of law enforcement, including the local office of INAFOR, the Municipality and community leaders. This anomalous situation shows that determined organised local actors can sometimes twist the law to favour their own interests.  
Pommier, 2002

concrete results (CAN, 2002). In Nicaragua, corruption is widespread, reaching high levels of government, although various measures are currently under way to try to remedy this situation. Given the levels of government corruption, it is not surprising that surveys in both countries identify this as one of the most prominent causes of illegal logging and trade (see, for example, Ampié Bustos, 2002).

### Imperfect knowledge and unsatisfactory knowledge management

Making knowledge about the condition of forest resources and how they are being managed more widely available would increase transparency and thus make illegal logging and other illegal activities difficult to hide. Unfortunately, public knowledge about the features of forest resources and the ways in which they are being managed is scarce in both countries. There is seldom a clear idea of existing commercial volumes, quality of forests, distribution of species and geographical location of timberwood resources. Forest inventories are imperfect, obsolete or just non-existent. As already mentioned, the public forest administration does not have the data needed to control the implementation of forest management plans, to track the evolution of forest resources or to enforce the law.

Governments may have clear boundaries on paper for their national parks and reserves, but these limits are seldom demarcated on the ground. Peasants or companies entering these lands may not even know that they are trespassing. In all these cases, a knowledge baseline that would allow the monitoring of changes in the forest condition does not exist. Loggers and other users of forests can enter forest lands and extract valuable trees or other products, and these interventions may go unnoticed for long periods. In all these conditions, it is difficult to monitor changes and gather the necessary evidence to arrest, indict and prosecute those who do not comply with the law.

Monitoring the quantity and quality of forest products is also difficult because products are seldom homogeneous. For example, species of timber may be (intentionally) misidentified and their quality prove difficult to ascertain.

Furthermore, the public forest administration in both countries is less than transparent when it comes to information they have about forest management plans and their implementation. Public access to information such as forest management plans is not easy in Honduras. This situation does not encourage the development of social control mechanisms. In some cases, municipalities in Honduras have denounced agreements between professional foresters and industrialists which under-declare the availability of timber in community lands in order to evade taxes. The public and watchdog NGOs find it hard to check the veracity of these declarations simply because many records are inaccessible to the public (Colindres, 2002).

### The costs of operating legally

Because of the policy, legal and institutional failures detailed above, illegal logging and trade are profitable operations. One of the main barriers to operating legally is the difference in costs between legal and illegal timber. Although it is difficult to obtain completely credible data and information, analysis carried out in Honduras strongly suggests that the costs of production and transportation of illegal wood may be about 75% of the cost of legally harvested wood (Ddel Gatto 2002a). Studies in Rio San Juan in Nicaragua show similar results (Paniagua, 2002). And other analyses in Bilwi, Nicaragua, show that the differences between the cost of production increases for more valuable species (e.g. mahogany compared to pine). In other words the financial incentive to operate illegally is higher for precious woods. However, in both cases the rewards for operating illegally are substantial. If a mahogany logger evades 60 percent of taxes and 50 percent of forest management plans and transport permits, the financial profit per cubic meter of sawnwood goes up from about \$ 119 to \$200-250. In the case of pine, commercial profits jump from about \$ 29 to \$41 per cubic meter of sawnwood (Ampié Bustos, 2002).

The substantial financial incentive to operate illegally will continue unless this relationship is reversed, with the costs of illegal timber exceeding those of legal wood. Since legal wood intrinsically carries higher costs due to the need to comply with forest management plans, and obtain transport certificates, etc., for the movement of wood and so on, the cost of illegal wood needs to be increased through a higher probability of detection and stiffer penalties, financial or otherwise. Such actions are also likely to improve the market price for legal operators by reducing the price-dampening effect of a market flooded with illegal wood. Simultaneously, simplifying administrative procedures and increasing the realism, logic and stability of government rules, could reduce the costs of legal forest management.

### Conclusion

From the above it is evident that there are numerous and complex factors that create major real barriers to law compliance, as well as powerful incentives to act outside the law in the forest sectors of Nicaragua and Honduras. The governments of both countries are making serious efforts to streamline their administrative, policy and legal framework, and at least in the case of Honduras, taking explicit considerations of measures that could simplify procedures and to make the law more realistic, operational, fair and less vulnerable to corruption. In both countries there are also government-wide initiatives to combat administrative corruption across the board, and these efforts can only benefit forests and the people who populations depending on them.

However, the task of improving law enforcement in the forest sector is of such magnitude that it is doubtful that governments alone will be able to accomplish much. The support from international donors is needed, support that should diverge from the past emphasis on technocratic solutions (such as what species are best to plant, and how can logging roads be best built, etc.) and give much more emphasis to supporting improved higher levels of governance. This implies an improved understanding of power relationships, motivations and areas of influence in government, as well as a closer involvement with the political forces pushing for reform. In the past, donors and aid agencies have been reluctant to do so. However, now there is an increasing realisation worldwide that the introduction and dissemination of better





technologies cannot on their own solve the problems of the sector. The reform agenda undertakings also requires, political mobilisation and action by actors both inside and, (more importantly), outside the government, such as the private (industrial) sector corporations and loggers, NGOs, consumer groups in importing countries, communities and the general public.

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## Notes

- 1 Initially, poor communities may benefit from illegal logging performed by local actors. However, as forest resources become scarce, eventually these local actors tend to be overtaken by more powerful external stakeholders and are pushed away from their livelihood sources.

## Acknowledgement

This policy briefing paper has been written by Arnolando Contreras-Hermosilla, based on contributions from Ibis Colindres, Denis Pommier, Filippo del Gatto and Jaime Guillen. The main author accepts responsibility for any misinterpretation of the work of the national authors. The paper stems from a diagnostic study of illegal logging in Honduras and Nicaragua financed by the UK Department for International Development (DFID), the World Bank, and the Canadian International Development Agency (CIDA). The study was mainly implemented in Honduras by the Honduran Network for Broadleaf Forest Management (REMBLAH) with official support from the State Forestry Administration AFE-COHDEFOR and the Honduran Federation of Agroforestry Cooperatives (FEHCAFOR). In Nicaragua, the work was carried out by the NGO NICAMBIENTAL with official support from the National Forestry Institute (INAFOR). The study was coordinated by the UK Overseas Development Institute (ODI), and received technical assistance support from the Food and Agricultural Organization (FAO) of the United Nations.

