

Barriers to legal compliance and good governance in the forestry sector, and impacts on the poor in Nicaragua

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Introduction

Nicaragua is a net importer of forestry products and yet has great potential as a producer. Most of its forests are degraded, underused, or misused, and, as matters stand, landholding patterns that benefit large-scale livestock farming threaten to destroy the few remain parcels of primary forest in the region.

This situation is dramatically highlighted by extremely high levels of poverty among the majority rural population, a poverty that reflects the fragile nature of democracy in a country that is finding it hard to create a robust state capable of ensuring respect for the basic human rights of the majority of its people (food, education, and health). The evidence is incontrovertible, and one has to recognize that government land-management and forestry policies have not managed to call a halt to the destruction of forest and have not succeeded in making the timber trade, in all its aspects, an economically and socially significant activity.

New evidence has emerged from field studies in Bilwi, El Castillo, and Rosita. These provide a detailed analysis of the economic and social impacts of the growing commercialization of the forest and of trees on national, regional, and local development in Nicaragua. A number of initiatives taken by rural families and poor indigenous communities show just how feasible it is to make progress towards good governance when it comes to natural resource management a major challenge facing the nation as a whole.

Illegal logging and unregulated forest production? What are we talking about?

As it stands, the law provides that taxes are paid on timber extracted from the forest and puts experts chosen by the national forest authority in charge of both logging and trade. The régime is supposed to apply equally to areas of public forest and to privately owned land on which trees are grown, as well as to land worked by local communities.

The producer is required to seek a permit to fell trees and it is the State that decides whether or not to grant that permit and fixes the management criteria involved (volume of timber, species, and so on). It is the State

also that decides the taxes to be paid on timber extracted from the forest and collects those taxes. The law is applied through a whole host of regulations, procedures, forms, and paperwork, and inspections, with several different public bodies involved in the process, as well as the local people themselves.

When too many people flout the law, it is because the legislation itself is flawed, in conception and/or application. From the point of view of impoverished farmers with trees, the cost, in terms of time and money, of obtaining the necessary permits becomes a barrier to legal compliance, as do the taxes that have to be paid. They are hit twice over: their activities become criminalized and yet they continue to earn an extremely low level of return on their labour.

Another flaw in the present system is the way the legislation is applied, offering rich players many opportunities to evade tax, ignore their environmental responsibilities, and flout the rules and regulations.

- Thus, powerful merchants trafficking in illegally logged timber enjoy priority at compulsory auctions of that same timber and can buy it at knockdown prices, plus a fine.

- Intermediaries working for nationwide industrial concerns busy themselves buying up hundreds of domestic permits, which they then use to lay their hands on more than the permitted volume of timber, both from authorised logging areas and from elsewhere.

The social consequences of legal violations can vary enormously, depending on the seriousness of the infringement or crime involved. Stealing one tree from a plantation will not have the same social and economic impact as large-scale depredation involving Big-leaf mahogany or Spanish cedar.

The greatest harm comes when the authorities responsible for law enforcement begin themselves to break the law, either from weakness or because of corruption, and aid and abet logging that runs counter to the national interest. When this happens, not only is the forest destroyed but so is the credibility of the bodies appointed as guardians of the national heritage.

Illegal versus legal Studying the effects of applying the law

The community timber licence issued to a number of indigenous communities in Bilwi is illegal, as it violates Forestry Regulation 45-93. Yet licences of this kind are recognized by the local authorities in charge of forest operations in the township (INAFOR, the mayor's office and community leaders).

This is a clear case of local players getting together to force changes in the way the law is applied in favour of their own interests.

In such cases, violations of the law can have quite different impacts on a local population. Communities that add value to their forest, protect it, and work in timber production can have a positive impact on forest resources and improve their standard of living. At the same time, bad local government can lead to resource depredation and drive local people yet deeper into poverty.

One can look at the problem in two different ways in an attempt to understand its socio-economic effects on the nation and the people. One can question whether the law is adequate to deal with what is happening and one can observe how the law works, or does not work, in practice.

When the law is not up to the task but is, in practice, applied (as happens with compulsory auctions that do not constitute any real penalty for the lawbreakers involved), everything is technically above board but the results are negative as far as national development is concerned. On the other hand, there are violations of the law which do not amount to a threat to sustainable forest management. The secret, then, is to discover how to strengthen the legislative framework by legalising activities that actually help to realise local and national development objectives.

So, some approaches, even while illegal, can have a positive impact on poor local inhabitants, and others, which are perfectly legal, can impact negatively and run completely counter to the national interest.



Most logging in Nicaragua is either partly or totally illegal and it has had a massively destructive effect over recent decades on the forest, especially in the new frontier settlements on the edge of the forest in the East of the country. Some of the timber involved is illegal in every respect, being moved from the area of production to the centres of consumption, both at home and abroad, with no reference whatever to the regulations (no notice given, no authority sought or granted, no attention paid to the rights of owners, and no respect shown for the regulations in place). But most is at least partly legal, thanks to the retrospective legalization conferred by compulsory auctions, the procurement of some licences (covering felling and transport), and the payment of some taxes and fines.

Only a tiny proportion of the total forest output in the country is fully legal right from the moment of logging, in the sense that it complies with all the regulations in place (management plans, logging permit, transport licences, and taxes). Even then, the mere fact that an operation is legally authorized does not necessarily mean that it is fully compliant with the law, and it will often not have a beneficial impact on forest resources and local people. To take just one example, large enterprises systematically buy up community and/or domestic permits because these enable them to circumvent the requirements laid down in the management plan.

It is far too early in the day to be able to state with any confidence just how much of the wealth tied up in timber ends up in the hands of criminal mafias or terrorist organizations. The constant insecurity in the East of the country, the activities associated with drug trafficking, and the reported presence in the area of important arms dealers make this region, and hence the whole country, an extremely dangerous place in which to operate. Recent statements from the Nicaraguan Defence Minister give credence to the idea that there are entire 'drug villages' on the Atlantic seaboard and bear witness to the involvement of the Nicaraguan army in the Plan Colombia.

So, we have three broad categories into which we can divide forest products on the market: those that are result from illegal logging, some of these then being legalized on route, and, finally, timber which has complied with legal requirements right from the moment it was felled.

Trade in these three categories of timber has very different outcomes for the poor, in terms of wealth generation and/or impoverishment. It also has very different effects on governance.

Economic and environmental impacts

Beyond a shadow of doubt, illegal activity brings the poor short-term benefits. Clearing a piece of land by slash and burn and then selling it on as grassland to livestock farmers can be a profitable business. Finding someone willing to buy 50 or 100 trees from your land may make all the difference when it comes to feeding your family where there is not a single body, either public or private, prepared to make loans available. The employment generated by timber enterprises, very poorly paid though it may be, is often very important in keeping a family from starvation. Case studies show, however, that the cost to the poor and to the country as a whole is a high one:

- Timber producers (forest workers and those who grow the trees) receive only a fraction of the real value of what they produce (between 5 and 10 per cent), whether or not the logging is legal.
- The forests that have been looked at are all in the process of being degraded or destroyed (particularly as far as Big leaf mahogany and Spanish cedar are concerned) through unsuitable procedures and, especially, uncontrolled forest fires.
- Forest resources are underexploited, especially those that do not produce timber.
- Turning forest into pasture means that land is divided into larger and larger units, thus reducing the return per hectare in terms of value added. The process drives more and more local poor people from the land and increase the pressure on the Bosawas and Indio-Maíz reservations.
- Law-abiding producers face unfair competition from those who operate illegally.
- Public revenues (at community, municipal, and national levels) fall as tax fraud increases.
- Bribes do not end up in the hands of producers and thus represent lost forest management investment opportunities.

The cost to Nicaragua of illegal logging has been estimated at around US\$100 million a year.

Social impacts

Though it is not ascribable to illegal logging alone, the widespread poverty of the Nicaraguan people has important social ramifications for individual families, communities, and institutions and becomes a kind of vicious circle, increasing the negative impacts of that poverty:

- Families suffer from malnutrition, are exposed to food insecurity, are highly vulnerable to disease, are often denied education and have little or no access to information. All these increase the workload of women and are factors in family breakdown.
- Communities are riven by land disputes, especially where valuable natural forest resources are involved, and suffer from chronic insecurity in respect of producer rights. Indigenous communities are at the beck and call of powerful leaders, many of whom regard the forest as a source of personal wealth and abandon the belief systems of their ancestors about stewardship of the land. The weakness of local social mechanisms for preventing and resolving conflicts encourage these to escalate into violence. In Rosita, the ongoing activities of a number of armed gangs who make part of

their living by collecting money from producers and traders, make the whole picture more complex. Insecurity about whether contracts between producers and traders will or will not be honoured is clear to see in the frequency of incidents involving swindling, extortion, and acts of aggression. The justice system is ineffectual and beyond the reach of the poorest members of society.

- As for institutions, there have been open conflicts, in both El Castillo and Rosita, between the municipal authorities and INAFOR, over who has the right to collect certain taxes and what share of them each should keep. These disputes have helped to create a climate favourable to fraud and the embezzlement of the money collected. Some civil servants find themselves threatened by organised gangs, while others are open to corruption.

As it stands, the system for collecting taxes encourages the growth of a vicious circle involving timber traders, INAFOR, and the local mayoralties, since institutional budgets depend for their revenue on fines and on fees paid for permits .

Barriers to legal compliance and the challenge to 'good forest governance'

There are two barriers on the road to a sensible approach to forest resource use which have so far proved insurmountable:

- legislation that is based on a series of misconceptions, and
- the inability, as a nation, to apply the appropriate social and economic norms to ensure proper forest management.

The legislative framework and the regulations introduced over the past half century (and longer), have not achieved their objective of sustainable forest resource management, arguably because the laws and regulations themselves simply do not recognize the rights of those who plant trees and pay for their planting and upkeep. If official recognition of long-term land-use rights were tied in with the number of trees planted on the land concerned, there would be far less destruction of both forest and soil in Nicaragua.

The present process of granting title to the land and regularising land and forest rights lays great stress on private property and is accordingly unhelpful and even harmful to the interests of the wider society.

Forestry legislation is shot through with colonial ideas of what is meant by a nation's land and it is on that basis that timber taxes are levied at source, and even up front. A basic step in the right direction would be to abandon the requirement to pay taxes in advance against expected income and to collect them, instead, on how much an enterprise actually makes in any one year, as happens in the rest of the economy.

Another problem is the INAFOR monopoly approval of management

plans. The fact that the approval process is out of the hands of local people and beyond the reach of the local mayor's office makes for corruption and is often the reason that inappropriate expert advice is given.

At the same time, the Nicaraguan people have to cope with day-to-day problems of all kinds and simply do not have any energy left to bring effective pressure to bear on national policymakers. Although Nicaraguans pay more and more every day to meet the extra costs associated with bad management of their forest resources, they often do not know the first thing about what is happening and believe that they cannot make their own voices heard. The justice system is far too complicated, expensive, and open to corruption for them to have any confidence in it or its decisions.

Good governance rests primarily on the effective management of social institutions and an honest attempt to channel economic activity so that it works to the greater good of all. To do this, it is first necessary to set up a system where all citizens have equal access to the courts and enjoy equal protection under the law; where the individual citizen can participate directly through legitimate and democratic institutions, both public and private; where there is transparency (free circulation of information and majority access to it); and where each player is conscious of the responsibilities he and she owes to fellow citizens at local level. This is very far from being a description of today's Nicaragua.

In the three regions studied, we found grounds for hope and ongoing experiments that might prove shining examples of good governance of natural resources in general and forest resources in particular. The community permit system in Bilwi certainly offers an opportunity for the local communities themselves to take a more active part in the decisions that affect their lives and it has made them more aware of the vital need to strengthen the control of the forest by local people. The organizations involving the rural poor and the less well off in Rosita, which allow them an overview of agroforestry in their area and enable them to regenerate the forest and to plant the right crops (such as peppers), also have a useful role to play. And, in their way, the bitter lessons from El Castillo, where corruption and inefficiency have dogged all attempts at cooperative forest enterprises, have been learned and fresh ways of making a living from the forest, in terms of both income and social organization, are beginning to emerge.

Probably the most difficult challenge facing poor communities in the areas studied, if they are to repair the damage they are suffering, is how to assert their rights over the ways forest resources in their region are exploited in a socially responsible manner. Against the background of the ongoing debate over a new Forest Law, Nicaragua urgently needs to rethink the basic principles that underpin the legislative framework and to develop new mechanisms that guarantee much greater respect for the kinds of regulations that have been tried out locally to ensure the conservation of natural resources and reduce levels of economic and social deprivation.

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