



Forest Governance in Asia: 10 Years after the Bali Declaration



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The Bali Declaration can be credited with inspiring action by governments in Europe and the United States

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Ten years ago, in September 2001, the Bali Declaration, which concluded the East Asia Forest Law Enforcement and Governance (FLEG) Ministerial Conference, was signed. Although a non-legally binding document, the Bali Declaration committed the countries represented there – both timber producing and consuming nations – to intensify national and international efforts to combat illegal logging and the trade in illegal wood products.

Considered a watershed event at the time, the Bali Declaration inspired further global initiatives around the world. Ministers in Africa, Europe and northern Asia signed similar declarations within the next four years, and there was a perceptible change in attitudes towards discussing sensitive topics related to illegal logging and corruption in many countries and international fora. “FLEG” work programs appeared at the World Bank, ASEAN and the International Timber Trade Organisation (ITTO) – organisations which had previously hesitated to address such contentious issues head on. Perhaps most importantly, by recognising the need for mutually-reinforcing actions from both producer and consumer nations, the Bali Declaration can be credited with inspiring

action by governments in Europe and the United States – action that eventually led to the amendments to the US Lacey Act (2008), the EU’s new Timber Regulation (2010), and the Australian Illegal Logging Bill, all of which introduce penalties for those caught engaging in the trade in illegally sourced wood products.

“There was a perceptible change in attitudes towards discussing sensitive topics related to illegal logging and corruption in many countries”

Since 2001 progress has been slow but there has been forward movement nonetheless. Improvement has been most marked in countries which have had dynamic governmental leadership, adequate civil society engagement and an industry which is able to respond quickly to shifts in demand for legally-sourced wood products from major markets in the United States, Europe and Japan. Across Asia, new regulations and policies related to logging and timber exports have been put in place to conserve existing natural forests and promote a shift towards participatory, sustainable forest management. Awareness of

‘third party’ independent verification and / or certification standards is high, especially in countries with large export-oriented industries selling to major ‘big box’ retailers such as Walmart, IKEA and Crate & Barrel, all of whom are increasingly requiring suppliers to provide documentary proof of the legal origin of their raw materials.

Naturally, a number of challenges that the Bali Declaration sought to meet, remain. Many countries struggle with limited resources – both the financial means and the skilled staff required for effective policy implementation. Also, in some countries an absence of political will or the active cooperation of other government sectors such as finance, customs, judiciary, and autonomous anti-corruption commissions, mean that resource allocation and enforcement procedures remain untransparent and unaccountable to local populations, indicating that in some places pervasive governance problems, including corruption, persist.

Additionally, as we take stock of progress since Bali, new challenges have appeared on the horizon. The expansion of Asia’s export-oriented wood products industry and unparalleled global demand for



Opportunities for public debate about land issues appear to be growing

“In wood product markets, buyers are increasingly requiring proof of legality or sustainability of raw materials “

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industrial crops has come at a time when there are also growing calls for Asia’s forests to be set aside for conservation purposes, and for ecosystem services such as carbon sequestration and water provision. Competition for land – whether for food, fibre, fuel or ecosystem services – is intensifying across Asia, as it is the rest of the world (see article [Forest Forever? Food vs fuel vs fibre, page 4](#)) The pressure to ignore existing land rights is only likely to grow worldwide as this demand increases. Where land is at a premium, the allocation of land for economic land concessions (including plantations) has been raising questions about how local communities have been engaged in decision-making, whether processes for free and prior informed consent (FPIC) have been followed, and whether there are long-term benefits for these communities in the decisions taken.

Why Should Governments and Industry Care?

At the time of the Bali Declaration, it was estimated that the Government of Indonesia was losing US\$600 million per year in foregone payments on stolen timber alone – four times the total amount of local and central governmental investment in the forest sector. The World Bank estimated that lost revenue from illegal operations cost governments worldwide US\$10 billion per year, with the failure to collect appropriate royalties and taxes from legal operations costing another US\$5 billion.

Not all illegal operations produce unsustainable results, but where illegal forestry activities are unchallenged, it is impossible to guarantee that forest ecosystems will continue to provide the raw materials critical to the financial stability of national industry and local livelihoods. For countries with valuable timber resources remaining, accessing investment in logging has never been a problem. However, ensuring adequate investment in sustainable forest management has been difficult. Legal operators prepared to invest in long-term, legal and sustainable operations tend to avoid weak governance environments – worried about the risk of political and economic instability, inefficiency and the likelihood of being undercut by illegal operators. While governments cannot

change the geography or natural resource base of a country, they have significant influence over important investment climate factors such as the security of property rights, and the clarity and enforcement of laws and regulations.

How forest governance programs are designed and implemented also has huge impacts on rural communities. Although many local livelihoods rely on illegal wood, far greater numbers of forest-dependent will people suffer as their forest resources dwindle. Land use conflicts are on the rise across Asia. There is growing recognition of the need to clarify land ownership and traditional use rights in forest areas – a condition that, while not alone sufficient to ensure legal or sustainable management of the



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resources, is fundamental to ensuring a governance structure that is accepted by local stakeholders. Are the new laws and enforcement programs adequately recognizing the needs of rural households, or being pursued more vigorously and with less respect for due process and human rights when poor people are involved?

10 Years since Bali: What Has Changed?

Where progress has been made, contributing factors are usually linked to either dynamic national programs with strong governmental and industry leadership, and/or the burgeoning market demand for third party verified legal or sustainable wood products. Donor programs and bilateral dialogues such as the EU Forest Law Enforcement, Governance and Trade Voluntary Partnership Agreements (VPAs) have been able to play a supportive and facilitating role as these transitions have taken place.

Changes in Demand for legally or sustainably harvested wood products
In four of Asia's major markets – the US, EU, Japan and Australia – the last decade has seen a rapid increase in the demand for products which meet varying environmental and social requirements. This is affecting many sectors: fisheries, palm oil, textiles and food, as well as the forest sector.

In wood product markets, buyers are increasingly requiring proof of legality or sustainability of raw materials – both for domestic production and imports – and this proof must be independently verified (see [Box 1](#)). The amended Lacey Act in the United States and the EU Timber Regulation have led retailers to recognise that demanding third party certified or verified legal products can help them to demonstrate due diligence in their sourcing and hopefully avoid prosecution or fines. In the US, 55% of retailers now consider it “essential” that producers be third party certified – up from 27% in 2007.

With a large proportion of wood products exported to the most environmentally-sensitive markets in the US and Europe and to a lesser extent Japan and Australia, Asia's manufacturing hubs in China, Vietnam, Indonesia, Thailand and Malaysia are potentially vulnerable to these market shifts. Alternatively, these industries can treat the new market conditions as an opportunity to expand market share, particularly in the plywood, wood furniture and wood flooring sectors.

Box 1. Evolution of European and US Market Demand for Verified Legal Wood Products

• **Retailer purchasing preferences:** The first major sign of changes in demand appeared more than fifteen years ago, with increased market preference for certified wood products, such as those labelled by the Forest Stewardship Council (FSC). Buyers from North America, Europe and Japan wanted to demonstrate corporate responsibility and minimize risks to their business (reputational risk, supply sustainability, and more recently, new risks of prosecution under the US Lacey Act or EU Timber Regulation). Major international companies such as WalMart or Carrefour now require suppliers to be able not only to document country of origin of timber sources, but also demonstrate sustainability through third party verification systems. The UK Timber Trade Federation, which represents around 80% of UK importers, established strict purchasing guidelines for all its members, which resulted in several contracts with Indonesian and Chinese suppliers being cancelled in the mid 2000s.

While the volumes of certified timber remain small and brought few premiums for sellers, certification did help a few forward-looking producers to establish a market niche – providing an opportunity to establish relationships with new buyers and expand market share.

• **European and Japanese public procurement policies:** By the mid 2000s, several European Member States and Japan were individually developing timber public procurement policies, which required third party evidence of legal compliance or sustainability. The UK, Denmark, The Netherlands, Germany, France and Belgium took early leads. It was estimated that central government contracts accounted for

15-25% of all timber products purchased in most EU Member States, and many local government authorities were also encouraged to follow the national government lead. Analysts also identified a dynamic market impact, as large companies preferred not to manage separate inventories and therefore committed to moving their whole supply chains over to compliant products, even if government contracts only represented a proportion of their business.

• **Amendments to the US Lacey Act (2008):** In 2008 the US Congress passed a new law making it unlawful to import, export, transport, sell, receive, acquire or purchase in interstate or foreign commerce, any plant taken or traded in violation of the laws of the US, a US State, or relevant foreign laws. The law includes requirements for a statement of origin and species as well as the concept of “due care” which is assessed during any prosecution to determine the degree of penalty. The level of penalty is potentially steep – with jail time, forfeiture of goods, or fines depending on degree to which the company or individual knew – or should have known – that it was handling illegal products.

• **EU Timber Regulation (2010):** The EU Parliament recently passed a law which prohibits the first placing of illegally harvested timber and products derived from such timber on the EU market. It requires all operators who first place timber products on the market to establish “due diligence” systems to minimise the risk of handling illegal timber. All operators (importers, traders, buyers, sellers) must know the country of origin of the wood in their products, species, details of supplier and information on compliance with national legislations (“illegality” is defined in relation to the laws of the country where the timber was harvested).

The EU, US, Japan, and other relatively environmentally sensitive markets in Australia and New Zealand, account for 50% of the world's net wood product imports. Yet only 8% of the world's globally-traded wood products are certified (FAO 2009) – indicating that those countries which are able to supply markets first with certified or verified legal product, are likely to gain a significant advantage.

National Programs to Improve Forest Governance: Progress, But Patchy Progress has been most marked in countries

that have had dynamic governmental leadership and a private sector able to foresee and respond quickly to shifts in market demand from the United States, Europe and Japan. The Government of Indonesia, in particular, can be singled out as having moved from leadership at the Bali conference to actual change in both action and attitudes towards forest sector and land reform, civil society engagement and increasing enforcement actions. (see [Indonesia partners with EU to fight illegal logging, page 26](#)).



New regulations and policies related to logging and timber exports have been put in place to conserve existing natural forests

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Across Asia, new regulations and policies related to logging and timber exports aim to conserve existing natural forests and promote a shift towards participatory, sustainable forest management.

These are welcome developments; however there are still questions about whether the reforms will be implemented effectively. Despite virtually all Asian governments' official commitments to sustainable management of their forests, as codified in their laws and commitments to ITTO and other international criteria and indicators, many concerns remain regarding the management and governance of Asia's natural forests. Key issues include:

“Many Ministries of forestry, agriculture, justice and industry, as well as customs departments, are chronically underfunded and understaffed.”

- Limited resources, power and political will: In less developed countries in Asia, despite relatively robust national laws regulating the forest sector, the lack of financial and staff resources, combined with the lack of political will to address issues related to illegal logging and corruption, are major impediments to successful implementation. Many Ministries of forestry, agriculture, justice and industry, as well as customs departments, are chronically underfunded and understaffed. Most have a limited ability to affect the decisions made by other more powerful government

agencies, or address corruption at the highest levels of government or in decentralized provincial agencies.

- Difficulty defining and documenting “legality”: Due to complex legal frameworks and permitting requirements in the forest sector, and overlaps or loopholes within them, it is not always clear whether logging is legal or illegal. Discretionary and special quota systems as well as different rules that apply to logging associated with infrastructure and agriculture development and mining, complicate attempts to define legality. Imported materials pose a special problem, with importing country governments and industry often even less clear about what constitutes legal compliance in the country of origin.

- Verification of Legality or Forest Certification in Asia is limited but has potential: National certification systems (e.g. the Malaysian Timber Certification Scheme), international standards such as the PEFC and FSC, and various proprietary legality standards are developing for natural forest areas as well as plantations (e.g., teak, pulpwood and rubber). In some countries such as China and Vietnam, the number of Chain of Custody (CoC) certificates issued has sky-rocketed in recent years, but this has not been matched by corresponding forest management certificates, with the risk that CoC certificates are used to cover non-certified products. Certification costs to date have often been subsidized by donors, although certification of larger

areas of natural production forests, as well as plantation teak, eucalyptus and rubber (some of it smallholder-based) may reduce the need for this through economies of scale.

- Lack of Legality Assurance Systems: Even in China, where many stakeholders comment that Chinese laws are reasonably appropriate and adequately enforced, documentation of source of origin at district levels still poses difficulties for some manufacturers. This problem is compounded when the documentation needs to cover processed products made from imported raw materials. Several countries which are major suppliers to the manufacturing hubs of China, Vietnam, Thailand and Malaysia are considered medium- to high-risk¹ by market players in terms of the possibility of wood materials being illegally sourced. These include Myanmar, Papua New Guinea, Laos, Cambodia, Indonesia and several countries in Africa. Even in countries such as Thailand, Malaysia and China, which have relatively robust systems for tracking domestic timber, systems for verifying the legality of imported wood and tracking them within their manufacturing system are non-existent or left to individual firms.

- “Leakage effect” of domestic markets, particular in China: To date, a key driver towards verified trade in legal product has been the demand in European, North American and Japanese markets.

However, industries are increasingly recognising the emerging potential of Asia's domestic markets, which are less environmentally and socially demanding. In 2009 China was the only major global market posting positive increases in consumption. Regionally, the global recession strengthened China's trade relations with its Asian neighbours, particularly ASEAN when China's import markets remained relatively stable. China is expected to be the fastest-growing lumber producer, importer and consumer in the world, with annual increases in lumber consumption of 5.1 million cubic meters. Growth of a middle class in South East Asia, India and the Middle East is expected to see demand for consumer goods, including wood products, show similar increases. Progress in combating illegal logging and associated trade will be limited if verified legal and sustainable forest products are segregated for European and North American markets, while illegally sourced products are still

¹ “High-risk” is usually determined by market players, based on market perceptions of risk. These perceptions of risk are usually based on factors such as indicators of overall governance situation in a country (often tracked by international organizations such as Transparency International or the World Bank), recent reports on the forest governance situation in the country, producers' ability to demonstrate legality based on internationally accepted verification or certification processes, etc.



accepted by buyers and consumers in South and South-East Asia, Central Asia and the Middle East.

- Lack of clear land ownership and traditional use rights: Conflicts over land are a growing problem across many parts of Asia. There is growing recognition of the need to clarify land ownership and traditional use rights – a condition which, while not sufficient on its own to ensure legal or sustainable management of the resources, is fundamental to ensuring a governance structure that is accepted by local stakeholders. Even in China, where domestically-produced timber is considered generally low risk, questions arise about irregularities during land allocation processes in the burgeoning plantation sector. Clarifying land ownership and rights will be critical, not only for any efforts to assure retailers and others requiring credible evidence of legal supplies, but also for any payment distribution systems for national REDD+ programs and international investors complying with the Equator Principles or other standards for corporate responsibility (e.g. those for responsibly-sourced oil palm).

- Limited but growing room for civil society involvement: Countries like Indonesia have made significant strides in transparency and the inclusion of civil society organisations in national decision-making processes. The degree to which civil society organisations can help to improve the governance of land and forest resources varies between countries (and sometimes within countries). In many countries, the lack of independent domestic media stifles debate. Several

countries in the region are just emerging from an era where voices of opposition have been suppressed. But today opportunities for public debate about land issues appear to be growing; examples include current policy dialogues on land governance occurring in Indonesia and the National Assembly of Laos. However, while a recent decree in Laos opened the door for domestic civil society groups to become involved in resource management issues, in neighboring Cambodia, new draft regulations will make it more difficult for civil society organisations to operate.

- Poor quality of data: In virtually all countries across Asia, missing or fragmented data inhibit our ability to understand the transformation of the forest sector and industry. Accurate harvesting figures are usually difficult to confirm and large discrepancies exist between the export and import data between countries. In Laos, for example, official quotas for national harvesting fell from 600,000 m³ to 150,000 m³ between 2003 and 2008/9. Yet mirror data from importing countries indicate Lao export volumes increased from 800,000 m³ to 1.1 million m³ per annum between 2001 and 2007.

Growing Demand for Land

In many Asian countries, one can see continued forest loss despite a decrease or even cessation of industrial-scale natural forest harvesting. Considerable foreign direct investment has moved into Asia's forest-land sector, in the form of agribusiness plantations (oil palm, rubber, pulp and agricultural staples). In many countries, the forest/land sector is in the midst of a transformation from

the harvesting and export of unfinished or semi-finished natural forest products (especially logs and sawnwood), towards the establishment of commodified, intensively-managed industrial tree crop plantations and more highly capitalised forms of export-based agriculture and forestry production. This shift is being accompanied by the expansion of concessions for plantations, as well as in mining and hydropower projects. These large-scale agri-business projects play a significant role in the availability of wood from natural forests, but they are clearly not a sustainable source of wood. "Conversion timber" from these types of concessions is probably now the predominant source of timber in countries such as Laos, Myanmar and Cambodia and also important in Malaysia. In Indonesia a recent moratorium on new natural forest clearing for oil palm plantation, part of an agreement with Norway related to climate change payments, may result in a reduction in the volume of conversion timber.

The forest frontier areas where this land transformation is taking place is, in many countries including Laos and Cambodia, still highly unstable from a regulatory perspective, and many interests have been staking claims to land in a quasi-legal or even speculative manner. Some proposed development projects may never be implemented. In such cases, the land concession becomes a means to justify logging outside of national production areas or logging quota systems. Due process for the communities who have historically relied on these forest areas is often not followed. The social and ecological impacts of such projects have generated considerable concern and attention in recent years.

Addressing what some have coined "land grabbing" may be the biggest emerging challenge for those wishing to see Asia's natural forests managed sustainably. State institutions, in partnership with a number of international agencies, are currently moving to exert more coordinated and transparent authority over the land investment process. It will require a new level of cooperation across sectors, new actors, capacity building to transform the financial incentives and regional demand pressures necessary to accomplish this complex task.



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