

Policy options for improved integration of domestic timber markets under the voluntary partnership agreement (VPA) regime

Lessons from formalization case studies

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Key point

Formalization processes come with both benefits and risks, which require ongoing assessment, monitoring and mitigation. Case studies of formalization conducted in other natural resource sectors indicate that even well-intentioned processes can lead to exclusion, criminalization, barriers to entry and elite capture, which could disproportionately and negatively affect smallholders and operators, together with negative environmental impacts. If well-conceived and monitored, formalization could increase transparency and clarity of users' rights, reduce conflict and improve working conditions and local economic benefits.

Introduction

This infobrief presents some lessons learned from past or ongoing processes of formalization. They are derived from five case studies and a synthesis report conducted to bring lessons from the mining, fisheries, non-timber forest product and land sectors (International Peace Information Service 2012; McGrath 2012; Peluso et al. 2012; Spiegel 2012; Wynberg et al. 2012; Putzel et al. 2014, available at www.cifor.org/pro-formal). The explicit goals of formalization in these case studies show many similarities with the processes that, results indicate, will need to be started in VPA countries: resource conservation and management, local rights to use and access resources, and conflict resolution, among others. For this reason, a list of actual or potential benefits and risks associated with formalization is presented below.

Lessons from country and formalization studies

Formalization processes associated with the development of an international regime targeting an environmental or social problem of global importance may be well intentioned, such as preventing the trade in illegal timber, nonetheless, such processes come with potential risks as well as benefits. This section summarizes the benefits and risks of formalization, which need to be considered as domestic timber markets undergo reform.¹

Actual or potential benefits of formalization

- **Increased visibility.** The formalization of ownership, access and trade in land and natural resources enhances the ability of institutions, including State regulatory agencies and powerful nongovernmental institutions such as NGOs and corporations, to obtain more information about the ownership or control of land and resources and the trading of those commodities in the market. Information on trade flows increases the chances of enforcement agencies intercepting and apprehending resources, including endangered or threatened species, that are being transported by people who do not have the legal right to do so.
- **Clarity of use rights (e.g. harvesting licenses).** If access and use rights are clarified, the ability of the State and its agencies to award them could be a source of revenues that, if properly managed, may be used for the benefit of some or all citizens. This could also allow the State to regulate what is being extracted and in what quantities, which could lead to environmental benefits. Clarified rights and responsibilities of multiple parties with different interests in relation to land or a resource could also contribute to reducing conflict.
- **Empowerment and financial benefits for local resource users.** If formalization is designed with the intention of benefiting often economically marginalized local resource users, benefit flows to those users may increase and they may be empowered. Improved

¹ A more detailed version of the points discussed here is available at www.cifor.org/pro-formal (Putzel et al. 2014).



Timber trade sustains the livelihoods of thousands of people in rural areas

Photo by Paolo Omar Cerutti, CIFOR

information and accrued financial benefits may increase local forest users' capacity to engage in timber harvesting and trade, with growing positive impacts on their livelihoods. As a caveat for the VPA negotiations, it must be remembered that quite large financial benefits to local economies are already a reality thanks to the informal forest sector. The formalization process will thus have to avoid decreasing such benefits, while increasing the portion of them entering into the State coffers, notably by reducing corrupt earnings by State officials.

- **Prevention of environmental damage.** By bringing informal resource extraction into a formal regulatory framework that also mandates sustainable practices, negative impacts of the informal activity can be prevented or mitigated through planning and oversight. Project results indicate that in several provinces or regions where chain-saw milling has been operational over longer periods, harvesting tends to remain focused on a handful of very valuable species, albeit harvested at ever decreasing diameters.
- **Implementation of better employment practices.** Formalization brings workers into the regulatory systems governing employment, which can entail a number of important benefits. These include worker safety rules, such as use of proper equipment and protective clothing; proper treatment of hazardous materials; access to various forms of insurance, such as health insurance and social security; and rules that promote job security (e.g. International Peace Information Service 2012). Labor laws also generally prevent the abuse of child labor, and in some countries (to varying degrees) prevent discrimination based on gender and other identity categories.

- **Law enforcement.** Formalization provides the grounds to apprehend, prosecute and punish individuals that operate outside the formal system. Serious consideration must be given, however, to the ethics and moral conditions under which these punishments are meted out (e.g. Spiegel 2012). This is especially true under a VPA regime in countries that may prefer to clamp down on the (politically) weakest part of the forestry sector to show 'positive' implementation of VPA commitments.

Potential risks associated with formalization

- **Exclusion, loss of rights, conflict.** Formalization processes sometimes result in the exclusion of people formerly engaged in the sector, including small businesses, women and marginalized groups. Under the VPA regime, this risk needs to be carefully monitored together with law enforcement, as vested interests with established links to power may push for exclusion of current operators. If sufficient consideration is not given to those prior rights because they "complicate the formulas and make implementation too difficult" (Peluso et al. 2012), the memory of those rights can result in a perception of usurpation that may engender conflict or resistance to formalized systems.
- **Increased criminalization.** The criminalization of informal sector actors is a potentially severe risk in formalization processes. The direct social effects of criminalization of prevalent informal practices have been documented in many case studies on various commodities. They include the disruption of lives of informal actors via arrests and imprisonment (Spiegel 2012), and the forced removal of 'illegal' market outlets, exacerbating poverty in urban areas where

final consumption normally occurs (International Peace Information Service 2012; Peluso et al. 2012; Wynberg et al. 2012). In the case of need-motivated activity such as the one conducted by most operators in the domestic timber sector in VPA countries, such criminalization could have major negative impacts on family livelihoods.

- Enforcement failures.** If enforcement fails and criminalization is not avoided, this could lead to a culture of evasion, thereby reducing the chance for the formalization process to be effectively implemented (e.g. Spiegel 2012). Another risk of enforcement failure arises when local actors cease their informal activities but the area is subject to incursions by outsiders (e.g. Wynberg et al. 2012). In VPA countries, 'outsiders' are represented by many politically connected operators who could see the 'reformed' legal framework as an opportunity to make 'legal incursions' into forests previously used by informal local operators.
- Barriers to entry.** The application of standards of access or trade in resources, particularly those that require certifications or permissions that are costly to obtain, can act as a barrier to entry for certain user groups that do not have the financial resources, requisite skills or knowledge to fulfil new requirements. For instance, results indicate that in most countries chain-saw loggers are currently not acknowledged as a category *per se* and they must obtain agreements similar to those given to large-scale operators. This is one barrier to entry that VPA regimes should aim at eliminating.
- Elite capture and new forms of corruption.** When rules are changed and new formal systems of resource access and trade are introduced, there is a danger that elites at the local, regional or national scale will identify new opportunities to derive benefit for themselves at the expense of small-scale informal actors. This may or may not involve corruption, in which officials establish themselves as gatekeepers to conformity with new practices, extracting bribes from sectoral actors in order to facilitate a false demonstration of conformity to the new legal system. Many examples of both elite capture and corruption are to be found in the case studies (e.g. McGrath 2012; Peluso et al. 2012) and additional research conducted by the Center for International Forestry Research (CIFOR) (see, for example, Cerutti et al. 2013), and such behaviors have already been documented in some VPA countries. For instance, in domestic timber markets in Cameroon, sellers reported being asked for money to pay for 'new FLEGT permits' they needed under the VPA regime, if they wanted to be 'legalized'. In fact, such 'new' documents are just another way for State officials to collect informal payments from small-scale operators.
- Ecological disturbance caused by a race to access and claim-staking behavior.** When a formalization process is announced, it can trigger ecologically destructive behavior by stakeholders who are eager to either obtain land or resources prior to the implementation of the process (to avoid losing the opportunity) or to demonstrate ownership by showing a history of presence or access (e.g. Wynberg et al. 2012).



Sawn wood ready to be sold on the local market
Photo by Ahmad Dermawan, CIFOR

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Additional reading

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