

JOINT POSITION PAPER
Public Consultation on 'Deforestation and Forest Degradation –
Stepping up EU Action'
14 January – 25 February 2019



The undersigned organisations appreciate the opportunity presented by this public consultation to influence the direction of the EU’s plans to step up its action against deforestation and forest degradation. We urge the Commission to take ample time to consider our recommendations, as we were concerned by the lack of time allocated to review and consider the feedback submitted by 202 stakeholders on the Roadmap before the current consultation questionnaire (the “**Questionnaire**”) was published. As a consequence, the Questionnaire does not reflect the strong recommendations for the adoption of regulatory measures made in a large number of submissions as well as the clear calls for targeted action in support of forest tenure rights made by forest peoples’ organisations in tropical forest countries. This raises questions as to whether the Commission genuinely intends to take stakeholder input into accountⁱ and represents a missed opportunity to frame the current public consultation in the most appropriate and effective manner to elicit input from key stakeholders and inform the Commission’s policy-making.

In this document, we therefore reiterate and expand on [our feedback and recommendations in relation to the Roadmap](#). We trust that the Commission will grasp the opportunity to develop a comprehensive Action Plan that sets out a combination of policy and legislative measures of sufficient ambition to adequately address the growing challenges of deforestation, escalating EU demand for forest-

risk commodities, the role of EU trade and investments in fuelling deforestation, and the intricately related problems of human rights violations, insecurity of communal land tenure, biodiversity loss, GHG emissions and climate change impacts.

1. QUESTION 7: DIRECT AND INDIRECT DRIVERS OF DEFORESTATION

In addition to the drivers of deforestation highlighted in the questionnaire, it is of vital importance that the EU recognises two other key indirect drivers – the lack of binding EU regulation on trade in forest risk commodities and investment in forest-risk sectors, and insecure land tenure for indigenous and local communities in producing countries.

a. Lack of EU rules for trade and investment in forest-risk sectors

Given the largest cause of global deforestation – industrial agriculture productionⁱⁱ – is intrinsically linked with international markets, and the EU is a major market for agricultural products like soy, palm oil, beef and other commodities associated with deforestation,ⁱⁱⁱ **it is essential that the EU address the freedom of EU market participants to trade and invest in forest-risk sectors as a significant indirect driver of deforestation.**

While the Questionnaire lists “weak forest protection law and adequate enforcement” as a potential indirect driver of deforestation, there is no mention of laws or regulation regarding the market in forest-risk commodities, investment in forest-risk sectors, or otherwise any mention of regulation of ‘embodied deforestation’ in the EU. It must be emphasised that **an indirect driver of deforestation is the lack of any formal consequences for EU companies, financiers or investors engaging in business activities that contribute to deforestation.**

The current approach of relying on the market to regulate itself through voluntary sustainability initiatives or commodity certification schemes has proven inadequate: more embodied deforestation is imported into the EU year on year, and demand for forest-risk commodities is forecast to grow. Market mechanisms and policy initiatives have benefited a minority of market ‘front-runners’ but failed to drive transformation across forest-risk commodity markets. The reality is that the EU remains one of the largest importers of embodied deforestation on the planet. This flow of embodied deforestation from major deforestation zones is financed, enabled and facilitated by EU companies, financiers, and investors. Their business drives demand for forest-risk commodities which fuels the expansion of industrial agriculture frontiers in forest regions. **There is currently no incentive for those EU companies, financiers, and investors to ensure that their business activities do not indirectly contribute to deforestation or related human rights violations, and nor do consumers have the means to check for themselves.** Voluntary market mechanisms and opt-in policy initiatives are nice for a niche group of market ‘leaders’, but will never reduce the EU’s overall contribution to deforestation unless backed by binding regulatory measures.

The European Parliament has repeatedly called on the Commission to develop

concrete and coherent regulatory measures to address EU trade and investment in forest-risk sectors (eg. on [4 April 2017](#), [4 July 2018](#), and [11 September 2018](#)) and several EU members have called for “an ambitious EU Action Plan on deforestation and forest degradation” (eg. the [call from Italy, France, Germany, the Netherlands, Denmark, Norway and the United Kingdom](#) on 1 November 2018). The Commission’s own [Feasibility study on options to step up EU action against deforestation](#) concluded that new legislative measures combined with coherent policy initiatives would have the greatest impact and deliver the most effectiveness. The case for developing regulatory measures is clear.

The most important and critical point we wish to emphasise is that any EU initiative to step-up action on deforestation must consider appropriate regulatory measures.

b. Insecure communal land tenure rights in producing countries

Scientific studies show that deforestation rates are lower, and amounts of stored carbon higher, in areas where local communities have formally recognised and secure tenure rights, and that local communities can *significantly* outperform government agencies in preventing deforestation when given the opportunity and the means.^{iv} Estimates suggest that while indigenous people and local communities hold up to 65% of global lands under systems of customary tenure, only a fraction of this is formally recognised under national forest and land laws.^v Given that most of the world’s forests are found on these lands,^{vi} it is a missed opportunity in the EU’s efforts to address the global deforestation and climate crisis to ignore the need for leadership in addressing the underlying problem of tenure insecurity. **We ask that the EU explicitly acknowledge the positive role played by secure tenure rights for indigenous peoples and forest-dependent communities in the fight against deforestation and incorporate this in the design of its responses to deforestation.**

We are glad to see the EU acknowledge that large-scale industrial agriculture is the most important driver of deforestation, which requires urgent attention and concerted EU action. While we congratulate the EU for recognising the link between its own import and consumption of agricultural commodities and deforestation, **we urge that the related impacts on human rights and local community wellbeing are also explicitly identified.** NGOs from across Europe, the tropics and major agri-commodity producing countries have travelled to Brussels to meet with the Commission and share evidence of how global agricultural production is intricately linked with patterns of increasing social injustice and environmental damage, including threats to livelihood, cultural and territorial rights, the criminalisation of local peoples as well as physical abuse, violence, and murder.^{vii}

The fact that human rights violations are both a driver and a result of deforestation, particularly deforestation from large-scale agriculture that feeds the European market, gives rise to both **the need and obligation for any EU initiative addressing deforestation and forest degradation to adopt a human rights-based approach.**

2. QUESTIONS 10 & 10.1: ADEQUACY OF EXISTING MEASURES AND BEST OPTIONS FOR STEPPING-UP EU ACTION AGAINST DEFORESTATION

Given the EU's overall contribution to global deforestation continues to rise, it is clear that existing policies and initiatives have not had the intended effect.^{viii} The Commission's own [Feasibility Study](#) found that voluntary market initiatives are not enough to tackle deforestation and forest degradation. Moreover, independent studies have found that companies struggle to implement their zero-deforestation pledges, certification schemes are often poorly implemented, and that in order to level the playing field for producers and market participants of different sizes and capacities, **government regulation is necessary to ensure industry-wide commitments, performance and compliance.**^{ix}

As the Questionnaire suggests at question 10.1, it is necessary to create a "coherent framework to address deforestation, including measures that support and enhance the coherence of existing commitments and initiatives". We support the development of initiatives under a coherent and streamlined framework that aligns with the existing commitments of the EU institutions and Member States on human rights (see below). That said, the fact that this option is only focused on *existing initiatives* makes it inadequate as a stand-alone measure and far from the 'best option'.

The alternative option in question 10.1; to "explore possible new initiatives building on existing policies" is formulated in weak and vague language that does not provide the clarity needed to accelerate concrete and strong actions, and is not a credible alternative. The Commission should at this point be seriously examining potential binding regulatory measures to address human rights violations and deforestation connected with EU business, trade, consumption and investment.

We are concerned that the questionnaire fails even to mention the option of new regulatory measures. This is particularly worrying given repeated calls from the European Parliament^x and EU Member States^{xi} for an EU regulation on agricultural commodities entering the EU. Moreover, it shows that the EU is failing to act on the option identified as having the greatest potential for impact in its own Feasibility Study – **a coherent combination of legislative and non-legislative measures.**

3. QUESTION 13: MOST IMPORTANT WAYS OF STEPPING UP EU ACTION AGAINST DEFORESTATION

In order to ensure coherent, rights-based and impactful EU action against deforestation and associated rights violations, we call on the EU to adopt an Action Plan that includes the following demand and supply-side measures. We address demand-side measures first because these are the measures over which the EU has legal jurisdiction, unilateral decision-making power, and offer the greatest impact on reducing EU import of embodied deforestation.

a. Question 13b: demand-side measures

In addition to the options identified in the Questionnaire, the EU should adopt a

regulation governing supply chains entering the EU market that are linked to deforestation, human rights abuse, illegal land acquisition, or forest degradation - ie. forest-risk commodity supply chains. The regulation should take measures to prevent products being placed on the EU market where their production has involved the adverse acquisition or interference with indigenous and other forest peoples' land rights (titled or untitled), livelihoods and cultural integrity or the conversion of forest areas identified according to internationally recognised biodiversity and carbon standards (as opposed to local legal definitions of 'forest' or 'deforestation'). The regulation should also make it unlawful for any EU-registered or based financial institutions to participate directly or indirectly in transactions or investments connected to supply chains with these characteristics.

There are a number of forms that such a regulation may take and/or measures it may adopt (including prior and ongoing due diligence requirements, direct liability of companies to victims, access to effective remedies, criminal provisions, among other possibilities). A regulation may be able to draw on existing voluntary standards such as the Accountability Framework Initiative or the High Carbon Stock and High Conservation Value Approach, as well as take into account existing legislative frameworks within the EU, such as the EU *Timber Regulation*, the EU *Illegal Fisheries Regulation*, the EU *Conflict Mineral Regulation* and the French *Loi sur le devoir de vigilance*.

The exact form and function of the regulation should be the subject of continuing discussion and consultation between the EU and relevant stakeholders, but critically should include clear requirements for ensuring and verifying deforestation-free and human rights violation-free supply chains for all products being sold in the EU, and accountability for supply-chain participants, governments agencies, investors and financial institutions within the EU who trade in, purchase from or invest in such supply chains, as well as remedies for those who are harmed by non-compliance.

Importantly, because national laws of producer countries often do not contain adequate protections to ensure the exclusion of forest-risk products from commodity supply chains,^{xii} **it is of utmost importance that the criteria used to identify and exclude commodities with embodied deforestation or human rights violations from the EU market (whether produced in the EU or imported) are based on internationally-recognised human rights and environmental laws and standards.** Indeed, if there are discrepancies between applicable national and international law in a given country, the regulation should provide that the highest standard shall be applied. Not only is this essential for the effectiveness of such criteria, it is also necessary to ensure that the EU complies with its own legal obligations under international human rights and environmental law,^{xiii} requirements under international trade law, as well as its own policies, guidelines and international commitments.^{xiv}

b. Question 13a: supply-side measures

To supplement the needed regulatory measures, it will be important for the EU to **assist producer countries with national processes of legal and governance reform** as a means of both addressing local deforestation drivers and facilitating greater access to the EU market. These efforts should encourage and enable reform

of unjust and unsustainable land and forest allocation systems and ensure alignment with international standards on human rights and international principles concerning the responsible governance of land and forest tenure. Crucially, forest tenure reform initiatives should safeguard and recognise community tenure and community conserved forests.

An important aspect of these supply-side measures will be the **guaranteed transparency of information related to the allocation of concessions, licenses and other grants of interests for industrial agricultural or extractive industries** in or adjacent to forested areas. This will enable civil society, including indigenous and forest-dependent communities, to keep track of developments in forest-risk sectors and help prevent the acquisition or allocation of such interests on land of customary owners without their free, prior and informed consent or on land of high importance for the conservation of biodiversity or carbon stocks. **Such collaborative reform processes must be transparent and EU involvement should be explicitly contingent upon the effective participation of local civil society organisations and indigenous and forest-dependent communities** in all components dealing with laws and policies that may affect their rights, land, resources, territories, livelihoods and more generally, their physical and cultural survival.

As part of the supply-side actions, we recommend that the Action Plan specifically include a **dedicated component on "Supporting Secure Tenure Rights of Indigenous Peoples and other Forest Peoples"**. This component could coordinate diplomatic, technical and financial assistance in support of secure land and livelihood rights for indigenous peoples and forest-dependent communities. Including serving as the focal point for the bilateral reform dialogues, this component could establish:

- i. an EU Community Forest Tenure Fund;
- ii. financial support for community-conserved forests and territories;
- iii. financial and technical support for independent community-based monitoring of forest-risk commodity supply chains and company performance regarding compliance with human rights and environmental standards. This monitoring will be an important source of information for EU Member States, market-operators and financial institutions in determining the level of risk associated with of certain commodities and supply chains; and
- iv. a dedicated and permanent EU-indigenous and forest peoples' forum on forest defenders, territories and biodiversity for open dialogue between EU institutions, Members, businesses and civil society and community stakeholders from producer countries.

As a part of its supply-side actions it will also be important for the EU to engage in dialogue with tropical producer countries to enable reforms in their rural and agricultural policies with the view of **enabling a major shift away from large-scale industrial monoculture production systems**. Recently published evidence shows that intensive agriculture is a main cause of a dramatic decline in insect populations around the world - closely linked to loss of habitat as well as pesticide and fertiliser use. Given the important ecosystem role of insects, this

decline is expected to have serious impacts up the food chain, for crop pollination, soil replenishment and pest control.^{xv}

Given the current global environmental crisis, the EU needs to promote alternative food and commodity production systems (both at home and in producer countries) that are socially and environmentally sustainable. Such systems should be based on agroecology principles - including those of organic farming - and be embedded in the local and traditional knowledge of farmers with the aim of phasing-out dependence on fossil-fuel energy and agrochemical use. Such a move is already backed by [social movements and forest peoples in the tropics](#), the UN Special Rapporteur on the right to food as well as by the EU's own Standing Committee on Agricultural Research.^{xvi}

This position paper is jointly submitted by the following organisations:

Both ENDS, **the Netherlands**

Federación por la Autodeterminación de los Pueblos Indígenas (FAPI), **Paraguay**

Forest Peoples Programme, **United Kingdom**

El Gobierno Territorial Autónomo de la Nación Wampis (GTANW), **Peru**

Institute for Policy Research and Advocacy (ELSAM), **Indonesia**

International Work Group for Indigenous Affairs, **Denmark**

Link-AR Borneo, **Indonesia**

Pusaka, **Indonesia**

Réseau Ressources Naturelles, **Democratic Republic of Congo**

Social Entrepreneurs for Sustainable Development (SESDev), **Liberia**



ENDNOTES

- ⁱ And provide a legitimate justification if it chooses not to take into consideration widely supported recommendations.
- ⁱⁱ Kissinger, G., M. Herold, V. De Sy (2012), *Drivers of Deforestation and Forest Degradation: A Synthesis Report for REDD+ Policymakers*, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/65505/6316-drivers-deforestation-report.pdf.
- ⁱⁱⁱ World Economic Forum, (2017) 'Commodities and Forests Agenda 2020: Ten priorities to remove tropical deforestation from commodity supply chains', [white paper prepared by Climate Focus on behalf of the Secretariat of the Tropical Forest Alliance 2020], at p. 4, available at https://www.tfa2020.org/wp-content/uploads/2017/12/TFA2020_CommoditiesandForestsAgenda2020_Sept2017.pdf.
- ^{iv} L. Porter-Bolland, et al. (2012) 'Community managed forests and forest protected areas: An assessment of their conservation effectiveness across the tropics.' *Forest Ecol. Manage.*, available at <http://www.cifor.org/library/3461/community-managed-forests-and-forest-protected-areas-an-assessment-of-their-conservation-effectiveness-across-the-tropics/?pub=3461>; Persha L, Agrawal A, and Chhatre A. (2011) 'Social and Ecological Synergy: Local Rulemaking, Forest Livelihoods, and Biodiversity Conservation.' *Science*, Vol. 331 no. 6024 pp. 1606-1608; Nepstad D, Schwartzman S, Bamberger B, Santilli M, Ray D, et al. (2006) 'Inhibition of Amazon deforestation and fire by parks and indigenous lands.' *Conserv Biol.* 20: 6573; C. Stevens, R. Winterbottom, J. Springer and K. Reytar. (2014) *Securing Rights, Combating Climate Change: How Strengthening Community Forest Rights Mitigates Climate Change*, World Resources Institute, available at http://www.wri.org/sites/default/files/WRI14_Report_4c_Strengthening_Rights_final.pdf; A. Kothari, C. Corrigan, H. Jonas, A. Neumann and H. Shrumm, eds. (2012) *Recognising and Supporting Territories and Areas Conserved By Indigenous Peoples And Local Communities: Global Overview and National Case Studies*, Secretariat of the Convention on Biological Diversity, ICCA Consortium, Kalpavriksh, and Natural Justice, Montreal, Canada. Technical Series no. 64, p. 160, available at <https://www.cbd.int/doc/publications/cbd-ts-64-en.pdf>; Frechette, et al. (2018) 'A Global Baseline of Carbon Storage in Collective Lands: Indigenous and Local Community Contributions to Climate Change Mitigation.' *Rights and Resources Initiative.*, available at https://rightsandresources.org/wp-content/uploads/2018/09/A-Global-Baseline_RRI_Sept-2018.pdf.
- ^v Rights and Resource Initiative (RRI), 'Who Owns the World's Land?: A Global baseline study of formally recognized indigenous & community land right' (September 2015) 1.
- ^{vi} Peter Veit and Katy Reytar, 'By the numbers: Indigenous and community land rights' (World Resources Institute, 20 March 2017).
- ^{vii} See https://www.forestpeoples.org/sites/default/files/documents/Closing%20The%20Gap_0.pdf.
- ^{viii} See European Commission (2013) 'The impact of EU consumption on deforestation: Comprehensive analysis of the impact of EU consumption on deforestation', Chapter 6: Foresight scenarios of consumption trends within the EU27 in relation to land use and deforestation towards 2030. Available at http://ec.europa.eu/environment/forests/pdf/1_%20Report%20analysis%20of%20impact.pdf.
- ^{ix} See for example https://www.forestpeoples.org/sites/default/files/documents/Closing%20The%20Gap_0.pdf, p. 30-31 and https://www.forest-trends.org/wp-content/uploads/2018/06/Getting-the-Bads-out-of-Goods_6-20-18_FINAL_WEB.pdf.
- ^x Most recently in the Resolution on *Transparent and accountable management of natural resources in developing countries: the case of forests* (Resolution P8_TA-PROV(2018)0333), September 2018.
- ^{xi} <http://www.mightyearth.org/belgium-joins-france-in-calling-for-an-eu-due-diligence-cocoa-law/>.
- ^{xii} In this respect it is important that a future regulation learns from and corrects the shortcomings of legality as defined in FLEGT VPAs. See https://www.forestpeoples.org/sites/fpp/files/publication/2016/02/fpplegalcomparativestudyforweb_0.pdf.
- ^{xiii} Required, for example, by articles 3(5), 21(1) and 21(3) of the Treaty of the European Union.
- ^{xiv} Relevant obligations, commitments and policies include, but are not limited to: the International Bill of Human Rights, the Convention on Biodiversity, the UN Framework Convention on Climate Change, the UN Declaration on the Rights of Indigenous Peoples, the FAO Voluntary Guidelines on the Responsible Governance of Tenure; the New York Declaration on Forests, the UN Sustainable Development Goals, the UN Guiding Principles on Business and Human Rights; the OECD-FAO Guidance for Responsible Agricultural Supply Chains; the Seventh Environmental Action Program; the EU Action Plan on Democracy and Human Rights (2015-2019); the EU Trade for All Policy; the EU New European Consensus for Development; EU biodiversity targets and related global Aichi targets; the Council Conclusions on Indigenous Peoples; and the EU Guidelines on Human Rights Defenders.
- ^{xv} See BBC, 'Global insect decline may see "plague of pests"', 11 February 2019, Available at <https://www.bbc.com/news/science-environment-47198576>.
- ^{xvi} See Michael Pimbert, (2015) 'Agroecology as an Alternative Vision to Conventional Development and Climate-smart Agriculture', *Development*, 58(2-3), 286-298.