

**JOINT FEEDBACK ON THE EUROPEAN COMMISSION'S 'ROADMAP' ON  
"DEFORESTATION AND FOREST DEGRADATION – STEPPING UP EU  
ACTION"**

15 January 2019



The undersigned organisations welcome the European Commission's announcement to step-up action against deforestation and forest degradation and the possibility to provide input on the Commission's proposed initiative as described in the *Roadmap on Stepping up EU Action against Deforestation and Forest Degradation* ("**Roadmap**"). We provide this feedback as concerned and engaged European civil society organisations and as forest peoples' organisations and NGOs from tropical forest countries with first-hand experience with industry-driven deforestation, its causes and impacts, and sustainability initiatives for agricultural supply chains in both producing and consuming countries.

Having closely followed the deliberation, review and feasibility study process leading to the current proposal since 2013, we are disappointed by the low level of ambition and concerned by the inadequacy of the measures proposed in the current Roadmap. We therefore make the following observations and recommendations.

**1. EVIDENCE, EXPERIENCE, AND THE EUROPEAN PARLIAMENT CALL FOR BINDING, LEGISLATIVE MEASURES**

**a. Existing measures will remain inadequate and insufficient**

While we support "a more coherent and comprehensive approach to the problem", we are concerned by the **unreasonably limited scope** of the 'comprehensive approach' described in the Roadmap. Modifying *existing* EU policies and tools, better implementing and communicating actions *already undertaken*, and supporting *existing* government and private sector commitments is **woefully inadequate** to reverse the steadily-rising trend of the EU's overall contribution to global deforestation. Restricting the purpose of the initiative to setting out "a more coherent policy framework for existing policies and tools" ignores the fact that existing policies and tools, as well as voluntary market mechanisms and certification schemes, have so far failed to slow global deforestation and have not

prevented illegal land acquisition or widespread human rights abuse linked to both legal and illegal trade in forest-risk commodities.

The 2018 *Feasibility Study on Options to Step up EU Action against Deforestation* ("**Feasibility Study**") concludes that there must be "a more coherent and comprehensive EU approach" *acting on multiple levels to address the problem from several angles*, and explicitly states that new legislative measures combined with non-legislative measures (so-called 'Option C') "should have the greatest impact" and deliver the most effectiveness, despite its challenges. However, the present Roadmap disregards options for legislative or regulatory initiatives, instead adopting the unambitious goal of "increasing the coherence of existing EU policies and tools... and better mainstreaming deforestation considerations throughout relevant EU policies." This approach reflects 'Option A' described in the Feasibility Study as being *least effective and having the lowest likely contribution to the objective*. **This low-impact approach to tackling imported deforestation and harmful EU trade is misguided.** Existing market mechanisms and policy measures have failed to slow global deforestation or address rising consumption of forest-risk commodities. Improving existing measures makes sense only if those improvements have genuine potential to deliver results. Many existing measures have proven inadequate. **Legislative intervention is needed** to establish robust due diligence obligations for EU trade, investments and supply chains.

The economic, social, environmental arguments, scientific evidence,<sup>1</sup> as well as demands for action made by citizens, rights holders and a number of EU member-states<sup>2</sup> all clearly demonstrate the urgent need to increase the intensity of EU action to halt global deforestation and eliminate associated human rights violations linked to EU trade. The significant climate impacts of global deforestation and forest degradation are acknowledged in the Roadmap, as is the causal relationship between agricultural production and deforestation, and the EU's role "as a major importer of agricultural commodities". EU demand for key forest-risk commodities is expected to grow in coming decades, most likely increasing the 'pull' of EU market incentives that drive deforestation and the volume of 'embodied deforestation' imported into the EU. Reducing the EU's contribution to global deforestation is not only required to implement EU commitments on trade, rights and the environment, it is essential to achieving the Paris climate targets and Sustainable Development Goals, and is urgently needed to help ensure a survivable climate for all peoples. **A decisive and comprehensive EU Action Plan that combines both policy and legislative measures is warranted and required.**

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<sup>1</sup> For example, the Intergovernmental Panel on Climate Change recently emphasised in its 2018 *Special Report on Global Warming of 1.5 °C* the necessity of urgent government action within the coming decade to avoid locking-in irreversible and catastrophic consequences of a 1.5-degree climate change scenario before 2030.

<sup>2</sup> For example, the call from France, Germany, the Netherlands, Denmark, Norway and the United Kingdom to the European Commission on 26 February 2018 for, among other things, "strong ambition at EU level to combat deforestation" and "an ambitious Commission strategy to combat imported deforestation", and the call from Italy, France, Germany, the Netherlands, Denmark, Norway and the United Kingdom on 1 November 2018 urging the European Commission "to present, as soon as possible, a roadmap for the development, in the course of 2018[sic], of an ambitious EU Action Plan on deforestation and forest degradation."

**b. Legal interventions are necessary, justified and mandated - 'Option C' is the only viable option**

The Roadmap's preference for the relatively easy option of tinkering with existing initiatives and avoiding legislative intervention suggests **an alarming underestimation** of the scale of the problem and disconnect with Commission's policy-making mandate under the *Treaty on the Functioning of the European Union*. The importance of the objective and its relevance to the future security and prosperity of the European Union and the global community should not be underestimated.

The Roadmap acknowledges the **repeated calls from the European Parliament** for the Commission **to develop an Action Plan** on Deforestation and Forest Degradation **that includes legislative measures** to reduce EU consumption of embodied deforestation and forest-risk commodities. The Parliament again urged the Commission on 11 September 2018 to "address global deforestation by regulating European trade and consumption of forest-risk commodities" in its resolution on *Transparent and accountable management of natural resources in developing countries: the case of forests* (Resolution P8\_TA-PROV(2018)0333; the "**September Resolution**"), emphasizing that this regulatory framework should "comply with international human rights law, respect customary rights as set out in the VGGT and guarantee the FPIC of all potentially affected communities through the entire lifecycle of the product" (¶156). The **apparent disregard for the European Parliament's repeated calls** for "a meaningful EU Action Plan on deforestation and forest degradation that includes concrete and coherent regulatory measures" (September Resolution, ¶126) and rejection of the policy-making mandate conferred by the European Parliament is alarming.

Numerous legislative instruments<sup>3</sup> and widely-endorsed industry standards<sup>4</sup> exist for guidance and innovation. A variety of appropriate norms, principles, policy approaches and standards also exist in EU guidelines, commitments and treaty obligations that could be adopted and applied.<sup>5</sup>

Rather than adopting the Feasibility Study's least-effective 'Option A', the Roadmap should instead propose a substantive response to the European Parliament's repeated calls for coherent regulatory measures to "ensure that no supply chains or financial transactions linked to the EU cause deforestation, forest degradation, or human rights violations" (September Resolution, ¶126). **The Commission should instead pursue 'Option C' in the form of a robust and decisive Action Plan**, with the short-term goal of improving existing policy initiatives while appropriate legislative interventions based on existing examples and norms are developed and enacted.

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<sup>3</sup> For example, the EU *Timber Regulation*, the EU *Illegal Fisheries Regulation*, the EU *Conflict Mineral Regulation*, and France's *Loi sur le Devoir de Vigilance*.

<sup>4</sup> For example, the High Carbon Stock Approach and High Conservation Value Approach.

<sup>5</sup> For example, the International Bill of Human Rights; the UN *Declaration on the Rights of Indigenous Peoples*; the FAO *Voluntary Guidelines on the Responsible Governance of Tenure*; the UN *Guiding Principles on Business and Human Rights*; the OECD-FAO *Guidance for Responsible Agricultural Supply Chains*; 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* (2017); and the EU *Guidelines on Human Rights Defenders*.

## **2. ANY PROPOSED INTERVENTIONS MUST ADDRESS THE HUMAN RIGHTS DIMENSION OF THE CAUSES AND CONSEQUENCES OF DEFORESTATION**

### **a. An integrated rights-based approach is imperative across the EU's actions on deforestation**

Our organisations have emphasised during multiple visits to Brussels over the past year – including during meetings with DG Environment on 20 February 2018 (with Ms Astrid Schomaker and staff) and 28 June 2018 (inter-service meeting chaired by DG TRADE, attended by Mr Luca Perez) and with DG DEVCO on 19 February 2018 (with Ms Fabienne Van Den Eede and staff) and 29 June 2018 (with Mr Leonard Mizzi and staff) – that global agricultural production is intricately linked with patterns of increasing social injustice, environmental damage, threats to livelihoods, food and water sovereignty, abuses of cultural and territorial rights, displacement, oppression, intimidation, physical and sexual abuse, criminalisation, arbitrary arrest and detention, violence, and attacks and murders of local and indigenous people, their leaders and human rights defenders. It makes us hopeful that the EU is now ready to take responsibility for changing its role in the global agricultural system that currently perpetuates human rights violation. However, the Roadmap does not clarify what measures the Commission proposes to take to eliminate the negative impacts of EU trade and consumption on local people in producing countries. **To exclude such measures undermines the EU's human rights obligations and global human rights efforts.** Such rights-based measures should be included in the Roadmap.

The Roadmap rightly notes that deforestation can be associated with "abuses of the rights of local communities and indigenous peoples", yet it fails to further state how the proposed initiatives will address human rights violations in production zones or how EU trade, investment and development cooperation will be aligned with existing EU human rights commitments and treaty obligations (e.g. those listed at footnote 5 above). In recent years, numerous indigenous peoples' organisations, networks and movements from producing countries have travelled to Brussels in good-faith efforts to inform EU policy-makers about the real-life impacts of deforestation and EU consumption of forest-risk commodities on the livelihoods, safety and survival of local communities. We support the proposed actions described in the Roadmap towards improving land governance, livelihoods and sustainable agriculture and forestry practices in producing countries. However, we emphasise that **any producer country-oriented initiative must prioritise protection of the rights of indigenous peoples, customary landowners and local communities** and uphold the EU's obligation to ensure that companies (including financiers) registered or operating in the EU do not contribute to human rights violations abroad.

Scientific research and evidence from the ground confirms that a rights-based approach to deforestation would support the EU's efforts towards halting deforestation and improving the sustainability of existing supply chains. EU efforts to address local drivers of deforestation would also be enhanced by **requiring European enterprises to obtain and verify evidence of important indicators of respect for the rights of local communities** in production zones (e.g. secure land tenure, good land governance, and application of Free, Prior and Informed

Consent). For these reasons, the Roadmap should explicitly adopt a rights-based approach that is also aligned with the EU's existing guidelines and commitments on good governance of land tenure.<sup>6</sup> To ensure measures designed to eliminate embodied deforestation and associated human rights violations from EU supply chains are effective, human rights and environmental due diligence obligations for forest-risk commodity supply chains *should be mandatory*. Regulatory standards should include indicators and verifiers to prohibit commodities derived from illegal land acquisition, ensure compliance with customary tenure rights and require compliance with international human rights norms.

**b. Securing tenure rights of forest communities and indigenous peoples must be included in EU's Action Plan as a logical and cost-effective necessity to halting deforestation**

The Roadmap acknowledges that the problem of deforestation and forest degradation is linked to "weak governance, unclear land ownership, poor forest management practices, laws and enforcement in many producer countries" and that it can also "be associated with land grabbing, labour issues and abuses of the rights of local communities and indigenous peoples". However, there is no description of *how* the EU will address these underlying problems beyond building "effective partnerships" with producer countries to "support the uptake" of sustainable practices. The Roadmap should describe what measures will be taken to address these underlying and compounding problems.

In doing so, evidence suggests that, to be effective, efforts aimed at reducing deforestation should explicitly recognise the importance of formally securing the customary and collective tenure rights of forest peoples in addressing deforestation.<sup>7</sup> Studies show that deforestation rates are lower 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. To this end, **the proposed initiative should contain a dedicated component setting out planned measures for "Supporting Secure Tenure Rights of Forest Peoples"**, including the provision of targeted cooperation and technical assistance

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<sup>6</sup> See *inter alia*: the Council Conclusions on indigenous peoples (2017); the New European Consensus for Development (2017); the EU Human Rights Action Plan (2015-2019), Joint Staff Working Document on Implementing EU External Policy on Indigenous Peoples (2016), and human rights obligations binding on the institutions of the EU by virtue of the Charter of Fundamental Rights of the European Union (CFR) and relevant jurisprudence of the European Court of Justice.

<sup>7</sup> For research highlighting the link between secure land tenure of forest communities and healthy forests, see for example: 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](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>.

in support of secure land and livelihood rights for indigenous peoples and forest-dependent communities in producer countries.

Conventional approaches to verifying supply chain sustainability and legality that adopt definitions from national laws in the country of origin should not be relied upon alone to pursue the goals of halting *global* forest cover loss, respecting community land rights, and reducing *gross* tropical deforestation. To close the gaps in the current the FLEGT-VPA framework, which relies largely on national laws to define legality, the Commission should adopt unequivocal positions in support of partner countries' recognition of customary tenure rights (and all other legally protected human rights) consistent with international human rights laws and minimum standards for land and forest governance (as reflected in widely-accepted best practice instruments such as the *VGGTs*, the *High Carbon Stock Approach* and *High Conservation Value Approach*). This priority should be explicitly stated in the Roadmap and **pursued as part of a comprehensive Action Plan** on deforestation and forest degradation.

This feedback is jointly submitted by the following organisations:

**Both ENDS**, The Netherlands;

**la Federación por la Autodeterminación de los Pueblos Indígenas**, Paraguay;

**Federación de Comunidades Nativas del Ucayali y Afluentes**, Peru;

**Forest Peoples Programme**, United Kingdom;

**OKANI**, Cameroon;

**Pusaka**, Indonesia;

**Social Entrepreneurs for Sustainable Development**, Liberia;

**Sustainable Development Institute**, Liberia.