The Right to Legally Sourced Lumber? How the Effective Enforcement of the Lacey Act is a U.S. Human Rights Obligation and Critical to Preventing Abuse in the Illegal Logging Industry

Melanie Hess
Notre Dame Law School

Follow this and additional works at: https://digitalcommons.wcl.american.edu/sdlp

Part of the Agriculture Law Commons, Constitutional Law Commons, Energy and Utilities Law Commons, Environmental Law Commons, Food and Drug Law Commons, Health Law and Policy Commons, Human Rights Law Commons, Intellectual Property Law Commons, International Law Commons, International Trade Law Commons, Land Use Law Commons, Law and Society Commons, Law of the Sea Commons, Litigation Commons, Natural Resources Law Commons, Oil, Gas, and Mineral Law Commons, Public Law and Legal Theory Commons, and the Water Law Commons

Recommended Citation
Available at: https://digitalcommons.wcl.american.edu/sdlp/vol20/iss1/5

This Article is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in Sustainable Development Law & Policy by an authorized editor of Digital Commons @ American University Washington College of Law. For more information, please contact kclay@wcl.american.edu.
THE RIGHT TO LEGALLY SOURCED LUMBER? 
HOW THE EFFECTIVE ENFORCEMENT OF THE LACEY ACT IS A U.S. HUMAN RIGHTS OBLIGATION AND CRITICAL TO PREVENTING ABUSE IN THE ILLEGAL LOGGING INDUSTRY

By Melanie Hess*

INTRODUCTION: THE RIGHT TO LEGALLY SOURCED LUMBER?

A World Bank study estimated that eighty percent of wood coming out of Peru’s Amazonian forests is illegally logged. Illegal logging is perpetrated through a widespread system of fraud, deception, and corruption committed by local authorities, government agencies, and lumber suppliers. Some of Peru’s environmental agencies and other organizations, including environmental NGO Environmental Investigation Agency (EIA) work to enforce Peru’s laws regarding legal harvesting of lumber. Many others turn the other way—or worse, actively aid timber suppliers bypass legal means of logging.

The United States instituted a significant binding treaty, the United States-Peru Trade Promotion Agreement (TPA), in 2009, which was aimed to remove certain barriers to U.S. services and provide a stable framework for investors for both countries. Significantly, the agreement incorporates important provisions for the protection of environmental and human rights. This bilateral agreement is important because it represents the two countries’ commitments to healthy economies and strong international relations, but also to address the serious environmental and human rights violations occurring in Peru, with the encouragement of corporations based in the United States.

Illegal logging practices uphold a system of corruption in regulation and governance, which undermines the rule of law and destabilize the Peruvian government and its people’s access to and faith in security and justice. It also depresses economic development of the country by reducing the profitability of the sector as a whole, and undermines sustainable, legal operations by undercutting those prices. Addressing illegal logging involves a high-stakes resource: the Peruvian Amazon forest. The Amazon is part of Peru’s history, heritage, and legacy. However, it also plays an important global role as a precious natural resource with inestimable scientific, medicinal, and aesthetic value, with far-reaching effects in global issues like climate change.

The illegal logging industry engenders an environment where gross human rights violations occur pervasively and without consequence to the perpetrators. Illegal loggers in search of profitable forests forcibly and violently remove indigenous peoples from their land or deceive them into forfeiting land rights. Protests to the government tend to fall on deaf ears, and the response by the loggers can be deadly. Unscrupulous lumber suppliers frequently exploit impoverished communities and individuals into forced labor systems through debt servitude and other means. These workers do dangerous tasks for little to no pay, through schedules exceeding legal limits of hours, without guarantee to medical attention or even proper habitation and nutrition. Finally, the environmental destruction that the illegal logging industry perpetuates is a global, as well as local, human rights issue that cannot be ignored.

Supporting and tacitly approving of these practices are huge transnational corporations in the business of purchasing or distributing illegal lumber from Peru, costing Peru an estimated $250 million per year. These corporations are propping up the industry and creating powerful monetary incentives for timber suppliers.

These issues are attributable to the illegal nature of the industry; absent the oversight of the law, global corporations take advantage of cheap labor and more conveniently located forests to satisfy their timber needs. The timber suppliers are themselves desperate to obtain timber in any way that they can in order to be able to compete with the global market for lumber worldwide to ensure their own livelihoods. These human rights violations are directly linked to the issue of illegal logging for the simple fact that they are not occurring in the same frequency or with the same gravity where lumber is being harvested legally. A report conducted by the International Labour Organization (ILO) noted that the majority of those suppliers and companies that comply with the regulations around logging also comply with labor norms and are respectful of workers’ rights. These legal enterprises have explicitly disapproved of and rejected the practices of the illegal logging industry.

Despite the appearance of efforts to combat illegal logging, including international agreements and the creation of new agencies and laws, the industry is backed by timber laundering schemes, the indifference of local officials, and timber suppliers that have no qualms with maintaining their positions of power through corruption and violence. To illustrate the

* Melanie Hess, Juris Doctor Candidate, Notre Dame Law School 2020; Bachelor of Arts University of California, Berkeley, 2015. I would like to thank Dr. Michael K. Addo for his guidance and mentorship.
conduct of these corporate interests, during the 2015 detention of what turned out to be an illegal shipment of lumber to the US, the timber industry’s reaction was fierce and alarming. Forest investigation officials became targets of death threats and violent protests, which included the burning of coffins with their names on them. One forest inspection office was set on fire. The head of the Peruvian forest registry, Ramon Navarro, received death threats, and as the investigation of that shipment progressed, he was abruptly fired by the Peruvian president. Absent the authority of his office, he fled the country and sought political asylum in the United States in 2016, where he is now working with the EIA.

The United States is one of Peru’s largest trading partners, second only to China in Peruvian exports which are valued at almost $7 million in 2017, according to the World Bank. If U.S.-based business does not take care to avoid the illegal lumber industry, it inevitably contributes significantly to the problem of illegal logging and the gross human rights abuses that are tied to that industry. A 2012 report by the EIA indicated at least forty percent of official cedar exports to the United States include illegally logged timber.

The United States has a state duty to protect human rights; under the UN Guiding Principles on Business and Human Rights (the UN Guiding Principles) this means preventing U.S. businesses from committing abuses extraterritorially. This paper will address the obligations of both states, with particular focus on the United States, to protect human rights, which are adversely impacted by Peru’s logging industry through the lens of the UN Guiding Principles. Parts II and III will describe the problem of the illegal logging industry in Peru and its impact on human rights. Part IV will discuss what the U.S. state duty to protect is with regards to human rights abuses occurring extraterritorially in Peru pursuant to the UN Guiding Principles, and how the United States is falling short of its duties.

Parts V–VII will discuss the Lacey Act as the legal remedy on the frontline of preventing businesses from committing human rights abuses, and examine its effectiveness at this task. It will suggest that the failure of the U.S. duty can be traced primarily to ineffective enforcement of laws which inadvertently allows the continued participation of U.S. corporations in the industry, whose business dealings in turn perpetuate systems of abuse and incentivize weak governance in Peru. Parts VIII–IX address remedies that attempt to fill the gaps left by the Lacey Act and its enforcement authorities. The lack of an effective legal mechanism to protect against these abuses reflects failures of both countries to uphold international human rights obligations. They also threaten to make the commitments to environmental issues and human rights in the TPA mere verbiage, undermining that agreement and the goals it seeks to advance.

**Illegal Logging in Practice In Peru**

**The Regulatory Framework In Peru’s Logging Industry**

There are a number of places where timber may be legally harvested in Peru’s forests. Lumber can be harvested from Permanent Production Forests, granted by the Ministry of Agriculture in the form of concessions; timber may also be legally harvested in indigenous community forests through deals with the respective indigenous communities. Logging is also increasingly authorized on private properties and local forests as well, granted by regional governments to organized community groups.

To get approval to sell and log the appropriate species and volume of timber in their forests, the individuals, communities, and organizations who act as managers of forests where lumber may be legally extracted must file *Planos de Operación (POs).* The POs describe forest inventory using geographic maps and lists of the trees slated to be logged and those to be left, and are filed with a local corresponding authority in order to get approval for the volume and species proposed. These local approving authorities are registered with Colegio Forestal, the national professional association of forestry consultants, and pre-approved by Servicio Nacional Forestal y de Fauna Silvestre (Serfor), the national forest authority in charge of enforcing Peru’s forest and wildlife laws and regulating the forests and industries that rely on them. Another government agency, Organismo de Supervisión de los Recursos Forestales (Osinfor), plays a major role in ascertaining the legitimacy of the paperwork used by timber suppliers by conducting post-harvest inspections of sites listed in POs to verify whether reported harvest sites are being used as reported.

According to the primary law governing the regulations of the forestry industry, *La Ley Forestal y de Fauna Silvestre,* no. 29763 (Ley Forestal 29763), any person trading, transporting, or possessing forest or wildlife products or species must be able to prove the legal origin of the product, and any illegally sourced products may be seized and the transporter subject to sanctions, regardless of their knowledge of the illegal origins.

This is accomplished through the requirement that all lumber transports must be accompanied by a *Guía de Transporte Forestal (GTF)* that theoretically includes legitimate information about the lumber’s source, traced back to the PO, which grants the authorization for harvesting activities in that region of the forest. GTFs may only be legally issued from sites that have been formally authorized for logging—those sites for which POs have been submitted and approved. The Ley Forestal 29763 requires that newly harvested lumber pass first through a sawmill, which is obligated to verify the source of the transport; thereafter, a series of GTFs must accompany a transport of lumber in every step of their journey.

**Timber Laundering and Fraud in Peru**

Despite this framework, rampant fraud is committed at the first stage through the creation of false POs. In some cases,
logging operators "invent" trees, creating false inventories of the trees in their forests that simply do not exist (a series of inspections by Osinfor found that twenty-six percent of reported trees in certain areas did not exist). In others, logging operators create inventories based on the existence of real trees reported in false geographic locations, as the "real" trees are in forests too remote to be profitably logged. These falsified POs are then submitted for approval to local authorities, many of which have neither the resources nor the will to properly verify the veracity of the documents, which would require intensive fieldwork. Using these false POs, "legitimate" GTFs can then be created that correspond with the amount of lumber being taken. It follows that these GTFs, based on false information, would not have otherwise been authorized based on the actual capacities of the forest being harvested. In some areas, POs and GTFs based on those POs continue to be used even if that concession of forest has been completely used up—documents are simply altered to create the appearance of legality for timber that was in fact harvested from somewhere else.

This practice not only enables the laundering of almost 28,000 square acres of trees in the Peruvian Amazon every year, but it creates a black market for false documents, which are traded and sold, perpetuating this illegal economy. It creates a complicated problem of enforcement where determining the legitimacy of a lumber transport requires returning to the original PO that authorized the harvest and a physical inspection of the forest to determine whether the PO accurately reported the forest's inventory. One of the only ways to have confidence in a document's legitimacy would require the verifier to visit the geographic location and check for a tree stump, proving that that site had indeed been harvested (though this would not preclude the possibility that the PO was being falsely used multiple times).

Another significant result of this practice is the way that it complicates enforcement of logging laws, as traders may claim—or truly believe—that their purchase of illegal transports was "in good faith" and based off what appeared to be legitimate documentation, despite widespread knowledge of the laundering practices. The ability to claim ignorance poses a significant problem in the enforcement of foreign laws against international corporations and providing justice to those harmed by the illegal logging industry.

**THE HUMAN RIGHTS IMPACT OF THE ILLEGAL LOGGING INDUSTRY**

**INDIGENOUS COMMUNITIES**

In September 2014, Peruvian authorities announced the murders of four Ashéninka tribal leaders, including Edwin Chota, a renowned anti-logging protestor and indigenous community advocate. According to witnesses and local indigenous leader, illegal loggers bound and shot the four community leaders on a sports field, in front of the village's inhabitants. The loggers' motivation was to exact revenge on Chota and his companions for reporting them to authorities, and in all likelihood, to send a message to anyone that might have stepped up to carry on their legacy.

The Ashéninka are Peru's largest group of indigenous population, at 92,000, and have increasingly become the victims of violence as they begin pushing back against loggers who illegally enter and destroy their land. For almost a decade, Chota and other community leaders had been writing letters to Peruvian authorities, protesting against wrongful seizures of indigenous land rights, and defending their ancestral lands. The tragedy of their murder was made worse by the fact that local law enforcement and judiciary knew that these community leaders were the targets of violence, and yet failed to do anything about it. Peru's Director for the EIA noted that: "It was widely known that Edwin Chota and other leaders from the Alto Tamaya-Saweto community were asking for protection from the Peruvian authorities because they were receiving death threats from the illegal loggers operating in their area."

This infamous case is only one example of a pattern of exploitation and violence committed against indigenous communities occupying valuable forest lands. Indigenous communities that have watched Peru's historically apathetic response to illegal incursions on their land have developed distrust and taken to forming *Rondas compesinas*, or community groups that stand guard over land. Illegal logging operations continue invading territories occupied by Peru's estimated fifteen isolated indigenous tribes, or "uncontacted" peoples who live in voluntary isolation without significant contact from the global civilization. Such groups not only have particular reverence for their land, but lack immunity to common diseases and are imperiled after even one contact with another person or unfamiliar disease-carrying agent. These groups have been documented fleeing their lands to escape the onslaught of illegal loggers, as they are doomed to adapt to new conditions or be killed by disease or at the hands of the invaders.

Violence and expulsion from land is not limited to indigenous tribes: violent conflicts that erupt over land use result in murders of other local inhabitants and farmers. Authorities often stand by or are complicit in these crimes through granting falsified documents that allow the illegal loggers and land traffickers to continue their lucrative trade and ignoring complaints of illegality from those affected.

**FORCED LABOR**

In the TPA, the United States and Peru both explicitly reaffirmed the commitments they made as members of the ILO. The ILO includes a declaration of workers' rights, fundamental to which is the obligation to promote and realize "the elimination of all forms of forced or compulsory labor."

Illegal logging operations exploit workers through poor pay, abysmal working conditions, and forced labor systems. Workers are coerced and then trapped into these systems of exploitation through economic traps and physical threats and violence. A 2005 study conducted by the ILO estimated that over 33,000 people worked under conditions of forced labor in labor camps. Typically impoverished communities are targeted, where
workers are convinced to sign contracts that stipulate wages that are insufficient to cover the cost of lodging and living.\(^{58}\) The result is the workers get trapped in a system of debt slavery where they are unable to recover enough money to save or pay off their debts.\(^{59}\) Camp operators frequently use other means to coerce workers to stay, such as retaining their paperwork, or threatening to withhold pay. Workers often receive death threats if they try to escape.\(^{60}\) While most of the workers are adult males, some bring their families, who may also be subject to degrading work or even forced prostitution.\(^{61}\)

In other cases, patrons offer a generous incentive to a community that lives near a place with harvestable wood, in the form of money or even infrastructure, such as the building of a school, in exchange for the delivery of a certain quantity of wood.\(^{62}\) In written or oral agreements, the parties decide on a certain percentage of the profits or wood harvested. After the lumber has been harvested, the patron has little difficulty persuading the community that they have harvested poor quality trees or cut them incorrectly, or simply lie to them about the market value of the lumber.\(^{63}\) After having completed a project and receiving far less compensation than was owed, the patron may offer an advance or to pay off workers’ debts in exchange for a new harvesting job, or sending workers to a labor camp.\(^{64}\)

Conditions at labor camps are abysmal, consisting of back-breaking labor in long work days that far exceed legal limits.\(^{65}\) The workers also experience hunger, as limited food is provided and what is provided comes out of their paychecks.\(^{66}\) Despite the frequency of accidents, sickness, and exhausting labor, there are no medical services, adequate water or food, and work hours exorbitantly exceed the legal limit.\(^{67}\)

Furthermore, the work itself is dangerous to the point of deadly, as untrained workers learn on the job how to stay out of the way of falling trees, which can crush and kill multiple men if they inaccurately predict its trajectory. Because of the tools and nature of the work, one slip can sever a hand, and loss of limb is not uncommon.\(^{68}\) One worker recounted his experience, saying: “In a moment of carelessness I had opened my hand in two and three fingers hung off. So much blood was squirting out; I could not stand the pain. I screamed out of pain begging for help. . . They sent me to an emergency center in Puerto Maldonado, there they cut off my hand because otherwise it was going to be infected.”\(^{69}\)

However, despite the dangerous and degrading treatment, most workers have no choice but to stay and continue working in these conditions of forced labor because they are afraid for their lives.\(^{70}\) As one victim described:

> Thus, without realizing it we had worked for years and years for the loggers. . . We did not have another option [than to stay] because the patron (boss) threatened us and told us that we had to pay the debts we acquired. But some young people my age escaped and others did not return to work in the second and third harvest; they ended up deserting. The two men that came with the patron had weapons and took shifts at night to ensure that no one fled from the camp.\(^{71}\)

**Environmental Harm**

The excess in tree loss caused by illegal logging has devastating effects worldwide, causing it to be not only an issue of local human rights with the communities that directly confront the industry, but a human rights issue on a global scale. Peru, which contains the second largest region of the Amazon forest after Brazil, loses 600 square miles of forest every year, equivalent to approximately seventeen soccer fields an hour.\(^{72}\) Trees in forests typically act as carbon sinks, absorbing carbon from the atmosphere and reducing greenhouse gas emissions, but scientists estimate that tropical forests now emit more carbon than they capture as a result of forest degradation and disturbance, and that stopping deforestation is a critical step to combat global warming.\(^{73}\) Furthermore, trees that were commonly found in the Amazon, like mahogany and cedar, have drastically and dangerously depleted, and experts have recommended adding a third tree species, the shihuahuaco, to the list of endangered tree species because of its depletion between 2000 and 2015.\(^{74}\)

**The State Duty to Protect**

**Set clear expectations for U.S. businesses’ participation in Peru’s logging industry**

Given the pervasiveness of the problem and the significant involvement of U.S. corporations in the industry, the United States is implicated in the human rights issues connected with this industry. Because international human rights norms are only binding on states, not private actors, the UN Guiding Principles on Business and Human Rights (the UN Guiding Principles) were adopted in 2011 to address the problem of human rights violations by business enterprises.\(^{75}\) These principles set out the duties of the States to protect human rights, and the responsibility of business to respect human rights. The Guiding Principles thus provide a framework wherein States fulfill their duty to protect human rights by policing corporations that may be violating them through the course of their operations.\(^{76}\) According the UN Guiding Principles, “States’ international human rights law obligations require that they respect, protect and fulfil the human rights of individuals within their territory and/or jurisdiction. This includes the duty to protect against human rights abuse by third parties, including business enterprises.”\(^{77}\)

The Guiding Principles provide that the United States has a duty to “set out clearly the expectation” that all business enterprises, including those operating extraterritorially, respect human rights “throughout their operations.”\(^{78}\) This includes the recommendation that States “take steps to prevent abuse abroad by business enterprises within their jurisdiction.”\(^{79}\) Thus, under the UN Guiding Principles, the United States should protect human rights violated extraterritorially by corporations within their jurisdiction; this is tied to the implementation and enforcement of laws and policies that prevent U.S. businesses from participating in Peru’s illegal logging industry.\(^{80}\) One clear
way to achieve this is to take steps to more actively eradicate
the industry, where the human rights violations are occurring.
At the very least, the United States must ensure that it is doing
what it can to refrain from participating in the industry where it
is thereby tacitly sponsoring these human rights abuses.

DEMONSTRATING COMMITMENT TO COMBATTING ILLEGAL
LOGGING THROUGH THE U.S.-PERU TRADE PROMOTION
AGREEMENT

Both States collaborated on combatting the issues of the
logging industry through the creation of the U.S.-Peru Trade
Promotion Agreement (TPA). This partnership reflects a step
forward in implementing a more effective forest governance
system in Peru through the creation of several agencies charged
with enforcement and regulation of trafficking and laundering
of lumber. It also includes efforts to establish technical support
in the form of monitoring technologies that have the potential to
make the industry more transparent and easier to police.

The TPA establishes a framework for forest governance
and affirms the two countries’ commitment as members to ILO
Declaration on Fundamental Principles and Rights at Work. As
members of the ILO, these countries have an obligation to
uphold the principles of the ILO Declaration. For purposes
of international law, treaties between countries create binding
and enforceable obligations between those countries. By
incorporating the ILO Declaration into the U.S.-Peru TPA,
the United States and Peru made the ILO Declaration, which
has principles that are not enforceable on their own, binding
obligations between their two States. Since the TPA requires
both Peru and the United States to ensure that ILO principles
are upheld, the agreement requires both countries to address
the culprits of these human rights violations—particularly the
dangerous forced labor. This necessarily implicates the illegal
logging industry, where these violations are rampant.

Significantly, the TPA includes an entire Annex on Forest
Sector Governance to develop, implement, and strengthen the
legal and regulatory framework and enforcement bodies for the
sustainable management of forest resources. This section of
the agreement commits both parties to effectively enforce existing
domestic environmental laws as well as adopt and implement
any laws necessary to fulfill environmental and human rights
obligations.

The TPA requires Peru to “develop systems to verify the
legal origin and chain of custody of CITES-listed tree species
develop systems, including requirements for management
oversight and record keeping, to reliably track specimens
from harvest through transport, processing and export.” As
a potential market for Peru’s illegally sourced timber, the United
States has a duty under the TPA to “deny entry to a shipment
that was the subject of verification” and deny entry to products
where an enterprise “knowingly provided false information to
Peruvian or United States officials” regarding the contents of
the shipment. In 2015, for example, a shipment of lumber
was red-flagged after Peruvian officials said it lacked the proper
paperwork. U.S. enforcement authorities seized the shipment,
originally destined for an Oregon-based corporation Popp Forest
Products, Inc., and destroyed it in a settlement agreement.
In short, the TPA makes explicit both states’ commitment to
addressing the problem of stolen wood, and the intricately
linked human rights abuses, perpetuated by Peru’s logging
industry by outlining and strengthening enforcement systems for
corporations that violate laws around legally sourced lumber.

OVERVIEW OF UNITED STATES’ EFFORTS TO FULFILL
OBLIGATIONS UNDER THE TPA

In December 2016, the United States adopted a National
Action Plan (NAP) to strengthen public and private actors’
abilities to attain responsible business conduct goals. The
UN Working Group on Business and Human Rights strongly
encouraged States to develop these NAPs in order to help
implement the UN Guiding Principles, and to date, twenty-two
countries have adopted NAPs to address responsible business
conduct, with thirty-one other countries committed to or in
the process of developing NAPs. The U.S. NAP specifically
acknowledges and reinforces its ongoing commitment to the
capacity-building and technical support to combat illegal
logging. In doing so, the NAP affirms partnerships with
several States that are high-risk for illegal logging, which along
with Peru, also include Colombia and Cameroon. Without
explicitly acknowledging commitments like the U.S.-Peru
TPA, the NAP complements it by affirming its commitments.
This is particularly true in the commitment to preventing
violations through enforcement actions: the TPA requires the
parties to “ensure that judicial, quasi-judicial, or administrative
proceedings are available under its law to provide sanctions or
remedies for violations of its environmental laws,” and the
NAP commits the United States to investigating and prosecuting
illegal logging cases.

The NAP “encourages businesses to treat tools like the
OECD Guidelines and the UN Guiding Principles as a floor
rather than a ceiling for implementing responsible business
practices...” The United States commits resources and tools,
including research and data, to allow businesses to more
effectively conduct due diligence necessary to describe the
state of human rights. One such resource in development is a
database service for international company profiles that allows
companies to search foreign suppliers for past history and risk
assessment purposes. A reliable database would allow U.S.
corporations to vet potential partners for risk for human rights
abuses, and would make ignorance of a risky partnership less
easy to claim.

In line with the commitments expressed in the NAP and the
TPA, the U.S. Agency of International Development (USAID)
has been involved in several development programs with the
goal of strengthening Peru’s forestry governance and providing
technology to help with some of the issues that the industry
faces. Since 2009, the U.S. government has dedicated over
$90 million to develop forest governance procedures, both in
technical assistance and capacity building.
One of the programs being supported by USAID has the potential to get at the root of the problem: providing technical and technological capabilities that will allow officials to better monitor and track Peru’s Amazonian forests so that fraudulent GTFs are not so easy to create, buy, and sell. USAID is working with Serfor to develop systems that will allow the agencies to develop, utilize, and analyze geospatial data from the new technologies.102 Digitizing the tracking systems for lumber transports would go a long way in obstructing the current ease of illegal logging activity. USAID donated a new satellite monitoring system for deforestation, and the United States has worked with Peru’s agencies to develop a digital timber tracking system that has the potential to create transparency and traceability.103

In theory, the United States has in place laws and programs that have the potential to support the eradication of the illegal logging industry through preventative means and have reinforced their commitments to international human rights norms. One important law in place purports to address the human rights at stake by establishing a legal remedy criminalizing participation in the illegal logging industry: the Lacey Act.

REMEDIES: THE U.S. LACEY ACT

THE EFFECTIVENESS OF THE U.S. LACEY ACT PURSUANT TO THE UN GUIDING PRINCIPLES

Pursuant to the UN Guiding Principles, “[s]tates should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses.”104 This goes beyond having an effective law in place that purports to address abusive conduct; it is additionally necessary to “take appropriate steps to investigate, punish, and redress business-related human rights abuses when they do occur, [or else] the State duty to protect can be rendered weak or even meaningless.”105

The U.S. Lacey Act was passed in 1900 to protect endangered wildlife by imposing civil and criminal penalties for those that violate rules and regulations around the illegal trade and possession of primarily endangered wildlife.106 The Act was amended in 2008 to include plant products and has been the primary enforcement tool in the United States addressing the importation or exploitation of illegally-sourced plants and animals.107 The 2008 amendment that expanded the law to include illegal timber requires due care to be exercised by importers/purchasers to ascertain the legality of wood they have purchased.108 Unfortunately, this could be (and has been, in some cases) interpreted to mean simply requiring documentation that verifies the legality of the timber import, which as established, does not guarantee the legality of the wood.109

Under the Lacey Act, it is unlawful to “import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce” any plant “taken, possessed, transported, or sold” in violation of any State or foreign laws and regulations that regulate “the taking of plants without, or contrary to, required authorization.”110 Thus, a felony-level Lacey Act violation requires an actor to violate an existing U.S. or foreign law. An actor that “knowingly” engages in importing or exporting plants or wildlife in violation of the Act can be criminally prosecuted and fined up to $250,000 for individuals ($500,000 for an organization) and be sentenced to five years’ imprisonment.111 A lower criminal sanction, however, allows a defendant to be charged where she, “in the exercise of due care,” should have known that she was violating foreign or State laws and regulations. This misdemeanor-level criminal offense can result in up to $100,000 in fines for individuals ($200,000 for an organization) and one year’s imprisonment.112

In application to the topic at hand, this means that to violate the Lacey Act at a felony violation, a company must have had knowledge of Peru’s local laws regarding timber sourcing. However, companies can be prosecuted for misdemeanor-level violations under the Act by the failure to exercise due care in sourcing lumber and following Peru’s laws.113 Thus, a company found to have imported illegally logged lumber from Peru, according to Peru’s local laws, would result in at least a misdemeanor-level violation of the Lacey Act. As described above, the relevant regulations require any timber supplier to have sourced the timber from a legal origin and be able to verify that origin through a legitimate paper trail.114

As is the case in many industries involving transnational corporations and human rights, the involvement of business enterprises in supporting and promulgating the existence of illegal logging undermines any efforts that Peru and the United States might take to try to eradicate it through legal means. Effective and diligent enforcement of the Lacey Act sets the precedent that businesses are expected to follow the law, even where it may be possible to circumvent because of the nature of the illegal timber trade makes it easy to claim that the company had a “good faith” belief in the legality of their supply.

THE LACEY ACT’S POTENTIAL TO ADDRESS AND PREVENT EXTRATERRITORIAL HUMAN RIGHTS VIOLATIONS

Effective enforcement of the Lacey Act, pursuant to provisions of the U.S.-Peru TPA that require the prosecution and investigation of environmental laws, has the potential to not only have welcome environmental consequences, but also to address the human rights violations rampant in the illegal logging industry. The strong connection between the illegal logging industry and the human rights violations cannot be overstated. Illegal loggers directly take advantage of indigenous communities by persuading them to sign contracts that are illegal, abusive, or not approved by legitimate community procedures.115

As described above, indigenous leaders or defenders of the land are often targeted with threats or even killed.116 However, the true source of the problem is much more complicated than the behavior of the illegal loggers themselves. Rather, the true source of the problem is the economic demand and incentives to deliver the low-cost lumber to a global market. Thus, closer to the root of the problem is the powerful transnational corporations that feed the industry through its patronage. In a prominent case where several Ashaninka
community leaders, including Edwin Chota, were murdered for their activism in protecting land from illegal logging, the community knew that “the murderers were paid by powerful businessmen.” This implicates the effective enforcement of statutes that prevent businesses from profiting from these illegal endeavors, such as the Lacey Act.

Effectively enforcing the Lacey Act also has the potential to have a strong impact on the inhumane labor conditions that workers in the illegal logging industry are subjected to. By ignoring decent wages and engaging in exploitative labor and environmental practices, the illegal logging industry can be lucrative because of profit margins and the ability to undercut prices of lumber, which makes it appealing to lumber purchasers. The debt slavery that victimizes workers in the illegal logging industry is largely a result of the lack of formal financing mechanisms available to logging activities. An anecdotal investigation by the EIA “conservatively” estimated that the quantity and quality of a batch of wood produced by one of the forced labor camps could be worth almost $493,000 on the international market, but had been produced by that camp for approximately $20,000. Even adding in any bribes that might have been paid to enforcement authorities, it is a “very profitable business and, unfortunately, one which carries very little risk.” The combination of the lack of traditional financing and the fact that illegal logging undercut the price of the lumber causes the industry to be “trapped in a vicious cycle of illegality, informality and abuse.” Contributing to the pervasive abuses is the auspicious lack of any governmental and regulatory oversight. This allows the loggers to abuse labor rights, enact and perpetuate horrific working conditions, and violate labor laws, such as minimum wage and hourly working requirements.

In short, the industry’s illegality itself creates and sustains conditions where vulnerable communities and individuals are targeted and trapped in these abusive working conditions; the pressure to compete with the prices of illegally harvested lumber incentivizes these practices and the lack of regulatory or governmental oversight enables them. Without the demand for illegal lumber from the ultimate consumers (the transnational corporations), the incentives for the illegal logging industry, along with all of the human rights harms it implicates, would disappear. An EIA report from 2012 concludes: “[A]n effective fight against this scourge has to look beyond the poor loggers in the forest or the petty criminals, and focus on those who are truly enriched by this illicit activity.” In other words, simply coming down on the illegal loggers themselves would not represent a sustainable solution to these labor and human rights violations.

Thus, there is a close relationship between what is at its root an environmental law and the protection of human rights. The stronger the Lacey Act is as an enforcement mechanism, the more effective the United States will be at addressing the extraterritorial violations of human rights occurring as a result of the actions of U.S. corporations. On the other hand, if the Lacey Act is weak and ineffective as an enforcement mechanism, U.S. and other transnational corporations may weigh the cost-cutting benefits of purchasing illegally harvested timber against the risk of liability, and find that it makes business sense to take the risk.

THE LACEY ACT IN ACTION

FALLING SHORT: THE CASE OF GIBSON GUITARS (2012)

One of the most touted successes of the Lacey Act in recent years was the crackdown on Gibson Guitars, a popular guitar manufacturer and distributor that was investigated for criminal violations of the Lacey Act in 2012. Gibson Guitar reached a settlement agreement with the Department of Justice (DOJ), where the government agreed not to press charges against the corporation for illegal purchases of ebony and wood in from Madagascar and India. In exchange, the corporation paid a penalty of $300,000, made a community service payment of $50,000 to the National Fish and Wildlife Foundation, and agreed to relinquish civil claims to wood seized by the government, which valued at a little over $260,000. It also agreed to implement a detailed compliance program to strengthen compliance protocols and procedures.

A statement from the DOJ regarding the criminal enforcement agreement noted that “Gibson has acknowledged that it failed to act on information that the Madagascar ebony it was purchasing may have violated laws intended to limit overharvesting and conserve valuable wood species from Madagascar.” The criminal charges that Gibson Guitars narrowly avoided were largely premised on evidence that the corporation was aware of their contribution to import and export of illegal lumber. An employee visiting one of their suppliers was explicitly told that their lumber was harvested illegally. Upon his return, he told superiors at Gibson, who declined to do anything about it. Despite knowing the illegality of their actions, these individuals continued to order shipments from the same supplier.

As part of their criminal enforcement agreement, Gibson agreed to implement compliance procedures to strengthen their systems and procedures for executing “due care.” Relevant procedures include training for staff, communication with suppliers, verification of foreign laws and review of the necessary documentation for wood procurement.

In order to prevent and deter participation in the illegal logging industry, the enforcement mechanism employed must be effective. As a general compliance principle, effective enforcement schemes includes the cost-benefit of committing a crime, and must balance deterrence, detection, reporting, and cooperation in such a way that companies have an incentive to turn around misconduct at all of these stages. Thus, evaluating whether a sanction is effective depends partially on that calculus and the incentives to engage in the illegal business, including the company’s revenue and the scope of their illegal business, the volume of illegal timber, and length of time that they imported the illegal timber. Gibson Brands, Inc., which manufactures Gibson Guitars, is a massive transnational corporation, netting $1.2 billion in revenue annually according to numbers reported.
in 2017. The company was sanctioned a mere $350,000. To put this number into perspective, the single shipment of illegal lumber they agreed to release claims to also as part of the settlement was worth over $260,000. Gibson had been knowingly trading illegal ebony from Madagascar since before 2006, when this material was prohibited from trade in that country. Gibson had been profiting off illegal shipments such as the one seized in 2011 for at least five years.

The weakness of the ultimate sanction when compared to the company’s profits off their illegal activities in the many years prior, creates a seemingly pessimistic incentive: it is worthwhile to game the system while you can, because the stakes are not that high, even if you are caught. In fact, until the evidence was stacked against them, this seems to have been Gibson’s strategy: the company denied wrongdoing following the raid in 2011 and throughout the year-long investigation, but ultimately acknowledged the company’s wrongdoing as part of the criminal settlement agreement in 2012.

On the other hand, imposing the requirement for Gibson to acknowledge its actions publicly and implement a strong compliance program has the potential to influence the company’s attitude and actions into the future. The merits of having an official compliance program for due care cannot be ignored. Having such policies in place not only expresses a company’s commitment for good practices, but it also changes that company’s culture internally, and sets a good example for the business community. To illustrate, in 2012 following the settlement, Gibson’s CEO expressed support of the Lacey Act, affirmed the need for such a law, and encouraged the government to “make it stronger.” Such declarations regarding compliance and due diligence can also be used as tools to hold a company accountable to its own professed policies and statements.


The largest Lacey Act Penalty to date was imposed on Lumber Liquidators Holdings Inc., a discount wood floorings corporation—and purports to be one of the nation’s largest specialty retailers of hardwood flooring. In that case, Lumber Liquidators pled guilty to charges under the Lacey Act of illegal importation of hardwood flooring from China, made from wood that had been illegally logged in Russia and paid $13.15 million in criminal fines, criminal forfeiture, community service payments, and civil forfeiture.

Importantly, this case illustrates the relevance of doing business with high-risk countries and industries. In a press release describing the indictment, the Department of Justice noted that:

Lumber Liquidators employees were aware that timber from the Russian Far East was considered, within the flooring industry and within Lumber Liquidators, to carry a high risk of being illegally sourced due to corruption and illegal harvesting in that remote region. Despite the risk of illegality, Lumber Liquidators increased its purchases from Chinese manufacturers using timber sourced in the Russian Far East.

Still, Lumber Liquidators was guilty of more than simply knowingly purchasing timber from high-risk regions—the company also imported high-risk tree species, conducted business with partners who were unable to provide documentation for their lumber, and engaged in fraudulent reporting of the species of wood imported. The investigation also revealed that Lumber Liquidators may have participated directly in a form of timber laundering similar to the practices rampant in Peru’s illegal logging industry, where criminal activity along the supply chain utilizes a seemingly valid government-issued permit too many times or in areas outside those designated by the permit.

This penalty is much harsher than the one imposed on Gibson Guitars, even considering Lumber Liquidators. The company also collaborated with the DOJ to develop an Environmental Compliance Plan, described by the company’s Chief Compliance and Legal Officer, when implemented, “to be one of the strongest and most comprehensive in the industry.”

There are several lessons from these two cases. First, successful Lacey Act investigations and prosecutions are few and far between. Lumber Liquidators was the first ever felony conviction under the Lacey Act related to the import of illegal timber and there are have not been many other cases that have even been brought under the Lacey Act since 2008 when the law was amended to include plants. Second, the Lacey Act is not enforced consistently. Gibson Guitars was at least similarly culpable in its knowledge of the illegality of its conduct. In that case, however, Gibson Guitars was able to reach a settlement agreement and was never even prosecuted, and the penalties imposed on the two corporations differed significantly.

It is also possible that timing played a role; prosecutions of environmental crimes such as the Lacey Act increased under the Obama administration, either because of prior successes, the greater maturity of the law, or increased zealousness for environmental policies by the time Lumber Liquidators was prosecuted. These are some of several factors that may have contributed to the vastly different treatment of these two cases. However, the true explanation is less important than the fact of the Lacey Act’s inconsistency as an enforcement mechanism, which means that businesses are less likely to take it seriously or even understand how to best comply.

The Lumber Liquidators’ case is particularly relevant because Peru, whose illegal logging industry accounts for around eighty percent of the timber exports from the country, could also be considered to be a high-risk country for business partnerships. Without more effective enforcement of the timber laundering, even careful review of origin documentation will not ensure that the Peruvian timber was legally sourced—the documentation may appear legal, but could still be fraudulent. While the lumber industry has long been aware of the scope and pervasiveness of this problem, recent exposures, including EIA’s 2012 report, the Laundering Machine and Al Jazeera’s
La Oroza had been harvesting cedar illegally. Eighty-five percent of the shipment aboard was falsified. By January 2015, Navarro pressed field agents to get GTFs from exporters earlier. Oroza’s GTFs. In 2015, Osinfor’s executive at the time, a California-based, Las Vegas-incorporated corporation that had a massive Peruvian exporter of Amazonian timber. In 2010, after several weeks of investigation, authorities found that over on-the-ground investigations to verify the existence (or lack thereof) of the logged trees that were being reported in La Oroza. The ship contained 1,770 metric tons of Amazonian timber, and 2015 documentary “Rotten Wood” make one conclusion inescapable: if a corporation’s ignorance before these exposés was inexcusable, a corporation’s ignorance now is implausible, if not downright absurd. Yet where one of the most successful cases had direct evidence of the corporation’s awareness of the illegality of their supplier’s lumber and still avoided criminal prosecution, it begs the question: what can be prosecuted under the “due care” standard of the Lacey Act? Is the law really as effective a remedy as it purports to be?

**A Test for Lacey Act as a Remedy for Illegal Logging in Peru: Global Plywood and La Oroza**

In October 2015, a freighter called Yacu Kallpa steamed into the port of Houston and was detained by Homeland Security on intelligence that it contained illegally harvested lumber. The ship contained 1,770 metric tons of Amazonian timber, and after several weeks of investigation, authorities found that over ninety percent of it was illegal.

The timber came from La Oroza Inversiones (La Oroza), a massive Peruvian exporter of Amazonian timber. In 2010, an investigation by the Peruvian Forest Service revealed that La Oroza had been harvesting cedar illegally. Eighty-five percent of the delivery was for Global Plywood and Lumber, a California-based, Las Vegas-incorporated corporation that had imported more than 9,700 metric tons of wood from La Oroza between 2012 and 2015, when the seizure took place. By 2015, Global Plywood’s business with La Oroza had increased to $2 million in imports per year.

Over a period of four years, the EIA had been conducting on-the-ground investigations to verify the existence (or lack thereof) of the logged trees that were being reported in La Oroza’s GTFs. In 2015, Osinfor’s executive at the time, Ramon Navarro, proved to be helpful and willing to cooperate with the investigations, genuinely wishing to solve the issue. In attempt to get better enforcement procedures in place, Navarro pressed field agents to get GTFs from exporters earlier so that his field agents would be able to conduct checks with time enough to stop shipments of illegally logged timber.

The day before Yacu Kallpa’s last trip to Houston, agents had been scrambling through forests, checking for supposedly harvested trees that were still there in attempt to present evidence sufficient to stop the ship from leaving Peruvian ports. By the time the ship was leaving Peru, they had discovered that fifteen percent of the shipment aboard was falsified. By January 8, updated intelligence showed that number was seventy-two percent—and final reports would show that ninety-two percent of the shipment was illegal.

**The Case Against Global Plywood**

Because the Lacey Act is a strict liability statute, violators can face criminal and civil sanctions for dealing with illegally harvested products, even if they had no knowledge of the illegality of their actions. This clearly puts Global Plywood in direct violation of the Lacey Act for the majority of their $2 million purchases made from La Oroza every year; if they knew about the violations, the violations would be even more severe. Courtesy of exposés like Rotten Wood and the EIA Report, the illegal logging industry is arguably common industry knowledge. Thus, the corporations that are receiving illegal imports from Peru should arguably be presumed to be knowingly perpetuating the problem. Given the scope and reality of the laundering issue, a quick review of documentation should not be sufficient to satisfy the reasonable due care required by the Lacey Act. Still, given the evidence of knowledge that was required in the Gibson Guitars and Lumber Liquidators cases, whether Global Plywood can be prosecuted successfully under the Lacey Act would require proving knowledge of its business partner’s illegal activities.

There is ample evidence that Global Plywood was fully aware of La Oroza’s illegal dealings. In 2010, years after Global Plywood began their business relationship with the Peruvian supplier, La Oroza was publicly sanctioned. Al Jazeera’s “Rotten Wood” investigated and reported on the illegal timber coming out of Peru, detailing the corruption and fraud of the illegal sourcing practices and identifying the major players in the industry. The documentary directly implicated Global Plywood, which made an appearance on camera. A reporter approached Kenneth Peabody, the general manager of Global Plywood in San Diego, California. In the scene, the reporter stops Peabody outside his house and asks him if he knows that the paperwork documenting Global Plywood’s shipments from La Oroza are illegal. Peabody denied knowledge of the illegality of the documents and assured the reporter that they complied with the Lacey Act, including the due care provision.

In mid-January 2016, Navarro met with the CEO of Global Plywood and told them their recent findings: that shipments with apparently legal documents were coming from illegal sources. (Navarro was abruptly fired from his duties and forced to flee to the United States shortly thereafter.)

Finally, in May 2016, a potential timber buyer called Peabody regarding his interest in purchasing the shipment that was being detained in the Houston harbor and selling it into the Chinese market. Technically, the wood could potentially still be sold into other states’ markets, even if it was illegal to do so in the United States. Peabody flew to Vancouver, Canada, to meet the potential buyer and try to arrange a deal to get the jeopardizing shipment off his hands. When the buyer sought affirmation that the suppliers in Peru were trustworthy, Peabody put the nail in the coffin. His calculated response (“We trust them to do what they need to do to get by in Peru”) served as confirmation, or at least a strong insinuation of his familiarity with his business partners’ disreputable practices.

Thus, there are strong indications that Global Plywood was well aware of the illegality of the timber it was receiving from its business partner La Oroza, and Global Plywood had been aware for years.

This glaring evidence of misconduct was vindicated in June 2016 when the Department of Homeland Security obtained and executed a search warrant on Global Plywood for probable...
cause that the corporation violated the Lacey Act.\textsuperscript{176} There have been no formal charges brought against Global Plywood, but the investigation is ongoing. However, shortly after the publishing of an investigative piece in WIRED detailing the final shipments on the Yacu Kallpa, the U.S. government blocked future timber imports from La Oroza for up to three years.\textsuperscript{177}

**Business Responsibility to Respect**

**Global Plywood’s Failure of Due Care**

Effective enforcement of the Lacey Act represents part of the U.S. state duty to protect human rights under the UN Guiding Principles and the TPA; thus, the question of Global Plywood’s culpability under the Lacey Act is highly relevant. However, it also bears examining whether, regardless of any potential liability pursuant to the Lacey Act, Global Plywood nonetheless violated the UN Guiding Principles. Under the UN Guiding Principles on the business responsibility to respect, companies have a duty to survey for and address potential human rights impacts through due diligence. Principle 18 provides that:

In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should: a) draw on internal and/or independent external human rights expertise b) involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.\textsuperscript{178}

By the letter, the Lacey Act has a “due care” component analogous to the due diligence responsibility in the UN Guiding Principles, but the Lacey Act’s due care requirement has not proven to be particularly strong or consistent. In contrast, the diligence required by the UN Guiding Principles, such as consultation with affected communities, are designed to result in engagement and understanding and certainly represent a more robust and specific set of actions for compliance. Due diligence requires understanding the “specific impacts on specific people, given a specific context of operations.”\textsuperscript{179} In this case, this required Global Plywood to make a reasonable effort to identify and understand the nature of the logging industry in Peru and how it affects communities and individuals that are directly involved or impacted by those operations.

Global Plywood did not need to conduct its own investigation to be aware of the risks of its business partnerships in Peru’s lumber industry. Huge industry-wide exposes in 2010 and 2012, not to mention the “Rotten Wood” documentary that directly interviewed one of Global Plywood’s executive managers, made the pervasiveness of illegal logging in Peru at least industry common knowledge, if not general common knowledge.\textsuperscript{180}

The World Business Council’s report on the practical implementation of the UN Guiding Principles noted that “[t]he UN Guiding Principles recognize that where there are limited resources or an overwhelming number of business relationships in the value chain, it may be necessary for companies to prioritize certain human rights impacts for attention.”\textsuperscript{181} Given the specific business that Global Plywood was engaging in, the corporation’s responsibility to human rights was to prioritize obtaining wood through legal means to avoid the human rights abuses perpetuated by La Oroza and its illegal supplier peers\textsuperscript{182}—to say nothing of the corporation’s legal obligations to avoid purchasing illegal lumber under the Lacey Act.

Even if there is not sufficient evidence of Global Plywood’s knowledge of the illegal operations of its business partner necessary to be convicted under the Lacey Act, Global Plywood should have been aware of the illegal logging issues in Peru as part of their responsibility to avoid violating human rights through their extraterritorial operations.\textsuperscript{183} Because of the corruption and the ubiquity of the illegal logging industry in Peru, Global Plywood might have best covered its tracks by choosing to invest in business partnerships elsewhere. However, at the very least, a Google search of Global Plywood’s primary supplier (a relationship representing $2 million in annual business by the time the La Oroza shipment was detained), would have quickly revealed that supplier’s particular risk, given the report revealing its illegal activities that came out in 2010.\textsuperscript{184}

Global Plywood’s violations of the Lacey Act and the UN Guiding Principles are so blatant that it is difficult to imagine a situation where they would not have been sanctioned in a criminal settlement agreement similar to Gibson Guitars.

**What Happened to Global Plywood?**

The world will never know how the case against Global Plywood would have turned out, because Global Plywood was dissolved in December 31, 2017.\textsuperscript{185} Combined with the fact that La Oroza has been banned from exporting timber to the United States,\textsuperscript{186} this portrays the initial happy picture that in this instance, the bad guys were defeated. In reality, it is unsatisfying that no one was held liable for this gross violation of domestic laws and international agreement, not to mention for the human rights abuses indirectly committed by this American company.

There is still one avenue for justice left against Global Plywood: the DOJ could prosecute some or all of the executives of the corporation, such as Jose Ceballos Gallardo, Patricia Moran Lopez, or Kenneth Peabody under the Lacey Act.\textsuperscript{187} The likelihood of this is unlikely, as discussed further below.\textsuperscript{188}

In analyzing the effectiveness of the Lacey Act as a remedy, one of the most important questions remains: who and what defeated Global Plywood? Was it the United States, carrying out its duty to protect human rights by enforcing relevant laws? Or was it a few dedicated individuals with the EIA and the power of the media?

**An Unofficial Remedy**

**Media, Public Opinion, and Reputation as Remedy**

Compliance with legal and ethical standards is important in today’s climate where consumers expect and demand human
rights to be a priority in a corporation’s business model. As a result, businesses are making efforts to avoid the reputational harm that comes with being associated with human rights violations and tragedies.

Such efforts increasingly have less to do with simple corporate social responsibility (CSR) projects and more to do with making responsible decisions that take long-term impact into consideration, whether this means making responsible investments or forming responsible partnerships. The “naming and shaming” form of liability can often fill the gaps where judicial and non-judicial remedy mechanism fails. Active human rights groups, tenacious reporters, and socially conscious individuals therefore can sometimes have as much power as the legal system in addressing the worst human rights abuses.

**The Court of Law and the Court of Public Opinion**

The Lacey Act did not prove to have strong teeth with its rather moderate response to Gibson Guitars and the low number of prosecutions that have occurred under the Act, despite the high probability of rampant illegal importation of timber from Peru alone. The Lumber Liquidators case presents a more optimistic example of effective enforcement, including valuable guidelines for what is considered to be irresponsible business practices according to the act, such as investing in business partnerships in high-risk areas known to be rife with illegal logging activity.

The victory of the detainment of La Oroza’s shipment and the Yacu Kalapa was the culmination of four years of dedicated, thorough, and at times, dangerous, investigation by the EIA and Peruvian environmental agencies. These individuals spent years poring through fraudulent paperwork and physically entering remote forests to track down specific geographic locations to check for tree stumps—the only way to be confident of the veracity of the paperwork. Only after all this effort, done in large part on the initiative of an environmental/human rights organization, were U.S. authorities willing and able to step in to detain the shipment in Houston. By then it was already established that the majority of the shipment was illegal and there was almost fatal evidence that both the supplier and the buyer had knowledge of this fact.

Still, while the EIA and the media may have done the work, the Lacey Act and the TPA provided the legal framework and authority that backed their findings and made them significant. The public exposure of the wrongdoing, combined with the threat of investigation and potential litigation, seem to have worked in tandem to destroy Global Plywood altogether.

**Challenges to Overcome**

Given the current ease of laundering timber, one of the best solutions to the problem of illegal logging would be improve the transparency and traceability of the timber coming from Peru so that illegal operations can be more easily detected and stopped. Experts at the Peruvian Amazon Research Institute believe that implementing a DNA-tracking technology system could permit trees to be easily and efficiently traced back to their origin, making fraud impossible.

However, the idea of improving transparency and traceability is currently receiving some push-back from these same Peruvian agencies that USAID has worked with in the past. In response to proposals for systems that would make transparency and traceability easier and more effective, Serfor seems to be resisting, claiming true traceability is impossible. This presents an obstacle to moving forward as well as an implicit recognition of the years of fraud based on claims of traceability. Peru’s logging industry, a chief opponent to these reforms, further argues that “(1) tracking a physical wood product back to origin is impossible, (2) products of ‘secondary transformation’ are not subject to traceability documentation requirements anyway, and (3) everything beyond rough sawn timber is a product of secondary transformation and thus does not need to be traced.”

In short, since processing facilities combine wood from many different origins, the argument goes that there cannot be responsibility to identify the origins of any of the wood. This new declaration of impossibility contradicts the terms of the TPA: on the legal side, the agreement obligates Peru to “develop systems, including requirements for management oversight and record keeping, to reliably track specimens from harvest through transport, processing and export.”

Still, it would be inaccurate to say that the primary solution would be for Peru to “step it up,” because monetary interests generated by transnational corporations have created powerful entities in the logging industry that do not shy away from violence and corruption in order to bend the system to their will. The story of Osinfor’s former executive Ramon Navarro, who fled for his life after being fired and is now residing in Washington D.C., illustrates this point. Navarro’s wife and children remain in Peru, but he cannot return because powerful lumber interests surely influenced his being fired and absent the support or protection of the government, his life would be in danger. Shortly after Navarro left the country, his wife was approached at a traffic light in Lima and sinisterly told, “Your children are going to pay for the wood.” These actions and threats are indicative of an organized and lethal crime collective, supported by corporations that are accepting lower prices and turning a blind eye to the corruption.

Almost two years after the search warrant was executed on the California office of Global Plywood, the Department of Justice has remained conspicuously silent on the issue. Richard Conniff, the writer of the investigative piece in WIRED that seemed to have catalyzed at least some of the action against Global Plywood, found it puzzling that no indictment had been forthcoming, and is of the opinion that the effectiveness of the Lacey Act may depend on the incumbent executive and his priorities. This author reached out to the Department of Justice, Environment and Natural Resources Division to seek an update regarding the ongoing investigation against Global Plywood, but the Department declined to share further information.
Between Gibson Guitars in 2012 and Lumber Liquidators in 2015, under the Obama administration, the Lacey Act was starting to gain momentum in terms of prosecution of illegal logging and imposition of more substantial penalties. However, based on professed policies and emerging patterns, the Trump administration appears unlikely to prioritize the prosecution of environmental crimes as resolutely—in fact, environmental prosecutions of at least certain environmental violations under the Trump administration are projected to be the lowest in two decades.

CONCLUSION

The effect of rampant illegal logging on Peru’s timber trade has created a culture of fraud, bribery, human rights violations, and serious environmental impacts on forest ecosystems.

In order to fulfill the State duty to protect human rights pursuant to the UN Guiding Principles, both the United States and Peru must be more effective and diligent at abating the illegal logging industry by discouraging its existence. There is a legal system in place to penalize companies that contribute to the illegal logging problem with the Lacey Act, however, inconsistent to nonexistent enforcement with regards to this problem have not rendered the law particularly effective in the past decade.

At the same time, businesses have a responsibility to conduct proper due diligence, particularly when confronting a high-risk region and industry such as that found in Peru, where almost all of the exported timber is illegally sourced. Companies like Global Plywood, Lumber Liquidators, and Gibson Guitars should work harder to mitigate their impact on human rights abuses by ensuring that they are not entering into business arrangements with suppliers that buoy up industries committing gross human rights violations.

Glossary of Acronyms

PO(s): Planes de Operación
Serfor: Servicio Nacional Forestal y de Fauna Silvestre
Osinfro: Organismo de Supervisión de los Recursos Forestales
GTF: Guía de Transporte Forestal
ILO: International Labour Organization
TPA: U.S.-Peru Trade Protection Agreement
NAP: National Action Plan
USAID: U.S. Agency of International Development
EIA: Environmental Investigation Agency

ENDNOTES

2. See e.g. Juliana Urrunaga et al., MOMENT OF TRUTH: PROMISE OR PERIL FOR THE AMAZON AS PERU CONFRONTS ITS ILLEGAL TIMBER TRADE, 8 (Environmental Investigation Agency, 2018) (reviewing the status of lumber laws in Peru and the enforcement of these laws in practice).
3. Id. at 12.
4. United States-Peru Trade Promotion Agreement, Peru-U.S., Apr. 12, 2006, Chapter 18, Annex 18.3.4, (stating the shared goals between the two countries on Forest Governance, [hereinafter Perua Peru Trade Promotion Agreement]).
5. THE WORLD BANK, supra note 1, at xii.
6. URRUNAGA ET AL., supra note 2, at 12.
7. Id.
8. See infra notes 55–56.
9. Id.
11. THE WORLD BANK, supra note 1, at 12.
12. BEdoya Garland, E. & A. BEdoya Silva-Santisteban, El Trabajo Forzoso en LaExtracción de la Madera en la Amazonía Peruana, xi (International Labour Organization, 2005), https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_082056.pdf (“Resulta importante recalcar que durante el proceso de investigación se comprobó que la mayoría de los empleadores formales (no ilegales) de la madera, cumplen las normas laborales, son respetuosas con los derechos de los trabajadores y no atentan contra la dignidad de ellos.” [It is important to emphasize that throughout the investigation process it was verified that the majority of the formal (not illegal) employers in the wood industry complied with labor laws, are respectful of the workers’ rights, and do not violate their dignity]).
13. Id.
14. Id.