

**JOINT SUBMISSION TO THE MINISTRY FOR THE ECOLOGICAL & INCLUSIVE
TRANSITION ON THE CONSULTATION DRAFT OF THE FRENCH NATIONAL STRATEGY
TO COMBAT IMPORTED DEFORESTATION
(STRATEGIE NATIONALE DE LUTTE CONTRE LA DEFORESTATION IMPORTEE)**

24 JULY 2018



1. INTRODUCTION

A delegation of indigenous peoples' representatives and human rights defenders from Liberia, Colombia, the DRC and Indonesia travelled to France to attend the Multi-Stakeholder Meeting of the Amsterdam Declarations Partnership in Paris on 27 June 2018. Those delegates were representatives of a larger group of 14 indigenous peoples' representatives and human rights defenders from 11 agricultural-commodity exporting countries (Indonesia, Malaysia, Argentina, Paraguay, Colombia, Peru, Guyana, Surinam, Liberia, the DRC and Cameroon) that met in Amsterdam in February 2018 for the *Closing the Gap Forum on Human Rights, Deforestation and Supply Chains*. Specific recommendations for European governments were developed during the *Closing the Gap Forum* to address the impacts of their imports on global deforestation and human rights violations.

Those recommendations were presented to Mr Xavier Sticker, French Ambassador for the Environment, at the Amsterdam Declarations Meeting, and the delegates, together with Both ENDS and the Forest Peoples Programme, were invited by the French Government to provide comments on the draft National Strategy to Combat Imported Deforestation ("SNDI").

The following observations and recommendations are jointly submitted by Both ENDS (of the Netherlands), Forest Peoples Programme (of the United Kingdom), Social Entrepreneurs for Sustainable Development (of Liberia), Pusaka (of Indonesia), Sabah Environmental Protection Association (of Malaysia) and Réseau Ressources Naturelles (of the DRC) in response to this invitation.

2. STRENGTHS OF THE SNDI

We commend the French Government for undertaking the SNDI initiative – there is an urgent need for European countries to address the role of their economies, imports and consumption patterns in contributing to global deforestation.

The SNDI contains several good proposals for tackling this urgent and complicated challenge at the national and EU levels which should be prioritised:

- a) **Objective 4: Support the development of an *ambitious* EU Action Plan on Deforestation and Forest Degradation by 2020.** We strongly support the call for an ambitious, robust, and decisive EU Action Plan on Deforestation and Forest Degradation. Knowing that the EU is responsible for a third of trade-related agricultural deforestation, the need for a binding EU-wide policy on addressing and reducing imported deforestation is *critical*.
- b) **Measure 11-2 – Support the establishment of a duty of vigilance at the European level** and evaluate the possibilities of strengthening national initiatives, like the *Loi de Vigilance*. We strongly support the establishment of binding due diligence and duty of vigilance obligations at the EU level that require European businesses, companies and enterprises to eradicate deforestation and human rights violations from their supply chains and business activities.
- c) **Targeting key forest-risk sectors and commodities:** the SNDI rightly acknowledges that the expansion of industrial agriculture and livestock production are the main causes of deforestation around the world, and that the production – and consumption – of a few commodities: beef, soy, palm oil, and cocoa, are disproportionately linked to deforestation and constitute 80% of European forest-risk imports (pp. 1, 2). Addressing European imports and consumption of these commodities, particularly beef (which is responsible for roughly a quarter of global deforestation alone), must be a priority.
- d) **Broad scope of environmental impacts:** we support the inclusion of forest degradation, natural (forest and non-forest) ecosystem conversion, and indirect land-use change, in addition to deforestation, within the scope of impacts to be scrutinised and avoided under the SNDI and included in the definition of “imported deforestation” and related definitions in the SNDI.
- e) **Measure 5-1:** Encourage the European Commission to integrate sustainable forest management issues in sustainable development chapters of EU trade and investment agreements.
- f) **Measure 12-3:** Propose an EU-wide public procurement prohibition on imported deforestation.
- g) **Synergies with the Amsterdam Declarations Partnership:** we support proposals to align national and EU-level zero-deforestation initiatives with the Amsterdam Declarations commitments and platform. The Amsterdam Declarations Partnership offers the potential to become an ambitious

and influential platform for policy aspiration and innovation, and we strongly encourage the French Government to continue pushing the urgency and importance of the zero-deforestation agenda within and through the Amsterdam Declaration Partnership.

3. GAPS AND WEAKNESSES

The SNDI presents a broad range of initiatives to address both French and European import of embodied deforestation. All initiatives towards this end are welcome. However, we consider the SNDI could be strengthened and improved by addressing the following gaps and weaknesses:

- a) **Absence of any plan for binding obligations on importers:** while the SNDI mentions the *Loi de Vigilance* and the duty it imposes on certain companies to identify and mitigate social and environmental risks associated with their activities and proposes supporting an initiative with the European Commission asking for a similar scheme at the EU level, the SNDI does not propose any binding obligations or prohibitions on companies importing or selling forest-risk commodities or embodied deforestation into the French market. Nor does the SNDI explain how the goal of reducing and avoiding imported deforestation will be integrated with the *Loi de Vigilance* scheme. Given the urgency of the global deforestation crisis and the failure of numerous voluntary and non-binding commitments, pledges and promises by governments and companies alike, it is clear that binding and enforceable obligations are needed to ensure that the activities and products of European companies are not contributing to deforestation, land-grabbing or associated human rights impacts.
- b) **Reliance on soft incentives and market mechanisms:** many of the measures proposed in the SNDI focus on soft incentives or market mechanisms, such as development cooperation and dialogue with producing countries, research and awareness-raising, encouraging financiers and private sector actors, increasing consumer awareness, product certification and labelling and sectoral plans, which may or may not lead to a reduction in imported deforestation. While such initiatives are welcome, over-reliance on voluntary, market-based and industry-managed initiatives should be avoided. In particular, Measures 6-1, 6-3, 6-5, 8-1, 8-2, 10-1, 11-1, 14-1 generally focus on encouraging and empowering market actors to voluntarily address deforestation in their activities or policies without requiring any genuine, meaningful or comprehensive change in industry practice or performance. In reality, market mechanisms like corporate CSR policies, sustainability reports, certification schemes and labels, and 'green finance' initiatives have not been effective in driving sector-wide behavioural change or mitigating the escalating rate of global deforestation, associated human rights abuse and illegal land acquisition. On the contrary, research shows that the development of sustainability certification and labelling schemes in soy production in Brazil, in palm oil in Indonesia, and in cocoa in Côte d'Ivoire, have coincided with increasing deforestation and have had no conclusive effect on the conversion of forested land to agricultural production.¹ Binding obligations are necessary.
- c) **No clear strategy to address rising demand for forest-risk commodities:** the SNDI acknowledges that one third of global agricultural and livestock production is undertaken exclusively for export, that the expansion of agriculture and livestock frontiers is the main driver of deforestation in all regions of the world, and that global demand for forest-risk commodities is growing (p.2). European demand for beef, soy and palm oil continues to grow annually. While the SNDI includes some welcome measures directed at sustainable consumption (Objective 9 and Measure 10-2), the SNDI lacks a clear strategy for reducing *overall demand* for forest-risk commodities. Given even increasing 'sustainable' consumption risks contributing to deforestation by pushing

¹ H. van der Ven, C. Rothacker, & B. Cashore, (2018) ,Do eco-labels prevent deforestation? Lessons from non-state market driven governance in the soy, palm oil, and cocoa sectors', *Global Environmental Change* 52, pp. 141-151, <https://www.sciencedirect.com/science/article/pii/S0959378017304545>.

‘unsustainable’ production into markets with lower or no sustainability requirements, it is not sufficient to promote responsible consumption alone without addressing the overall *demand* for forest-risk commodities. The SNDI should include robust and time-bound measures to reduce overall demand and consumption of targeted forest-risk commodities (especially beef, soy, palm oil, and cocoa), such as binding targets on volumes of imported deforestation, overall volumes of imported forest-risk commodities, and levels of consumption of imported agriculture and livestock products.

- d) **Little reference to the human rights violations associated with deforestation:** while we appreciate that the SNDI focuses on the environmental impacts of deforestation, we note there is little reference to its associated social impacts. Deforestation often takes place with the displacement or eviction of local communities and indigenous peoples, with threats, intimidation, violence and sometimes murder of community leaders and environmental defenders, and is associated with weak law enforcement, corruption, organised crime, narcotics trade, and criminalisation of human right defenders. The obligations of the French Government and French companies under international law to avoid contributing to such human rights violations in trade and investment activities should be integrated as a priority and fundamental component of the SNDI. To this end, we recommend a specific section on human rights and environmental defenders in the final strategy.
- e) **Ambiguous deforestation methodology:** the SNDI does not propose a clear baseline methodology for calculating deforestation associated with commodity supply chains and operations, but rather states that a balance between net and gross deforestation methodologies will be sought (p.4). While net deforestation takes account of natural forest regeneration, it also risks implicitly supporting deforestation through the recognition of offsets and industrial tree monoculture plantations, which are inadequate replacements for the loss of forest ecosystems and fail to address the associated landscape, ecosystem, biodiversity, social, cultural and livelihood impacts of deforestation. Forests are more than just trees, and the SNDI should adopt a sophisticated contemporary understanding of forests as specific legal land jurisdictions that encapsulate environmental, social, livelihood and cultural components as well as the irreplaceable value of the ecosystem services they provide for forest peoples, national populations and the international community. The gross deforestation methodology should be adopted to reflect the intrinsic, irreplaceable and global value of preserving the Earth’s remaining forests. Likewise, given the SNDI is partly aimed at reducing deforestation in countries where France has little oversight or control over reforestation or offsets programs, a strict gross deforestation metric should be adopted.

4. ADDITIONAL RECOMMENDATIONS

In addition to the recommendations above, we recommend that the SNDI should:

- a) Adopt a human rights-based approach to deforestation and include human rights violations in the various sustainability policies and frameworks it supports, including through a specific section on human rights that includes recognition and protections for both individual human rights and the collective rights of forest peoples as enshrined in existing international human rights instruments.
- b) Require French businesses, traders, investors, financiers and official development agencies to meet supply chain and sustainable investment standards that are – at a minimum – *consistent with existing international law standards* on human rights, land tenure rights (including collective rights) and environmental protection. This requirement is essential as national forest and land laws in producer countries still often fail to protect the rights of forest peoples as they do not contain adequate safeguards for the human rights of indigenous peoples and customary landowners recognised by the international community (eg. land laws in Central Africa).

- c) Include proposals for the establishment of an independent sustainable trade ombudsman's office to receive complaints and investigate cases of violations and deforestation linked to French trade and investment. This measure should be accessible to non-French individuals and organisations and linked to the *Loi de Vigilance* scheme to provide additional and agile redress options for complainants alongside actions in the French courts.
- d) Provide safe institutional platforms for input from local and indigenous communities impacted by French supply chains or deforestation and rights abuses linked to the French market to enable them to inform due diligence processes, risk assessments and verify potential violations by providing information to relevant French business and government actors on risks to / impacts on human rights, human rights defenders and forest resources. For example, communities and organisations in agricultural production regions and international civil society should be supported to provide information and reports into the national information platform contemplated under Measure 15-1 (discussed below) and actively consulted by French agencies to verify suspicions or allegations of deforestation or rights violations.
- e) Expand the national information platform contemplated by Measure 15-1 to include comprehensive environmental and human rights risk registers by producer country that includes information and reports from official and unofficial sources (such as community and civil society organisations as proposed above) of rights violations, deforestation, and perceived risks to land rights and human rights risks, including perceived risks to human rights defenders and risks of land-grabbing. The strategy should also explore options for ensuring that French businesses, traders and investors have regard to the information available in the national risk registers for their due diligence investigations and risk assessments, such as through recognition of the national risk registers as a reasonable and relevant source of information under the *Loi de Vigilance* scheme.
- f) Support independent, community-led supply chain monitoring and verification initiatives by forest peoples' organisations and international civil society organisations to assess supply chain risks and report violations of national and international laws.
- g) Ensure all proposed producer country-oriented initiatives (country risk assessments and road maps, monitoring, bi-lateral cooperation, dialogue, research etc) actively engage, consult and support local and indigenous communities in producer countries where industrial agriculture and livestock production, trade and investment exhibits a reasonable risk of human rights abuse, land-grabbing and illegal deforestation. Producer country strategies and bilateral cooperation initiatives should include targeted assistance to organisations and communities of indigenous peoples (and other first peoples) and forest-dependent communities to monitor government, company and investor compliance with human rights, land tenure and environmental standards in agri-commodity supply chains.
- h) To the extent that it supports commodity certification schemes (eg. Measures 8-1 and 8-2), ensure that certification standards are not regarded as a proxy of supply chain sustainability unless those certification standards are *fully aligned with international human rights law norms* (including norms regarding customary and collective tenure rights of forest-dependent or

indigenous communities and associated free, prior and informed consent requirements), backed by robust compliance, verification and accountability mechanisms and that any loopholes in such accountability frameworks that allow companies to avoid accountability or shift responsibility are closed and rectified (eg. gaps in complaints and redress mechanisms, weaknesses in membership rules).

- i) Adopt a simple, universal definition of 'forest' and related terms ('deforestation' etc) based on international criteria acceptable to the whole European Union community.

5. CONCLUSION

We support the SNDI initiative in principal and applaud the French Government for embarking on the undertaking of combating imported deforestation. We commend the broad range of complementary political, policy, research and industry proposals the SNDI contemplates. We strongly support the proposals for robust and binding regulation at the national and EU levels that establish supply chain due diligence and vigilance obligations for businesses and financiers of all sizes, and the commitment to push for a robust EU Action Plan on Deforestation and Forest Degradation.

However, in order to ensure the strategy is effective, the final framework document should adopt a more explicit rights-based approach and include specific elements to protect and safeguard collective systems of land tenure, human rights, local livelihoods and food security systems, including in relation to the rights of indigenous peoples and other customary landowners (who, as noted above, still do not enjoy effective legal protection of their customary land rights in many forest countries).

To offer the best chance of driving a reduction in imported deforestation, the final strategy should include independent mechanisms to verify human rights and deforestation risks in French trade and investment alongside binding targets on both volumes of imported deforestation and the underlying consumption patterns and market demands that drive those imports and the expansion of the agricultural and livestock production frontiers that are the main cause deforestation around the world. The international community's experience of performance on zero-deforestation commitments is that voluntary pledges are not working – binding and enforceable obligations are necessary, backed by proper risk assessment, *due diligence* and compliance mechanisms along the supply chain.

We are grateful for the opportunity to provide comment on the draft SNDI. We would also welcome the opportunity to provide comments on future iterations of the SNDI and to be further involved in the development of the various important and progressive initiatives it contemplates.

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