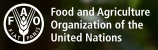


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Bilateral MoUs and Transboundary Cooperation Instruments:

**An Assessment of Effectiveness for the
Lower Mekong Region's Forestry Sector**

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Key Messages

The UN-REDD Sustainable Forest Trade in the Lower Mekong Region (SFT-LMR) Initiative conducted an assessment to better understand the criteria, content and circumstances that make bilateral Memorandums of Understanding (MoUs) and transboundary cooperation instruments effective in combating forest crime and promoting the legal forest product trade.

01

Bilateral MoUs are useful and necessary in specific situations, such as facilitating action in ad hoc situations where the exchange of information amongst transboundary enforcement agencies is paramount for monitoring activities and investigating the illegal timber trade and other forest crimes.

02

MoUs are perceived to be less effective than other transboundary cooperation instruments, due to a lack of transparency and communication about their contents and achievements. This contributes to poor stakeholder understanding of these instruments and lack of identifiable entry points for external organizations to provide support.

03

The most important factor for improving MoU effectiveness is clearly defining objectives and activities so that a clear work plan can be developed, benchmarks can be set and monitored, budgets can be estimated, and external organizations wishing to provide support for MoU implementation have clear entry points.

This brief presents the broader findings of this assessment, with the goal of sharing strategies that governments can adopt to improve the design of forest sector MoUs and agreements. It also offers recommendations to donors and international organizations on critical entry points for support to maximize impact.

Introduction

Transboundary cooperation instruments – such as bilateral Memorandums of Understanding (MoUs), multi-lateral agreements, and trade agreements – provide a critical foundation for forest sector cooperation, allowing transboundary issues to enter strategies, mandates and workplans. MoUs in particular establish a legal pretext and a platform for engagement, laying the high-level political foundations that facilitate more specific entry-points for implementation at lower administrative levels. Among governments in the Lower Mekong region, MoUs are often used to:

- officially state political agreement on cooperation and define its scope
- formalize avenues of exchange and communication
- facilitate engagement and agreement on issues of shared concern

However, there is limited information about how effectively these transboundary cooperation instruments – especially bilateral MoUs – deliver upon their objectives. What is known is that MoU implementation is challenged by a plethora of factors:

- broad and vague language in MoUs that challenge translation into concrete activities that could be included under work plans or requests for budget allocations.
- absent coordination mechanisms and weak communication within and between institutions
- a lack of budget
- language barriers and lack of appointed focal points for communication
- limited human and technical/physical resources
- disconnects between MoU objectives and government sectoral priorities, when trying to mainstream transboundary cooperation with another country's disparate line of work
- weak monitoring, documentation and reporting

To gain further insight into which factors are the most significant for influencing MoU implementation, the UN-REDD Sustainable Forest Trade in the Lower Mekong Region (SFT-LMR) Initiative conducted an analysis to gain insights into the effectiveness of cross-border MoUs and related transboundary cooperation instruments as models for achieving shared goals cooperatively in the region's forestry sector.

In this context, 'Effectiveness' is defined as fulfilling one or more of the following criteria:

- the achievement of stated goals
- the completion of tangible and measurably impactful activities
- indirect benefits, such as examples of the enhancement of bilateral/multilateral communication/exchange

The analysis consisted of two main components:



1. An online survey of 42 national, regional and international stakeholders from a range of sectors including government, development partners, CSO/NGO and the private sector.



2. Five Focus group discussions (FGDs) held online or in-person, participated by 54 LMR stakeholders at the national and regional levels with direct experience in developing or implementing MoUs and Agreements in the LMR region.

Figure 1: Total number of participants by country

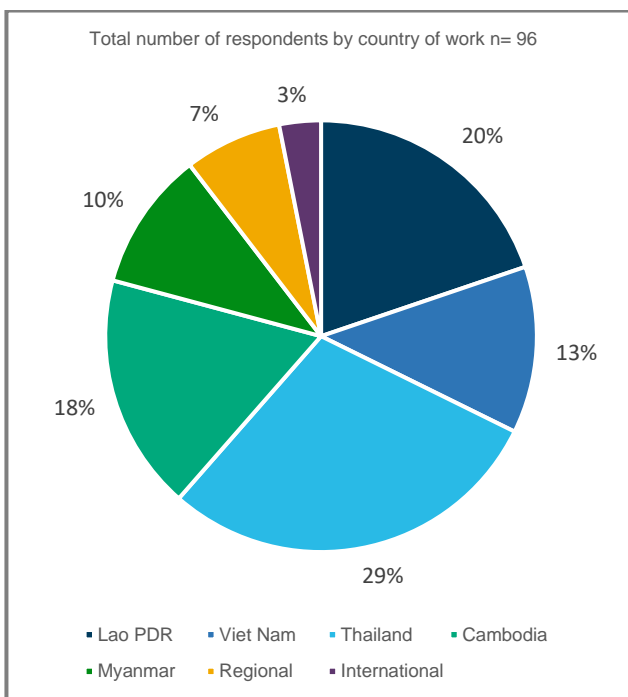
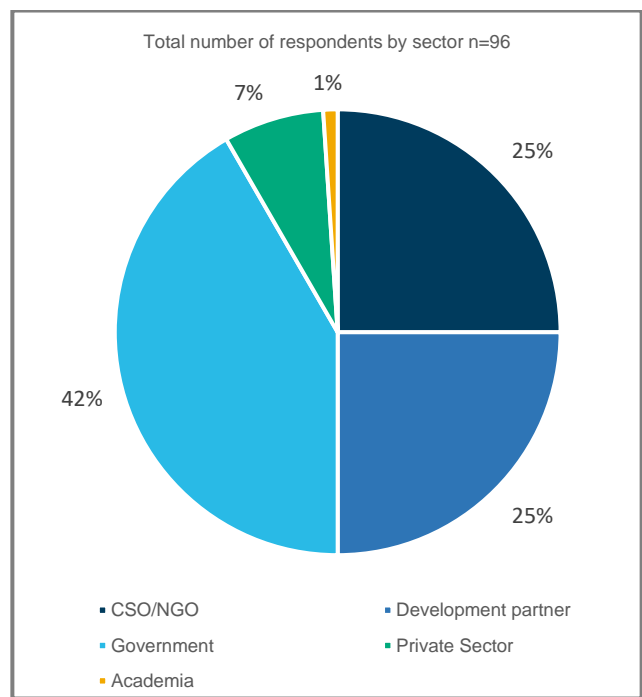


Figure 2: Total number of participants by sector



Both components sought to integrate the knowledge and perceptions of experts, government officials and other actors while comparing the different types of cooperation instruments. While efforts were made to ensure balance in securing responses from across different stakeholder sectors, there was a bias towards government respondents. This is largely because governments are inevitably the main actors in defining and implementing transboundary cooperation instruments, so their views figure strongly in the analysis.

The scope of this analysis covers several different transboundary cooperation instruments in the five LMR countries (Cambodia, Lao PDR, Myanmar, Thailand, Viet Nam), with examples given in the table below. This allows for comparison between alternatives, and identification of “missing ingredients” for delivering magnified impact in the forestry sector.

Table 1: Scope of Transboundary Cooperation Instruments

Type of Cooperation Instrument	Example
<p>01 Transboundary bilateral MoUs between two LMR countries</p>	<p>Thailand - Cambodia MoU on Cooperation on Protected Areas and Transboundary Biodiversity Conservation Landscapes Management Lao PDR - Viet Nam MoU 2018-22 on Cooperation in the field of forest protection, forest law enforcement, controlling and preventing illegal trading and transporting of timber, forest product and wildlife.</p>
<p>02 Transboundary bilateral MoUs between one LMR and non-LMR country</p>	<p>China-Myanmar MoU on Cooperation to combat the illegal timber trade</p>
<p>03 Multilateral agreements</p>	<p>Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)</p>
<p>04 Trade and trade-related agreements</p>	<p>USTR-VN Bilateral Trade Agreement on illegal logging and timber trade <i>Voluntary Partnership Agreements (VPAs) under the European Union Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan</i></p>
<p>05 MoUs, mechanisms or instruments between one LMR country and a non-LMR country or entity</p>	<p>MoU between Myanmar's Forest Department and the ASEAN Centre for Biodiversity</p>

Given the lack of published or public information on MoUs in the Lower Mekong Region, this analysis provides unique insight into understanding how they operate. In analyzing quantitative and qualitative data collected from the survey and FGDs, a detailed list of indicators for designing an effective MoU are provided, along with recommendations on how support can be best offered to further support the implementation of MoUs and other transboundary cooperation instruments.

Findings



The survey collected perception of effectiveness from participants – particularly which mechanisms were most effective, and what were the main criteria for effectiveness. The focus group discussions defined the strengths and weaknesses of each transboundary cooperation mechanism, with an emphasis on bilateral MoUs as the primary mechanism used in the Lower Mekong Region. The text below outlines the main findings.

Trade and trade related agreements and multilateral agreements were perceived to be more effective than bilateral MoUs. Bilateral MoUs secured fewer positive mentions among survey participants when asked to cite examples of transboundary cooperation instruments they considered to be effective for improving forest governance and promoting trade in legal and sustainable timber, while Figure 4 below shows that bilateral MoUs were more likely to be ranked by survey participants as “usually not effective but still needed”. In comparing survey and FGD responses with publicly available information about these agreements, it seems that perceptions of effectiveness are linked with greater emphasis on communication about, and multi-stakeholder participation in creating, these mechanisms.

To illustrate this point, Table 2 below compares bilateral MoUs with the more positively-perceived trade and trade-related agreements. It notes that trade agreements are also appropriate for specific circumstances, and that their main advantage is clearer political accountability and economic incentives for implementation.



Advantages



Disadvantages/Limitations

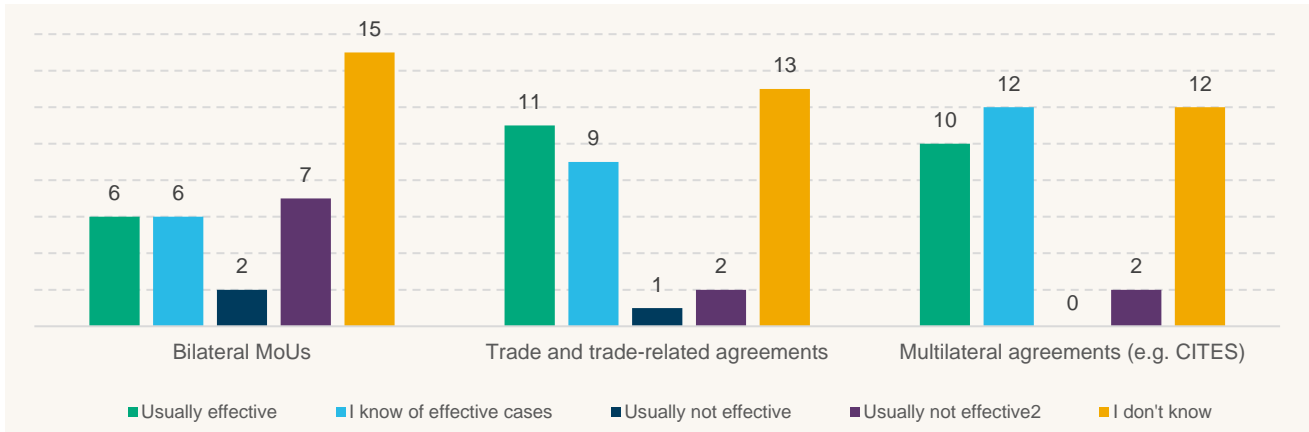
Trade Agreements

- Enhanced trade offers economic incentive to implement the trade agreement(s), both in terms of increased revenue generation and access to more global markets.
- They are legally binding, creating accountability from the other signatory(ies) of the trade agreement
- Enactment of agreements may require legal, policy and regulatory reforms; rapidly furthering reform processes relative to business-as-usual scenarios
- There is clear reporting and communication
- The advances of each trade agreement lay the foundations for improvement to be capitalized on by other instruments. In Viet Nam, the USTR-VN trade agreement took advantage of the successes of the preceding EU FLEGT-VPA process, building upon and strengthening the Viet Nam Timber Legality Assurance System.

- The countries with whom trade agreements can be negotiated may not be the most strategic for addressing forest sector issues. E.g.: In Vietnam, there appear to be no plans to develop MoUs with countries at high risk for illegal timber to enter supply chains.
- If trade ceases or is disrupted, the resolve to implement the contents of the agreements may be weakened, as will their effectiveness
- Trade agreements require significant commitment and investment by participating countries that can be undermined by the policy changes of trade partners
- Trade agreements may not be suitable in all settings due to limited trade volumes
- Trade agreements have more influence over production of timber for export markets than domestic markets. If the improvements are not institutionalized, benefits may be limited to the country/trading bloc in question rather than affecting all markets.

This less favorable perception of MoUs can largely be explained by the second finding; MoUs generally lack transparency in communicating their contents and results to stakeholders. Both the online survey and focus group discussions found a high level of uncertainty around MoUs and trade-related agreements. As seen in Figure 3 below, stakeholders often answered “don’t know” to questions about the tangible impacts or content of MoUs.

Figure 4: Respondents' relative assessment of the effectiveness of different kinds of MoUs and Agreements



This lack of understanding points to the importance of transparency and measuring and communicating impact. The lack of transparency can be partially attributed to the political nature of MoUs and the need to protect information about politically-sensitive, diplomatic processes, but it can also be a sign of shortfalls in documentation, data management, or reporting between sub-national and national levels. If these issues were addressed and more space was provided for collaboration and greater transparency, MoUs would likely attract more funding and support.

The existence of monitoring frameworks is the most critical indicator for MoU effectiveness.

During the analysis, survey and FGD participants were asked which indicators were the most essential for improving MoU effectiveness. The results found that, contrary to expectation, budget was not the key limiting factor. Rather, the most important indicator of MoU effectiveness was whether these MoUs set meaningful benchmarks and work plans that could be monitored.

The top 10 indicators are presented below, ordered by percentage of survey respondents agreeing that the indicator helps to improve the effectiveness of bilateral MoUs.

Table 3: Top 10 Indicators of MoU Effectiveness

Indicators	% Agreement
1. Objectives and activities defined so that benchmarks can be set and monitored	78%
2. Yearly workplans required for implementation the entire duration	68%
3. Identifies relevant implementation agencies and focal points	63%
4. Defines roles and mandates	
5. Clearly allocated budget, resources and human resources	54%
6. Plan outlined for monitoring, evaluation and performance reviews	51%
7. Legally binding	46%
8. Contents communicated clearly with stakeholders	44%
9. Outlines mechanisms to build trust and relationships	44%
10. Identifies and addresses potential issues with institutional alignment	41%

Most respondents – especially from government – agreed that defining objectives, annual work plans and focal points were the main indicators for effectiveness. Private sector also prioritized the fact that the MoUs are legally binding, while CSO and NGO respondents also emphasized the need to clearly communicate MoU contents and describe dispute mechanisms. Development partners perceived far more than other stakeholder groups that budget limitations were an issue, which is interesting given that MoUs often do not receive national budget allocations for implementation and are heavily reliant on external financing for meetings and activities.

Lack of appropriate coordination mechanisms drives implementation challenges. The focus group discussions identified that even it is difficult to conduct basic activities, like sharing and exchanging information and lessons learned, without appropriate coordination mechanisms. *MoUs often do not establish such mechanisms or identify focal points, resulting in a lack of leadership guiding implementation.* Where they do, engagement at the focal point level is generally limited. *At this level, weak coordination* was also found to be the result of language barriers and the limited technical capacities of officials. This can be addressed through creating official steering committees and identifying focal points at multiple-levels of government, which will strengthen both MoU implementation and regional and bilateral cooperation in general.

Example: The Viet Nam - U.S. Trade Representative Trade (USTR) Agreement

The USTR-VN Agreement (2021) ensures that the U.S. would not apply tariffs to timber imports from Viet Nam – a USD \$7 billion market – if measures were implemented to promote sustainable forestry and timber trade and prevent illegal timber from entering its supply chains. This agreement has been assessed as quite impactful since its recent inception, partially due to the establishment of a Timber Working Group (TWG) as a coordination mechanism. The TWG seeks to deepen collaboration, exchange information, facilitate coordination between the parties and oversee the implementation of the Timber Agreement. This level of accountability has already led to strengthening bilateral dialogue with Vietnam's major timber supply countries, and with Vietnamese importers.

MoUs remain critical for allowing bilateral counterparts to bypass the complex processes of going through diplomatic channels to communicate between forestry institutions. They were cited by FGD participants for their effectiveness in ad hoc instances, as they provide the political basis for rapid communication and engagement in time-sensitive or emergency situations such as law enforcement operations, or responding to tips on illegal activities or confiscation of smuggled timber. This element of MoUs makes law enforcement operations more targeted and effective. This may explain why MoUs are popular with LMR governments as a model for cooperation.

Viet Nam - Cambodia (VNFOREST – Forest Administration) MoU 2012 – 2017

When an NGO publication reported on breaches of import regulations on timber entering Viet Nam from Cambodia, the bilateral MoU between Viet Nam and Cambodia facilitated rapid dialogue between the two counterparts to investigate these claims. This illustrates how MoUs provide a channel for communication during time-sensitive situations.



MoUs facilitate data sharing that would normally not be possible, and which can further support achievement of regional goals. Sharing data, information and technology for forest monitoring helps build capacities to more effectively manage forest areas and prevent forest crime. FGD participants noted cases of sharing information between law enforcement agencies on transboundary illegal timber flows. Sharing knowledge and lessons learnt on internationally relevant mechanisms (e.g. FAO's Forest Resources Assessment exercises, Timber Legality Assurance Systems development) can help to collectively achieve regional goals under the ASEAN umbrella (i.e. ASEAN Senior Officials in Forestry: ASEAN Ministers on Agriculture and Forestry).

The Cambodia-Thailand MoU on Cooperation on Protected Areas and Transboundary Biodiversity Conservation Landscapes Management (2018-2023) has enabled the integration of technology into transboundary conservation approaches and built information databases that can inform protected area managers with real-time data. The two countries share databases on potential poachers, and have exchanged information gained through Spatial Monitoring and Reporting Tool (SMART) Patrols, including information from 'Network Centric Anti-poaching System' NCAPS to monitor evidence of illegal logging and wildlife crime. This illustrates how information sharing is made possible when more real-time information can be collected through the adoption of near-real time monitoring technologies that generate datasets on natural resources and can be used to monitor various types of forest crime.

MoUs create the potential for developing protection strategies that connect and protect transboundary forest landscapes. This opens the door to developing transboundary biodiversity conservation landscapes that can protect conservation values at greater scales and protect remaining contiguous forest areas. Transboundary forest landscapes without MoUs might otherwise lack high-level support and institutional commitment for protection efforts at the border, and expose the other side to encroachment, illegal logging or other risks.

Strategies to Address Limitations

To increase delivery against MoU objectives, the following strategies can be incorporated into MoU design and implementation to address limitations to effectiveness. These strategies are drawn from solutions highlighted in the FGDs and from existing successful MoU examples.

 <p>Identified limitation or risk</p>	 <p>Strategy to Address Limitation</p>
<p>Imbalanced power dynamics between signatory countries; diverse aims of donors and governments can shift implementation towards/away from certain topics building upon and strengthening the Viet Nam Timber Legality Assurance System.</p>	<p>Allow independent observers to join the design process and introduce clear monitoring mechanisms and third-party monitoring of MoU implementation for export markets than domestic markets. If the improvements are not institutionalized, benefits may be limited to the country/trading bloc in question rather than affecting all markets.</p>
<p>Funding is often not allocated for meetings or to support the implementation of activities</p>	<p>Harmonize MoU content with implementing agencies' strategic priorities, to elevate the importance of transboundary issues and prevent MoU activities from conflicting with other priorities or competing for funds.</p>
<p>Donors and external actors have difficulty financing MoU activities due to long approval processes</p>	<p>Design MoU to match with a country's strategic development plan(s) to expedite government approval for MoU activities.</p>

<p>Meetings to negotiate or review progress on transboundary cooperation instruments require large amounts of resources but do not produce clear impacts. This makes it difficult to secure external support due to lack of quantifiable activities or measurable impacts.</p>
<p>MoUs don't capture the real needs/gaps, conditions on the ground or policy priorities of government(s).</p>
<p>Lack of leadership and appropriate coordination mechanisms</p>
<p>Limited knowledge on the forest areas covered within the scope of the MoUs, including biodiversity, encroachment statistics, hot-spots and trends in forest crime</p>
<p>Mechanisms to share information between central and sub-national levels are weak</p>

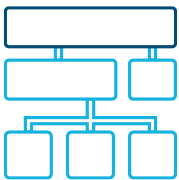
<p>More meetings could be held online to reduce costs. Steps should be taken to design agendas to produce measurable outcomes and translate these into concrete activities. Build capacity in monitoring and evaluation for focal points and meeting organizers.</p>
<p>Invite technical staff from national and provincial levels to provide input into MoU design processes, rather than relying solely on inputs of central, senior or policy figures.</p>
<p>Identify focal points with a clear chain of authority at all levels. Establish MoU steering committees and transboundary technical working groups, with routine interactions.</p>
<p>Form partnerships with academic, research and conservation institutions to help collate and analyze data, and harmonize data-sets to facilitate target interventions. Enhance data management systems and analytics and utilize free digital platforms.</p>
<p>Develop communications and reporting strategies with oversight from broader monitoring and evaluation structures</p>

Strategies to Maximize Effectiveness

Governments or institutions engaged with designing or supporting bilateral MoUs are recommended to integrate the following actions into the design process to develop clear and functional cooperation mechanisms well-positioned to achieve their objectives.



Define clear work plans and implementation timelines: MoUs were generally more effective when they included clear work plans or timelines that defined concrete activities with specific actors in specific landscapes. The existence of these work plans adds a level of accountability that facilitates action, and makes it possible for external actors to identify activities to support.



Develop monitoring frameworks and integrate M&E processes in design and implementation: M&E is not built into MoU design, evidenced by the lack of structures and processes allowing for M&E (i.e. definition of specific activities and work plans). To support this, templates and formats for reporting progress against MoU objectives could be developed as part of larger monitoring structures harmonized with internal government reporting. The frameworks would need to include qualitative indicators to assess the outcomes of activities, i.e. not just report that an activity was conducted. External organizations can also support third-party monitoring of MoU implementation when appropriate, to create accountability for MoU implementation.



Design bilateral MoUs to facilitate the development of sub-national MoUs and activities: The focus groups found that most concrete achievements were found at sub-national levels, usually through successful joint law enforcement operations. For example, the national Laos-Vietnam MoU enabled the enactment of 9 provincial-level MoUs between bordering provinces of Lao PDR and Viet Nam. Under the Salavanh-Quang Tri provincial MoU, between 2017-2022, the Salavanh provincial forestry office worked with Quang Tri government agencies in border areas to conduct inspections, during which 48,062 m³ of illegal timber was seized. National bilateral MoUs should be designed to facilitate the enactment of sub-national agreements, recognizing that diplomatic language which broadly canvasses international concepts, mechanisms, agreements and conventions will need to be translated into provincial level capacities and knowledge-sets.



Include provisions and/or budget for communication and transparency: Many stakeholders reported that they were unaware of MoU contents or implementation status, contributing to the impression of low MoU effectiveness. That can be addressed through communicating MoU contents, activities and achievements, building communication capacities, and including provisions in MoUs related to transparency. This is not only necessary for communicating to stakeholders, but also to other relevant government agencies.

Recommendations for Support

Donors and partner institutions who wish to support implementation of these MoUs have often faced difficulties in identifying suitable entry points, given that MoUs are typically government-to-government instruments, with un-defined or not publicly accessible work plans, or implementation timelines that may not match a donor's project cycle. Possible entry points are identified here for those seeking answers to the questions: What types of instruments or activities are best to support? How can support best be provided to improve MoU effectiveness?

It is recommended that external actors work with government(s) to:

01

Develop institutional knowledge management systems: Centralized information hubs are needed where focal points and coordinators can input essential information (documentation; networks and contacts; standard operating procedures; lessons learnt; history of implementation, etc.). Due to staff turnover and changing mandates, this information needs to be available and accessible at different administrative levels to ensure consistency and continuity.

02

Support joint capacity building activities on topics of mutual interest as a way to establish relationships and trust among the agencies engaged in bilateral collaboration: The issue of trust emerged prominently in the analysis, finding that corruption and poor communication damages trust and relationships among transborder agencies. This is corroborated by findings from similar transboundary instruments such as the ASEAN Wildlife Enforcement Networks. The process of building trust and developing relationships has been found to boost the effectiveness of communication and collaboration, and be fostered through capacity building on topics of mutual interest – as a way to share knowledge, improve communication and gain deeper understanding of on-the-ground land-use patterns.

03

Design bilateral MoUs to facilitate the development of sub-national MoUs and activities: The focus groups found that most concrete achievements were found at sub-national levels, usually through successful joint law enforcement operations. For example, the national Laos-Vietnam MoU enabled the enactment of 9 provincial-level MoUs between bordering provinces of Lao PDR and Viet Nam. Under the Salavanh-Quang Tri provincial MoU, between 2017-2022, the Salavanh provincial forestry office worked with Quang Tri government agencies in border areas to conduct inspections, during which 48,062 m³ of illegal timber was seized. National bilateral MoUs should be designed to facilitate the enactment of sub-national agreements, recognizing that diplomatic language which broadly canvasses international concepts, mechanisms, agreements and conventions will need to be translated into provincial level capacities and knowledge-sets.

04

Create more opportunities to learn from other cooperation instruments and agreements: A number of countries have not yet established transboundary forest sector cooperation via MoUs or other instruments (example: Myanmar-Thailand, Cambodia-Laos). The focus group discussions also suggest that MoU design could benefit from adopting the elements of multilateral or trade agreements that stakeholders perceive to make them more effective, such as multi-stakeholder participation. Assistance in facilitating collaborative and participatory processes would aid in harmonising these different expectations of MoUs and matching stakeholders' capacities and priorities with achievable activities. Virtual exchange meetings can be organized to enable cross-country learning when designing new MoUs and agreements.

In summary, MoUs and other transboundary cooperation instruments provide a platform for joint action in forest landscapes across borders while also defining the scope, forms and areas of cooperation and collaboration. In this regard they have a valuable role to play in tackling forest crime and the drivers of deforestation, recognizing that they alone are insufficient to unravel the complexity or provide the cooperative solutions necessary to tackle them. However, to facilitate this, MoUs need to be designed in a more transparent and accountable way to attract the funding and external support needed to achieve the vision for cooperation on forests enshrined within.



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