



CCCA Deforestation Project: Theory of Change

(i) Summary

Deforestation and forest degradation is a major driver of climate change and biodiversity loss. Much tropical deforestation is illegal, or is linked with illegal activities – when CCCA refers to “illegal deforestation” this includes deforestation in violation of domestic laws, and deforestation linked with violence, intimidation, abuse of rights or corruption. However, local laws are often not effectively enforced domestically. Foreign enforcement and advocacy can be used to sanction and disincentivize illegal deforestation (especially when linked with export commodities and foreign financing and investment), supporting local efforts. However, foreign actors (regulatory and law enforcement authorities, and private sector entities) frequently lack the information necessary to act. Local civil society organizations (“CSOs”) often have access to relevant information; but they traditionally do not coordinate their action and struggle to provide external actors with the information necessary to prompt action.

There is thus a gap: because the right evidence is not reaching foreign actors, neither local CSOs nor the foreign actors are achieving the impact that they are capable of. CCCA’s Deforestation Project will bridge that gap. It will not duplicate existing efforts, but will put CCCA’s law enforcement expertise and connections at the service of local CSOs to maximize the impact of the information and evidence that they gather. By working with local CSOs to strategically develop and share case files, CCCA will empower both local partners (presenting their work collaboratively to maximum effect before new audiences) and law enforcement authorities and advocacy organizations (providing solid bases to pursue their mandates, including to address climate change and human rights violations linked with illegal deforestation).

CCCA’s Deforestation Project will reduce illegal deforestation by prompting foreign actors (public and private) to take actions which increase costs and risks (financial, legal and reputational) of, and thus reduce the incentives for, illegal deforestation. It will develop case files flexibly (mobilizing both legal and non-legal mechanisms to maximise the impact), rigorously (using law enforcement analysis and careful attention to standards of proof) and at scale (building on domestic legal findings). CCCA will thus cut corporations who are directly or indirectly responsible for illegal deforestation off from important segments of the international market.

(ii) CCCA's mandate

CCCA is a non-profit organization of prosecutors and law enforcement professionals designed to support and scale up judicial action and other forms of litigation and advocacy against illegal activities that are relevant to climate change and human rights, both of which are relevant to deforestation. CCCA is unique, both in its methodology and mandate. CCCA uses its law enforcement expertise to strategically support, advise and coordinate existing efforts by NGOs, scientific/expert organizations and private citizens fighting climate change to generate, preserve and collect information that is relevant, probative and admissible in court. CCCA also conducts legal and forensic analyses of information and prepares case files to share with competent law enforcement or regulatory authorities, or with civil society organizations in support of strategic climate litigation and advocacy. CCCA case files provide the information and analysis that enables the authorities and NGOs to enforce the law, litigate and advocate in the global fight against climate change.

CCCA does not replicate the work of local communities or NGOs. Rather, CCCA serves as a bridge (overcoming the gap between the local communities and NGOs with access to relevant information or expertise, and law enforcement authorities and advocates hampered by inadequate access to high quality information needed to trigger and conduct investigations), and as a force multiplier (allowing both local communities and NGOs, and external authorities and advocates, to have greater impact).

(iii) Situation Analysis (Why)

Deforestation and forest degradation is a major climate concern: The Intergovernmental Panel on Climate Change in its recent report on [Climate Change and Land](#) estimated that deforestation accounts for about 12-15% of global GHG emissions. The Paris Agreement on Climate Change recommends the urgent reduction of deforestation and forest degradation as a [key mechanism](#) to achieve its primary objective of limited global temperature increase to well below 2°C. It found that the preservation of existing tropical forest coverage is the most cost-effective way to achieve the objective of the Paris Agreement through land use. This also poses the least competing land pressures, has additional positive impacts on the human rights of indigenous people, and preserves high biodiversity ecosystems.

Much tropical deforestation is illegal: [Mapbiomas alerted](#) that approximately 90% of the deforestation in the Amazon is not authorized, thus illegal. Consistent with this, reports from the [World Bank](#), [UNEP](#) and [INTERPOL](#), indicate that up to 90% of logging in key producer countries of tropical timber is illegal. These organizations all argue that law enforcement plays a critical role in addressing illegal deforestation. The [experience of Brazil](#) bears out this thesis: a combination of government policies with enforcement actions by prosecutors caused a positive response by soy and beef industries—the main drivers of deforestation—which resulted in a reduction of tropical deforestation in Brazil by 70% within 10 years. Unfortunately, recent policy changes and slowing of enforcement action have caused a recent increase of deforestation in Brazil.

Deforestation is linked with illegal activities: Deforestation is also often associated with other illegal activity: [INTERPOL](#) reports 50-90 per cent of the deforestation in tropical countries is associated with organized crime. This can include violent offences such attacks on local or indigenous communities, their leaders, and environmental or human rights defenders to gain access to land and prevent accountability for deforestation; and forced labour. It can also include financial offences such as corruption, fraud and tax evasion. These offences provide additional options for accountability and advocacy, regardless whether the deforestation can be proven to be “illegal” under the relevant domestic environmental or forestry laws. For example, the US Department of Treasury [recently issued Global Magnitsky Act sanctions](#) against a corrupt network responsible for illegal logging in Cambodia.

Local laws are often not effectively enforced: Enforcement in tropical forest countries is not currently effective in addressing this illegal deforestation, for a variety of reasons. Relevant laws are often inadequately enforced, whether because of lack of resources or weak governance in some states hosting major tropical forests. And even when there is some enforcement this is often not sufficient to prevent continued illegal deforestation (for example, fines are not paid, and strong local political support and profit motives undermine impact). Recent developments in Brazil (undermining policy frameworks and enforcement authorities, discussed below) highlight this challenge.

Foreign enforcement and advocacy can support local efforts: Approximately 70-80% of tropical deforestation is linked with commodity agriculture, including beef, soy, palm oil and timber. Much of this is for export markets, or is financed by international investors, insurers or lenders. Regulators and law enforcement authorities have the tools to target commodities derived from illegal deforestation, including legislation prohibiting import of illegally logged timber (in the US, EU, Australia and Japan), legislation requiring due diligence in foreign operations of multinationals (in France and under development in other European jurisdictions), imposing sanctions on entities and individuals linked with human rights violations and corruption (in the US, Canada and UK, and under development in the EU and Australia); and money-laundering and proceeds of crime legislation. Investors, banks, other financial enterprises and customers may also have other obligations, under internal social or environmental policies, sector-specific due diligence obligations, or external standards such as the OECD Guidelines for Multinational Enterprises. Actions by these external actors are an important step in the chain of addressing the incentives, costs and risks (financial, legal and reputational) for illegal deforestation.

But foreign actors lack the information necessary to act: CCCA’s enquiries with national and international law enforcement authorities indicate that this law enforcement gap results from a lack of access to high quality information and support that would enable them to conduct effective enforcement proceedings. National law enforcement authorities must frequently balance competing priorities, meaning that ‘hard’ cases, even if globally significant, fail to get the attention they deserve. This gap prevents national law enforcement authorities from fully exploiting their collective potential. But this is not reflective of a general lack of

willingness by foreign enforcement authorities or of tools that they could use if they have the relevant information. For example, the Dutch criminal prosecution office requested information from CCCA on Brazilian companies linked to illegal deforestation that export to The Netherlands.

Traditionally CSOs have not effectively been able to fill this need: CSOs, especially those based in countries where illegal deforestation is taking place, have access to important information. But in practice, local CSOs have often been unable to provide foreign authorities with the information that they need to act: they often do not coordinate their action, they may be unaware of the relevant authorities, lack the expertise to demonstrate why they are able or obliged to act; or may face competing urgent demands and be unable to prioritize building casefiles for external enforcement or advocacy. And public authorities in the countries where illegal deforestation is taking place often do not see it as part of their job to encourage foreign enforcement actions, even if they are aware of those options and have the capacity to pursue them.

(iv) CCCA's role (What)

This analysis reveals a gap: important evidence, materials or findings are not generating their maximum impact; and as a result, potentially influential enforcement options and advocacy targets are being underutilized. Both sides suffer from this gap. By strategically developing and sharing case files, CCCA empowers both local and international partners (by presenting their work collaboratively to maximum effect before new audiences) and law enforcement authorities and advocacy organizations (by providing solid evidentiary bases to pursue their mandates, including to address climate change and human rights violations linked with illegal deforestation).

Our theory of change is that we can bridge that gap if local and international CSOs are provided with support and guidance to gather the most relevant and probative information; and if that information from multiple CSOs is then compiled, analysed, supplemented (including with existing legal findings) and presented to external enforcement authorities in a form which they find credible and meets their legal requirements, and to advocacy targets in a form which is legally persuasive. And if we bridge that gap, then external actors will be motivated and/or compelled to act against the commercial drivers (including customers and financiers) of illegal deforestation.

In doing so, our project complements existing efforts such as [INTERPOL's partnership](#) to enhance law enforcement action against illegal logging to add civil society cooperation and information to the law-enforcement cooperation fostered by INTERPOL.

As detailed in the description of activities below, CCCA will deploy its expertise to:

- identify external authorities and advocacy targets that may have obligations or powers to act, and the legal basis / requirements for such actions;
- advise local and international groups on what information they need to gather and how;
- conduct gap analyses and assist with development of investigation plans;

- provide those groups a way of getting their information before external enforcement authorities, using our expertise and credibility to increase the chance that the information is viewed seriously and acted upon;
- use our understanding of legal standards to put the right, and right amount of, evidence before the correct authorities; and
- explain to foreign authorities why certain types of evidence that they may be unfamiliar with should be viewed as relevant and probative.

(v) CCCA's approach (How)

In bridging the gap between CSOs and law enforcement, litigation and advocacy organizations, CCCA will apply the following core operating principles:

Focus on affected communities: Each CCCA project focuses on the communities affected by climate crime and human rights violations (including those linked with deforestation) and actively involves them throughout the process. As part of its case selection process, CCCA assesses the affected communities' needs, interests, perspectives and willingness to cooperate and participate. CCCA also does a community risk assessment and develops a strategy to minimize community risk. During the investigation phase, the communities are a main and critical source of lead information and expertise. In the case file stage, community and victim redress are part of the litigation and advocacy strategies.

Network approach: At each phase of a case, CCCA cooperates with affected communities, organizations and individuals who have access to relevant information or expertise. CCCA's law enforcement experts advise, support and coordinate the activities of these organizations to build strong cases together. CCCA's ability to cooperate with the most appropriate partners on a case-by-case basis enhances its operational flexibility and cost-effectiveness in diverse contexts and regions.

CCCA's network approach has a force multiplier effect: First, it enhances the effectiveness of the investigations by its partners and the impact of their investigations. It does so by focusing their collection, consolidating information from different groups, providing legal analysis of the information, and using CCCA's expertise and connections to put the right case files before the right authorities or litigation groups. Second, CCCA's approach empowers law enforcement authorities and advocacy organizations to pursue their mandates, including to address climate change and human rights violations. Law enforcement authorities or other litigation groups often lack access to high quality information and evidence that is necessary to take action. Through CCCA, its partners organizations may provide much of this information. In fact, if properly guided, supported and coordinated, NGOs, expert organizations and local communities may often investigate more effectively than state agencies because collectively they have significantly more human resources; more immediate and direct access to certain kinds of information and expertise; and the higher ability to share relevant information swiftly across borders without being restricted by jurisdictional limitations or narrow procedural rules.

CCCA works in close partnership with a range of NGOs, including those based in tropical forest countries, throughout the investigation and building of the evidentiary dossiers or case files. We provide initial information on foreign enforcement options and what is required to activate them; work collaboratively to develop case hypotheses and investigation plans; provide regular feedback and input during the collection and analysis of evidence; and work together to conduct joint lessons-learned reviews after the submission of key dossiers. Each of these efforts benefits CCCA's work, but also leaves its partners stronger and in a better position to conduct rigorous investigations and enforcement efforts themselves in the future.

Innovative investigative techniques and alternative forms of evidence: CCCA explores innovative investigative techniques and relies on alternative forms of evidence, including scientific evidence, cutting edge technological evidence (such as remote sensing satellite data) and modern open source investigation techniques. Members of the affected communities provide valuable lead information or documentary/electronic evidence and assist in the collection and analysis of evidence on the ground. While victim testimonials collected by NGOs are effective in public advocacy, judges rarely rely on privately gathered statements to establish criminal or other responsibility, and they have limited value to establish corporate responsibility for human rights violations. Witness-based investigations also present greater risks to victims and investigators, and are more expensive. CCCA therefore prioritizes other forms of evidence, and generally does not rely on victim testimonials.

Flexibility and pragmatism to maximize impact: While CCCA uses criminal law investigation and analysis techniques, it does not only promote criminal prosecution. CCCA strategically chooses and creatively promotes both legal and non-legal mechanisms to maximise the impact the protection of forests for the benefit of the climate and the protection of human rights. By using criminal law's stringent standards for evidence and proof, CCCA's case files can be used for all forms of judicial or regulatory enforcement, civil litigation and other forms of advocacy. This means that the enforcement of "hard law" through courts and regulatory authorities will be combined with efforts persuade corporate actors to better manage financial, legal and reputation risks or comply with their corporate climate, human rights or sustainability standards. In the context of the current project, this could include:

- Regulatory enforcement actions under the EU Timber Regulations, the US Lacey Act, or the Australian Illegal Logging Prohibition Act;
- Criminal enforcement through money laundering, proceeds of crime, bribery or comparable offences;
- Legal actions to compel due diligence, for example under the French *loi de vigilance*, the EU Timber Regulations, or before the National Contact Points for the OECD Guidelines for MNEs;
 - Comparable laws are under development in a number of other European jurisdictions;

- Advocacy for compliance with voluntary guidelines or internal policies regarding ESG (economic, social and governance) or environmental (including climate change) impact of supply chains or portfolios;
- Applications for sanctions on individuals and companies responsible for serious human rights abuses or corruption under the US Global Magnitsky Act (and EO 13818) and similar provisions in Canada and the UK;
 - Comparable laws are under development in the EU and Australia.

Maximizing impact of domestic legal decisions: To scale up cases, CCCA will use wherever possible existing domestic law enforcement and administrative decisions that establish illegal conduct and supporting evidence gathered by its partner organizations. It uses the relevant findings by the judicial and regulatory authorities to build cases and to give those findings effect in litigation in foreign jurisdictions. This way the illegal conduct does not need to be re-investigated by CCCA and its partners and CCCA can build upon authoritative domestic findings and focus on giving them maximum effect abroad.

(vi) Expected results

The result of this project will be to reduce illegal deforestation by prompting foreign actors (public and private) to take actions which increase costs and risks (financial, legal and reputational) of, and reduce the incentives for, illegal deforestation; including by prompting buyers and financiers to ban illegal deforestation from their supply chains and lending/investment portfolios.

By rolling out a relatively high number of cases arising in each deforestation area and by employing a variety of enforcement, litigation and advocacy action in relation to each case file, CCCA intends to reduce deforestation in key tropical forest areas of the Amazon Basin (and other Brazilian rainforest biomes), the Congo Basin and in East Asia. It aims to do so by effectively cutting those corporations who act illegally off from the international market. They will find it significantly more difficult to sell their products or to find international investors, lenders and insurers. As a result of the activities of CCCA and its many partners, international trading partners will either be legally barred from trading or otherwise dealing with illegal suppliers in deforestation areas, or they will be persuaded to cut ties with their partners due to financial costs or legal and reputational risks. The illegal actors in the deforestation area, on the other hand, will be incentivized to refrain from further illegal deforestation related activities, to be able to stay in the business.

As criminal prosecutors and law enforcement experts, we see daily that law enforcement—and, more important still, the realistic threat of being subject to law enforcement—have a unique ability to repress, disrupt and deter the conduct of individuals. This is particularly true for business actors who generally take a rational approach to assessing risks and to considering those risks as part of their decision-making. The proposed programme therefore focusses on triggering change by impacting the incentives of business people both in deforestation areas, as well as other parts around the world who do business with

deforestation commodities or with corporations that are involved in illegal business linked to deforestation and who can put pressure on those companies (whether because of advocacy, enforcement, or perception of legal, financial or reputational risk).

Our strategy is premised on the understanding that targeting the financial dimensions (the financing of, and the purchase of products resulting from) illegal deforestation is an important contribution to reduce illegal deforestation. As one Federal Prosecutor in Brazil recently articulated:

“if a slaughterhouse/meat-packing plant acquires products from areas of illegal deforestation, it is benefiting from the product of illegality, placing it on the market and giving it value. There is no crime of deforestation without economic gain, and there is no economic gain from this crime without the commercialization of the product exploited by deforestation”.¹

And as with much of CCCA’s model of operation, the core tenet of our strategy is not ours. Instead, we are building on the insight and experience of critical allies in tropical forest countries, and applying them transnationally to magnify their impact.

Our strategy of external enforcement and advocacy to disincentivize commodity-driven illegal deforestation is based on four pillars:

- 1) regulatory actions (including against importers of illegally logged timber);
- 2) international supply chain enforcement and advocacy against commodities linked with deforestation;
- 3) international enforcement and advocacy against financial backers of corporations that support commodity-driven illegal deforestation; and
- 4) sanctions on networks responsible for corruption and human rights violations linked with deforestation.

¹ [AÇÃO CIVIL PÚBLICA – MINISTÉRIO . FEDERAL n° 1016503-53.2019.4.01.3200](#), p. 17 (unofficial translation).