



## **17<sup>th</sup> Illegal Logging Update and Stakeholder Consultation**

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The views expressed by participants at the meeting and reported in this document are not necessarily those of Chatham House.

Thursday 27<sup>th</sup> January 2011

## SESSION I: US LACEY ACT

### US Lacey Act – update on implementation and enforcement

#### Andrea Johnson, Environmental Investigation Agency

Following the amendments to the US Lacey Act in May 2008, it is unlawful to trade a plant or plant product taken in violation of the laws of a US state, or most foreign laws. Under the Act it is also unlawful to provide false information about plants or plant products. The Act requires importers to submit a basic information declaration for certain products.

Implementation is achieved via an inter-agency process involving key stakeholders: the US Department of Agriculture, the Fish and Wildlife Service, Homeland Security, the Department of Justice, the Bureau of Oceans and International Environmental and Scientific Affairs, USAID, the Office of the US Trade Representative, and the Council on Environmental Quality.

The focus of the Act to date has been on outreach and education overseas, and declarations. The declaration is an information requirement for products that include wood. Despite initial concerns about the potential complexity of the requirement, it is generally considered to have developed into a reasonable process supported by useful guidance.

The declaration requirements are being phased in in three stages, each covering more products:

- Timber and timber products.
- Furniture.
- Walking sticks, pianos, sculptures and other wood products.

Paper is currently not subject to the requirements.

Thousands of declarations are being received by APHIS (Department of Agriculture database) each month.

There is a requirement in the Act for a two-year report to review its implementation; this will be published in spring 2011.

There is little dedicated funding from government to support the Act; however, there are dedicated human resources and the Act is being enforced. Examples of enforcement action include:

- **Gibson Guitars** – this case is ongoing. Gibson's premises in Tennessee were raided in November 2009 on suspicion of importing illegal ebony from Madagascar, via Hamburg in Germany. The importing company in the US did not submit a Lacey Act declaration form, and it is likely that the illegality of the timber's origin was known. There is currently a criminal investigation under way with an indictment 'likely' according to prosecutors.
- **Peruvian hardwoods** – this is the first concluded case under the amendment. Three pallets of sawn hardwood were seized in 2009 in Tampa, Florida, incorrectly classified as finished products. It is likely that this mis-classification was intentional as finished products were exempt from the Act at the time of the seizure. The due care applied was deemed inadequate by prosecutors.

- **Anecdotal evidence** – there is considerable anecdotal evidence of inspections, and of questions being asked at the point of entry into the US, and to exporters overseas.

A survey of US industry representatives, commissioned by the Forest Legality Alliance, found that awareness of the Act is high, particularly in sectors most affected by the declaration requirements. Paperwork was seen as complicated at first, but the key concern surrounds the definition of 'due care'. There is widespread support for the intent of the Act, but concern about enforcement actions. More enforcement actions are needed in order to clarify aspects of the Act and how it will operate.

There have been attempts to clarify best practice in 'due care'; for example, a recent study by WRI on fibre testing in books on the US market found the presence of ramin and mangrove fibres, both from Indonesia, which has banned the harvesting of mangroves to protect coastal areas, and has banned the export of ramin, which is also protected under CITES. The results of the study demonstrate that it is possible to detect potential Lacey violations for paper using modern technology.

The insurance industry is now offering Lacey Act insurance although it is unclear how this would work in practice.

The PowerPoint file of this presentation is available at:  
<http://illegal-logging.info/uploads/Johnson270111.pdf>

## **An industry perspective from North America**

### **Jameson French, Northland Forest Products**

The passing of the Lacey Act amendment in 2008 was the first occasion on which the environmental community and the business community worked together to achieve something.

The existence of a level playing field is very important; if left unchallenged, the business impact of illegal logging could be a 10-15% depression in timber prices. Therefore, environmental concerns and industry competitiveness came together and industry saw it as a top priority that the amendment was passed.

The Act forces companies to know about their supply chains and is seen by industry as a useful piece of legislation, but one that needs to be monitored going forward. Most companies have given it broad support, although there are questions about its effectiveness and how to comply.

It is crucial to maintain the united front of industry and the environmental community, for example in working on tweaks to improve the Act and in the definitions of genus and species. The Tea Party movement would like to see the Act repealed on the grounds that it is 'anti-libertarian', therefore the industry and environment coalition must work together to press political leaders on its importance.

Funding for implementation and enforcement is a key concern; there is little government money available (as is also the case in the EU for the Timber Regulation), so it will be important to build a case that enforcement of the Act is a good use of the resources that are available.

The Act can be tied directly to US jobs, currently a key debate in the US. 5% of US manufacturing output is tied to the forest industry, which is one of the top 10 employers in 46 States. Illegal timber could be responsible for as much as \$1 billion losses to US industry; this is a powerful political argument.

Two final points:

1. **The EU Timber Regulation** – US exporters believe strongly that the EU must recognise risk assessment when it is implemented, if legality can be verified.
2. **Standards for other sectors** – the wood industry in the US has come a long way. It is now important that other building materials are held to the same standards as timber, for example, the extraction of iron ore is associated with considerable environmental degradation and aluminium, plastic and concrete should also be subject to standards.

## **Learning about FLEGT and the US Lacey Act**

### **Ramon Alvarez Lazzaroni, AMADHO (Asociación de Madereros de Honduras / Honduras Lumbermen's Association)**

Honduras has 50% forest cover, 60% of which is broadleaf forest and 40% pine. Commercial harvesting accounts for less than 1 million cubic metres of timber per year, 97% of which is pine. The sawmill industry operates in the pine forests, and 30 – 40 mills are responsible for 80% of the production. Over 100 smaller mills are responsible for the remainder.

Approximately 50% of timber is used locally and 50% is exported. Of the exports, sawn timber is mainly sent to the Caribbean, and secondary products mainly to the US.

In recent years, interest in, and efforts to combat, illegal logging in Honduras have decreased. This is due in part to a coup in 2009, and in part to an increase in the operations of drug cartels and gangs, which has required more police time and money.

In 2005 an investigation by EIA identified two factors about illegal logging in Honduras: firstly, 50% of exports were illegal, and secondly, wood obtained from smaller saw mills is often illegal. The government has not yet confirmed the export figures or begun to address the problem.

The Lacey ACT and FLEGT are not widely recognised. AMADHO is starting to work with the Forest Legality Alliance in order to:

- Develop efficient low-cost controls.
- Participate in pilot tests.
- Help to achieve a FLEGT VPA (Voluntary Partnership Agreement).
- Foster better forestry data.
- Help focus on the key problems.
- Move towards sustainable forest management, with the recognition that 'legal' is not necessarily 'sustainable'.

Obtaining accurate information on the state of forests and the timber industry in Honduras is problematic. Honduras was recently described as the country with the highest rate of deforestation in the world at 37%. However, the data behind this figure was based on incorrect information on forest coverage, which has resulted in incorrect data on deforestation rates in subsequent years. The amount of illegal commercial harvest is also not known, as data collection methods have not been consistent year on year. There is also a lack of clarity over the annual allowable cut.

By law, every timber harvest must be covered by a government certified forest management plan. The certification process recognises that an appropriate management method is being employed in private forest areas.

There is much confusion over the range of laws and schemes that are being developed in other countries. With the assistance of the EU, a meeting will be held in February 2011, bringing together industry representatives with those involved in FLEGT, the Lacey Act and certification schemes in order to increase understanding. AMADHO is keen to work with the government to initiate the process towards a VPA.

Those involved in FLEGT and the Forest Legality Alliance need to work more with those outside the forest sector – for example, customs and finance – to increase understanding of forest management and legality issues. The Honduras Government Forestry Agency is in charge of monitoring and regulating the forest industry but has no expertise in, or relationship with, production, marketing or export issues.

Specific actions to reduce illegal logging should be part of the conditionality of the different assistance programmes operated by the US and the EU.

Strict application of laws already in existence in Honduras is also vital. Both private and public sector bodies need to have the will to combat illegal logging in Honduras. Funding and technical assistance can only help to a point; with the right political will, it will be possible to achieve much more.

The PowerPoint file of this presentation is available at:  
<http://illegal-logging.info/uploads/Lazzaroni270111.pdf>

### ***Discussion***

**Question:** A participant suggested that initial enforcement actions under the Lacey Act had not involved the larger industries and noted that high volumes of illegal timber were still being imported from countries like Honduras; is the Lacey Act not yet making an example of the more significant players and problems?

**Answer:** The guitar industry case has significant symbolic value and the hope is that the Act will lead to cases in many different sectors. It is hard to overestimate the importance to companies in the US of not being caught by the Act and huge effort is being employed to avoid actions. It is harder to measure the impact on the ground in countries with a high level of illegality, but more and more information is being sought from Asian hardwood exporters, which will have an impact. Other countries, such as Australia, New Zealand and Japan are also developing new policies, but unscrupulous exporters try to find other markets for their products, so it is clear that a global solution is needed.

Larger cases are being brought under the Lacey Act in other sectors such as fisheries; for timber, it is very much still a learning curve.

**Question:** A participant asked whether the EU Timber Regulation is likely to be as effective a tool as the Lacey Act, and whether there are reasons to have Lacey Act-type legislation in the UK in addition to the EU Regulation.

**Answer:** The key to the EU Timber Regulation will be how well it is enforced. There are 27 countries in the EU and the Regulation is focused on the point of placing, for the first time, onto the EU market, rather than at each stage down the supply chain as with the Lacey Act. Creating strong enforcement in individual member states will be crucial if the Regulation is to be effective.

**Question:** A question was asked about the definition of 'due care' and whether any guidelines had been produced for industry.

**Answer:** It is the responsibility of individual companies to determine how they wish to comply with 'due care' under the Act. The appropriate level of 'due care' varies according to, for example, the size of the company or from where it is sourcing its products. Therefore it is unlikely that there will be guidance produced in addition to the definitions already published. The US government does not intend to endorse a particular standard; it is likely that it will evolve over time and in response to best practice and cases taken through the courts.

**Question:** A participant asked whether there were significant costs involved in complying with the Act and whether there were concerns about this, particularly amongst SMEs (small and medium-sized enterprises).

**Answer:** For those companies with simple supply chains, the process is uncomplicated and low cost. There may be costs associated with changing supply routes, which may have been the cheapest sources to date, but these are not a cost of the Act per se. Those that have expressed the most concern about costs are the larger retailers with multiple products, rather than the timber supply sector.

## **KEYNOTE SPEECH**

### **Seeing the wood for the trees – on EU's role in global forest management**

#### **Janez Potočnik, Commissioner for Environment, European Commission**

Timber is one of earth's valuable resources. In 2003 the EU adopted the FLEGT Action Plan and has invested much in its implementation. A number of Voluntary Partnership Agreements (VPAs) have been negotiated with timber producing countries. These have involved working through many complex issues, such as the quality of the stakeholder process and the technical and institutional specifications of the Legality Assurance Systems.

The EU is now focusing attention on other key challenges, such as:

- Implementing the concluded agreements.
- Expanding the number of VPAs.
- Putting in place the EU Timber Regulation.

VPAs have been concluded with Ghana, Cameroon, Congo Brazzaville and the Central African Republic. Agreements are currently being negotiated with Indonesia, Vietnam, Malaysia, Liberia, the Democratic Republic of Congo and Gabon. Information requests are coming in from many other countries, and the EU also expects to intensify bilateral discussions with China, Russia and Brazil. The EU wishes to conclude negotiations with at least two more countries in 2011; it is hoped that Indonesia will be one of these and the first VPA in Asia.

In 2010, negotiations between the European Parliament and the European Commission concluded on the proposed Timber Regulation. The Regulation will operate from March 2013, from which point it will be prohibited to place illegally harvested timber on the EU market. It will also be a legal obligation for timber traders to undertake due diligence before placing timber on the market for the first time. Traders will need to keep records of their suppliers and customers to ensure products are traceable.

The Commission is currently developing secondary legislation on the implementation of the Regulation. It is expected that the impacts of the Regulation will be:

1. Legality will become a minimum requirement for selling timber in the EU.
2. There will be a shift from high- to low-risk sources, which will favour timber from verified legal and certified sustainable sources.
3. Genuine traders will not be undercut on prices.

It is clear that the global efforts against illegal logging are having an impact. Chatham House research indicates that the global response against illegal logging has a positive impact on forest governance and helps to curb illegal deforestation. However, the situation of forests worldwide and of those living in the forests is not generally good. We still need better governance, increased transparency and more respect for community rights.

The link between illegal logging, forest governance and climate change is crucial. Deforestation is a major contributor to greenhouse gas emissions. Countries that improve forest governance and reduce illegal logging are, therefore, better positioned to combat climate change and benefit from REDD (Reduced Emissions from Deforestation and forest Degradation) funding.

The REDD text from Cancun shows that the link between forest governance and REDD is now recognised world-wide. FLEGT VPAs can help to meet REDD goals and REDD may provide an additional incentive for governance reform in the forest sector.

The EU and its partners have made a significant investment in tackling illegal logging over the years and this momentum must be maintained. A number of things must be done:

- The new EU Timber Regulation needs to be implemented and enforced.
- The concluded VPAs need to be implemented so that the agreed reforms and controls result in better governance and shipments of FLEGT-licensed timber in the EU.
- The number of VPA processes needs to be expanded.
- We need to look for ways to reduce the risk-profile of timber imports into processing countries such as Vietnam and China.
- Governance challenges in the Eastern Neighbourhood Countries need to be addressed as the EU imports much timber from this region.
- The links between REDD and FLEGT need to be strengthened.
- The EU needs to strengthen dialogue with other timber consuming countries to support the application of regulatory measures against the trade in illegally harvested timber.

The FLEGT process has benefited greatly from the technical and financial support of Member States, the expertise of the European Forest Institute, and the support of many NGOs. The private sector in the EU is also playing its part, not only by developing codes of conduct and purchasing policies, but also by making clear to colleagues across the world that legality verification is here to stay.

We all want to further develop the agenda and this will require more financial resources. Securing these is one of the most important issues to address in the immediate future. The problems of legality and sustainability are no less important in times of financial austerity, and it is important that they are kept on the political agenda. The Commission will continue to support the global effort to better manage forests and to better support the people that depend on them.

The full text of the speech is available at:

<http://illegal-logging.info/uploads/PotocnikSpeech270111.pdf>

### **Discussion**

**Question:** Concerns were raised about the reduction in resources at DG Environment and the potential impact on priorities.

**Answer:** Resources is a serious concern and the EU will have to deliver with less. However, the Commission is aware that adequate resources are needed to implement commitments. The current financial crisis was not caused by environmental matters, but by greed and poor governance. Whilst governments deal with the economic crisis, it is crucial that issues discussed prior to the crisis, including climate change, biodiversity and water security, are not forgotten. Solving the economic crisis must be done in a way that safeguards the environment or we will be back to the drawing board in a few years time.

**Question:** A participant noted that Indonesia is hoping to sign a VPA with the EU in 2011, and asked whether the EU has plans to extend similar schemes to other commodities such as palm oil, rubber and soy beans.

**Answer:** The EU has had discussions with Indonesia about palm oil and other commodities and there are a number of possible options for addressing sustainability concerns.

A new approach is needed to manage the environment and achieve sustainability. This must involve not just regulations to address problems that already exist, but avoiding the problems in the first place. This requires a system of opportunities and limits: opportunities in the form of, for example, job creation, and limits on behaviour.

**Question:** A participant asked the Commissioner to expand on the dialogue that is taking place with countries such as China, Russia and Brazil.

**Answer:** China is aware of the Timber Regulation and its possible impacts. Certification and public procurement policies are already included in the EU-Asia FLEG support programme. The Timber Regulation has resulted in more dialogue and contacts with many countries. The timber trade in some of these is not primarily focused towards the EU, but the dual approach of the VPAs and the Regulation has led to more interest and more discussion.

## **SECTION II: EUROPEAN TIMBER REGULATION**

### **Next steps in implementing the EU 'Timber' Regulation**

**Svetla Atanasova, European Commission**

The key obligations under the EU Timber Regulation are:

1. A prohibition on the first placing of illegal timber and timber products on the EU market.
2. An obligation of 'due diligence' for the operators first placing timber and timber products on the EU market to take measures to verify the legality of timber of timber products traded.
3. Basic traceability for internal traders – i.e., other than the 'operators' – to keep records on suppliers and customers.

The Regulation was published in the Official Journal of the EU and entered into force on 2<sup>nd</sup> December 2010. It will become applicable from 3<sup>rd</sup> March 2013. This allows for preparation time in member states which have the responsibility to designate the competent authorities and monitoring organisations, and to develop penalties, and for the implementing legislation to be drafted.

Delegated Acts will be drafted detailing the procedural rules for the recognition in member states of monitoring organisations (to be completed by 3<sup>rd</sup> March 2012), and for the amendment of the product scope and development of further risk criteria. Detailed rules will be agreed by 3<sup>rd</sup> June 2012 on risk assessment and risk mitigation measures, and on the frequency and nature of checks on monitoring organisations.

In order to clarify why both Delegated Acts and Implementing Acts will apply to the Regulation:

- **There are different powers conferred on the Commission:**
  - The Commission has 'quasi-legislative' powers to adopt delegated acts.
  - The Commission has purely executive powers to adopt implementing acts.
- **There are different adoption procedures:**
  - The Commission has autonomy for delegated acts.
  - The rules and general principles for implementing acts are laid down in the legislation.

The Commission is holding a consultation process to assist with the drafting of detailed rules and is keen to receive relevant research and information from stakeholders. The consultation process will include external studies, stakeholder meetings, expert meetings to consult on the delegated act and the assistance of the FLEGT Committee in working with the Commission to adopt detailed rules (the process known as comitology). The Commission is inviting inputs from all interested parties via its website:

[http://ec.europa.eu/environment/forests/timber\\_regulation.htm](http://ec.europa.eu/environment/forests/timber_regulation.htm).

The Regulation will be applicable from 3<sup>rd</sup> March 2013 and binding on all 27 Member States. Enforcement and sanctions will be the responsibility of member states. A progress report will be produced every two years based on reports from Member States, and a report on the effectiveness of the Regulation and the products scope will be published five years after entry into force and every six years thereafter.

The PowerPoint file of this presentation is available at:  
<http://illegal-logging.info/uploads/Atanasova270111.pdf>

## **A vision for the implementation of the EU Timber Regulation**

**Tim Grabiél, ClientEarth**

Under the Timber Regulation, stakeholders have two years to get their houses in order to ensure a fully functioning Regulation. This process involves the EC, Member States, operators and monitoring organisations and civil society.

Due diligence is at the heart of the Regulation and has the potential to transform companies and the timber sector. Due diligence is based on three key elements:

### **1. Information**

- **Legal harvesting** – Timber must be harvested in accordance with applicable legislation in the country of harvest. Details must include the species and the volume of timber being imported and the concession of harvest where applicable.
- **Standard forms** – there should be an annex to the Regulation containing standard forms on each informational point.
- **Proof of compliance** – there must be uniform presentation of proof to ensure clarity. There should be guidance for operators on forms of proof, including declarations, affidavits, foreign documentation and official documents.

### **2. Risk assessment:**

- **Methodology for assessment** – the methodology for assessment must be standardised. Methods used in other regulatory systems, such as money laundering and food safety should be used for guidance.
- **Additional proof of compliance** – Guidance should be provided on the value of the proof given to demonstrate compliance and on third party verification. Supply chains are complex; the Regulation only requires traders to report one up and one down in the supply chain, however, the supply chain is relevant to risk assessment.

### **3. Risk mitigation:**

- **'Negligible risk'** – this needs to be defined as it could result in a loophole.
- **Proportionality of measures** – there needs to be a reaffirmation that risk must be reduced to negligible levels.
- **Additional information / third party verification** – additional information needs to be outlined for common risks.

The procedures for the accreditation and checks of monitoring organisations must be transparent. This means there must be access to information in a timely fashion, adequate notification and public participation in reviews, a process for internal review of the accreditation of monitoring organisations, and clear criteria for the withdrawal of recognition.

Member States will be responsible for ensuring that the competent authorities discharge their duties, for ensuring the power to issue notices of remedial actions, such as the seizure of timber and the suspension of marketing, for developing official checks, and for creating procedures for receiving and acting on substantiated concerns from third parties.

Member States will also have responsibility for sanctions and penalties. These must be 'effective, proportionate and dissuasive'. Harmonisation across member states will be key to ensuring there are no loopholes or weak points of entry.

Civil society has a valuable role to play in reinforcing the value of the VPAs, which are yielding positive results. The Regulation should provide incentives for countries to negotiate a VPA with the EU, and civil society should encourage this. Civil society can also provide case studies through tracking timber flows and monitoring leakage, publishing exposés and examining US Lacey Act angles with reference to the Regulation.

It is crucially important that there is outreach and coordination among governments, civil society and enforcement agencies to ensure that on day one of implementation, it is clear that the EU means business.

The PowerPoint file of this presentation is available at:

[http://illegal-logging.info/uploads/1\\_Grabiell270111.pdf](http://illegal-logging.info/uploads/1_Grabiell270111.pdf)

## **EU Timber Regulation: a private sector perspective**

**Fiona Wheatley, John Lewis plc**

The Timber Regulation brings discipline and commercialisation to the market, as well as recognition to companies, such as John Lewis, which have worked on their supply chains for years. However, there are uncertainties and a lack of clarity; companies need to be confident about the roadmap to legal compliance.

Knowledge and competence are very low across the retail and contractor sectors, which makes it difficult to establish cost-effective systems to manage the new requirements. It is vital that there is fair application of the Regulation across the EU; this will require collaboration at the highest levels.

The Regulation must be an enabler of responsible business practice, but the following issues need to be considered in relation to the impact on business:

- Buying lead times take, on average, 12 months but the implementation times for the Regulation are not clear.
- The nature and range of affected products is likely to be complex. Some products have only a tiny proportion of timber, and some have many different elements in each component. Sorting out the supply chains for each element provides a huge challenge.
- Supply chains include multiple trading relationships: agents, makers, wood agents, companies, forest owners etc.
- The legal status of a trader or operator is not always the same as that for a company. Companies are likely to adopt operator level controls across all ranges of products to ensure they are not at risk. John Lewis has complex and possibly opaque supply chains; for example, a wardrobe may have six or seven wood components, plus MDF and particle board. This throws up multiple challenges from a supply chain perspective.
- The implementation of due diligence is common practice in the food industry and a whole industry has developed around third party involvement. But companies in other sectors need to have time to develop due diligence systems.
- There is a risk that other, less sustainable, products will be substituted for wood, such as plastics or bamboo.

Time is limited for industry to get prepared, therefore clarification is needed urgently on:

- The components of an adequate due diligence system. There may be multiple suppliers upstream and it can be a lengthy process to influence major suppliers.
- To what extent is certification or verification a proxy for legal sourcing? John Lewis believes that certification is critical and there is now an opportunity for it to be mainstreamed. Certification schemes are not perfect but they are critical for sustainable forest management and supply schemes.
- The availability of monitoring organisations – in the UK the TTF (Timber Trade Federation) is best placed to carry out this role and it is hard to see how a fragmented sector could develop an alternative system in time.
- Technical assistance – industry is concerned that there is a reluctance to provide technical assistance prior to implementation.
- The status of FLEGT timber needs to be reaffirmed. There is currently no clear timeframe for supply.

The Regulation is good but further clarity is required. Governments and industry must work together to bring forward the necessary clarity as soon as possible.

The PowerPoint file of this presentation is available at:  
<http://illegal-logging.info/uploads/Wheatley270111.pdf>

## **EU Timber Regulation: role of the shipping sector**

### **Cecilia Müller, Maersk**

Containers are delivered to the shipping company at the port of export. Containers are filled and sealed and the shipper has no legal right to open the containers. There are unforeseen risks as containers pass through the port of export and the port of import; however, there are some spot checks carried out, during which containers are opened.

Maersk does not see what is in the containers and has to rely on what the customer puts on the declaration; there is, therefore, an element of trust involved. This does open the company up to potential reputational and operational risk.

In 2010 Maersk had a customer in Madagascar who gave a false declaration; rosewood was declared as other timber. Two company employees were arrested. It is possible for the customer to have a more anonymous role than the transport company.

Maersk does not wish to be part of an illegal trade, and recognises that the company is an important link in tackling illegality. Maersk has been involved in discussions to identify weak links and will cooperate with local authorities and recognised organisations to help address the issue.

The PowerPoint file of this presentation is available at:  
<http://illegal-logging.info/uploads/Muller270111.pdf>

## ***Discussion***

**Question:** A number of concerns were expressed about the timeframe for the implementation of the EU Timber Regulation, in particular, the readiness of competent authorities in Member States.

**Answer:** It is not yet known which bodies will act as competent authorities and this is an issue that will be considered as a priority at an EU Member State meeting in February. Once they are identified, their readiness can be assessed. It is likely that most countries will use their Departments of Environment or Agriculture, or Forest Agencies.

From a company perspective, the lead time is feasible, as long as there is early clarity and guidance provided on implementation.

**Question:** A participant asked whether the Commission would be providing any analysis or guidance to ensure the consistency of penalties, and questioned the meaning of 'effective, proportionate and dissuasive'.

**Answer:** Part of the 'compromise' reached between the Parliament and the Commission is that penalties are the responsibility of Member States. Some Member States have asked the Commission to coordinate this, but the Commission's actions will be limited to coordination, not to setting or enforcing penalties.

It was suggested that there should be a baseline penalty across member states, which is sufficient to act as a deterrent and to make it too expensive to do illegal business. There must be alignment within the EU or trade will move to where the penalties are lower and the controls fewer. It would be possible to observe this by monitoring any changes in trade routes.

**Question:** A participant noted that in many areas of EU regulation in which enforcement is decentralised, the Commission has brought together committees across competent authorities to coordinate actions and share good practice; will the EC develop a network like this for the Timber Regulation and could the FLEGT Committee be involved?

**Answer:** There is no move currently for the EC to facilitate such a network. However, the EC is obliged to use the assistance of experts in Member States. It is possible that the FLEGT Committee could be used to monitor the Regulation but this has not yet been decided. The EC is committed to consulting as widely as possible on measures that are acceptable to stakeholders and workable.

**Question:** A participant noted that monitoring organisations will be taking on a quasi-state role in enforcing the law, and asked if there are any EU laws that would enable the prosecution of monitoring organisations found not to be acting in a sufficiently diligent manner or assisting rogue operators.

**Answer:** The competent authorities will be responsible for monitoring the way in which the monitoring organisations discharge their functions. Authorisation of monitoring organisations can be withdrawn and Member States can lay down penalties. There could also be other sanctions for more minor issues of non-compliance.

**Question:** A participant commented that there are approximately 16 million forest owners in Europe, and that little mention has been made of how the Regulation will affect them; to whom should they go for assistance with due diligence systems?.

**Answer:** A meeting was held in mid-January between representatives of the EC and forest owners and their concerns were discussed. It is vital that forest owners engage in the consultation and attend meetings to give them access to the EC. However, forest owners within Europe tend to have short supply chains, so complying with the Regulation should be relatively straightforward for them.

**Question:** A number of comments were made regarding the potential reputation risk to shipping companies that may be carrying illegally sourced goods, and a question was asked about what clauses are in contracts with customers regarding dangerous or risky goods.

**Answer:** Maersk handles over 6 million containers, therefore it is not possible to track everything that is shipped. However, some tracking has been carried out for goods that are traded in large volumes and dialogue has been entered into over high-risk commodities. If a customer books 'private items' or 'general commodities' it is hard to know what is being shipped and problems may not be detected until the container is on the ship.

## **SESSION III: TIMBER PUBLIC PROCUREMENT**

### **VPA licensed timber and its compatibility with timber procurement policies**

#### **Sofie Tind Nielsen, ProForest**

The long-term aim of the FLEGT Action Plan is sustainable forest management. Ensuring good governance and compliance with legislation is a first step towards this.

Among EU countries, Belgium, Finland, France, Germany, the Netherlands, and the UK already have timber procurement policies. Austria, Italy, Spain, Sweden and Poland have some green public procurement and product-based requirements for timber under development.

The first procurement policies focused on legality as a first step to sustainability. Now, the focus is on an overall approach to sustainability, which includes biodiversity, governance, development, climate change, the rights of indigenous peoples, and security of supply, all in the context of illegal logging and forest loss.

The definitions of sustainability in procurement policies are based on internationally agreed criteria for sustainable forest management, and focus specifically on compliance at the level of the forest management unit (FMU). In this context, sustainability includes:

- Forest health and vitality.
- Production functions of forest resources.
- Protection functions of forest resources.
- Biological diversity.
- Extent of forest resources.
- Social requirements.

All these elements are covered in the procurement policies of Belgium, Denmark, the UK and the Netherlands.

FLEGT operates in countries with poor governance; there are four ways in which VPAs can contribute to sustainability:

1. **Scope** – some aspects of sustainability can be delivered at the FMU level, others have to be delivered at a larger scale, perhaps nationally.
2. **Impact** – Sustainable management at a FMU level can go well beyond legal requirements, however, in countries with a limited area under sustainable management, the impact is also

limited. Where legal requirements are delivered across the entire national forest sector, and the bar is therefore raised in terms of governance, capacity, transparency and traceability, the overall impact may be substantial.

3. **Reducing barriers** – where the level of forest management is at a good standard across the sector, the additional costs for obtaining certification at the FMU level are reduced.
4. **Leakage** – creating small areas of sustainable management, where wider governance is poor, can result in leakage, or indirect land use change. Bad practice is driven from well-managed areas to areas with fewer controls resulting in no net gain for sustainability. There is evidence for this from the biofuels industry.

FLEGT VPAs do contribute to sustainability in a number of ways, based on the experience of those signed so to date:

- The requirement for a multi-stakeholder process ensures the involvement of all relevant actors, many of whom have never met and negotiated previously.
- The requirements within a VPA, including what needs to be met and how it needs to be enforced, are clear and transparent.
- VPAs promote good governance in the forest sector.
- Independent monitoring is built in.
- Management goes beyond the level of the FMU.
- The VPA will have a long-term impact.

VPAs do not compete with FMU certification, but each reinforces the other.

The FLEGT VPA process supports sustainable management of forests in ways that are different from, but complementary to, the certification schemes and other FMU-level approaches already recognised in EU member states; and supports public purchasing policies.

The PowerPoint file of this presentation is available at:

<http://illegal-logging.info/uploads/TindNielsen270111.pdf>

## **The opportunities and challenges of complying with procurement policies**

### **Sheam Satkuru-Granzella, Malaysian Timber Council**

There are a number of key points to consider on public procurement policies:

- An EU Directive gives Member States the responsibility for developing public procurement policies (PPPs). This is difficult for exporting countries as it means they have to try and satisfy differing requirements.
- There has been progress on the harmonisation of procurement policies; this is vital for developing countries who find it extremely difficult to meet varying requirements.
- Public procurement policies should be in compliance with DG Internal Markets and the free movement of goods across all 27 Member States.

Public procurement policies are important to countries like Malaysia. Malaysia currently sends 14% of its timber to the EU, worth \$1 billion per year, and this could increase significantly.

A recent report by IISD reviewed plans and programmes aimed at achieving sustainability, and stated that PPPs are a key driver in the progress towards forest certification for many countries,

particularly in the tropics. A key reason for this would be market access, which in turn guarantees returns that enable re-investment in sustainable forest management. If market access is blocked off, there is no completion of this circle.

Malaysia believes that FLEGT VPAs do support sustainability but there have been internal problems over whether the VPA should be signed.

The two major certification schemes, FSC and PEFC, cover 18% of certified, well-managed forest areas, representing 9% of certifiable forest areas globally. Less than 1% of this is in tropical countries.

FSC timber can command up to 14% premiums and PEFC timber 2 – 10% premiums.

Malaysia has over 4 million hectares (ha) of certified forest and is satisfied with the progress made over the last decade. The challenges now will be to bring together the certification schemes, the FLEGT VPA negotiations – which the Malaysian authorities intend to complete this year – and the requirements of the new EU Timber Regulation in 2013. There is commitment and funding resources from EU Member States to help tropical countries sign up to VPA agreements, but only the UK specifies FLEGT timber. Other countries have made vague commitments, but forest producers need guarantees that their timber will be accepted.

When FLEGT VPA timber is produced, there is traceability at the point of production; however, there is no clarity over traceability once it has entered the EU, and how it will comply with the EU Timber Regulation. Under the Regulation, the obligation is on the first placer on the market, but others in the supply chain need to keep records of consumers and suppliers. FLEGT VPA timber will not be labelled or marked in any way and is exempt from controls at the point of import. There are two years to prepare for the Regulation and clarification is very important if the Regulation is to succeed.

Malaysia has certification schemes in place but sees FLEGT VPA as a means of addressing areas that are currently outside such schemes; i.e. timber can be proved to be from a legal source but cannot be proved to be sustainable. However, it is hard to see how the supply chain can be made complete under the Timber Regulation. Malaysia wants the advantage of gaining market access, but is unclear how the Regulation and the VPA will work together and at the same time, ensure that their requirements are deliverable.

## **UK government's timber procurement policy – impact assessment**

### **Emily Fripp, EFECA**

EFECA was asked to assess the impacts of the UK government's timber procurement policy to date, focusing on the following:

- The impact on trade and on sustainable forest management.
- The role of the UK government as a leader in developing and harmonising timber procurement policies.
- The role of CPET.

Consultation was undertaken with 43 stakeholders over a four week period; stakeholders included governments, timber trade federations, certification schemes, private sector suppliers, NGOs and individuals.

The key points and aims of the procurement policy are:

- To ensure that central government departments, their executive agencies and non-departmental public bodies only procure timber and timber products originating from legal or sustainable or FLEGT licensed or equivalent sources.
- To encourage local government to adopt the policy (local government is not mandated).
- The policy was originally developed in the 1990s, was revised and evolved during the early 2000s amidst growing NGO pressure and as a result of political commitments. The UK and Danish governments are considered to have led the way initially.

From a baseline of five years ago, there are now a number of new initiatives in place that have changed the context, including the EU FLEGT Action Plan, the EU Timber Regulation, the Lacey Act, the growth of private and public sector timber procurement policies, a rapid growth in the use of certification and verification labels, and a positive change in the behaviour of both the private and public sector. However, there is a lack of accurate figures to assess actual government spend, and the impact depends on the product type.

The study considered the impact of the procurement policy on trade. This cannot be viewed in isolation of other initiatives. However, the policy has under-delivered in terms of direct government spend as there has been a lack of comprehensive implementation and inconsistency across government departments and contractors. The policy has over-delivered in terms of wider market impacts; all trade respondents reported that the policy had an impact on the way in which they do business, and there has been a significant increase in the supply of certified wood, from 47% in 2003 to 63% in 2009. It is worth noting that an over-stringent application of the policy could have a negative impact on some producers, particularly smaller family owned companies or tropical hardwood producers, as suppliers opt for certified products rather than those supported by CPET Category B evidence. However, the supply of tropical timber has remained constant between 2003 and 2009 at around 5% of UK supply.

The study also considered the impact of the procurement policy on certification schemes. The evidence suggests that standards and processes have improved. There has been an increased demand for certified wood, particularly softwood, to meet procurement policies and the EU Timber Regulation. Certified wood is shifting out of its original niche into mainstream markets; whilst this is positive, there is a potential increased risk of criminal labelling. Available resources in terms of time and the limited supply of certified wood from the tropics do present challenges to meeting requirements of procurement policies in the UK and across the EU.

The UK and CPET are seen as leaders in Europe on timber procurement policies, working closely with Denmark, the Netherlands and France. They are also seen as leaders in driving change in the private sector. The study revealed mixed views on the harmonisation of procurement policies, with concern that it could lower rather than raise standards, but agreement that harmonisation is helpful to suppliers.

CPET is recognised as playing a key role in the implementation of the UK policy, it is well recognised in the UK, the EU and globally, and is seen as technically credible and robust.

EFECA makes a number of recommendations:

- Application across government departments:
  - Share best practice, e.g. Environment Agency procedures and compliance checking.
  - Aggregate of public spend need to ensure procurement policy requirements are in all contracts.
  - Maximise the policy's impact by ensuring full compliance.

- Support to certification schemes:
  - Allow time to respond.
  - Increase application in the field.
  - Provide support for preventing the risk of fraudulent use.

The PowerPoint file of this presentation is available at:

<http://illegal-logging.info/uploads/Fripp270111.pdf>

### **Discussion**

**Question:** A participant commented that the ‘bar’ for sustainability is a moving target, which has recently been moved up, resulting in the potential widening of the gap between ‘business as usual’ and what is defined as sustainable.

**Answer:** There were two viewpoints on this: on the one hand, moving goalposts was seen as positive if it results in more issues being brought under the umbrella of sustainability and being delivered. On the other hand, shifting goalposts can present problems for those trying to reach them; there is clearly a need for evolution, but setting clear goals and target dates, and allowing countries or suppliers to achieve that before setting the next goal would be helpful.

**Question:** It was suggested that the requirement for the legality of timber being placed on the market under the EU Timber Regulation would make public procurement policies redundant.

**Answer:** The Regulation will address legality, but it is important that public procurement policies go further than this and develop minimum requirements for sustainability. Sustainability has to be the goal in procurement policies, but where a specific type of wood is required and cannot be sourced from a certified source, referring to legality schemes can be useful. The UK government is clear on what legality schemes need to prove; the current VLO (Verification of Legal Origin) standard is not sufficient to meet the UK legality criteria. However, when companies join a VLO scheme, they make a commitment to move to VLC (Verification of Legal Compliance).

The EFECA study found that there was an acceptance amongst contractors that certified wood was required for government contracts, and legality verified for everything else. Legality was accepted as the minimum and as part of the cost of doing business.

**Question:** A participant asked whether public procurement policies (PPPs) are acting as drivers for certification schemes to raise their bar.

**Answer:** Certification was initially seen only as a market mechanism. Once governments became involved via procurement policies, both the certification schemes and the policies evolved; however, there is concern that if the bar is raised too quickly in procurement policies, this could become a barrier for certification schemes and the achievement of certification in many countries.

VPA's raise the general awareness of sustainable forest management and will help to increase the amount of certified forest.

In Malaysia the demands of procurement policies have acted as a key driver for certification, which has spent £0.5 million during 2010 to comply with just one EU country's policy. However, this could be seen as a protectionist measure that is morally unjustified.

## SESSION IV: PRIVATE SECTOR INITIATIVES

### Illegal logging and related trade: indicators of the global response

#### Sam Lawson, Chatham House

Chatham House has published research aimed at measuring progress with efforts to tackle illegal logging and the associated trade. A set of indicators were developed, across all country types (producer, processor and consumer), covering the public and private sectors, and all phases of response, from awareness to final output (i.e. the actual reduction in illegal logging).

12 countries were included in the study, five producer countries: Brazil, Cameroon, Ghana, Indonesia and Malaysia; five consumer countries: France, Japan, the Netherlands, the UK and the US; and two processor countries: China and Vietnam.

The study covers the following issues:

- **Awareness / attention** – media coverage (qualitative and quantitative).
- **Government** – policies, enforcement data, revenue capture data, a survey.
- **Private sector** – voluntary scheme data, a survey, sensitive market share.
- **Levels of illegal logging and trade** – wood balance, a survey, import-source analysis, trade data.

Both the methodology and results were reviewed by independent experts. Some of the key findings are as follows:

#### Government response

- **Producer countries** – the key areas covered are high-level policy arrangements; the legislative framework and government structures; international engagement; policies and measures concerning the supply and demand of legal timber; land tenure and use rights; the timber chain of custody; transport and tracking; transparency requirements; resource allocation procedures, institutional and operational factors in law enforcement; information and data management, and financial management.

Improvements have been made in all countries, but there are still weaknesses in many areas. Overall, Brazil scored the highest and Indonesia the lowest; Brazil has had a major overhaul of its laws recently. Timber tracking systems are generally poor, and institutional and operational factors in law enforcement (such as sufficient penalties or the technology for detecting illegal logging) is also poor across all countries. Transparency is poor in Indonesia and Malaysia.

- **Consumer and processor countries** – numerous actions have been taken by all seven countries over the last decade. Of the consumer countries, the UK scores best overall and has often been the first to take certain steps. The US was slow to respond initially, but was the first to ban the handling of illegally harvested wood. Japan receives the lowest overall score, but has taken some actions.

In the processor countries, all relevant agencies are now engaged and coordinating. China has put in place a Memorandum of Understanding (MoU) with Burma and with the US, and

the EU is negotiating with both China and Vietnam. However, both have been seen as unable to act against shipments of illegal timber in the past.

### **Private sector response**

- **Producer countries – voluntary certification / verification.**

The area of verified forest has increased rapidly in Cameroon, Indonesia and Malaysia. Cameroon now has 38% of its forests under certification or verification schemes. This growth is accelerating; legality demand and rules in consumer countries are important drivers. However, the verification often only covers the licensed source of the timber, and not full legal compliance. The growth of certification and verification has stalled in Brazil. In Ghana there is no certification or verification and there has been a rapid shift of timber exports to less sensitive markets.

### **Levels of illegal logging**

There are a number of ways of estimating the level of illegal logging and trade. One of these is wood balance modelling, which compares licensed annual production and recorded imports against domestic consumption and exports. The study indicated:

- A decline in illegal logging of 50 – 75% in Brazil, Cameroon and Indonesia.
- The majority of experts agree there has been improvement, and also suggest there have been improvements in Malaysia and Ghana.
- The smuggling of illegal logs from Indonesia into China has reduced by 92%.
- There was some consistency between the expert survey and wood balance estimates, although the survey estimates were higher as they capture more types of illegality.

Import source analysis involves complex modelling, incorporating variations in source country illegality and the effects of demand-side measures. Analysis suggests that:

- Overall illegally logged wood imports have been falling since 2004, and dropped 30% by 2008.
- Imports of illegally logged wood are now falling in all seven consumer and processor countries.
- Illegally sourced imports are also falling per capita in all countries and as a percentage in all countries except the US.
- The US is the biggest consumer of the five consumer countries studied by both volume and value (\$4 billion per year), and Japan is the biggest importer per capita and by percentage of total imports (9%).
- More than half of imports into consumer countries are now of processed products arriving via third countries.

The impacts of reducing illegal logging over the last 10 years have been significant in Brazil, Cameroon and Indonesia. 17 million hectares of forest are estimated to have been protected from degradation. At least 1.2 billion tonnes of CO<sub>2</sub> emissions have been avoided. The reasons for the reduction include increased enforcement, NGO campaigning and consumer country actions. In Cameroon, independent monitoring has played an important part; and in Indonesia general governance has improved.

The cost of reduced illegal logging are estimated at less than \$3 per tonne of CO<sub>2</sub>, or \$6 in extra revenues for every \$1 invested.

## **Conclusions and recommendations**

Despite the improving situation, there is no reason for complacency. Illegal logging is still a major problem, with the volume of timber estimated to be 100 million cubic metres per year – enough logs to create a line running 10 times around the world.

In producer countries, greater effort is needed to tackle the more difficult problems which have seen less improvement, such as:

- Domestic markets.
- Illegal harvesting by licensed companies.
- Illegal issuance of licences to clear forest.

This will require a more profound overhaul of regulations.

Among consumer countries, Japan needs to follow the US and the EU and prohibit the handling of illegally harvested timber. It is important that such laws are implemented and enforced, and this requires cooperation with source countries – VPAs have been shown to have a broader positive effect on policy.

Among processor countries, China needs to take more concrete action. China should prohibit the use of illegal timber, implement a government procurement policy, and require evidence of legality for timber imports (e.g. recognise FLEGT legality licenses).

Aside from the focus on specific countries, it is important to ensure that the REDD agenda supports efforts to tackle illegal logging and improve forest governance, and not distract from them.

The report and country report cards are available on the Chatham House illegal logging website: [http://illegal-logging.info/approach.php?a\\_id=186](http://illegal-logging.info/approach.php?a_id=186)

The PowerPoint file of this presentation is available at: <http://illegal-logging.info/uploads/Lawson270111.pdf>

## **FLEGTability: catalysing initiatives to control and verify the origin of timber in support of the FLEGT Action Plan in South American countries**

**Ulrich Malessa, TRAFFIC South America & Martha Lucy Mondragon, WWF Colombia**

There is currently very little activity connected with VPAs in South America. The only countries to have requested information to date are Colombia and Ecuador.

Current socio-economic and political circumstances are worth noting:

- Informality and illegality – more and more forest operators are informal, and between 20% and 80% of Amazon timber is illegally sourced.
- Modernised states – there is a current trend towards developing effective and lean administrations, with full controls (e.g. internal revenue services).
- There are a number of pilot projects to generate domestic demand for legal timber.
- There are strong emerging economies in the region.
- Forest conservation is low on the political agenda.
- In diplomatic terms, illegal logging is seen as a domestic concern and a matter of sovereignty.

The proportion of harvested wood being exported to the US and the EU varies greatly between South American countries. 45% of Brazil's exports go to the EU and 34% to the US, whereas only 2% of Colombia's exports go to the EU and 11% to the US. For Colombia, Venezuela is the key market and for Peru, Mexico is important.

TRAFFIC, WWF and IUCN want to open the debate on FLEGT in the region. The overall aim is to create an enabling environment and increase capacity in South America for initiatives that reduce illegal logging, with a focus on trade from Brazil, Colombia, Ecuador and Peru. The project will involve six key activities:

1. Increasing understanding of FLEGT in South America.
2. Generating knowledge of options for action.
3. Indicator studies on the response to illegal logging.
4. Catalysing a transition towards FLEGT compliance.
5. Exploring and promoting FLEGT synergies with other initiatives.
6. Increasing awareness of, and demand for, EU FLEGT compliant timber supplies.

The project partners want to use the Chatham House indicators study to develop a benchmark for forest governance. The benchmark will be developed via a participatory process with key stakeholders. A comparative analysis of benchmarking results from the four countries will be produced. The benchmarking tool methodology, guidance notes and lessons learned will be published.

Establishing a benchmark for forest governance is important for a number of reasons:

- To facilitate understanding of the complexity of forest governance.
- To help stakeholders understand what constitutes forest governance.
- There is a big gap between theory and practice, therefore a benchmark helps to visualise the impacts.
- Highly aggregated indices, such as the Human Development Index, do not provide the data needed to understand the specific challenges in the forest sector.
- To help actors to recognise their shortcomings and strengths.
- To highlight areas that require action.

Focusing on Colombia, it is estimated that the level of illegality is 42%. Illegality is found along the whole production chain from harvesting and transporting, to selling and buying. Indigenous people own at least 50% of forests.

The government has forest governance and trade of illegal timber as a key point in its four-year programme so it is high on the political agenda. A National Legal Timber Pact is in place, signed by 24 organisations. There is a National Strategy for the Control and Surveillance of Wood and two FLEGT projects are under way. Sub-national governments have also shown interest in developing Regional Legal Timber Pacts. A gap study is planned to examine missing knowledge on illegal timber, and a process is in place to develop indicators on sustainable forest management.

The TRAFFIC-WWF-IUCN project will add to the activities aimed at sustainable management of forest systems, and will reinforce the control and surveillance systems. It will encourage the participation of the private and public sectors and communities, and also contribute to strengthening forest and land use governance at the national, sub-national and local levels.

The PowerPoint file of this presentation is available at:  
<http://illegal-logging.info/uploads/Malessa270111.pdf>

## **International public-private partnerships for strengthening the value chain of sustainable tropical timber**

### **Petra Hamers, The Amazon Alternative**

The Dutch Sustainable Trade Initiative (IDH) is a project centred on multi-stakeholder public-private partnerships, with the aim of making mainstream markets for a wide variety of commodities more sustainable. It works with 'coalitions of the willing', the sector front-runners, and focuses on bottle necks in the supply chain. In the context of forests, forest management is the first step in the chain.

IDH aims to mainstream sustainability by improving the business case; for example, implementing faster, more robust certification processes, with up-front additional match-funding, or through faster, more proactive and more effective demand alignment, so that the demand for the certified tropical timber exists when the certification is in place. Three programmes have been initiated in the Amazon, the Congo Basin and Indonesia to increase the amount of certified forest by 10 million hectares.

The Amazon Alternative was created in 2009 with three key objectives:

1. Better market access for FSC certified timber on national and Dutch / European markets.
2. More Amazon forest under FSC certified forest management.
3. Effective, long-lasting cooperation between all actors involved.

Demand will help to drive production and achieve 4 million hectares under certification. Cooperation at the national level between the private sector, civil society and government is crucial to success.

Participants include private forest owners, concessionaires, saw mills, construction firms, housing corporations, the retail sector, forest communities and social enterprises, governments at national, regional and local levels, NGOs, labour unions, financial institutions, research institutions and other sponsors.

The four key strategies for the programme are:

1. Increase demand both locally and in Europe – using market information brokering, incidence purchasing policies, and promotional species.
2. Forest management and chain of custody certification – producing manuals, studies on high conservation value forests (HCVF), training, cooperation between companies and communities, and evaluations.
3. Efficiency – forest inventory and management, timber processing, and product development.
4. Enabling environment – government policies, regulations, and financial institutions.

In Peru, the focus will be on the many small private sector forest owners and concessions; in Bolivia, the community owns the majority of the forests, and in Brazil, ownership is mainly in the hands of the private sector.

The targets for the amount of hectares under certification are:

- 2010 – 166,481 hectares – achieved.
- 2011 – 1,164,094 hectares.
- 2012 – 2,986,302 hectares.
- 2013 – 1,098,112 hectares.
- **Total – 5,430,865 hectares.**

The PowerPoint file of this presentation is available at:  
[http://illegal-logging.info/uploads/1\\_Hamers270111.pdf](http://illegal-logging.info/uploads/1_Hamers270111.pdf)

### **Discussion**

**Question:** A participant noted that Brazil’s deforestation rate is reducing and that this is likely to be due to a combination of better governance and the fall in commodity prices. Did the Chatham House report take both these factors into account?

**Answer:** The report considered both Brazil’s deforestation rate and export figures; it does not claim that all the reductions in deforestation are due to better governance. However, reductions in both illegal logging and deforestation began prior to the current economic recession.

**Question:** A participant asked whether domestic demand for timber in Brazil, which is a key driver for illegal logging, was being addressed.

**Answer:** Most timber consumption is domestic. Loggers entering the forests to extract timber for direct sale are often abused by other interests. They may cause social conflicts and clearly have a negative impact on forest management, but they are not the key drivers of large-scale deforestation in South America. More significant is commodity agriculture, which requires a high level approach. Measures put in place to combat illegal logging will not stop deforestation on their own, although empowering communities to protect their forests through, for example, building their capacity to monitor activities is very important.

**Question:** A participant asked whether South American countries will be able to meet the EU Timber Regulation requirements or whether trade patterns would be likely to shift.

**Answer:** There are serious efforts in most South American countries to tackle the problems that exist. These centre on good governance and economic growth to conserve nature and alleviate poverty. For example:

**Ecuador** has put in place a new computerised database system for forest management and trading permits, which reduces the opportunities for corruption, and which will bring many actors into the formal sector.

**Peru** is the most difficult country in which to address the issues, because the political focus is not on forest management but purely on economic growth. The government sees the Amazon firstly as economic development potential. There are moves to develop monitoring and traceability systems, but these have a long way to go. In trade terms, FLEGT may not provide the necessary leverage but establishing a dialogue is still important.

**Colombia** has forest management firmly on its agenda and is making significant progress.

**Bolivia** has a strong political tendency to introduce its own initiatives rather than be influenced by external factors.

**Brazil** presents a different challenge as it is not only a country the size of Western Europe with significant decentralisation to the state level, but its export market is currently not as important as its domestic market.

**Question:** It was noted that the Chatham House report found that illegal logging had reduced in Cameroon, but that this was based on official statistics and the views of independent monitors. However 'hidden' illegal logging is very difficult to track and therefore the volumes are hard to estimate; it is important that methods are found to monitor this.

**Answer:** The wood balance method referred to in the report looks at timber consumption vs. the legal harvest; this does not capture illegal logging within the licensed harvest, but it does capture most other forms of illegal logging. It is clear that, even if illegal logging is being reduced in Cameroon, it is still a significant problem.

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**Friday 28<sup>th</sup> January 2011**

## **SESSION V: CHINA AND THE MEKONG REGION**

### **China and the Mekong: timber trade and governance snapshot**

#### **Kerstin Canby, Forest Trends**

**China** – China's timber exports peaked in 2007 and fell back in the following two years. However, the figures for 2010, when available, will show a significant increase. Domestic production is also up.

Import figures show a trend of steady increase, except for a dip in 2008. In 2009, China was the only market showing a growth in demand for forest products. Figures for the first quarter of 2010 show total imports increasing by over 100%, with lumber imports from Russia up by 77%, from Canada up by 200%, from Thailand 140% and from the US 40%.

Chinese commodity demand is making a significant contribution to the global economic recovery. The demand for timber is influenced by a number of factors including the relative strength of the Chinese economy, a stimulus package encouraging infrastructure development and construction, and an increased acceptance of lumber as a construction material.

In terms of domestic production, China reduced harvesting in natural forests in the 1990s and focused on the development of plantations. There are timber tracking systems in place but these have proved difficult for manufacturers. The land allocation process has resulted in an increasing number of land use conflicts so policy reforms have enabled households to transfer land rights to outsiders providing the process is voluntary. However, a study by RRI (Rights and Resources Initiative) in 2009 found that were irregularities in the way in which Stora Enso acquired access to land for its plantation programme.

60% of China's forest products exports are destined for the US, the EU and Japan, therefore making them 'vulnerable' to new laws and procurement policies.

Vietnam and Thailand are also processor countries in the region but their trade is dwarfed by that of China.

**Vietnam** – Vietnam has ceased harvesting in its own forests, which has resulted in ‘leakage’ to countries such as Laos. Within Vietnam, plantation development is increasing. There are no certified forests in Vietnam, but there are many chain of custody certifications. The industry is very concerned about the Lacey Act and the EU Timber Regulation and is in the process of negotiating a VPA with the EU. Preliminary studies are being undertaken as part of this process with strong collaboration between the government and industry, although civil society has yet to be involved. Approximately 80% of Vietnam’s forest product exports are ‘vulnerable’ to US, EU and Japanese laws, regulations and procurement policies.

**Thailand** – Thailand’s imports have declined from a high point in 2005; it is likely that, although a high proportion of imports appear to come from Malaysia, a significant amount of those products originated in Burma. Thailand has stopped harvesting its own natural forests and there are strict controls in place to track domestic harvests. Plantation development is important and growing. 7,000 hectares of forest are under FSC certification. Thailand has a history of land conflict, and has a highly controversial policy process regarding community forest management and enterprises. The timber industry is very concerned about the Lacey Act and the EU Timber Regulation, but the government has been slow to respond. Approximately one third of Thailand’s forest product exports are vulnerable to US, EU and Japanese laws, regulations and procurement policies.

**Laos** – Laos exports the majority of its forest products to Vietnam, Thailand and China. The main source of timber is ‘conversion timber’, the legal status of which is problematic, due to issues such as the definition of ‘degraded’ land that is allowed to be converted. Plantation development is increasing, as are land use conflicts. There are legal loopholes in every part of the timber process and although a small amount of forest is FSC certified, there is no chain of custody certification, thereby preventing the products being exported as certified, which results in them becoming lost in the system. The Vietnamese timber industry is highly influential, and there is no recognised role for civil society.

**Cambodia** – The vast majority of Cambodia’s exports are destined for Vietnam. As with Laos, a key source of timber is converted land, which has dubious legal status. There have been no industrial scale concessions since the early 2000s, and plantation development is increasing, as are land use conflicts. Political patronage networks have been well-documented by Global Witness. Civil society is still weak but there are improving prospects for community forest management.

**Burma** – the majority of Burma’s exports are shipped to China and India. Overall exports have almost halved since a high point in 2005. However, illegal logging and export are widely reported; ‘legal’ exports are stamped by the government and subsequently mixed with ‘illegal’ logs and smuggled via Yunnan across the border in China. There is evidence that some exports are reaching Europe via Malaysia and/or Vietnam or are being transhipped via Singapore.

There are seven key points in conclusion:

1. **Common problems** – issues around re-exports, capacity, political and financial means for enabling effective forest governance, confusing laws and a lack of good data all prevent better governance in the region.
2. **Land use allocations and conflict** – land allocations are not proceeding according to the law; underlying this are issues such as insecure land tenure and rights of access.
3. **Conversion timber** – developmental projects are within the sovereign rights of individual countries, but are not proceeding according to the countries’ laws.

4. **Plantations** – these are developing right across the region and attract the investment of large multi-national companies. Many plantation investments are developed to feed vast pulp and paper mills.
5. **Lack of domestic experts and weak civil society** – there is a lack of experience in policy processes and in understanding legality verification processes.
6. **Lack of coordination between BINGOs (business-friendly international NGOs).**
7. **Potential for REDD / FLEGT mutual benefit** – there is a great deal of potential for there to be mutual benefits from these processes, but also the potential for them to work as separate parallel processes. REDD processes started prior to any FLEGT dialogue in the region, but FLEGT is clearer on issues such as land ownership, so could be of real benefit.

The PowerPoint file of this presentation is available at:

<http://illegal-logging.info/uploads/Canby280111.pdf>

## **Structuration of the Chinese timber trade: insights from Amazonia and the Congo Basin**

**Louis Putzel, Center for International Forestry Research (CIFOR)**

In 2009, China imported 54% of the world's tropical logs and 28% of the world's sawn wood and exported secondary products worth \$16.4 billion.

It is useful to have a conceptual framework within which to analyse the industry; structuration theory considers the relations between social groups rather than between institutions, and builds structure out of complexity. When applying structuration to the timber trade:

- Companies and people involved in logging and the associated trade operate according to a set of national and international norms and laws.
- Norms and laws are modified with inputs from actors:
  - External to the timber trade (e.g. Governments and conservation bodies)
  - Internal to the timber trade (e.g. timber companies and communities with the resources to participate).
- New logging and timber trade norms and laws are designed, i.e. structure is only signified until it becomes practice.
- In order to be effective, norms must also be legitimated (practiced) and then dominate through enforcement by powerful actors.

Timber actors experience new structure in different ways. If they have the resources to adapt to change, they may help to legitimate the new structure. On the other hand, if companies have few resources or a lack of will, they may be excluded from the new structure, and go out of business or follow non-legal or interim norms. If those with the resources to adapt continue and the rest become marginalised, the new structure dominates.

In the context of China, there are three notable international efforts to structure legal trade:

1. State Forestry Administration (SFA) and the Ministry of Commerce have introduced guidelines to Chinese companies for overseas silviculture and forest management. However, there is no information on how this is being implemented, so it remains at the *signification* stage.

2. SFA and the China Academy of Forestry, with the involvement of DFID and DEFRA (UK), ProForest and timber companies, are developing a Timber Legality Verification System (TLVS). This has not yet been tested, so is at the *signification* stage.
3. China Legal and Certified Timber Market Forums, with involvement of NGOs and the timber companies, are promoting FLEGT (at the signification stage), the Lacey Act (at the legitimisation stage) and FSC (at the legitimisation / domination stage).

Existing examples of adaptation include the following:

- **Legitimation through acquiring permits** – In Gabon, certain logging permits in specific zones were formerly reserved for Gabonese nationals. In 2001, the per area tax on concession lands was increased from 8 to 600 francs resulting in many Gabonese permit holders being unable to pay. Chinese-owned companies were allowed to purchase the existing permits and enter the market.
- **Legitimation through acquiring companies with certified concessions** – In 2008, Chinese timber companies acquired certified forest concessions in Peruvian Amazonia. Certification was mentioned as one of the stated objectives of the purchases, although the companies have also continued to operate within the informal trade. In 2011, a Singapore-based firm acquired a timber company and its subsidiaries with certified concessions in the Congo Basin. Certification was documented as one of the stated objectives of the purchase.
- **Business as usual / going out of business in the DRC** – in DRC (Democratic Republic of Congo), under the structuration of the timber sector under a new forest law and reconversion of concession titles, no Chinese or ethnic Chinese-owned company concession survived the reconversion. Two Chinese companies follow an interim system of 50 hectare permits. Chinese exporters continue to buy timber at port, but ethnic Asian companies face stigma in dealing with organised timber company groups.

The diversity of actors (timber companies, extractors, export companies and intermediaries), of species traded and of third party consumer markets adds complexity to the structure of the Chinese timber trade. It could be argued that the Chinese market appears to create more complexity in the global trade.

The Chinese market demands much higher volumes of secondary species than the EU or the US, resulting in greater opportunities for mis-labelling and the likelihood of inaccurate verification at customs.

Mainland China-owned companies increasingly export to third party markets, e.g. from Peru to the US, Mexico and across Latin America, and from the Congo Basin to Europe. Importing countries have customs controls and their own laws and imports, but there is a question as to whether China is responsible for companies exporting to third party markets. The majority of timber exported to China from Africa and South America has been exported by non-Chinese timber companies; China has responsibility at customs to accept or to reject legality documentation but are third party countries responsible?

In conclusion, structuration of the international timber trade is resulting in modification of norms and laws in producing countries and in consumer countries. Changes in these norms and laws are promoted by global actors, especially in conservation and sustainable forest management. Timber companies with resources participate in structuration and may survive under a new regime, but other companies either go out of business or continue to operate according to temporary or illegal models. A key question to consider is what happens to local people who depended on the old models.

The PowerPoint file of this presentation is available at:  
<http://illegal-logging.info/uploads/Putzel280111.pdf>

## **China timber legality practice**

### **Shengfu Wu, China National Forest Products Industry Association**

Chinese wood products production is increasing and markets continue to develop.

Within China, there are approximately 1,950 million hectares of forest, amounting to 20.4% of total land area. These forests range from tropical rainforest to sub-tropical evergreen broadleaf forest, to temperate forests, and support 30,000 higher plant species, 8,000 woody plants, one third of which are endemic and relic species, accounting for 40% of the world's total. The majority of forests are located in South East China.

Forestry plantations – agriculture forests – are growing fast in China. The key species grown are poplar, acacia, eucalyptus and bamboo. 85% of bamboo products on the global market are from China; bamboo is a useful substitute for tropical timber.

Poplar veneer production is an important industry and the companies which are well-managed produce the highest quality products in the world. The industry is very labour-intensive.

There are legitimate public concerns about illegal logging and questions about where to strike the balance between environmental and social issues and economic benefits.

There are two systems in China for establishing traceability of timber, one for domestic timber and one for imported timber. The system for domestic timber operates on the basis of logging licenses, transport licenses and processing licenses. The system for imported timber involves customs laws, certification documentation and VLO documentation.

Certification is growing quickly in China, from less than 0.4 million hectares in 2007 to almost 1.8 million hectares in 2010. China is also developing a legality verification system.

There is still much uncertainty within China about new policies and laws in consumer countries, including the Lacey Act, FLEGT and the EU Timber Regulation. The Lacey Act requires legality from stump to shelf, but it is not clear how to achieve this, where to find guidelines, who will be enforcing this and how the system will work in practice.

In the light of new requirements in key markets, China is discussing introducing a code of conduct, including the establishment of a due diligence system. The code will specify the obligations and responsibilities of signatories to the code, and provide guidance on how to comply with policies in order to minimise the risk of supporting illegal logging and associated trade activities. Such a code would build a fair and legal trade platform, whilst promoting the sustainable development of the timber product trade. The code of conduct would be voluntary and will encompass traceability, legality, declaration and practice.

Under the code, a system of risk management would require investigation of the wood origin and its legality, and require the timber supplier to sign a declaration of origin and legality. Risk assessment may be undertaken by a third party and the aim would be to minimise all risks. Signatories would be required to operate a green purchasing policy, which would prioritise the purchase of wood sourced from certified forests, ensure that locally produced goods have logging, transportation and processing licenses, and require the application of due diligence to imported logs. The aim would be to avoid the use of high risk products.

Organisations eligible to become members of the code of conduct would need to be lawful organisations without any unfavourable records, which agree with the principles of the code,

operate business with integrity and reliability, take care of their social and environmental responsibilities, and engage in corporate social responsibility.

The aim of the code would be to ensure companies are operating under a system of good governance, and to maximise the application of due diligence in order to comply with the requirements of FLEGT and the Lacey Act.

The PowerPoint file of this presentation is available at:  
<http://illegal-logging.info/uploads/ShengfuWu280111.pdf>

### ***Discussion***

**Question:** A participant asked whether the Chinese timber industry is likely to go through some form of re-organisation and, if so, what would that look like, would small companies survive and would it result in a greater geographical concentration?

**Answer:** The Chinese timber industry is restructuring continuously. Until recently, the industry was almost 100% state-owned, whereas now it is under approximately 99% private ownership. Smaller, mainly family-owned companies are still crucial as they provide the timber for the family and for sale in local communities. The larger companies tend to have 30-40,000 employees and to be very hi-tech.

There has been huge investment in the processing industry in China, by both Chinese companies and by multinational companies. There are many actors who have an interest in protecting the sector. There are exclusionary tendencies developing against some smaller actors and if the price offered is acceptable, smaller companies will sell their assets. There is no doubt that it is becoming more difficult for smaller companies to operate, and this raises questions about whether the distribution of timber products will shift to larger operators or remain a key role for the wealth of social networks across the country.

**Question:** A participant asked what happens to the initial donor subsidisation of companies which are subsequently bought by Chinese companies, and what happens to the long-term commitments on sustainable forest management and relations with the local community?

**Answer:** It is usually the case that when one company purchases another, it remains intact. Debts and obligations should transfer as well as the assets. It is likely there will be a financial guarantee that obligations will continue to be met and that there will be a guarantee covering any donor money. FSC certification is transferable and when the concession or forest is due to be reviewed it will be re-assessed for compliance as it would have been under the previous ownership.

**Question:** It was noted that under the Forest Land Reform Act of 2008, there was a huge shift from collective to household tenure. Households can now lease forest land, but there was a concern that the land would then be leased to companies. Has this happened?

**Answer:** Some state-owned forests remain state-owned and these are key areas. Land that has been transferred can be sold or leased but the land use cannot change and any logging requires a permit which specifies how much timber can be cut.

## **SESSION VI: PAPUA NEW GUINEA: IMPROVING GOVERNANCE OF THE FOREST SECTOR**

### **Sustainable forest management, governance and trade in Papua New Guinea**

#### **Dambis Kaip, PNG Forests Authority**

Forests cover two thirds of PNG and are very important to the economy. Of the 29 million hectares of forest, 15 million hectares are production forests, and 14 million hectares are reserve forests. 12 million hectares of the production forests are 'acquired areas', native customary land which has been 'acquired' by the government in order to grant concessions. 10 million hectares of the production forest areas are under timber permits. The current committed cut is 8.9 million cubic metres per year and this has never been exceeded. Under a government-approved agriculture programme, 1.5 million cubic metres are cut per year in order to establish plantations for products such as palm oil.

There are 34 steps under the resource acquisition, allocation and operational process to ensure proper allocation and management. Log harvesting and exports are always below the amount set for the sustainable annual allowable cut (SAAC).

The major destination for PNG timber is China, which accounts for 82% of exports. Other countries importing from PNG include India, South Korea, Vietnam and Japan.

The total area of planted forests to date is only 65,000 hectares. These forests are scattered throughout the country. Pine and teak are the only introduced species and the main species planted are indigenous tropical hardwood species.

The forestry sector makes a significant contribution to PNG through:

- Economic and social well-being of the rural population.
- Providing K400-450 million (US\$150-170 million) on average annually to GDP.
- Providing K120-130 million on average annually in taxes.
- Providing K40-45 million in royalties and levies to landowners.
- Providing infrastructure – roads, bridges, wharfs, jetties etc.
- Providing community services – schools, health services, transport etc.
- Providing employment – more than 8,000 employees in both rural and urban areas.

PNG's National Forest Policy was introduced in 1991, since when it has been amended on a number of occasions. Also in place are National Forestry Development Guidelines, a Code of Logging Practice and many other instruments to guide PNG towards sustainable forest management.

PNG also receives assistance under, and takes part in, a number of donor projects, including the provision of four advisers under the Australian government's Advisory Support Facility, a FLEG-ITTO project, a sustainable forest management project with TNC-ITTO, the acquisition of GIS remote sensing equipment, with US\$7 million funding from Japan, and an eco-forestry programme supported by the EU.

Timber products leaving PNG are legal. SGS (PNG) has checked all log exports since 1994, all timber is harvested and exported in accordance with the Forestry Act, and strict forest resource acquisition, allocation and operation processes are in place. ITTO, of which PNG is a member, defines illegal timber as timber that is extracted and sold in contravention of national laws. By this definition, PNG timber is legal.

PNG is introducing a number of new policy initiatives, including the acceleration of domestic timber processing, improvements to landowner benefits and livelihoods, REDD initiatives and improved governance and accountability through a new Corporate Plan.

Going forward the key challenges will include the implementation of the Corporate Plan, addressing future resource security options, the development of the plantation industry and opportunities for carbon trading. PNG lacks resources for the effective monitoring of logging operations, managing natural forests and establishing new plantations. Land tenure continues to be a controversial issue and the diverse interests of landowners – due in part to the influence of particular interest groups – complicates efforts to achieve sustainable forest management. PNG also sees a lack of clarity in the requirements for different market regimes.

PNG's key achievements in forestry include:

- The development of a sound policy and legal framework to support sustainable forest management capabilities.
- Stakeholder dialogue in the implementation of policies and programmes.
- The involvement of stakeholder consultation in the timber allocation process.
- Adequate links with international organisations.
- The increase in landowner benefits, such as royalties.
- Third party monitoring of log exports.
- Increased contributions from the forest sector to the economic development of PNG.

In conclusion, like many countries, PNG is doing all it can with limited resources to achieve sustainable forest management. Stakeholder dialogue is a very significant part of this process. PNG continues to maintain the legality of its timber trade.

The PowerPoint file of this presentation is available at:

<http://illegal-logging.info/uploads/Robinson250610.pdf>

## **Navigating a way forward for PNG's timber industry – responding to market perceptions and diverse markets**

**Bob Tate, PNG Forest Industries Association**

**From the private sector perspective:**

Illegal logging undermines the financial viability of the legal forest products industry. Consumer aversion – largely the result of misleading ENGO campaigns – to the use of tropical timber impedes efforts to achieve rural-based growth, employment and poverty alleviation. Declining returns from legal forest activities creates a perverse incentive for forest owners to seek higher returns from alternate land use activities. Permanent forest conversion, such as to commercial agriculture, often results.

Increasingly complex 'rules' of doing business add significantly both to the costs of doing business and to the perception of uncertainty which undermines investor and forest manager confidence.

REDD+, initially welcomed by the private sector as having significant potential for post-harvest management, and for encouraging reforestation and afforestation on degraded lands, and plantation development, is now dominated by a carbon / green aid approach by donors and recipient governments.

### **From an ENGO perspective:**

Logging companies destroy over 250,000 hectares of primary forest each year in PNG, most of it illegally. According to Greenpeace Pacific in November 2010, 90% of logging is estimated to be illegal, up from 70% two years previously.

According to Transparency International, over 90% of exports leave PNG unchecked by SGS; SGS 'checking' is only a paper exercise.

According to published reports, such as the Chatham House study discussed earlier, there is strong evidence of illegality in the allocation of concessions.

Even the World Bank estimated in 2006 that 70% of logging in PNG was illegal. However, this figure was not the result of original research, but of the evaluation of available reports, the accuracy of which is dubious.

### **The dilemma:**

There is no agreed national definition (among the ENGOs) of illegal harvesting. The PNG Forestry Authority uses the ITTO definition which refers to the *'harvesting, processing and trading of forest products in violation of national laws'*.

In the absence of an agreed definition, commercial forest activities are being judged on the basis of Greenpeace's definition. This is a much broader definition and encompasses areas of responsibility that are beyond the mandate of the Forestry Authority. Based on this definition, it would be fair to conclude that commercial harvesting activities in almost all countries are illegal in one aspect or another. Therefore, is it justified to single out PNG?

Production in PNG is export-driven. Processed products are assuming greater importance to both market share and enhancing domestic economic opportunities and growth. In log markets, PNG is perceived as a low-value, species diverse, spot supplier. In the long-term, reliance on China as a log export market may be unsustainable as China continues on a drive towards self-sufficiency. Plantation log exports are sent mainly to Vietnam and Japan.

For processed products, Australia is a significant and growing market; other key markets are South Korea and Taiwan. The EU accounts for less than 1% of exports.

In order to establish a way forward, the following elements are important:

- There must be recognition of national sovereignty and laws – the EU regulations appear to endorse such an approach.
- Under such laws, forest conversion, and the forest products resulting from this, may be legal.
- Sustainability, particularly in developing countries with high population growth rates, is not necessarily the primary determinant of forest use.
- Forest certification schemes, such as FSC, require legality, chain of custody verification, sustainability and an emerging 'no conversion' requirement.
- The collapse in the confidence in consumer countries of the ability of producer countries to administer their forest resources in the national interest, necessitate independent verification of compliance with national laws.
- Effective chain of custody systems can also provide end user confidence in legal sources of supply.

Within PNG, the annual sustainable log harvest has never been exceeded. All log exports are independently checked by SGS for species, measurement, volume, taxes and royalties paid, the validity of the harvesting permit and of the export permit and license. SGS carry out the work under contract to the government. Voluntary legality and chain of custody verification schemes have been instituted by companies involved in processing, including VLO and VLC compliance and chain of custody schemes, and FSC Controlled Wood certification. PNG has met, and exceeds the often cited target of 10% of land set aside for conservation forests.

Among importing countries, there should be a consensus and recognition of credible, independent third party legality and chain of custody verification schemes. This should be led by the EU, Australia and the US, significant importers who have imposed import restrictions or requirements outside the normal course of trade.

Finally, if REDD+ is to achieve results, in developing countries where governance and systems are weak, there must be a re-engagement with the private sector that will achieve monitoring, reporting and verification (MRV) results and enhance or rebuild forest carbon sinks as part of broader sustainable forest management objective. The sustainability of 'carbon aid' projects, where development and economic objectives are uncertain, could be further strengthened with the existing commitment to long-term forest management by the private sector.

The PowerPoint file of this presentation is available at:

<http://illegal-logging.info/uploads/Tate280111.pdf>

## **Illegal logging in Papua New Guinea: NGOs perspective**

### **Thomas Paka, Papua New Guinea Eco-Forestry Forum**

80% of people in PNG depend on the forests for their livelihoods. 5% of the world's biodiversity is found in PNG, and some species, such as the bird wing butterfly, are unique. The fast depletion of the forests is threatening the livelihoods of the people, contrary to the spirit of the country's constitution which calls for the sustainable use of resources.

The PNG timber trade mostly involves round log exports and is dominated by Chinese and Malaysian logging companies. The forestry sector has faced a lot of controversy and there are increasing numbers of court cases being brought against it.

The forest sector is subject to a number of contradictions and confusions. The many amendments to the Forestry Act are interpreted in different ways by different people, and the sector is also subject to a great deal of international attention and encouragement from many different angles (e.g. the World Bank, the EU and Australia) to improve forest governance. There is no agreement amongst stakeholders on the definition of illegal logging. Although PNG leads the international debate on REDD, logging is continuing at alarming rates, in part as a result of the granting of agricultural leases. On a positive note, a move to increase in-country processing and reduce round log exports is encouraging.

The Forestry Policy and legal framework are strong in terms of social and environmental considerations, however, compliance and enforcement have presented a major challenge, and political patronage and corruption are common.

Illegal logging is a matter of widespread concern in PNG. There have been many reports and much media coverage of governance and illegal logging in PNG; despite these reports, the logging industry and the government are still insisting that there is no illegal logging because the companies have proper permits and licenses.

Based on the ITTO definition, NGOs believe that breaches of any of the laws concerning the management, harvesting, transporting and selling and buying of the forest products is deemed illegal. Illegal logging is to do with laws, compliance and enforcement. Levels of compliance and enforcement of the laws determines the legality of logging operations, therefore the following examples demonstrate illegality:

- Resource owners have not fully consented under the requirement for Free Prior and Informed Consent (FPIC) in Section 57 of the Forestry Act. Many court cases have been heard.
- No proper Incorporated Land Groups (ILGs) studies have been carried out to determine the genealogy of those claiming ownership. This is likely to result in more legal challenges.
- The National Forest Plan expired in 2001 and there is no replacement as yet. Section 54 of the Forestry Act requires that all resources shall only be developed in accordance with the NFP; since there is no NFP, all logging could be deemed illegal.
- No National Forest Inventory has been completed as is required by law. It is hoped that this can now be achieved through the Japanese-funded GIS project.
- Serious breaches of the logging code of conduct have been noted by many reports:
  - Logs harvested on slopes greater than 30 degrees.
  - Logs harvested within 50 metre buffer zones.
  - Roads constructed poorly and on swamps and wetlands.
  - Trees less than 25cm diameter at breast height have been felled.
  - Bridges built with wooden culverts only to last the life of the logging project and not to bring long-term benefits.
- Agricultural leasing is increasing in forested areas, but with no real evidence of agricultural development, yet the logs are exported. This is done either to by-pass the 34 steps of the Forest Management Agreement process or to take part in the REDD process. As of 27 January 2011, almost 5 million hectares have been allocated for this purpose; this amounts to illegal logging.

Moving forward, it is important to agree a definition of illegal logging that encompasses all aspects as stipulated in the laws governing the resource. Enforcement and compliance needs to be improved if sustainable forest management is to be achieved. That includes strengthening the state institutions responsible for forest management. Recommendations from different reports need to be considered and implemented. Finally, more financial assistance is needed to improve management capacity for monitoring and enforcement.

The PowerPoint file of this presentation is available at:

<http://illegal-logging.info/uploads/Paka280111.pdf>

### ***Discussion***

**Question:** A participant noted that the forest areas under production are concessions, and asked whether landowners themselves are able to produce timber and suggested that establishing community forestry and encouraging artisanal logging would improve rural livelihoods.

**Answer:** The EU-funded Eco-Forestry Programme encompassed community forestry and there are examples of successful small-scale family companies. However, the

costs of compliance are beyond most smaller enterprises. Compliance, verification and third party auditing will be the death of the small indigenous informal sector.

There are also difficulties associated with the very poor infrastructure, poor quality of the timber produced and with meeting deadlines. There is a need to build capacity and understanding of the long-term approach needed for the success of community forestry.

**Question:** A participant noted that PNG has a strong legal framework on paper, that industry suffers from poor perceptions and that NGOs are vocal in exposing problems; when will the different sectors accept that they need to sit down together and work a way through this?

**Answer:** PNG needs to understand that it cannot survive by constantly retreating into the arguments of sovereignty and that it must look outside to other tropical countries to see what they have done and what can be applied within PNG. PNG needs to gain acceptance from the global community. Government, NGOs and industry need to sit down and examine best practice from elsewhere, current trends, and decide how best to bring benefits to local people.

**Question:** A participant noted that, if there are continuing doubts about the legality of PNG timber, China – a key market – will stop buying.

**Answer:** The industrial formal sector does operate in accordance with the laws of the land and follows parliamentary legislation, so the timber exported is legal. However, it would be useful going forward to educate field inspectors and forestry officials about the Timber Legality and Timber Verification (TLTV) Standard. Establishing a TLTV FLEGT project could also be considered.

**Question:** A number of concerns were raised about the conversion of forest areas for agricultural purposes, and that 50% of timber produced comes from conversion forests, and questions were raised about the legality of the process, and whether the permits allocated go against REDD+ commitments, and it was suggested there is a need for both a National Forestry Plan and a National Agriculture Plan.

**Answer:** Conversions for products for oil palm have resulted from the government's national development plan. The resources acquired from such development fund infrastructure projects for local communities. However, companies cannot simply move in and clear land; there is a clear process set down in law, which includes obtaining a license and undertaking a consultation with landowners and other stakeholders to ascertain if there are any objections. Once a project goes ahead, it is monitored by government officials to ensure compliance on the ground.

## **SESSION VII: PROGRESS ON FLEGT**

### **Assessing transparency in the forest sector in Cameroon and implications for VPA-FLEGT**

#### **Germain Djontu, Centre for Environment and Development (CED)**

40% of the rural population in Cameroon are living under the poverty line. The contribution of the forest sector to the national economy and to rural development is not reflecting the profits being made. Illegal logging, a lack of transparency and accountability and the inequitable

sharing of benefits are all characteristics of the industry. However, moves towards access to information and decision-making are steps towards good forest governance.

Transparency International has produced report cards for Cameroon. These are built around 78 indicators within 15 themes. The data is collected by local communities and representatives of the Forest Administration and analysed using traffic light symbols. The results show that progress was made between 2009 and 2010 with the establishment of a national forum on forests. However, key areas of concern remain around the publication of exploitation permits, public information on the volumes of timber exploited, harmonisation between forest and mining exploitation and consultation in the management of community funds. Making progress in increasing transparency takes time.

Establishing local forest forums is important for two key reasons:

1. Big investment projects, such as the construction of dams or agro-industry projects, often encroach on national parks so a forum should assist with the process or park protection.
2. There are many interests each defending their corners (e.g. forest communities, state organisations, forest concessionaires, mining groups, NGOs, and private tourist companies), and often a lack of coordination which may result in a loss of biodiversity.

It is particularly important to harmonise forest and mining policies.

The VPA between Cameroon and the EU has been signed and is now awaiting ratification by both the Cameroon Parliament and the European Parliament. Between May and September 2010, the Cameroon forest administration ran an information campaign to raise awareness of the VPA. At the same time, the process of reviewing forest law started and a number of other actions were implemented. The first FLEGT licenses are expected to be issued in 2012.

Most information required for the effective implementation of the VPA exists (e.g. information on timber production, legal texts, forest allocation, rights, forest management, wood processing, exports and financial transactions) but has not been made public, or has only been made partially public. The few differences reflected in the transparency report cards for 2009 and 2010 suggests that it will take years to make all the required information public. There is a need for close monitoring of information disclosure to ensure that the priorities of the VPA annexes are addressed.

The government should disseminate the information that does exist; there is no need to wait for other aspects of VPA implementation. The government should guarantee access to information by enacting a 'Right to Know' law, and the Forest Administration should design an adequate information dissemination scheme taking into account local community particularities.

The PowerPoint file of this presentation is available at:

<http://illegal-logging.info/uploads/Djontu280111.pdf>

## **Scenarios for implementing FLEGT VPA programmes: the role of social safeguards**

**Freerk Wiersum, Wageningen University, the Netherlands**

Wageningen University has undertaken a project to assess and strengthen livelihood considerations in timber legality policy by:

- Supporting good governance to manage the consequences of FLEGT VPA legality standards on local livelihoods.

- Strengthening the capacity of actors to (re)negotiate institutional arrangements for sustainable resource use in Ghana and Indonesia.

The Ghana VPA was the first VPA agreement to be adopted in 2008 and was the result of an inclusive design process. Besides the licensing scheme, it incorporates the domestic market and includes social safeguards. Hence, the VPA is not only about the formulation and implementation of a policy process, but is also a social learning process.

The study was aimed at establishing the opinions of the VPA process actors on the present and optimal design of the FLEGT regime in respect of the legality standards and the need for social safeguards during the VPA formulation process. A survey was carried out amongst VPA stakeholders in Ghana and Indonesia, and workshops were held in Ghana.

There are two different approaches that link timber legality and governance:

1. Governance of the traditional export timber sector, involving adherence to technical and administrative issues, and increased transparency and accountability through governance.
2. Governance of forests and livelihoods, involving adherence to norms on public-private interactions in allocation, use and trade of forest resources, and attention to benefit-sharing and social safeguards for preventing negative livelihood impacts.

Stakeholder responses were clear that the key focus of the VPA is the export timber market, although the domestic timber market is included.

There was not seen to be much emphasis on social issues, although social obligations for timber companies to provide labour rights were included, as were forest access rights and benefit-sharing mechanisms. In Ghana the VPA also includes a social responsibility agreement.

In the area of law enforcement, it was clear that respondents believed that 'soft law' issues (e.g. providing incentives for adherence to timber legality norms, capacity building, and alternative livelihoods for vulnerable people affected by VPA implementation) received more explicit attention in the VPA than 'hard law' enforcement issues (e.g. imposition of fines and punishments, or the criminalisation of violators).

In both countries, participants thought that only limited attention had been given to specific social safeguards, listed as:

- Legal security.
- Benefit-sharing / compensation.
- Capacity building.
- Legal reform.
- Expanding the resource base.
- Alternative livelihoods / employment.

All safeguards require more attention in order to achieve sustainable forest management.

Participants were presented with four possible policy scenarios for linking timber legality and forest governance and were asked which was the most likely through a VPA and which was the most desirable. The options were:

**FLEET** – Forest Law Enforcement for Export Timber.

**FLETS** – Forest Law Enforcement in integrated Timber Sector.

**FLEETL** – Forest Law Enforcement for Export Timber and forest-related Livelihoods.

**FLETSL – Forest Law Enforcement in integrated Timber Sector and for forest-related Livelihoods.**

50% thought FLETSL was the most likely outcome.

100% thought FLETSL was the most desired outcome.

In conclusion, during the VPA governance process the need for increased attention to social / livelihood issues was identified; e.g. the need for benefit tracking in addition to timber tracking, and the need to develop unspecified monitoring systems into further specified social safeguard criteria. One comment from the Ghana workshop was that the EU considers FLEGT VPA as a trade issue but they saw it as a development issue.

The PowerPoint file of this presentation is available at:

<http://illegal-logging.info/uploads/Wiersum280111.pdf>

## **Developing a strategic research agenda for forest governance and FLEGT**

### **Jo Van Brusselen, European Forest Institute EU FLEGT Facility**

The European Commission wants to be able to rely on robust science for policy making. One current research focus is on activities on governance in the context of FLEGT and REDD. The aim is to assess knowledge gaps, research needs and priorities and their urgency, and their relation to the FLEGT Action Plan.

The purpose of the research is to assist in the programming of research funding mechanisms, and to stimulate the development of research capacity. The research agenda must be comprehensive and policy relevant, prioritised and time-bound, strategic, include stakeholder consultation, and have a high degree of acceptance and ownership.

An advisory group is to be established, which is likely to include representatives from EFI, CIFOR, Chatham House, IUFRO (International Union of Forest Research Organisations), EU Member States, the European Commission, and the forest technology field.

The key stakeholders will be the European Commission (the client), EU Member States, the European forest research community, NGOs, timber importers, VPA partners, timber exporters and the EU FLEGT Facility expert team.

It is hoped that the final document will be published in October 2011. An initial consultation has already taken place. A second consultation in February – March 2011 will focus on a web-based survey and stakeholder networking. The third consultation, scheduled for May – July 2011 will work on drafting.

The shortlisted headline topics for research are:

- Policies and institutions – interactions with, and impacts of FLEGT on, other policies; and FLEGT VPA and local governance effectiveness.
- Monitoring, Reporting and Verification – the nature and extent of illegal logging, and due diligence; and legality assurance systems.
- Markets and trade – FLEGT VPA impacts on wood commodities markets and trade.
- Socio-economics – macro-economic effects and impacts; local socio-economic and community effects in VPA countries; and land allocation, registration, tenure rights, and transparency of related decisions.
- Organisations, process and networks – participatory process; and the learning of lessons.

The PowerPoint file of this presentation is available at:  
<http://illegal-logging.info/uploads/VanBrusselen280111.pdf>

### **Discussion**

**Question:** A participant commented that it was worrying that Cameroon still had such a long way to go in terms of transparency, in the context of a five-year VPA negotiation, and asked whether the VPA was spurring political will to strive for governance improvements.

**Answer:** There is political will for achieving governance improvements; this is clearly on the agenda now. However, it will be important for stakeholders to keep pushing the government to take relevant actions around the VPA agreement.

**Comment:** One participant felt it was useful to have commitments on transparency framed in the way described by the CED research and suggested that it was a useful tool in building capacity to hold different players to account. To date, there have not been any arguments from governments against information disclosure, but building capacity in governmental institutions to maintain information in the public domain will be important. Other stakeholders could look at holding some information and perhaps linking to relevant government websites.

**Question:** There were a number of comments on the description of the Ghana VPA process as set out in the Wageningen University study, specifically that civil society representatives have ensured that social principles and issues of benefits-sharing and rights of access are included in the VPA, and that this was one of the key reasons for the length of the negotiations.

**Answer:** The study reports on how the participants believe the various issues will be taken into account in the VPA implementation in Ghana. There was a clear sense that some issues were elaborated in detail whilst others were not. There was a clear desire to see more attention given to these areas in the VPA implementation.

**Comment:** A participant from the European Commission commented that the Commission does not see VPAs as solely a trade issue, and suggested that the Wageningen University study should explain the outcomes of the workshops, which do not reflect what has happened in reality, what political discussions have taken place, or why civil society decided some issues did not need to be included.

## **SESSION VIII: REDD AND FOREST GOVERNANCE**

### **FLEGT and REDD linkages**

#### **Valérie Merckx, European Forest Institute**

In Cancun, REDD+ was part of the climate 'mitigation' package. Agreement was reached on the three main issues left open in Copenhagen: the goal of REDD, the level of implementation and finance for REDD+. Annexes were adopted on guidance and safeguards for REDD, and the methodological and technical work programme.

At Copenhagen, progress was made on:

- Principles and safeguards.
- Scope of REDD – deforestation, forest degradation conservation, sustainable forest management, and enhancement of carbon stocks.

- National strategy and action plan – to address the drivers of deforestation, land tenure issues, forest governance issues and safeguards.
- The three operational phases – readiness, transition and results-based.

Discussions were ongoing over:

- The objective – was this the introduction of a global quantitative and qualitative objective?
- Sources of financing – fund vs. a carbon market.
- Level of implementation – national vs. sub-national.

At Cancun, consensus was reached on the three outstanding issues. The key points in each agreement are:

**The objective / goal of REDD** was formulated as *'Parties should collectively slow, halt and reverse forest cover and carbon loss'*. This is an aspirational goal.

**The agreement on the source of finance** is that parties will *'explore financing options for the full implementation of the result-based actions'*. The debate is still ongoing on the fund vs. the market.

**The national vs sub-national debate** was resolved by agreeing the implementation could be at a sub-national level as an interim measure within a national framework.

A work programme will start in 2011 on three key areas:

1. Identifying activities to counter drivers of deforestation and forest degradation and methodological issues associated with the estimation of emissions and removals from these activities.
2. Modalities for emission reference levels and robust and transparent monitoring systems.
3. Modalities for measuring, reporting and verifying emissions and removals resulting from the implementation of REDD+ activities.

The agreement reached on REDD+ in Cancun opens the door for concrete cooperation with FLEGT in three main areas:

1. **Establishing effective national processes** – the use of multi-stakeholder processes has proved to be a very effective way of engaging with stakeholder groups in FLEGT. Consultations in VPA negotiations bring experience on how to consult on a government-led national programme in an inclusive and effective way, and on how to engage the private sector. VPA negotiations have also demonstrated how to manage external pressures.
2. **Addressing the challenges of governance** – REDD national systems and FLEGT Legality Assurance Systems require cohesion and coherence at all levels from national to local. Lessons can be learned in the allocation of existing resources such as tenure and use rights, and for the allocation of income generated by REDD. The FLEGT Joint Implementation Committees (JICs) provide a useful template for a mechanism to oversee the development and implementation of national REDD programmes.
3. **Monitoring, reporting and verification (MRV)** – this is crucial for both FLEGT and REDD. FLEGT LASs can provide on-the-ground input into monitoring of forest

management and particularly of forest degradation. FLEGT LASs cover annual reporting, independent monitoring, the JIC, and an analysis of the long-term social, environmental and economic impacts. The LAS could be useful indirectly in providing models which REDD can also utilise.

The interest in both REDD and FLEGT communities for exploring the synergies between the two is high, but there is a real need for more information to provide the basis for making informed decisions. There is consensus on the potential areas for synergies: e.g. national processes, governance, MRV, and land use planning. Work on synergies should be taken forward at a country level, which is the most appropriate level for operational synergies to emerge.

Initially, coordination needs to be fostered at all levels, as establishing linkages will facilitate cross-learning and identification of operational synergies. The potential for multi-stakeholder processes and dialogues should be developed. Work should also be intensified on land tenure and land rights issues; any work done on this now will ease future debates on benefits-sharing.

FLEGT can help to address REDD+ governance issues, particularly now that FLEGT VPAs are becoming operational. However, it is important not to over-estimate the role of FLEGT in supporting REDD+, as the REDD+ scope is much broader than that in the VPAs. REDD can also help FLEGT to move more quickly by, for example, helping on land tenure issues, addressing fuelwood and charcoal production. It should be remembered that the REDD process started first in some countries.

The PowerPoint file of this presentation is available at:

<http://illegal-logging.info/uploads/Merckx280111.pdf>

## **TI's Forest Governance Integrity Programme: corruption risks in illegal logging and REDD**

### **Manoj Nadkarni, Transparency International**

Transparency International's (TI's) definition of corruption is *'the misuse of entrusted power for private gain'*. It is the primary driver of illegal logging. In order to curb corruption, National Integrity Systems need to be strengthened; this involves not just laws, the judiciary and enforcement, but a holistic system built up of various institutions that contribute to a country's integrity system. Corruption is best fought and prevented by institutional safeguards and reforms, and needs to be tackled from multiple directions.

TI's Forest Governance Integrity (FGI) Programme to combat illegal logging is based on the principle that direct law enforcement actions need to be complemented by national and global forest and timber trade governance reform. The programme involves:

- Identifying corrupt practices in the forestry sector that pose the greatest risk to governance.
- Identifying existing anti-corruption tools and initiatives within countries.
- Working with stakeholders to monitor the performance of such tools and identifying gaps needing governance and legal reforms.
- Conducting advocacy interventions aimed at raising awareness and addressing governance weaknesses.
- Critical but constructive engagement with all stakeholders focusing on a process of change.

Questions might be raised about whether this methodology could be applied to REDD, which can be very technical, however, REDD+ governance issues are not technical. Under REDD, laws, rules and regulations are decided upon and agreed to openly by all stakeholders in order to achieve a common good with benefits shared by all. Actors are decided by informed opinion and consensus. This is the basis of all forest governance.

However, many countries taking part in REDD are known for having high levels of corruption in the forest sector. Corruption could have many impacts on REDD, resulting in reduced donor / private sector / citizen confidence, and thereby reducing support for project involvement. There are many areas in which corruption could occur, for example land use change and planning, large companies could buy off local communities to accept projects, vested interests can bribe to receive more information or access to decision-makers and have advanced knowledge of tenders or investors. The fast pace of REDD could prepare the ground for corruption.

During REDD+ implementation, problems could include fraudulent under-estimating of baselines and over-estimating the amount of carbon reduction potential. However, the biggest issues are likely to be around land tenure and benefit sharing and distribution.

Some issues are the same for illegal logging:

- Are transparency criteria a part of tendering, concessions or land zoning processes?
- Can local institutions resist the financial power of large multi-national corporations?
- Will enforcement officials and the judiciary have enough knowledge to prosecute?
- Will financial institutions do enough due diligence on the source of carbon credits?
- Will assessors and certification agencies understand the corruption risks?

In order to address these issues, it is important to understand why and how corruption occurs, and why anti-corruption safeguards fail, and use this research to mobilise civil society organisations and help them to develop their own advocacy and monitoring activities, and to train government officials to recognise and find tools to minimise risks and work with them to ensure they are used. There are existing tools that could be useful in this, such as OECD conventions, transparency laws in procurement and tendering, access to information laws, and environmental and social impact assessments.

Establishing local ownership and using local knowledge and expertise for initiatives is vital for long-term impacts. External NGOs may be seen as patronising or anti-development and create resistance. Reforms need foundations built out of multi-stakeholder consultations, which will result in better informed decisions, more credible initiatives, and improve prospects for effective REDD implementation.

The PowerPoint file of this presentation is available at:  
<http://illegal-logging.info/uploads/Nadkarni280111.pdf>

## **Critical issues in Ecuador's forest sector and implications for the national REDD+ strategy**

**Sigrid Váscquez Davidsson, Grupo FARO**

Ecuador is a middle-income country but with extreme inequalities, and great poverty in rural areas. Forests cover 9.1 million hectares but this is reducing as the country has one of the highest deforestation rates in Latin America of 1.7 – 2.4% annual loss. The key drivers of forest

loss are land use change (to agricultural use), unsustainable and illegal logging, extractive industries expansion (oil and mining), and the development of roads and infrastructure.

In the public sphere 65% of forests are owned by civil society – indigenous peoples, local communities and individual landowners. Management policies are mainly market-driven. There are no logging concessions and decisions are made by individual managers. 6 – 8% of forest land that is in public hands could be opened up to concessions but, with many people living in these areas, this would be very complex.

The 2008 constitution established environmental services as a state function, and they are subject to appropriation. Conflicts arise as indigenous peoples own much of the land.

Under the National Forest Administration and Control System, any company wishing to log requires a plan and a programme, which have to be approved by the Ministry of Environment. Logging and timber transportation both require licenses. Forest regents – professional foresters accredited by the ministry – monitor the implementation of plans and logging licenses and fill out transport permits in the forest. They are paid by the clients and receive more for more trees cut, which provides a perverse incentive. The Ministry applies controls to itself with no oversight, in a clear conflict of interests.

The critical issues for Ecuador's forest sector include:

- **The regulatory framework:**

- The Ministry of Environment designs, implements, evaluates and controls.
- There are policy contradictions which influence the low value placed on the forests.
- There is no baseline information – no forest inventory, and a lack of a national land use plan.
- There is no independent, third party oversight.
- Forest statistics are not related to definite territories and are not publicly available.
- There are potential conflicts between REDD+ mechanisms and the evolving Environmental Services policy.

- **In the market:**

- A lack of comprehensive economic incentives for sustainable forest management.
- The forest value chain is extremely inequitable – with a 300% price increase in the industrialisation phase.
- There is an oligopoly in the market – 92% of the commercialised sector is in the hands of five companies.
- The domestic timber market is distorted – 50 – 75% of the national timber supply is illegal and / or of an informal origin. 95% of timber cut is for the domestic market and only 5% is exported.

Grupo FARO is working with other organisations to increase transparency and public access to forest information, to strengthen civil society organisations and coalitions, and to improve forest governance.

The PowerPoint file of this presentation is available at:  
<http://illegal-logging.info/uploads/Vasconez280111.pdf>

## **Discussion**

**Question:** A participant noted that, under REDD, the trade involves forest carbon credits, which is a trade in something that does not exist, i.e. a lack of CO<sub>2</sub> emissions. This must provide significant potential for corruption as it cannot be measured.

**Answer:** It is important to ensure that REDD+ strategies have a transparency focus. Monitoring should be focused on transparency and questions such as: is REDD really reducing deforestation and degradation beyond simple carbon counting?

Carbon is technical; in some ways it is easier to tackle technical issues as they are more 'concrete' than issues like governance. Once these are agreed, the more difficult issues can be addressed. Governance is vital in order to have the correct numbers and information to inform policy. However, we cannot wait – the technical carbon issues need to be worked on now and governance needs to be addressed now. Work already carried out under FLEGT can help with this.

**Question:** A participant asked what is the rationale behind Article 74 of the constitution, which establishes environmental services as a state function, and asked whether this would lead to conflicts with tenure arrangements.

**Answer:** The constitution recognises nature rights, which is unique, and enabled the government to bring a complaint against BP following the Gulf of Mexico oil spill for damaging the environment. It is not necessarily binding and can be hard to make operational, but it established the principle that environmental services should not just be a part of market financing. It does potentially complicate land tenure issues, but there is intended to be a discussion about this later this year.

**Question:** A participant commented that there is very little that REDD can achieve unless forest governance is relatively good, but all the countries currently getting REDD-ready have poor governance records. In addition, it appears that those involved in REDD do not understand FLEGT and governance, yet FLEGT has a positive knock-on effect on many issues including increasing transparency.

**Answer:** The REDD and FLEGT communities do not understand each other. It is important that the implementation of REDD benefits from all the 'soft knowledge' accumulated in FLEGT processes but many countries involved in REDD are not involved in FLEGT.

We are rushing into REDD+ without governance in place. A network of organisations working with Amazon Basin countries on deforestation says that each country has its own national priorities and rhythms and that we should be cautious about pushing them too fast. It is vital that we address climate change and begin to take significant steps, but rushing could encourage corruption.

It is worth considering that REDD has a natural deadline to it, in that climate change is happening already. Technocrats believe the process is too slow, but NGOs believe it is too fast.