

Workshop Notes

Forest Law Enforcement, Governance and Trade (FLEGT) and Environmental Justice Europe Workshop, London, UK

Prepared by UEA and IIED, April 2016

These notes summarise the discussions that took place at an informal Workshop on Forest Law Enforcement, Governance and Trade (FLEGT) and Environmental Justice on the 12th April 2016 at the International Institute of Environment and Development (IIED) in London, UK. The Workshop was organised by the University of East Anglia (UEA) and IIED and brought together 26 practitioners, policy-makers, industry representatives and researchers (see attached participation list) to discuss FLEGT and the European Union Timber Regulation (EUTR) within an environmental justice framework. Conversations were conducted in small groups into which workshop participants self-selected. There is intentionally no attribution of comments to any individual or organisation. The main points of each group are summarised here without further analysis. The notes were taken by an IIED or UEA representative in each group and are broken down by small group topic, of which there were eight during the day.

The notes taken here do not represent UEA or IIED positions; they are raw notes based on group discussions.

FLEGT: Strengthening the Process

- There is a need to strengthen the current FLEGT process as there are gaps and weaknesses that do not address all the drivers of unsustainable forest use.
- It is necessary to understand the demand for FLEGT licences and EUTR, in particular, the actors driving it such as consumers, NGOs and governments, and the different roles they play. FLEGT is a state based approach that enables states to install legality and strengthen systems for verification.
- VPAs enable strong, deliberative processes with the engagement of different stakeholders to identify solutions that can enforce the implementation of FLEGT instruments. However, there is space for other, non-state options to achieve sustainability. For example, NGOs play an important role in generating evidence that can prevent illegalities and strengthen the decision making process. NGOs inform policy choices and decision making that can strengthen the legal framework.
- There needs to be more focus on land use change, land rights and livelihoods. Not only does FLEGT address justice and governance issues within the sector, it also promotes a wider review of policies and practices. In the case of Ghana, illegal logging with chain saws is being discussed to identify solutions that will contribute to reduce illegalities.

Complementary elements between FLEGT and third-party certifications (eg FSC & PEFC)

- There should be more space for third-party auditors in FLEGT. Third-party certification is a voluntary, market-based instrument that has proved invaluable in the design of FLEGT. FLEGT and third-party certifications can share auditors and also, the definition of legality.
- FLEGT is able to achieve large-scale impacts by dealing with institutional and governance issues at national level which can't be addressed by third-party certifications but which can, thereafter, facilitate third-party certification. FLEGT has the potential to automatically grant certification for third-party verified companies but political issues can undermine this synergy as has been observed in Indonesia.
- Third-party certification has been shown to be stronger and more experienced in two out of three dimensions of justice (e.g. FSC in Congo). Often, third-party certification has stronger environmental requirements and specifications for which types of companies to associate with (e.g. FSC in Indonesia not associated with APRIL, APP).
- This shows that distribution and context is highly relevant for understanding the impact of FLEGT on wider deforestation efforts. FLEGT is a highly technocratic procedure and stakeholders are reluctant to engage in different forestry processes.

Legitimacy

- Legitimacy in FLEGT exists at different levels and can be discussed in terms of outcomes, power and participation. It is framed by the scientific discourse on deforestation and illegal logging and competes with other processes such as REDD+ and EUTS.
- First, the legitimacy of FLEGT outcomes is typically defined by licenses but there are other outcomes that may have more impact, particularly in contexts where licensing has been less successful.
- Defining tenure rights is a necessary part of the reform agenda to improve the legitimacy of outcomes. However, user rights can sometimes be lost during the formalisation process.
- Participation can be seen as a form of legitimacy. For example, FLEGT is perceived as more legitimate in Ghana than other countries since the state entered into the partnership voluntarily.
- It is important that power relations between the- EU, state and local producers in the countries is not neo-colonial.
- Different actors have different legitimacy and power shapes what is legitimate. The participation of civil society in FLEGT processes has the potential to strengthen civil society and give it legitimacy.

Justice

- Justice means different things to different people and in the context of FLEGT, reconciling the different notions of justice held by the EU, states and local producers is one of the main challenges faced by practitioners.
- The legality focus of VPAs neglects ideas of justice and good governance. In some contexts, the verification processes may not be the most appropriate solution. For example, in Cameroon, community committees have been informally established to collect money from illegal loggers in order to benefit the community because the state lacks the capacity to regulate logging activities.

- Informal systems such as there can be extremely important to the local economy.
- Natural resources tends to get overlooked in post-conflict recovery.
- Allocation needs to be more thoroughly addressed and there is an opportunity in post conflict countries for addressing natural resources issues.
- FLEGT's expectations for land tenure are not well-defined, nor are the timeframes for changes within social responsibility agreements. Threats to indigenous forest rights are immediate and cannot be addressed by long term policy change.
- There are disparities in the expectations of consumers in the domestic and international timber markets and conflicts between national and international law. This demands different ways of thinking about justice at different scales and a stronger grasp of the domestic market and the demand for certification from small-scale producers.
- Verification and certification have not contributed to equity so far in the FLEGT process but may do so in the future.

Corruption

- In different contexts, FLEGT has been shown to both increase and decrease corruption within the forestry sector. In Ghana, the perception is that corruption is endemic and in Indonesia, it is also widespread.
- The corruption issues in FLEGT are exist in both the public and private sector and there is also the potential for other issues to arise over time.
- Companies are logging more land than they are entitled to and exploiting forest communities, bribes to state actors in Cameroon has increased due to an increased number of actors involved in regulating the sector.
- Small-scale producers are most disadvantaged by paying large bribes but poor, 'reluctant participants' in a corrupt system are common and rely on such bribes for their livelihoods.
- There is a lack of political will to tackle corruption and, in some cases, no punitive repercussions for perpetrators. However, in some cases, there have been reports of senior government officials being held to account by civil society.
- There is no formal process for civil society to report corruption and falsified documentation of the verification processes. It is important that there are clear expectations around tackling corruption in FLEGT.
- There is a need to gather a VPA baseline for corruption before and illegal logging before signing and ratifying in order to understand what impact it may have on in the country.
- There are gaps in the FLEGT process where corruption is not being addressed.
- VPAs have not always been entered into entirely voluntarily (e.g. Guyana).
- There is little incorporation of ideas around tree tenure.
- There is an expectation from small-scale producers that corruption will reduce after FLEGT licensing but paper-based systems allow for corruption at different levels. In order to address this, Ghana is trying to move towards an electronic system that is less susceptible. However, it has limitations due to lack of electricity and internet.

Authority

- FLEGT has been shown to strengthen national power structures and open new space for dialogue with actors that would have been excluded before. NGOs and civil society have

been given new space, but not necessarily a unified or representative voice; in general, they have to be careful what authority they're projecting.

- Trade agreements brings different actors, including the private sector, to the table and traditional authority structures can be challenged.
- International authority is being projected on countries and this can be positive and negative depending on the actor. There is sometimes resistance from government institutions.
- In the context of VPAs: the voluntary nature of agreements is crucial; stakeholders must choose their own representatives and civil society needs to be visible.
- Changes in the regulatory framework in the VPA process is forcing accountability in a new way. For example, civil society in the Central African Republic is able to respond to new policies and reports, where there was no capacity in the past.
- VPAs have been weak on challenging unjust land tenure and elite structures. Moreover, there is not yet enough evidence on whether new authority structures/regimes lead to changes.

Market relations and availability of wood products

- There have been changes in the market that are both influenced and not influenced by FLEGT.
- FLEGT has been shown to bring about: better supply chain management; more profit to producers; increased usage of third-party certifications as a tool to meet the due diligence required by FLEGT regulations and better management of reputational risks in terms of legality.
- The quantity of exports and the global supply chain have not been influenced by FLEGT – illegal timber is still being exported to China and sold back into the EU market.
- In order to increase the influence of the EUTR more support is needed from the EU member states in order to increase the importance of legality in the timber market.
- The EU should exert more pressure on producer countries as well as consumer countries to promote certification.
- Ideally, there would be a tax incentive for certified products but WTO laws prevent that. Therefore, retailers need to be encouraged to buy certified products.
- Data for governance and transparency indicators needs to be systematically gathered, monitored and shared. It is important to recognise that demand for FLEGT licensing is not from the end users but, in general, from companies along the supply chain who are ahead of the curve in managing risks.

Forest and market governance

- National interests have been affected by VPAs and predominantly, central government have streamlined tasks and institutional arrangements around forestry governance.
- There needs to be more emphasis on addressing smallholders and domestic production in FLEGT but the EU is predominantly concerned with large companies.
- There is intention in some contexts for large companies to assume rights to the forests and manage them entirely. This will undermine widespread efforts to protect indigenous rights to the forest.

- Trying to establish how market behaviour has changed as a result of FLEGT and EU and VPA influence is difficult since there are a number of other certification processes that may have played a role such as FSC and PEFC.
- It is necessary to understand the influence that FLEGT is having on these existing processes. For example, in some contexts FSC certification is widespread and in others, there is no experience of FSC certification. Therefore, it is difficult to draw conclusions across countries since there is no standard process and decisions that are common.
- Future research can look at what works and the enabling environment. There is also an opportunity for research to explore how much change in the behaviour of companies is attributable to FLEGT.

What UEA will do with this information

UEA will use this information to guide the ProdJus project, which focusses on FLEGT and forest governance justice issues (see [ProdJus website](#) for more details) so that research can address the interests and needs of relevant stakeholders in the EU. Separate processes will take place in Indonesia, Ghana and Vietnam toward the same objective. UEA will make this report available to interview respondents and other interested parties as appropriate. Workshop participants are also welcomed to distribute this report as you see appropriate. For questions pertaining this report or the ProdJus project, please contact Rodd Myers at rodd.myers@uea.ac.uk.