

## Reflections on the Social Dimensions of Verification in FLEGT processes: Issues, Risks and Challenges<sup>1</sup>

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### Key points:

- FLEGT verification faces quite different political challenges to timber certification: its aim is to catch out the crooks, not ensure compliance by the good guys;
- Current forest related laws make much community use of forests illegal;
- There is clear evidence that crude enforcement is unfairly targeting the poor while the big players are protected;
- Avoiding FLEG becoming another engine of social exclusion requires active attention to social considerations at all levels of the FLEGT process;
- Legality definition requires attention to laws that protect community interests and needs to be done through socially inclusive processes, but outcomes are difficult for vested interests to accept;
- Disagreement in interpretations of the EU Procurement Directive is delaying due attention being paid to social considerations;
- VPAs are meant to avoid negative consequences for local communities but procedures to achieve this are still under discussion;
- Effective VPAs and verification will require genuine participation to ensure adequate definitions of legality are adopted, action plans address social concerns, and transparent processes are adopted to ensure independent third-party verification and parallel monitoring;
- The time and financial implications of adopting adequate procedures should not be under-estimated.

### *Introduction:*

Although 'Forest law enforcement, governance and trade' is being presented as a voluntary process and is thus compared with previous voluntary timber certification and third party verification processes that have been adopted by the private sector, in fact the FLEGT approach constitutes a significant shift back towards forestry reform through state regulation and control.

Timber certification has been adopted voluntarily by 'market leaders', who choose to go beyond what the law requires because they have adopted corporate policies of social and environmental responsibility, to gain a market premium or in order to access niche markets.

FLEG and FLEGT policies, by contrast, are being endorsed through regional intergovernmental statements and promoted through bilateral government to government agreements. Where certification aims to raise the ceiling on good forestry practice, FLEGT aims to raise the floor under bad practice, curbing illegality and ensuring good governance. Unlike **auditing of timber certification**, where companies can be expected to be keen to show off their commitments to participation and accountability, FLEGT **verification** may face much tougher challenges, as it is designed to deal with public and private actors that may often be unlawful, criminal, corrupt, unaccountable and untransparent.

Although economic and environmental concerns can be seen as the main drivers of both initiatives, social considerations have, sooner or later, come to be seen as central to both.

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Indeed 'Forest Law Enforcement and Governance' (FLEG) approaches have been justified as a way of benefiting the poor and meeting the Millennium Development Goals by improving State revenues from forests, but to date the social implications of such enforcement has not been given great attention.

*Experiences with Forest Law Enforcement*

A recent review carried out for CIFOR constitutes an attempt to fill this gap.<sup>3</sup> It looked at community experiences with forest related laws and enforcement in Bolivia, Cameroon, Canada, Honduras, Nicaragua and Indonesia. Our study concluded that:

- the extent of forest-based livelihoods is often under-appreciated;
- laws that affect the way people use forests are often contradictory and restrictive;
- laws tend to be selectively developed, and applied, in favour of large-scale forestry;
- laws to secure community rights in forests, are often absent, ignored or too onerous to be widely used;
- this lack of legal protection of community rights makes much small-scale forest use technically 'illegal'; such illegality hinders good forest management;
- illegal forest use, including by communities, tends to be enmeshed in wider political economies, so major players tend to be politically protected while local communities are politically vulnerable;
- enforcement has sometimes focused narrowly on forestry laws to the neglect of other laws that secure rural livelihoods;
- crude enforcement measures have reinforced social exclusion and tended to target poor people, while avoiding those who are well connected;
- rather than helping alleviate poverty, crude enforcement can thus exacerbate it.

*FLEG criteria:*

Social considerations have not been absent from the recent regional agreements on 'Forest Law Enforcement and Governance'. Those adopted in Asia, Africa, Europe and North Asia, and by the European Union have committed governments to, *inter alia*:

- engage indigenous peoples and local communities in the formulation and implementation of forest laws and policies;
- ensure coherence between forestry and land tenure laws;
- reform laws and strengthen land tenure and access rights especially for rural communities and indigenous peoples;
- take into account customary law and traditional knowledge;
- strengthen effective participation of all stakeholders, notably non-state actors and indigenous peoples, in policy making and implementation.<sup>4</sup>

**Confessions of a forest ranger:**

'We have always pushed the little guy around because they have no political clout. It has always been our way of convincing ourselves and the public that we are doing our jobs. Yet the real crimes... the real damage is committed by the big corporations. They are ones who need to be hammered! It will never happen in a meaningful way... they are too powerful.'

<sup>3</sup> Marcus Colchester et al, 2006, *Justice in the forest: rural livelihoods and forest law enforcement*. CIFOR, Bogor.

<sup>4</sup> Ministerial Declaration on Forest Law Enforcement in Asia, Bali, 10-12 September 2002; Déclaration Ministérielle, 2003, Conférence Ministérielle sur l'Application des législations forestières et la gouvernance en Afrique (AFLEG), 13-16 octobre 2003. Yaoundé, Cameroon; EU Council Conclusion on Forest Law Enforcement, Governance and Trade, 13 October 2003; ENA-FLEG, 2005, St Petersburg Declaration.  
[http://www.illegal-logging.info/papers/MDILA\\_final\\_25\\_Nov\\_05\\_eng.pdf](http://www.illegal-logging.info/papers/MDILA_final_25_Nov_05_eng.pdf)

However, in practice, undue targeting of the 'little guy' remains all too common. It has been noted to be a problem in Peru, India, Honduras, Nicaragua, Indonesia, Cameroon, Cambodia, Russia and the Philippines. Even in Bolivia, which in many respects has been considered a 'best practice' example of FLEG - in terms of legal reform and politically independent enforcement - there have been complaints about the unfair targeting of the poor.

*Early FLEG experiences: defining legality*

Social considerations were not prominent in the early Independent Forest Monitoring Projects funded by the World Bank first in Cambodia and later Cameroon. Nor were they initially apparent in the MoU signed between the UK and Indonesian governments in 2003. At that time forest economists had already decided that based on comparisons of the country's 'annual allowable cut' with the amount of timber actually entering mills, it was evident that some 60-80% of Indonesia's timber was 'illegal'. But that is just in terms of one legal requirement - acquiring a permit to cut the timber. However, civil society organisations in Indonesia quickly realised that unless issues of human rights, land tenure, indigenous peoples and community forestry were adequately addressed, FLEG might only serve to marginalise the poor and enforce an unfair forestry regime that many NGOs in Indonesia see as a root cause of the corruption and illegality in the whole sector.

After considerable resistance, the Indonesian MoU parties did accede to a multi-stakeholder process to develop a definition of legality, which started with regional workshops to ensure that any differences in views about legality, between the central government and newly autonomous regional authorities, were also taken into account. The process, which has taken three years and is still not complete, had to look at some 900 laws and regulations related to forests, governance, tenure, occupancy and use in order to come up with a definition that satisfied the wide range of stakeholders, though it has yet to be endorsed by the Ministry of Forests. The trouble is that by this definition almost no forestry operations in Indonesia are legal.

Take, for example, two basic legal requirements, those related to forest gazettement and concession delineation - essential processes by which forest resources are surveyed and rights then allocated. Research by the World Agroforestry Centre (ICRAF) shows that only 12% of the 122 million hectare forest zone has yet been gazetted - the process by which forest areas are classified, their boundaries surveyed and agreed by interdepartmental teams and then officially registered as 'State Forest Areas'. ICRAF research also shows that, even where gazettement has occurred, the legal status of the 'forests' may be disputed - many of the required procedures for setting the boundaries have been rushed through without due consultation with local village leaders, to check that the designated forests do not overlap areas where people have rights.

Notwithstanding the failure to complete the process of ascertaining which areas actually fall under the Forestry Department's jurisdiction, the Department has granted concessions to the great majority of the country's forests (over 600 large concessions in all of which an estimated 270 are still active). In order to compensate for the lack of gazettement, concessionaires are required by law to 'delineate' their concession boundaries, with the participation of local governments and community leaders, a procedure aimed to clarify that concessions do not overlap the lands of other users. ICRAF data show that only 8% of forest concessions have been properly delineated by the companies that have been given logging licences, meaning most concessions should be forfeit.



