

Meeting Summary:

Illegal Forest Conversion in the Mekong: Policy Implications for Land Investments, Climate, and Forest Legality Initiatives

Phuket, Thailand

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Introduction

It is increasingly clear that the most significant threat to the remaining forest in the Mekong region is conversion for commercial agriculture and infrastructure. Much of this conversion is also highly correlated with land rights abuses and recent Forest Trends research suggests that a substantial proportion of these lands, in some countries the majority, are being illegally deforested. Failure to comply with relevant laws can occur during the process of issuance of rights to convert forests, if permits or licenses are corruptly or wrongly issued, and in relation to environmental and social regulatory requirements for companies operating in land use sectors.

This two and a half day workshop brought together experts from five focal countries (Cambodia, Laos, Myanmar, Thailand, and Vietnam) and a range of relevant policy processes (Reducing Emissions from Deforestation and Forest Degradation (REDD+), Forest Law Enforcement, Governance, and Trade (FLEGT), and corporate responsibility), to engender a regional discussion. Facilitation emphasized regional policy synergies, with a focus on problem solving. Participation included local, national, and regional experts in REDD+, FLEGT, economic development, land use planning, foreign direct investment (FDI), poverty alleviation, and land rights/land use issues, along with relevant international agencies from the forests, development, and agricultural sectors.

Below is a summary of some of the key themes that emerged during discussions:

- Legality as a measure of land conversion activities is not automatically meaningful in countries with poor legislative frameworks, government capacity, and/or rule of law; however, experiences from political processes such as FLEGT Voluntary Partnership Agreements (VPAs) show that it can be, with appropriately directed support and political will.
- There is a significant data gap relating to areas of land being converted. In some countries satellite imagery can show what has been converted in practice, but governments will need to release concession/area maps in order to allow for a clearer understanding of what is planned and/or legal as opposed to unplanned and/or illegal. There is also a dearth of data relating to the production of conversion timber¹ and commodities arising from illegally converted forest lands. In many cases the necessary information is not collected by government, let alone collated or made public.
- As with illegal logging in 2000, there is no generic definition of illegal forest conversion accepted by a wide range of stakeholders across different countries. Ongoing discussions between the relevant sectors and national and international actors will be necessary in order to work towards a definition that is clear and useful at the national and international levels.
- While domestic political will to improve governance of forest land is required, external incentives and disincentives are key to supporting progressive actors. Demand-side measures for timber and agricultural commodities, and appropriate standards for finance can improve the business case for responsible companies and policy makers.
- The innovative use of extra-territorial corporate accountability mechanisms represents a potentially game-changing opportunity which be used to hold companies to account for the negative impacts of their activities, particularly where local laws have been ignored or are insufficient. Clear, effective

¹ "Conversion timber" refers to timber generated during the conversion of natural forest areas to non-forest or plantation use, such as the clearance of a forest for commercial agriculture.

legal frameworks can improve the business case for responsible investment in the Mekong, and responsible companies should support the legislative process.

Session 1: Assessing the scale and characteristics of the problem

Session 1 explored global and regional trends in forest conversion, definitions of illegality, and rights and tenure issues as they relate to land conversion. International demand for agro-commodities is a major driver of forest conversion worldwide, and evidence suggests that much of this conversion is illegal. The main types of illegalities relate to improper permitting and non-compliance with contracts, such as failure to implement social and environmental impact assessments. Land conflicts are common and exacerbated by a lack of secure tenure rights in the Mekong and, coupled with endemic corruption and weak regulations, make addressing forest conversion through a legality framework challenging. However, demand-side measures focusing on legality present significant opportunities to influence national policy and regulatory frameworks.

Presentations

In order to highlight the link between forest conversion in the Mekong and the global trade in agricultural commodities, **Keith Barney** of Australia National University presented data on the production and consumption of timber, sugar, rubber, coffee, palm oil, and other crops grown in Southeast Asia, revealing China's increasingly significant role in the processing of such commodities and subsequent impact on forest economies worldwide. Though Dr. Barney argued that some degree of forest conversion may be justifiable and desirable for development, there is a risk that the short-term wealth created by liquidating natural resources could lead to overexploitation and long-term economic stagnation. He emphasized the importance of stable regulatory oversight and the enforcement of strong environmental standards to ensure that resource-led growth is both legal and sustainable.

Clare Brogan of the IDL Group then discussed the main types of illegalities associated with forest conversion, explaining that illegality typically occurs during the issuance of rights to convert land or in non-compliance with environmental and social regulatory requirements; for example, clearing forests without the proper permits, clearing in designated protected areas, failure to enforce required environmental mitigation measures, or failure to comply with provisions of a contract. She acknowledged that addressing illegal forest conversion can be a significant challenge due to confusing and contradictory legislation, lack of transparency around the process of permit allocation, regulatory loopholes, and unclear boundaries of authority between ministries and agencies. However, despite these challenges, Ms. Brogan argued that using a legality approach can be a powerful tool to address deforestation, because it respects national sovereignty and is therefore less likely to be seen as "green" protectionism.

Next, **Bryson Ogden** of the Rights and Resources Initiative presented research on community forest tenure, explaining that 99 percent of forests in the Mekong remain controlled by governments. This is a high concentration of state-administered forestland in comparison to other tropical regions, reflecting a history of authoritarian regimes and limited opportunities for civil society engagement to catalyze tenure reform. Mr. Ogden suggested that the lack of strong tenure rights is likely correlated with the high rates of forest conversion seen in the Mekong, pointing to studies linking robust community rights to improved forest

conversion and livelihood outcomes. He encouraged the audience to think creatively about how to empower communities and strengthen tenure rights as a means to reduce illegal forest conversion.

Lastly, **Art Blundell** of Forest Trends presented a case study on Indonesia to exemplify larger global trends in illegal conversion and the extent to which international demand for agro-commodities is driving tropical deforestation. Using official Ministry of Forestry and industry association data, he demonstrated that the majority of timber coming from Indonesia is likely conversion timber from forests that have been clear cut for agricultural plantations. Furthermore, evidence suggests that most of this conversion is illegal (i.e., violates Indonesian laws around permitting and land clearance) and most of the commodities grown are exported. A new [Forest Trends report](#) illustrates that the situation is similar in many tropical forest countries – that is, export-driven commercial agriculture is one of the biggest drivers of worldwide deforestation and much of it is illegal. Dr. Blundell urged the international community to take action to decrease pressure on forests by identifying political and market-based opportunities to address this demand-driven deforestation.

Discussion

Much of the discussion centered on the practicality and challenges of addressing deforestation through a legality framework. For example, in countries with significant corruption, legality is not always clear cut (conversion timber may seem legal because it has the proper paperwork, or a land concession may be legally granted by the state even though communities were not properly consulted). While this is true, experience shared from countries negotiating FLEGT VPAs suggests that framing the conversation around legality can open up opportunities to address corrupt practices, clarify conflicting laws, and identify legislative weaknesses or gaps. In an international context, the legality framework also allows for the use of demand-side measures while respecting national sovereignty and World Trade Organization (WTO) commitments.

SESSION 2: Presentation of country studies on land conversion

In this session, authors of five country case studies presented their research findings. Topics included: status of land conversion, legal and regulatory requirements for conversion of forestlands, social and environmental impacts of illegal conversion, key government institutions, conversion timber assessments, and agricultural production and end markets. Several common themes emerged, including the need for better data on land use and conversion patterns, improved government coordination to clarify laws and align environmental and economic goals, and increased consultation and involvement of communities in the development of agribusiness projects.

Vietnam:

Presentation

Nguyen Vinh Quang of Forest Trends presented an overview of land conversion in Vietnam with a specific focus on rubber plantations. After an overview of the regulatory requirements surrounding rubber development, Dr. Nguyen presented a rubber case study to illustrate the discrepancy between official policy and what often happens in practice. Common violations include planting rubber in natural forest areas, failure to secure land use certificates, failure to consult communities, and failure to conduct environmental impact assessments. Dr. Nguyen argued for an independent non-state actor to monitor authorities at local, regional, and national levels to limit the abuse of power and improve enforcement of laws. He also

recommended better coordination throughout different ministries and improved long-term land-use planning to fully consider local contexts and national goals.

Discussion

Improved land use policies, better law enforcement, and enhanced long-term planning were highlighted as key to addressing the many mistakes that have been made with agricultural development in Vietnam. Crops should be planted on suitable land and allowed to grow to maturity while efforts must also be made to diversify the market (e.g., by avoiding market dependence on a single crop such as rubber).

There are also political challenges and opportunities associated with the VPA being negotiated between Vietnam and the EU. Vietnam's FLEGT VPA, legality definition, and timber legality assurance system (TLAS) need to address the issue of illegal timber entering Vietnam from neighboring countries. On the topic of conversion, it is also extremely important to address rights and tenure issues in a variety of policy fora, such as VPA and REDD+ discussions.

Thailand:

Presentation

Alexandra Banks of NEPCo outlined the evolution of Thailand's forestry policy during the last half-century and listed the major drivers of deforestation, including agricultural expansion, shifting cultivation, plantation development, and infrastructure development. Thailand does not have a distinct law for conversion, which, along with a general lack of data and absence of central monitoring, makes it very difficult to define and track forest conversion across the country. Ms. Banks concluded that Thailand's contradictory legal landscape enabling illegal forest conversion could be rectified through secure and clarified land tenure, increased coordination between agencies, adjustment of inappropriate or obsolete legislation, clarified forest/land classification and boundary identification, and enforcement of environmental and social impact assessment requirements.

Discussion

There is concern that Thailand's forestry goals and economic development goals are often at odds with one another. For example, national economic policies promote rubber, cassava, and rice plantations while new forestry strategies aim to secure existing forest areas and even increase national forest cover. Land conflict is an issue as well, and it is important to consider how indigenous land rights and the practice of shifting cultivation factor into the country's government policies relating to forest conversion. Another ongoing debate relates to Thailand's definition of "forest" and whether it is appropriate for plantations to be considered forestland.

Cambodia:

Presentation

Dr. Koy Ra provided introductory information on Cambodia's forest resources and declining forest cover trends. Next, **Alexandra Banks** described the key drivers of deforestation in Cambodia, with a focus on Economic Land Concessions (ELCs) for agro-industrial crops. Although there are Protected Area laws in Cambodia, companies and the government have exploited loopholes to permit development in protected

forests. Civil society has raised concerns about lack of transparency and potential illegalities in the granting of ELCs. Ms. Banks concluded by emphasizing the need to improve the supply and reliability of data and build mutually beneficial relationships between civil society organizations, industry, and government agencies to define common goals, reduce corruption, increase transparency, and incentivize due diligence practices.

Discussion

One key question that arose was whether civil society can truly engage with the Cambodian forestry industry, given this new era of conversion timber and the entrenched interests (economic and political elites) that continue to benefit from an extractive economy. The problem may not be weak governance but rather a very controlled but informal system with clear, unwritten rules about how timber is harvested and moved. There is also reportedly a divide in Cambodia between human rights organizations and environmental organizations. Participants suggested that more progress could be made with better collaboration between these groups. Lastly, the general confusion regarding land categorization and land use underlines the need for more research on this topic and improved data collection.

Lao PDR

Presentation

Sidavone Chanthavong and **Aidan Flanagan** described the history of forest conversion in Lao PDR, which has been driven by international demand for land and the nation's economic development strategies. As in other Mekong countries, there is a need for greater coordination among Lao government ministries in the granting of land concessions. Proper implementation of environmental and social impact assessments is also crucial to avoid adverse impacts on communities and natural and cultural resources.

Discussion

Lao PDR is formulating its first ever National Land Policy which will set the framework for future land use and land management. It was recommended that the policy include provisions preventing expropriation for private interests, increased recognition of customary tenure, a clear policy on communal land titling, and clear grievance mechanisms to resolve land disputes in a transparent and timely manner. Another ongoing project collects data on concession boundaries and what land has already been cleared, as well as evaluation of the economic, environmental, and social impacts of concessions.

Lao PDR is negotiating a VPA, and although there are many challenges to confront, especially with regard to tenure issues, it is hoped that the VPA and other processes in the region can serve as a catalyst for further change.

Myanmar

Presentation

Kevin Woods of Forest Trends began by contextualizing forest conversion in recent political reforms in Myanmar, where foreign investment (especially in the resource extraction sectors, such as agriculture) is a top priority for the new government. The reforms are also providing more political space for civil society to engage, with land conflict and land dispossession emerging as two of the most pressing concerns for local people.

The top two areas for agribusiness concessions are in Kachin state and Tanintharyi, two regions which are also home to globally significant high conservation value forests. Concessions are often granted in protected state forest areas—in fact, degazetting forest reserves is a common practice and it represents a legal loophole allowing widespread clear-cutting of forests. Conversion timber is subsequently mixed with all other timber sources in Myanmar, making it almost impossible to identify the true origin, legality, and ethical implications of wood that is exported. Mr. Woods concluded by encouraging debates on the future of Myanmar’s forests and the reforms needed in both the agricultural and forestry sectors, warning that while the legality of conversion timber remains an important consideration, it is crucial to think beyond normative legality standards to focus on the intent of the law, improved safeguards that meet international standards, community land rights, and socially-sanctioned processes with buy-in from civil society.

Discussion

The ethnic divisions and ongoing conflicts in Myanmar present huge political challenges to reform. Furthermore, the legal framework for land use is extremely complex, partly because the country does not have a comprehensive land use policy. Given the outsize role of conversion timber in the forest product industry, Myanmar should focus on the legality of conversion timber as a significant source of export and revenue.

Some participants were concerned that a focus on legality may not be enough in Myanmar—due to corruption and a lack of robust laws—and it remains to be seen whether demand-side measures could have much impact when most timber from Myanmar goes to India and China, markets which are considered less environmentally sensitive than the US and EU. However, although trade-based mechanisms may not have significant leverage, the national debates initiated by these mechanisms are creating space for civil society to engage with decision-makers, and the importance of this should not be dismissed.

SESSION 3: Land conversion and implications for REDD+: Differentiating between legal and illegal drivers of deforestation

Session 3 focused on how REDD+ could address legal and illegal drivers of deforestation. Consideration was given to safeguards introduced in Cancún, the Warsaw Framework on Finance, the Durban Platform, and how REDD+ institutions can encourage demand-side policies for commodities produced on converted forestland. Though there seems to be general acknowledgement in official REDD+ policies that commercial agriculture is the largest driver of deforestation in the Mekong, it is unclear whether there has been much focus on the illegalities associated with it or the tools by which REDD+ can distinguish between legal and illegal deforestation.² Furthermore, although the REDD+ framework includes safeguards to ensure that mitigation does not contribute to forest conversion, there is still a lack of guidance on how safeguards should be implemented and reported on in practice.

Presentations (part 1)

Ben Vickers of the Asia-Pacific UN-REDD Programme presented on the status of REDD+ readiness in the Mekong by describing the results of a survey asking national focal points and stakeholders about the

² “Illegal deforestation” refers to deforestation that takes place in contravention of the written laws, policies, and regulations in the concerned country. This does not include breaches of international law or customary law unless those are reflected in national statutory or case law. This definition encompasses two general categories: illegalities in licensing and illegalities in forest clearance.

perceived level of REDD+ readiness in their countries and their level of awareness of the progress of REDD+ activities. The survey included, among other questions about the management of the readiness process, questions about benefit distribution systems and safeguards. Of 18 countries surveyed, Vietnam scored the highest for REDD+ readiness while Myanmar scored the lowest. However, scores varied widely across the numerous categories and Mr. Vickers acknowledged that the results were somewhat subjective as they were based on stakeholders' opinions and weighted indicators. Despite these caveats, the survey provided insight into the degree to which stakeholders are satisfied with the REDD+ readiness process in their countries, believe the process is on track, and are aware of related activities and international conventions.

Melissa Blue Sky of the Center for International Environmental Law (CIEL) presented on the implications of the United Nations Framework Convention on Climate Change (UNFCCC) REDD+ framework and relevant safeguards for legal compliance in land conversion. The Cancún Agreements included a number of safeguards relevant to forest conversion, and the 2013 Conference of the Parties (COP) in Warsaw included three noteworthy decisions: 1) a requirement for countries to report on how they are addressing safeguards in order to receive results-based payments; 2) a stated need for consistency in how countries define forests; and 3) an explicit mandate for the UNFCCC to address drivers of deforestation (though this doesn't necessarily address the broad commercial drivers of conversion). These decisions indicate that progress is being made, but more work needs to be done. For example, although countries are required to report on how safeguards are implemented at a national level, more concrete guidance is needed on how to do this. Furthermore, although national strategy documents include general proposals to address illegal logging, conversion, and tenure, there are still major policy gaps to be addressed. The issue of non-carbon benefits in REDD+ may also present opportunities to address conversion, but that discussion has been deferred until June 2015.

Discussion

REDD+ is an evolving mechanism that continues to be developed through international negotiations. No country has yet completed the readiness phase and there are still many unknowns in terms of how an incentive-based payment system will work and how safeguards will be addressed. International guidance is important to provide clarity and consistency, but sovereignty issues continue to arise around discussions of safeguard information systems (SIS), results-based payments for upholding safeguards or assessing non-compliance with safeguards, how forests and degraded land are defined per country, and how REDD+ mechanisms can ensure that natural forest conversion occurred legally. Proper stakeholder consultation and the development of grievance mechanisms are seen as key to using safeguards as a means of ensuring legal compliance in land conversion. The discussion also revealed significant differences in the assessment of REDD+ readiness by civil society as opposed to official focal points, particularly as expressed by participants from Vietnam and Cambodia.

Presentations (part 2)

Kate Horner from the Environmental Investigation Agency presented on land use, legality, and governance in the context of the 2011 UNFCCC Durban Platform. The mandate of the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP) is to develop a legal protocol to address carbon emissions by 2015, with important implications for how forests and agriculture are treated in upcoming climate negotiations. Ms. Horner differentiated reporting (accumulating data and providing information) from accounting (comparing

reported quantities against a target or baseline) and emphasized the importance of transparency of emissions data (rather than accounting) as necessary to build trust in the integrity and fairness of the reporting system. There is a high degree of uncertainty associated with measuring emissions, and the land sector is the most difficult to measure—uncertainties of 50 percent are not uncommon – and there are major delays between the international policy process and on-the-ground realities. Moving forward, food security, equity, and the sustainability of smallholder livelihoods needs to be prioritized. Additionally, tenure, land use and access rights of Indigenous Peoples, local communities, and smallholder and landless farmers must be legally enforced in all mitigation and adaptation actions, and effective participation of civil society organizations (CSOs) is key to ensuring safeguards. Ms. Horner recommended incentivizing finance for measures which reduce emissions, increase sustainable development, and promote comprehensive land use planning at the national level.

Next, **Eve Richer** of Forest Trends discussed how REDD+ readiness documents treat the issue of forest conversion and related illegalities. In an initial review of REDD+ strategy documents, Ms. Richer found that all five Mekong countries identified commercial agricultural expansion as one of the primary drivers of deforestation. Most documents also mentioned weak law enforcement, conflicting regulations, and unclear land tenure, but the texts were generic and did not explicitly focus on illegal forest conversion. (This is in contrast to discussions of logging as a driver of forest degradation, which clearly differentiate legal and illegal logging.) Strategies emphasized the need for better law enforcement and harmonization of laws, but there was little to no discussion of specific tools to address illegal conversion. The international REDD+ community may consider employing the following tools to address illegal conversion: 1) obtaining better data on illegal land use and conversion for agriculture; 2) multi-stakeholder processes to improve and clarify legislation around conversion and close loopholes (akin to VPA discussions to define timber legality); 3) trade-based approaches to reduce demand for illegal commodities (e.g., public procurement and policies like the EU Timber Regulation (EUTR) and the US Lacey Act).³

Discussion

Corruption represents a major challenge and it was noted that REDD+ payments should be used to incentivize good behavior rather than compensate bad actors for discontinuing illegal activities. It may also be worth questioning whether estimating emissions from land use change is a cost-effective and logical approach to reducing deforestation. This is an ongoing debate and an increased understanding of what is happening on the ground will be needed to feed into high-level policy discussions, grounded by increased capacity-building to improve understanding of planned and unplanned, illegal and legal deforestation, particularly in developing countries. There are also opportunities for REDD+ to build on relevant participatory processes such as VPA negotiations—it is important that the platforms developed for REDD+ and FLEGT are mutually supportive and do not work against one another.

SESSION 4: Conversion timber and commodities: Implications for global supply chain initiatives

Session 4 focused on global supply chain initiatives, demand-side tools, and the role that they can play in keeping illegal conversion timber and agro-commodities off the global market. The status of VPA negotiations

³ The EUTR (effective March 2013) prohibits the placing on the EU market of illegally harvested timber and products derived from such timber, and it requires EU traders who place timber products on the EU market to exercise “due diligence.” The US Lacey Act was passed in 1900 and originally related to illegal trade in wildlife. A 2008 amendment made the policy capable of combating illegal logging and expanded the Act’s anti-trafficking protections to a broader set of plant and plant products.

in the Mekong was presented and lessons were shared from VPA processes in Indonesia and Ghana. Despite the relatively low level of trade in traditional forest products between the Mekong and EU, FLEGT and other demand-side tools may still present opportunities to improve and clarify regulations around conversion, create opportunities for increased civil society engagement, and influence markets toward a preference for legally verified products.

Presentations (part 1)

Andy Roby, from the UK Department for International Development, presented an overview of the status of VPA negotiations in the Mekong region. Numerous factors determine how a VPA deals with forest conversion, including the scale of conversion in each country; whether local civil society is well-informed about the issue and concerned; and the extent to which existing legislation provides conversion-related safeguards that could be reflected in the timber legality definition.

Mr. Roby explained how markets can drive change, giving an example of Asia Pulp & Paper, a large company which has done significant damage to Indonesian forests. In March 2013 they made a “zero deforestation” pledge and now have hundreds of staff working on social and environmental matters. The impetus was mainly a loss of big customers (e.g., Walmart, Staples, and Disney), the effect of EUTR and the Lacey Act on the markets, and the cost of social conflict. There are a number of strategies that can be employed moving forward to address conversion, involving communications, demand-side instruments to ban illegal agro-commodities from sensitive markets, and continued dialogue with businesses and the private sector. All of this should be supported by more case studies, improved data about supply and demand, and political and economic analysis.

Clare Brogan from the IDL Group presented the Ghanaian VPA experience to demonstrate how forest governance can be strengthened through the process of defining legality. When Ghana expressed interest in a VPA, the government was committed to using legality as a stepping stone to sustainability. There was strong civil society capacity in Ghana and one of their concerns was the allocation of harvesting rights and the misuse of salvage permits by the government through ministerial discretion. During VPA negotiations, the legality definition was developed by drawing from Ghana’s existing legal framework, but with an understanding that the definition had to have strong stakeholder consensus. On some issues there was a surprising consensus between civil society and the private sector—for instance, both groups agreed that ministerial discretion represented a loophole that was not in the spirit of good governance, and it was ultimately left out of the legality definition. Ghana’s negotiations ended in September 2008, and in December that year, there was a change of government. However, when the new government started using ministerial discretion to issue permits, civil society raised concerns. The EU acknowledged that although this was technically legal, such timber would not get a FLEGT license, and there was subsequent commitment from the Minister to amend the legislation to remove the discretionary provision from the law.

Abu Meridian from Forest Watch Indonesia discussed lessons learned from Indonesia’s VPA negotiations, which began in 2001 and involved public consultation at each stage. Illegal logging involves people at all levels, including the army and the presidency, various ministries, an international syndicate, and the mafia. There was a log export ban that aimed to curb the rampant illegal logging that had been happening but illegal loggers have also resorted to new tactics, such as smuggling logs inside containers. Indonesia’s legality definition states that timber is considered legal when its origin, production process, and subsequent

processing, transport, and trade are verified as meeting all Indonesian laws and regulations. An independent forest monitoring network, Jaringan Pemantau Independen Kehutanan (JPIK), was established in 2010, and by 2014 its members consisted of over 60 NGOs and over 300 individuals.

One lesson learned by civil society was the importance of encrypting data and setting up security protocols to prevent intimidation and tapping of phones. Indonesia's judicial system is in great need of reform, and all stakeholders need to play a role in monitoring. Coordinating with the media is also critical in order to get the public's attention. Indonesia's timber legality assurance system, the SVLK, is a tool that is not going to fix the entire forestry problem, though it is a start. Multi-stakeholder dialogue is continuing in Indonesia, and transparency and the involvement of civil society were key components of the process of developing the SVLK and will continue to be crucial in monitoring its implementation.

Vu Thi Bich Hop, chair of the Vietnamese NGO-FLEGT Network, discussed Vietnam's FLEGT experience from a civil society perspective. VPA negotiations in Vietnam began in 2010, and although the process is scheduled to conclude this year, Ms. Hop suspects that this timeline is unrealistic. The VNGO-FLEGT network has grown from 20 organizations to 41, and has worked to build capacity in order to understand the technical documents related to the VPA negotiations. They have also conducted multi-stakeholder workshops and provided information to communities. Three marginalized groups are of particular concern: those who have forested land but no title, ethnic minorities living in the forests, and micro-enterprises and households who process wood.

The Government often ignores comments from the network, but thanks to the involvement of FAO, collaboration has increased and civil society is beginning to feel more included. However, there is no NGO law in Vietnam, which means the network cannot be an official representative in the negotiation process. The network also has limited legal expertise (partly because lawyers are expensive) which makes it difficult to provide input to the negotiations. Nonetheless, civil society sees the VPA as a good opportunity to address forest governance and fight corruption, and CSOs have had a greater role and more government recognition in recent years. Ms. Hop concluded by emphasizing the importance of linking REDD+ with FLEGT—in Vietnam, the same department manages both, but there is limited communication between the two programs.

Discussion

The discussion focused on political realities and opportunities for CSOs to participate in government processes. In top-down political cultures, how much engagement with the government is possible? Do western donors, with their very different political systems, understand the degree to which political constraints can affect civil society's participation? Experience from other VPA countries demonstrates how FLEGT can open up space for civil society, so it can be influential regardless of whether the EU has a large market share of a country's timber exports. For example, Liberia does not export much to the EU and its interest in the VPA was not related to the market; but as a post-conflict country, the Government wanted to improve its reputation and eliminate associations with conflict timber. Liberian civil society saw what happened in Ghana and thought the VPA process would provide an opportunity to shape community forestry. The EU insists on multi-stakeholder involvement during negotiations, but the negotiator needs to be informed about what an appropriate level of engagement is for each country. It is also possible for the VPA process to facilitate peacebuilding, as it helps create a participatory system and improves transparency and accountability.

Presentations (part 2)

Peter Feilberg of NEPCon discussed the validation of legal supply chains consisting of conversion timber. According to the EU, timber is considered “legally harvested” if it was harvested according to applicable legislation in the country of harvest. Only harvest-related legislation is considered, and this presents a challenge because assurance systems that only consider harvesting laws may not effectively address illegal conversion. For instance: sometimes wood is legally harvested but then after logging the land is illegally converted to other uses; sometimes conversion permits are obtained, the timber is harvested, but the land is never used for plantations or agricultural purposes; in other cases conversion permits are used to launder timber from other areas.

A key challenge to verifying the legality of conversion is confirming the integrity of information. Linking documentation to products can be difficult, especially in countries where bribes for document stamps are common. One has to look at a permit and consider how likely that permit would be issued according the legal framework. The approach of the EUTR is to require due diligence that evaluates legality based on a risk evaluation, which looks at the forest or logging site, the supply chain, and traces the material to see if conversion timber is mixed into the supply chain. When high value species come from areas with a high likelihood of conversion, there is a high risk that the timber is illegal. A risk-based approach that considers these factors will help prevent illegal timber from entering supply chains.

Moray McLeish, a sustainability adviser from PricewaterhouseCoopers (PwC), discussed land use planning and the legal verification of land conversion. Mr. McLeish described a landscape approach and emphasized three key considerations for good spatial planning: 1) making it about people; 2) following a plan; and 3) being flexible to deal with the practicalities of implementing the plan. A land use plan must consider social welfare and the environment in the context of wider development goals and a long term development vision. To maintain legitimacy, one needs to create conditions for reporting, oversight, and compliance that allows all parties to exercise vigilance, ensuring the plan remains rooted in the needs of local (often rural) communities. When a plan presents opportunities for people, it will usually require little enforcement and therefore money saved on enforcement can be spent on monitoring effectiveness. Usually there will be a combination of public and private investment, and a good plan is integrated with economic planning and should finance itself as much as possible, inviting the private sector in and reducing uncertainties feared by investors. Collaborations between rural and urban populations, sellers and buyers, and physical and institutional landscapes are essential to reduce illegality and move to a sustainable landscape approach.

Naomi Basik of Forest Trends presented a broad overview of various demand-side tools for addressing conversion timber from agro-commodities in the Mekong region. Major industrialized nations are responsible for one-third of global deforestation: approximately 70 percent of tropical deforestation is for large-scale, commercial agriculture, and 20 to 40 percent of that is exported. Exports from Southeast Asia contain the third-largest amount of embodied deforestation (after Sub-Saharan Africa and South America).

Public Procurement Policies (PPPs) represent one demand-side option which can have broad impacts on markets. There are 13 consumer countries with PPPs aimed at timber sourcing and the UK also has a Statement on Sustainable Palm Oil. Other potential regulatory tools include subsidies and tariffs and legality initiatives such as the EUTR and the Lacey Act. Potential EUTR-type regulations for agro-commodities are currently being considered, potentially using the VPA model. From the private sector, corporate sustainability

initiatives including certification systems, roundtables, and voluntary company-specific commitments have garnered significant praise, but must be implemented throughout the supply chain in order to be effective. Consumer countries have an important role to play in reducing the demand for commodities grown on illegally converted land, though numerous challenges remain, including WTO rules and subsidies that incentivize agro-commodity exports from developing and post-conflict countries, and the danger that Mekong exports will shift to China and India, thus creating “dual markets.”

Discussion

An interesting point was raised about subsidies: often these commodities are not heavily taxed in raw form but products containing them are heavily subsidized—this could represent an opportunity. Other ideas include making more use of land that has already been degraded and converted and reducing food waste (one-third of food produced is never eaten, and a massive cultural and behavioral shift is needed). In terms of corporate responsibility, sometimes listings on stock exchanges contain certain requirements for the companies, though participants were not aware of any emerging stock exchanges in the region or the potential for a requirement related to forest conversion. Lastly, the costs associated with legality verification need to be considered. There is a need to level the playing field so that legally verified goods do not have to compete with cheaper, illegal goods. Consumers are not usually willing to pay more for goods, but they also trust big companies to have legal products.

SESSION 5: Engendering corporate responsibility and accountability in land-based investments

Session 5 considered illegal forest conversion through a corporate social responsibility (CSR) lens, aiming to tease out the relationships between voluntary standards and legal frameworks. Presentations explored the defining characteristics of companies that are converting land in the Mekong and how they are financed. Representatives from the private sector described existing CSR and investor responsibility initiatives and how they can best be applied in the Mekong. Community land rights abuses emerged as one of the key challenges to address, and stakeholders are working to make the case that apart from legal and ethical implications, these land conflicts affect profits. Governments also have an important role to play in clarifying laws and making the agriculture sector less opaque in order to attract responsible companies to the region.

Presentations (part 1)

Megan MacInnes of Global Witness spoke about corporate accountability, land rights, and the limits of relevant international and regional instruments. She argued that in the context of conversion, laws around land tenure and agricultural investments matter more than forest-related laws. International standards are also important, but despite international recognition of rights to housing, food, freedom of expression, and free, prior and informed consent, there are no international laws recognizing a right to land. The UN is negotiating responsible agricultural investment principles, including questions of protecting local peoples' rights, but governments are blocking some of the more progressive measures. The Association of Southeast Asian Nations (ASEAN) can provide some guidance, but does not provide grievance mechanisms and ASEAN's non-intervention policy means governments rarely criticize one another. International standards do not include specific provisions for land or the agribusiness sector, and there is a widening gap between agribusiness and international regulatory frameworks. A rights-based approach to land should be embedded within national legislation. Alternative approaches to corporate accountability and land rights include the

legal cases that are being taken against foreign companies in producer countries, as well as trade and regulatory measures.

Next, Ms. MacInnes presented a rubber case study from a 2013 Global Witness report. The study focused on Hoang Anh Gia Lai (HAGL), a privately owned company, and the Vietnam Rubber Group (VRG), a state-owned company. These companies committed numerous violations to national laws and international safeguards, including ignoring land rights and destroying forests with economic and spiritual significance to local communities. Global Witness recommended systematic change to avoid future problems, and encouraged VRG and HAGL to resolve community disputes, bring operations in line with the law, and attempt to address the legality question around agro-conversion.⁴ HAGL subsequently made high-profile public commitments but there has been no substantial implementation on the ground yet. Communities in Cambodia submitted a complaint to the IFC's Compliance Advisor Ombudsman, which is mediating the dispute resolution process.

Global Witness had not expected to find such high levels of international connections in financing, supply chains, and certification. These links can provide leverage, illustrating this is not just a regional issue. Another unexpected finding was the differing levels of responsiveness between the state enterprise and private company (the state-owned company, VRG, was more responsive). This may relate to confusion around the idea of corporate social responsibility and benefit sharing; companies can choose to help communities by building schools and other services, but this is different from their legal obligation to provide compensation.

Courtney Lowrance, from the Environmental and Social Risk Management team at Citi Institutional Clients Group (CitiBank), discussed corporate voluntary standards in land-based investments. Corporate voluntary standards allow banks and corporate clients to work with governments and ensure that human rights are met within the context of the law. The voluntary standards include many types of certification (e.g., Roundtable on Sustainable Palm Oil, Forest Stewardship Council, and Equator Principles) and agriculture and forest carbon standards and they are important because many can be applied globally, unlike national regulatory frameworks. Citi also uses International Finance Corporation (IFC) standards; international finance is an important lever to promote legality and better performance. For example, companies like Unilever and Nestle have shown how buyers can influence change on the ground among their suppliers.

One major challenge is the role of governments, which administer the vast majority of land and forests in the Mekong. Communicating with the government requires sensitivity but there must be due diligence when an investment involves government land acquisition and displacement of people. Compliance happens over time and requires a stepwise approach, so it is important to have legally binding milestones in loan agreements that identify expected progress. Some issues around the allocation of permits by the government have to be addressed throughout the life of the loan. Action plans need to be a condition of the loan agreements, so that clients are bound to meet actions or risk a loan default. Citi also provides different financial products, and the ability to promote change and ensure legality varies alongside leverage – different types of finance have different types of leverage. The Environmental and Social Action plan applies only to loans, but much of Citi's work is in capital markets; as there is no credit risk in these cases, it has limited leverage. Fortunately some stock exchanges are establishing listing requirements for environmental and social assessments, and we should see more sustainable stock exchanges in the future.

⁴ "Agro-conversion" refers to conversion of forests for commercial agriculture and timber plantations.

Eang Vuthy from Equitable Cambodia spoke about corporate social accountability with a focus on the Cambodian Clean Sugar Campaign. In Cambodia, the rise of Economic Land Concessions (ELCs) has resulted in massive land grabs and human rights violations, so much so that a recent report by Global Witness claimed that Cambodia is a “country for sale.”⁵ By December 2012, at least 2.2 million ha of land were in ELCs, representing 61 percent of Cambodia’s arable land. These concessions have resulted in massive deforestation and the destruction of livelihoods (75 percent of the population depends on land for livelihoods). There has been massive displacement and Indigenous Peoples have been hit particularly hard from agro-industrial development and mining. Drivers of this crisis include the Government’s policies on concessions and foreign policies promoting investment.

The past five years have seen a sugar boom, partly caused by the Everything But Arms (EBA) treaty, through which Cambodia sends 90 percent of its exports to the EU. People on the ground refer to the sugar as “blood sugar” because of the human rights violations and illegal forest conversion that occurs. Local communities and CSOs founded the Clean Sugar Campaign to lodge complaints and hold the sugar industry accountable, and ensure that agricultural development and trade policies benefit smallholders.

The CSO network filed complaints against companies involved, including the sugar companies, investment banks, and buyers like Coca Cola and Pepsi, both of which have made commitments to zero tolerance for land grabs in their supply chains. A lawsuit has also been filed in the UK by displaced Cambodian villagers and the European Parliament has issued two resolutions calling on the European Commission to conduct a human rights investigation.

Discussion

In the sugar case, the Cambodian government only engaged politically when Coca Cola and Pepsi announced that they would not source from Cambodia until the human rights issues were addressed; this highlights the importance of leverage. Also, with many of these projects, community members feel they cannot be honest in front of companies and are sometimes even pressured into praising them, so it is important to fully investigate company claims of community support. There was some concern that small and medium enterprises (SMEs) could be harmed by the certification thresholds set by the financial sector. Banks are currently considering smallholder finance and working to find ways to incentivize better performance and sustainability in SMEs.

Presentations (part 2)

Bryson Ogden described efforts by the Rights and Resources Initiative (RRI) to engage the private sector on land and forest tenure issues, firstly by characterizing and quantifying trends of companies investing in agribusiness, infrastructure, and extractive industries, with the goal of understanding their roles in land acquisition, deforestation, and human rights. RRI is researching the business case for recognizing the financial risks associated with operating where land tenure is unclear. Conflicts with local communities increase costs and affect profits; however, many companies fail to account for these added costs, or insure against them.

Mr. Ogden presented an investment analysis of Myanmar; oil and gas concessions, agribusiness developments, and mining dominate. Although some information is available on spatial data around gas and

⁵ http://www.globalwitness.org/sites/default/files/library/country_for_sale_low_res_english.pdf

oil concessions, there is very little data on agriculture and mining. Most of the companies doing business in Myanmar are domestic or from China and half of the companies are large. This is in contrast to most other frontier markets where one normally sees smaller, risk-taking firms. Energy firms were the largest, followed by agriculture, infrastructure, and mining. In the energy sector, many firms are multi-national, particularly from Asian countries, and there is currently little exploration by western firms. Many companies doing business in Myanmar are involved in multiple sectors (e.g., timber, mining, hotels, and infrastructure) and they are partnering with foreign firms. All of these sectors could have links to conversion timber but the lack of transparency and minimal involvement of western firms makes it difficult to identify leverage points.

Mike Dwyer from the Center for International Forestry Research (CIFOR) explored ideas for bridging the “accountability gap” through investor disclosure and spatial transparency. Dr. Dwyer emphasized the problem of poor and outdated data, explaining that more data in the public domain would facilitate this kind of research and improve transparency. Key questions include: 1) Who is (or was or will be) doing what, and where? 2) How do we know? And 3) What should be the public’s role in this process? Investor disclosure on expenditures by geography, sector, or other factors, as well as risk forecasting and mitigation related to insecure tenure and social conflict, would also go a long way toward improving transparency and accountability, as would connecting spatial data with other information, such as cross-referencing online concession inventory systems with the annual financial reports of public companies. In Indonesia, Profundo was commissioned to do research comparing the available annual reports with the Indonesian data set, and only 12 out of 1200 oil palm concessions could be cross-referenced. Perhaps investors can pressure the companies to reveal more information? Dr. Dwyer concluded with three proposals: 1) lawyers should clarify the public’s legal right to know about who is doing what, and where (there is a strong argument that the public should know about allocations since much of the land is public); 2) promote official disclosure of public resource concessions; and 3) explore the question of what companies are required to tell their investors and find out if investors can demand more information.

John McGinley from the Australia and New Zealand Banking Group (ANZ) discussed the bank’s approach to sustainable development. ANZ uses screening tools when determining whether to finance a project and the Reputational Risk Committee (RRC) provides governance and decision making on sensitive sector customers, transactions, and issues. Projects are elevated to the RRC quite often in these markets. For example, the Cambodian sugar case was raised to the RRC and then on to the chief risk officer. ANZ came up with a set of recommendations and decided the concerns were addressable; however, the client did not fulfill the objectives and ultimately the client left. ANZ has recognized they still have a responsibility to find a solution for the communities.

In Cambodia, the process of issuing an ELC is opaque. Historically it was practically impossible to operate legally, so the industry found an illegal way to work and now there is a legacy of such a system. This opaque legal system does not encourage responsible investors. There are examples of responsible companies trying to operate legally in the region, but the process of getting concessions is unclear and informal payments are often requested, which means responsible companies often end up cancelling their projects.

Discussion

ANZ learned important lessons from the sugar case. The incident showed ANZ that its framework was not always sufficient and it is now doing a deep analysis of clients across the region. There are questions that still

need to be worked out regarding when ANZ should terminate relationships with companies that are not meeting commitments. ANZ monitors and continuously follows up with clients, often through independent consultants, but confidentiality agreements mean the information cannot be made public. ANZ welcomes discussion with CSOs, and encourages civil society to engage productively.

Concluding remarks

Jade Saunders and Kerstin Canby concluded the workshop by highlighting some of the key challenges and political opportunities to moving forward on the issue of forest conversion, especially in countries where the rule of law is questionable. There are parallels with how the illegal logging community began to work toward defining illegality over a decade ago. The opacity of the agriculture sector is a challenge and the specific characteristics of the agriculture sector will require some flexible thinking, especially regarding the investment profile.

Ms. Saunders highlighted three parallel political opportunities. First, the work being done on multilateral environmental voluntary standards and guidelines is important. The key is to operationalize them and ultimately embed them into national laws to establish a level playing field. Second, there are national political opportunities (like the VPA processes) where the governance aspect can be combined with trade aspects to address the conversion issue. More exploration is needed in the Mekong context and we also need broader thinking about which agro-commodities could be controlled under a VPA. Third, there is the extraterritorial legal accountability element, which we see in the Australian Illegal Logging Prohibition Act, the Lacey Act, and the EUTR as well as the Cambodia sugar corporate theft claim in the UK. We need strategic partnerships between sectors and different countries.

Ms. Canby concluded that, though Forest Trends has been analyzing forest conversion for three years, this conference has given rise to additional brainstorming on potential tools that can be brought to bear. Potential synergies and learning may arise by increasing collaboration between the REDD+ community, the land rights community, and the FLEGT community: for example, land rights experts have been working on international commitments for a long time, but those in the illegal logging community are often unfamiliar with that work; and to people working on land rights, FLEGT may be new. Forest Trends welcomes ongoing conversations and input on these ideas.

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