

Working Group 2 on MSD

- acceptability vs. legitimacy, acceptability is equal important
- what means LAS, accepted approach?
- LAS refers to EU-FLEGT <-> LAS is generally applicable not only in EU-context
- we must have common understanding about LAS
- more interesting: for what aspects of the LAS is a MSD useful for, LAS is more than chain/of-custody-tracking
- 1st question: what is legal?
- LAS has several dimensions
- US-Forest Service-example: cultural component that was missed by forest authorities → dialog necessary with local people having full knowledge about local/traditional laws
- LAS needs clear understanding what legal standard is
- combination of what is appropriate / legal / applicable / acceptable → esp acceptability cannot be determined by science but only by public consultation processes
- the more people are in the process the more different / mutually complementing views come in the process → LAS must in the end reflect fair compromise
- in the beginning many laws to be applied, what about legislation outside forest sector (worker, environment,..) → choose legal basis for legality definition
- people tend to criticise law instead of applying it
- the final decision making mechanism: some people are recognised as lawmakers / obbyists, others not = elected representatives without formal recognition
- sometimes lack of clarity in application of regulations
- imbalance in awareness and information e.g. between capitol and local level
- no good consultation in the group → weakness
- not every regulation is accepted by every group → MSD can bring central law into broader discussions
- who gives the mandate to the group so it can decide what is legal and what is not?
- design stage is different from implementation
- the more people you bring to the table the bigger is the acceptance but the more difficult is to reach consensus → whom not to bring to the table? (UN, WTO)
- slackers and spoilers → MSD must be well managed

Who should participate?

Who invites to the process?

Democratic legitimacy of governments?

Is the official part participating as stakeholder or does the state hold no stakes?

- there is no blueprint for any MSD → sometimes you must have government in, sometimes out

- can a LAS work without government?

- depends on the purpose of the LAS → in formal context (VPA) or private context (forest community)
- sometimes external “watchdog” like VPA-partner can be helpful
- NGOs can give to advise, but for LAS is government very important
- for private LAS no government may be needed but where government is landowner government must be involved

Role of government is also crucial (most of the times) – also for inviting / hosting the MSD.

- timeboundness of objectives of MSD can be helpful
- government must be accommodated, is a delicate thing
- governments must be permitted by electors, they are not an end in itself
- government has to be at the table as implementor of law → but who initiates? Who convenes? sometimes WorldBank, often NGOs,
- build trust between parties → difficult, takes time, government has to be able to listen like everybody else
- to achieve results you need trust
- MSD can minimise conflict esp. where government is landowner, but only at the level of the MSD → different province = different MSDs
- **who sets the Agenda?** → government convenes but someone else should invite to a parallel process?
- commitment for what comes next (backstopping, monitoring)
- several pitfalls for MSDs → facilitator must be an expert for the concrete setting
- worst pitfall: different expectations amongst participants and between participants and facilitator
- if you have difficult people in a consensus-finding process is different than in a consultation process → set playing rules in the beginning
- giving power to a non-legitimate process: who legitimates? **distinct between decision maker and advising body**
- range between consultation process and participatory decision-making
- provide space for dialogue
- decision-making means also taking over responsibility → can MSD do that?
- if government shall take advice into account it must have an incentive
- information of stakeholders is necessary to give advice
- if MSD is managed well it can work under any condition and setting
- important: something must be at stake, otherwise no incentive to succeed!

Examples from the ground

Philippines: supreme court currently marginalizes results of different MSDs, although government is part of the process

Indonesia: facilitator must be strong, MSD are on different levels (national to field level)

how to achieve more accountability and transparency in MSD with unbalanced participation

Diamonds: government says: not our fault, NGOs are anti-business. NGOs started to listen to industry. governments that did not want to implement new costlz arrangements did not cooperate. NGOs as watchdogs

ENA-FLEG: governments, donors, NGOs, private Sector were brought together, international steering committee, well structured process, trust and credibility> IUCN was in charge for NGO-group and acted as "honest broker", you cannot have a MSD in a vacuum → clear task, clear target

Capacity of actors important and transparency of discussions. Availability of knowledge.

How do you balance power?

If you forget important constituencies or isolate them is killing a MSD → step back and watch what you are doing.

Funding mechanism determines neutrality of MSD.

External auditor can give feedback if an agreement was implemented successfully.

At the end of the MSD there is no security that they will survive changes they have introduced.

Diversity of checks and balances and continuity of scrutiny is crucial.