

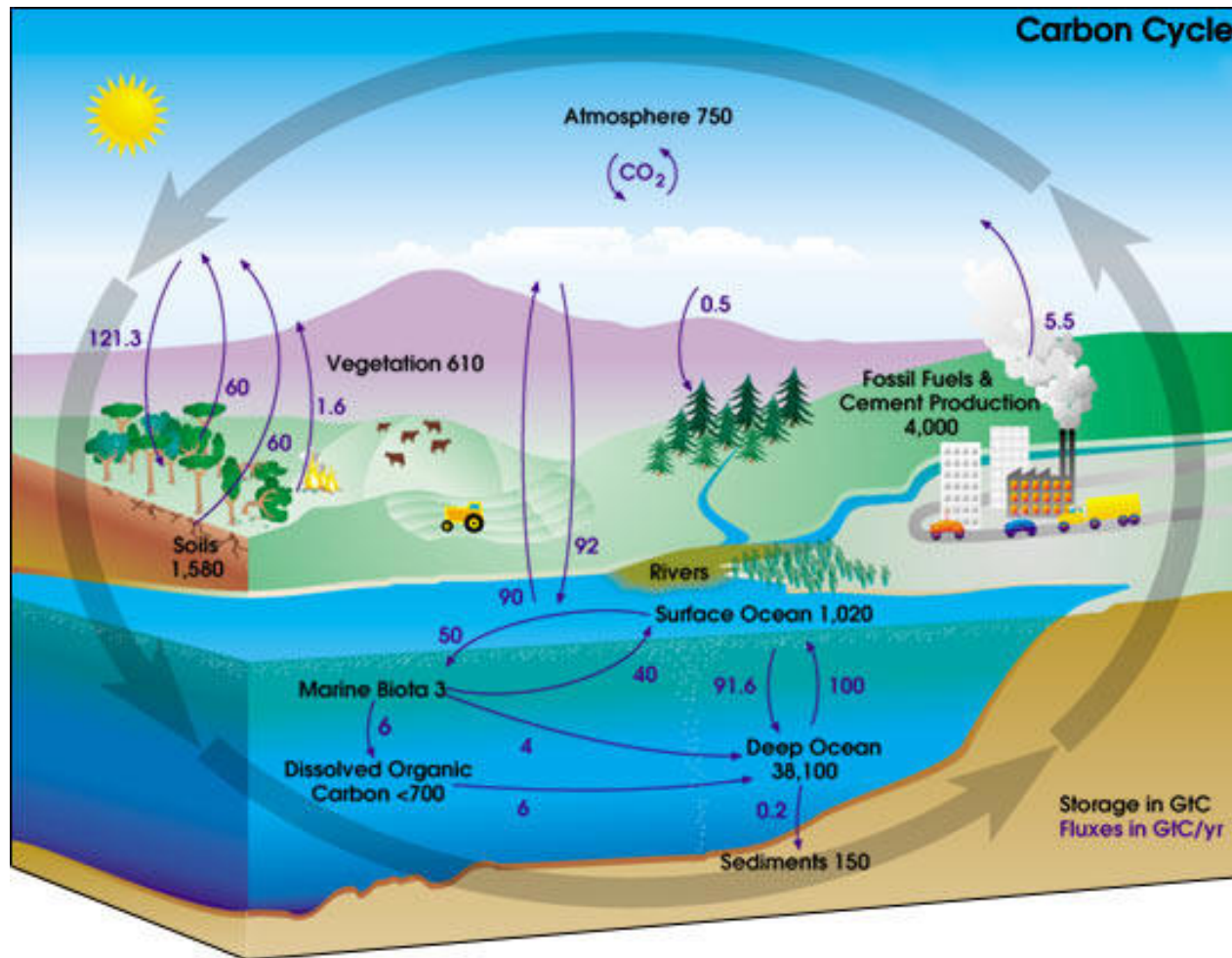
Negotiating Carbon Concessions in Developing Countries: Issues of Capacity, Confidentiality & Corruption



Dr. Kyla Tienhaara, Australian National University &
Dr. Wynet Smith, UN Panel of Experts on Liberia

International Conference on Global Land Grabbing
6-8 April 2011, University of Sussex

Forests & the Carbon Cycle

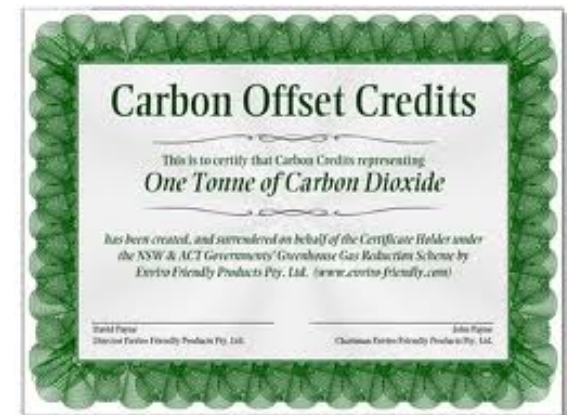


Source:
NASA

Forest Carbon Offset Projects

- Takacs (2009: 56-7):

a project developer plants trees to reforest a degraded ecosystem, or ensures that a forest that would have otherwise been degraded or felled is, instead, preserved. The developer can then sell the carbon...now sequestered in the trees and soil, for a contracted period of time.



Markets for Carbon

- Compliance market
 - Currently limited but that could change with REDD
- Voluntary market
 - projected to grow from \$42.0 million in 2010 to \$65.1 million in 2015



Who Owns Forest Carbon?

- Difficult to determine but in most developing countries it will likely be the state
- Governments have limited capacity to develop carbon offset projects themselves and will therefore enter into agreements with companies and NGOs

Concession Agreements

- Gray (2002: 1) defines a forest concession as “*a contract between a forest owner and another party permitting the harvesting (forest utilization contracts) and/or managing (forest management services contracts) of specified resources from a given forest area*”
- Concessions are the dominant form of forest governance in tropical forests in Southeast Asia, parts of the Amazon, and especially in Central and West Africa

Bidding & Negotiation

- Historically, concessions have been allocated administratively in most countries
- This is a slow process that invites inefficiency and corruption
- In recent years there has been a push by international donors and other organizations for countries to move to competitive bidding processes

Key Terms

- Carbon rights
- Government take
- Term of agreement
- Forest management & access to concession area
- Liability & insurance
- Dispute settlement

Capacity

- An issue in all sectors, but the problem is exacerbated when negotiators are dealing with a new type of investment that they have very little experience with
- Lohmann (2006: 238-9) highlights the fact that “forest authorities often simply don’t know how much foreign companies might profit from carbon trading, or how long they plan to keep plantation land out of other uses to ensure that carbon continues to be stored on it”.

Confidentiality

- Concession agreements and other types of foreign investment contracts are typically not publicly disclosed
- Confidentiality curtails accountability and participation and provides opportunities for corruption
- Most progress on contractual transparency has been made in the extractive sectors (e.g. mining, oil and gas); agricultural contracts and forest/carbon concession agreements are less likely to be disclosed.

Corruption

- Ayine et al. (2005: 3) note that the lack of transparency in contracts creates a “breeding ground for corruption”
- Global Witness (2010: 6) has pointed out that the “intangible nature of ‘carbon rights’” makes fraud much easier to commit and more difficult to detect, because the only physical evidence of ownership might be a piece of paper or an electronic record

A Liberian Case Study

- 2 decades of civil war followed by transitional government and democratic elections
- Since 2006, Liberia has enacted a number of new pieces of legislation related to natural resources but nothing specifically on carbon sequestration



Carbon Harvesting Corporation

- During 2008, news emerged that Liberia was going to issue a carbon concession for 400,000 hectares in River Cess County
- A document was circulating that proposed the allocation of this area to a UK-based company called Carbon Harvesting Corporation (CHC)



The Scandal

- The concession allocation process had not followed the required competitive bidding process and project documents were fraudulent
- Investigations revealed that the document being used to justify the proposal was a fraudulent report mainly derived from a United States Forest Service study in California
- In June 2010, police in the UK arrested the President of CHC on charges of corruption

The CHC Draft Concession Agreement

- CHC is obliged to set up a website and sell carbon credits
- Liberia is obliged to leave “intact the virgin rainforest, all forest resources and to not undertake any activities which impact on the climate in the designated area for the term of this agreement” in order to “ensure the integrity of the source of supply & harvesting of the CO2 emissions credits”
- Term is 2 years

The CHC Draft Concession Agreement

- Government take: Liberia would be paid a percentage of “the sale price received for each CO2 emission credit harvested and sold by the Agent from the designated area” every six months (percentage not identified in draft)
- Liability: Liberia would have to make up any shortfalls in the ‘production’ of carbon credits
- Dispute settlement: Permanent Court of Arbitration

Conclusions

- Case study from Liberia highlights the problems of capacity, confidentiality and corruption in the negotiation of carbon concessions
- CHC contract would have been a very bad deal for Liberia
 - Would lose up to \$8 million in annual timber revenues
 - Unlikely that the carbon concession would ever produce any revenue for Liberia
 - If the project produced less than 165 million tons of credits (which would be highly likely) the CHC could force the country to purchase the shortfall on the open market, which could cost more than \$2 billion

Recommendations

- Efforts on the part of NGOs and international donor agencies to push for contractual transparency in the extractive industry should be extended to other sectors
- A model carbon concession could be developed by an international organization or NGO
- Possibly time to set up an international agency to provide advice to developing countries on issues related to foreign investment and contract negotiation



Thanks!
Questions?