

A chance for change

A civil society briefing on the
Voluntary Partnership Agreement negotiations
between Vietnam and the European Union



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Cover: Residents of Tan Hoi Village in Vietnam's Thua Thien Hue Province.

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Executive summary



Eking a living out of the spectacularly rugged terrain of Vietnam's A Shau Valley can be a challenge for its forest communities.

On 11 May 2017, Vietnam reached a milestone in its fight against illegal logging.

After almost seven years of often exhaustive groundwork, the Vietnamese government initialled¹ the Voluntary Partnership Agreement (VPA) timber deal it's been negotiating with the European Union (EU) since October 2010.

VPAs are designed to end the illegal timber trade by tackling its root causes. These include corruption, power imbalances and a lack of clarity over land tenure rights.

As the world's first timber deals negotiated with the participation of civil society groups (including forest peoples), VPAs – which are part of the EU's Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan – are unique.

For many, they represent the gold-standard in international attempts to end illegal logging and the destruction of tropical forests through improving forest governance.² Yet if VPA standards are lowered in one country, the entire process risks being tarnished. Identifying and rectifying any failings is therefore critical.

1 The process leading to an operational VPA can be split into two stages: negotiation and ratification. The negotiation period ends with the initialling of the Agreement. The ratification period begins as soon as the Agreement is initialled, and the Agreement only enters into force once both parties have ratified. For further explanation of the VPA process, see: <http://www.fern.org/ratification> The initialling of a VPA by the EC and partner government marks the end of negotiations but does not amount to a formal signature. Under international law, initialling confirms that both parties agree that the wording contained in the document initialled is the wording they agreed. Initialling does not imply consent to subsequent signature or ratification. In the period between the parties initialling and signing the Agreement, each side must confirm the agreement through their own decision-making structures. See: <http://www.euflegt.efi.int/initialling>

2 In June 2016, the European Council described the EU FLEGT Action Plan (which the VPA is a component of) as "innovative" and stated that it has been valuable "in promoting and improving forest governance, especially through the establishment of effective multi-stakeholder participation processes, clarification of legal frameworks, policy reforms, increased transparency and accountability and awareness raising." See: <http://data.consilium.europa.eu/doc/document/ST-10721-2016-INIT/en/pdf>

This briefing takes stock of the VPA between Vietnam and the EU at a key juncture: as the Agreement formally moves from its negotiation to ratification phase. It assesses it – and the negotiation process – from a civil society perspective.³

The findings that emerge raise a number of concerns.

Vietnam has undoubtedly made steps to halt illegal logging within its own borders. The Vietnamese government has also made progress in recognising the value of civil society contributions. Yet despite this, up until the initialling of the VPA at least, civil society's input into the process has been limited, and access to VPA texts has been restricted.⁴

What's more, when measured against the indicators of good forest governance – accountability, participation, transparency, coordination and capacity – the VPA process in Vietnam has so far fallen short of the standards expected.

The continuing flow of illegal timber from neighbouring countries such as Cambodia into Vietnam to feed the latter's flourishing wood processing industry, is a particularly disturbing example of these failings.

Increasing the role of civil society in Vietnam's VPA will help the agreement succeed.

A concrete first step should be for the Vietnamese NGO network that was established to contribute and participate in the process to play a proactive and independent role in the VPA's Joint Implementing Committee (JIC).

The Vietnamese NGO network can also play a vital part in ensuring that the VPA's legality requirements improve rather than hamper the livelihoods of household businesses which survive thanks to small scale timber operations, and whose incomes could be profoundly affected by the VPA.

The evidence is clear – the more that people who have a stake in a countries' forests are involved in shaping how they are managed, the better they will be protected. And the more that citizens are involved in shaping the decisions that affect their lives, the more equitable societies invariably are.

3 From ratifying the VPA to implementing typically takes anything from a several months to more than a year. See: <http://www.euflegt.efi.int/vpa-phases>

4 This is at odds with the EU's Principles and minimum standards for consultation processes, as well the European Council's conclusions in 2003 and 2016 on transparency and participation.

A photograph of three men standing in a room. The man on the left is wearing a green and brown camouflage shirt. The man in the middle is wearing a maroon polo shirt with a white logo. The man on the right is wearing a light-colored polo shirt. Behind them is a blue wall with a red Vietnamese flag and a portrait of Ho Chi Minh. There are also some posters on the wall to the left.

Hope for a hard-pressed community

Lê Văn Bức (eft) and Tan Hoi villagers. “Surviving [here] with very limited resources is a big challenge,” he says.

The head of Tan Hoi village sits cross-legged on the floor describing the pressures his people face.

“The older generation lacks education. The younger ones leave school as early as 11. Only one person has ever graduated from university [out of a community of 328 people] as most people don’t have the resources to be able to afford it,” says Lê Văn Bức, a wiry, softly-spoken man in his 40s.

We’re in a community room decorated with environmental posters, the Vietnamese flag and a portrait of Hồ Chí Minh, in a village around ten kilometres from the Lao border, which lies in the shadow of a jutting mountain range covered with dense foliage. It’s a spectacularly rugged terrain. And one which can present deep challenges for those who live off it.

Speaking through an interpreter, Bức continues: “Surviving with very limited resources is a big challenge. The potential for agriculture here is very low, and the total plantation area for the village is small.” So as well as cultivating rice, bananas and cassava, the villagers subsist through their animals – goats, pigs, chickens, cows – and by collecting honey, rattan and bamboo shoots from the forest.

In many ways, the plight of the Tan Hoi villagers mirror that of rural communities the length and breadth of Vietnam: a lot of people eking a living from relatively little, husbanding the natural resources around them as best they can, trying to use the available arable land productively without destroying it.

It’s a struggle compounded by the dizzying rates of deforestation and forest degradation that blighted Vietnam over past decades – and which have reduced biodiversity, decimated many

of the protective canopies which stop torrential rain from eroding the soil, and razed the forests which guard against floods, drought and silting.

Forests have been cleared – often illegally – for agriculture, not just to feed the population but to meet export demands (for instance, in less than ten years, Vietnam has gone from nowhere to being the world's second largest coffee producer). They have also been cleared to make way to construct dams and other large-scale infrastructure projects, as well to feed the international furniture market.

Then there's the legacy of war. From 1962 to 1971 the United States' Air Force sprayed more than 80 million litres of defoliant chemicals – including Agent Orange – on hardwood forests, mangrove jungles and vast swathes of cropland to destroy the canopies where the North Vietnamese troops and Viet Cong were concealed, and to deny them food.

Tan Hoi village sits inside the A Shau Valley, site of the Hồ Chí Minh trail, a strategically vital network of routes used by the Viet Cong to funnel supplies and soldiers. As such, it was a major battleground and target for the US's chemical assault.

It was in the aftermath of the war that Tan Hoi village's inhabitants, who are from the ethnic minority Paco group, were first settled here by the Vietnamese government. The Paco's traditional belief system holds that everything in nature has a soul, and the spiritual world is anchored in the landscape around them.

Recently, hopes have risen for a future in which the natural environment they see as sacred is protected for future generations.

Since October 2014, the community has had support from the EU and the Dutch NGO the Inter-Church Organisation for Development Cooperation (ICCO), to run a community-based forest management model under the FLEGT programme. They have had technical assistance from the provincial Forest Protection Department, local NGOs and researchers.

Bức, who as well as being head of the village leads one of its two forest protection teams, says: "The VPA project has brought us benefits. Some people have been given small loans to improve their livelihoods through husbandry and farming. Forest protection and management plans have been introduced. So people understand that they have to protect the forest and not cut it down to make way for plantations, and the problem of land clearance for agriculture is under control." Illegal logging has also reduced.

"Villagers know they must have a land use right certificate [which proves the legality of their goods], and which gives them a better negotiating position with traders. Because people didn't understand the laws before, it was easier for them to be cheated and for traders to drive down the price. Now they know their goods have no problems," he says.

The FLEGT community forestry programme ended recently. Despite the improvements it's brought to the lives of people in Tan Hoi village, it remains a formidable challenge to thrive in the longer term from their limited natural resources.

The chances that they and many forest communities in Vietnam will prosper – will be greatly enhanced if the country's VPA with the EU succeeds.

Analysis

Six countries have signed VPAs with the EU. Nine others are currently negotiating or ratifying them. The backdrops against which these deals are forged, naturally, can vary greatly.

To better understand the achievements – as well as the shortcomings – of Vietnam’s VPA, a short detour through the country’s wider political and economic landscape is helpful.

Following Vietnam’s shift to a “market economy with socialist orientation” by the late 1980s, and the US subsequently lifting the trade embargo it had imposed on the country for almost 20 years, Vietnam’s economic growth has been among the most rapid in the world: making its economy, as one observer puts it, “a miniature China on amphetamines”.

As Vietnam’s economy – and population – has expanded, the demand on agricultural and forest land has also skyrocketed.^{5,6}

This pressure on forests has been exacerbated by Vietnam’s role as a major timber importing and processing hub, and the “exponential growth of its forest-based industries over the past decade”. (see box: Vietnam’s forests and forest sector)

The stability of the international timber market (in comparison to the more temperamental markets for Vietnam’s other major exports, such as rice, coffee and rubber) underlines the importance of the sector to Vietnam’s economy – and explains the significance many within the government attach to ratifying the VPA, which will bring the tantalising prospect of increasing the country’s access not just to the EU’s timber market, but others.⁷ Moreover, the VPA process is intimately tied to the wider Free Trade Agreement (FTA) between the EU and Vietnam, the conclusion of which was announced in December 2015.

Yet achieving the VPAs’ usual rigorous standards, means tackling some deep-seated and thorny issues.

Vietnam has long been plagued by poor forest governance.⁸ Its civil society has historically operated in a restricted space. And the country’s timber industry is incredibly diverse, ranging from small scale processing operations to major exporters – who operate under very different pressures.

So, after almost seven years of VPA negotiations, how far has Vietnam come in tackling these things, and in meeting the indicators of good forest governance – including participation, accountability and transparency?

5 Vietnam’s population has grown by nearly a third since 1979.

6 Agrarian Change and Land Tenure in Vietnam through a Political Economy Lens, Andrew Wells-Dang, Pham Quang Tu and Adam Burke May 2015.

7 See, for example, Vietnam’s Wood Industry expects strong growth with new trade pacts, VN Express, October 6, 2016.

8 For instance, in 2010, the World Bank report, Socialist Republic of Vietnam Forest Law Enforcement and Governance, noted: “The legal framework [for the forest sector] is still ambiguous and over-complex and contains loopholes that enable criminals to make easy financial gains with little risk of legal sanction. Prosecutions are minimal, and fines for forest crimes are extremely low relative to the gains that can accrue. These weaknesses diminish the deterrent value of the legal framework. In poverty terms, the legal framework is regressive since it places the enforcement burden almost entirely on the ‘needy’ (mostly farmers living in or near forests) rather than the ‘greedy’ (often well-connected businessmen and officials). It is the latter that drive illegal logging and wildlife trade and who benefit most from the proceeds of forest crime.”

Legality

Two very different stories can be told about Vietnam's efforts to end illegal logging.

The first is from within its borders, and is of a country which has been relatively successful in restoring its lost and damaged forests – the UN's Food and Agricultural Organisation (FAO) shows Vietnam's forests as moderately expanding for a number of years – as well as imposing tighter controls on logging them (in 2016 government announced a ban on logging natural forests).⁹

The second story is more depressing. This is one of a country which has fuelled illegal logging in its neighbours over many years to meet the increasing demands of its own wood processing industry.

In May 2017 – just as the EU and Vietnam were initialling the VPA – the Environmental Investigation Agency (EIA) published a damning report showing that vast quantities of illegal timber were being smuggled from Cambodia into Vietnam with the complicity of government officials and military personnel.

Those involved, the EIA said, were “pocketing millions of dollars in bribes from timber smugglers for their part in allowing hundreds of thousands of cubic metres of logs stolen from Cambodia's National parks to be laundered into Vietnam's voracious timber economy.”

The report is the latest in a line of well-documented evidence, stretching back many years.¹⁰

Promoting the plundering of a neighbour's forests while negotiating a trade deal with the EU with a Timber Legality Assurance System (TLAS) that supposedly bans illegal imports (as well as exports) of timber, is highly dubious.¹¹

As Fern said in the immediate wake of the VPA being initialled, signing the VPA before this loophole is closed, would imperil the credibility of the entire process.

Since then, reports from Vietnam suggest that concerns among some powerful industry players about the perception of Vietnam's timber industry in sensitive export markets, might create the pressure to finally address these concerns.

9 See: Prime Minister Nguyen Xuan Phuc has ordered a total ban on clearing natural forests to protect the 2.25 million hectares still surviving nationwide, Thanh Nien News, June 22, 2016. See: <http://www.thanhniennews.com/society/vietnam-pm-bans-cutting-down-of-natural-forests-63363.html> Some in Vietnam's civil society, however, question whether this total ban is being adhered to, alleging that big companies and others are being allowed to circumvent it.

10 According to the EIA: “The looting of Cambodia's forests is merely the latest phase in Vietnam's long and continuing history of wilful timber theft. Until 2015, Laos was Vietnam's biggest timber supplier and hundreds of thousands of cubic metres of logs flowed into Vietnam each year in violation of Laos' log export ban. That traffic only stopped in 2016 because Laos' new Prime Minister banned all raw timber exports, not due to any respect in Vietnam for Laos' laws or sovereignty.” <https://eia-international.org/corrupt-vietnam-officials-cambodia-timber-theft>

11 See: EU and Vietnam complete negotiations on a deal to combat illegal logging and promote trade in legal timber. “To implement the VPA, Vietnam will develop a timber legality assurance system to ensure that its exports of timber and timber products come from legal sources, including systems to verify that imported timber has been legally harvested and traded in accordance with the relevant legislation in the country of harvest.”

Vietnam's forests and forest sector

About 45 per cent of Vietnam is forested.¹²

Primary forest – defined as naturally generated native forest with no clear signs of human activity and undisturbed ecological processes – accounts for less than 1 per cent of the country's total.¹³

Vietnam's forests are classified in three main ways: special use forests (including national parks and conservation zones, which total 2.2 million ha); production 'forests' (used for harvesting timber and non-timber forest products, which total 8.5 million ha); and protection forests (used mainly for protecting water resources and land, totalling 5.5 million ha).^{14,15}

There is a general consensus that Vietnam has reversed the rapid deforestation of much of the last century – but the quality of most of its forests remains low.

Vietnam is the world's fourth-largest exporter of wood products, exporting to more than 100 countries.¹⁶

Large wood processing enterprises employ around 300,000 people, and the wood industry grew an average of nearly 15 per cent annually between 2007 and 2016.¹⁷



Illegal timber seized by the authorities in Thua Thien Hue Province.

12 Source: Vietnam Administration of Forestry, VNFOREST though this figure could be contested and depends on the definition of 'forested' and whether this includes plantations or land designated as forest land but which is being put to other use (see also point 15 below)

13 Source: FAO

14 Source: Vietnam Administration of Forestry, VNFOREST

15 A word of caution: Official (VNFOREST) figures of forest cover should not always be taken as gospel. Satellite imagery of specific areas – as well as local interviews from within them – has shown discrepancies between official data of forest designation and land use.

16 Ibid

17 Ibid

Civil society's role

The first step in a VPA is to define legal timber.

One of the agreements' strengths is that this definition evolves within timber-producing countries through wide-ranging consultations with civil society groups, forest community representatives, the timber industry and governments. In this way, the concept of legality is reached through the consensus of all who have a stake in the country's forests.

The Timber Legality Definition in the text of the EU Vietnam VPA, states that it has been developed through a "comprehensive consultation process". But how inclusive has the process really been?

In January 2012, a group of Vietnamese NGOs, research institutes and development centres from Vietnamese Universities, established the VNGO-FLEGT network.¹⁸

In the ensuing years, the network has conducted extensive fieldwork in different provinces and communities, undertaken research and advocacy, written policy briefs, made recommendations, and given presentations based on them. In this way, it has been a conduit for the hopes, expectations and concerns of poor communities and households across Vietnam, bringing their views directly to negotiators and policymakers.¹⁹

The VNGO network – as with civil society organisations (CSOs), forest communities and ethnic minorities generally – have not had a formal seat in the VPA negotiating process: something which marks it out from every other successful VPA. As such, at times, it has felt impeded in its efforts.

In a country where civil society has historically been controlled by the state,²⁰ this is the first trade agreement where CSOs have been actively involved – and their views (at times) heeded: a considerable achievement.

The VNGO network is now seeking a formal role for civil society-led independent forest monitoring by communities.

Impact on smallholders

Vietnam's economy is characterised by hundreds of thousands of household businesses. This presents a challenge for the government, as it is grappling to bring this informal sector into the mainstream economy and to enforce its regulations.

The situation is particularly acute in the forest sector, where a long tradition of small-scale timber processing operations exists, and tens of thousands of small household producers survive by turning wood from natural forests into household items, construction timber and other products – mostly to be sold domestically.

18 The network has 61 CSOs / VNGOs registered to participate, of which 20 are actively engaged in the process.

19 Among other things, the VNGO network carried out an extensive Livelihood Impact Assessment (LIA), analysing how the livelihoods of farmers without land use certificates, ethnic minorities who depend on forests, and small-scale wood processing households could be affected by the VPA. This study was very well-received by the government.

20 See for instance: Benchmark Assessment of Civil Society Space in Vietnam, 2016, Le Quang Binh and others.

Their livelihoods could be profoundly affected by the VPA. Yet awareness of the agreement within this sector is worryingly low.

Complying with the legality requirements of the VPA – for instance, being able to produce the documentary evidence of where timber has been purchased – could put these enterprises at risk.²¹ More positively, however, it should be noted that the VPA's legality definition does increase the flexibility in recognising smallholders' land tenure rights.²²

As the VPA moves into its implementation phase, awareness of the agreement and its requirements – and support in being able to achieve them – must be sharply increased among this informal sector. Consequently, the VNGO network is planning to consult with and support rural households as well as micro and small timber operators, and ensure that the VPA's legality requirements are realistic and practical for them.

Transparency

The Vietnam Administration of Forestry (VNFOREST)²³ broadly described what it saw as the roles of government, industry associations and CSOs in each stage of the roadmap (which outlines the topics to be addressed and timelines for negotiations). Unfortunately, both accountability and transparency in Vietnam's VPA process has been weak.

CSOs have had to wait for official documents to be shared, and then only on the government's terms (for example at the last minute, in hardcopy only or in one language; hampering in-depth assessment and feedback).

Between October 2014 and March 2017, little official information was released beyond to a privileged group of stakeholders. VNFOREST shared some hardcopies of draft texts for a consultation workshop at the end of 2016, and posted some annexes, including a draft version of the VPA's legality definition, on its website in March 2017: just two months before the agreement was initialled, while the [VPA texts and annexes](#) were made public only in the wake of the initialling.²⁴

In summary, without the opportunity to study and find loopholes in the agreement, how can they be closed? Sunlight is the best disinfectant, so until the agreement is read and understood by all interested parties – and until civil society is able to fully participate in making any necessary improvements – the VPA must not be signed.

21 In most provinces in Vietnam, timber flows in and out of hubs without proper documentation.

22 The legality definition includes up to 10 different types of documents (according to the category of forest) that timber growers can use to demonstrate legality of land use rights, and thereby obtain harvesting permission. Most significantly, for households that (for one reason or another) do not have any of the regular certificates/documents, they are able to obtain validation from the Commune Peoples' Committee that they are legally using the land. This will help create a framework for households to sell their timber. Research conducted by the VNGO Network in 2014, although from a small sample size, indicated that while around 80 per cent of household timber growers have Red Book certificates, the proportion increases to around 92 per cent with all the other types of verifiers and eligible documents. This still leaves around 8 per cent that are not able to demonstrate legality of land use, or which would need to obtain validation from the Commune authorities.

23 VNFOREST has overall responsibility for the management and development of forests in Vietnam.

24 According to those involved in the process, from 2012-13 there was intensive public dissemination of the draft legality definitions, as well the VPA texts and annexes, but since 2015 this tailed off.



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