

# Forest Watch Special

## FLEGT VPA Update, December 2018

# LOGGINGOFF

## Transparency and the timber trade: under construction

Illegal logging and the illicit timber trade thrive when legal frameworks, rights and benefits are unclear and complex to enforce. For this reason, transparency is at the heart of Voluntary Partnership Agreements (VPAs) and over the last decade, countries implementing or negotiating a VPA have made important advances in processing, collecting, monitoring and publishing information on the forest sector and related activities.

Various assessments are being conducted looking at how VPAs have contributed to transparency, and the ways in which it can influence governance and policies. Transparency works only when its value is understood, and information and knowledge are used to encourage and strengthen governance. This is becoming the case in many countries covered in this VPA update.

Some countries have dedicated websites providing updates on the forest sector and VPA-led reforms, and publish regular reports on progress. Liberia and the Republic of Congo have transparency laws and have integrated timber in their national Extractive Industries Transparency Initiative (EITI), (although Liberia's appears to have been suspended), and Central African Republic's (CAR) constitution includes provisions on contract transparency.

Civil society-led independent monitoring in Cameroon, Congo and Indonesia enabled the

discovery of grave and persistent illegalities in the forest sector; their findings are helping governments to understand the flaws, measure the risks and lost tax revenues, and improve environmental governance. In CAR, stakeholders and Civil Society Organisations (CSOs) are using transparency to create more trust and accountability. Awareness-raising campaigns are prompting communities to claim their rights. Researchers are using increasingly sophisticated satellite imagery and sensing to detect forest loss and understand the key drivers of deforestation.

Both in the negotiation and the implementation phase, the VPA process has provided governments with incentives to improve transparency. Even where discussions have yet to lead to firmer VPA commitments, such as in the Democratic Republic of Congo and Myanmar, the distant prospect of success combined with the requirements of the EU Timber Regulation have led to the creation of a system for tracking the chain of custody.

Much more needs to be done, however, to ensure that low-tech (concessions registers and tracking documents) and high-tech (such as satellite imaging) transparency informs virtuous policy-making and practices. This will contribute to healthier forests and forest sectors, and coherent land use planning, as shown below. This culture of openness must also permeate other sectors that exert pressure on forests, such as commercial



agriculture and infrastructure development. In terms of global biodiversity, climate, and the ancestral homes and livelihoods of the people who depend on forests, a great deal is at stake.

## AFRICA

### Cameroon

**VPA Status:** Entered into force 1 December 2011

The implementation of the VPA is playing out in a volatile context: a violent conflict in the Southwest continues and Presidential elections resulted in the contested victory of Paul Biya, confirming his seventh term in power. Nonetheless, implementation of the Cameroon-EU VPA seems to be regaining momentum after nearly two years in which hardly any progress was made, political

engagement to drive the VPA process forward was lagging meaning that illegal logging was rising.

The long-awaited process of revising the VPA legality grids was put back on the rails in September 2018. A critical report published in 2014 by Cameroon's Independent Auditor, as well as a series of pilot projects had revealed that the eight legality grids that form an integral part of the Cameroon-EU VPA are difficult, if not impossible to implement. The Auditor noted that some indicators in the legality grids would not verify timber legality; therefore in 2016 and 2017 the suggestion was made to revise all legality grids and adapt the verifiers and indicators where needed.

Civil society warns that if the revision of the legality grids removed essential social and environmental elements, it would ultimately undermine the whole VPA. In this respect, the participation of civil society and communities in this process is of great importance. The September 2018 meeting brought together all relevant stakeholders from the government, the private sector and civil society to define the next steps of the revision process and outline the plan of action. The revision process is to be launched in early 2019.

A stock-taking and planning exercise to assess the Cameroon VPA's strengths, weaknesses and challenges, and to define future actions is also programmed for early 2019. It aims to clarify what the VPA process hopes to achieve, and produce a detailed workplan for 2019, a seven-year workplan, and a workable monitoring and evaluation framework. This would help to keep the VPA focused on goals, keep all stakeholders engaged and prevent other essential issues, such as conversion timber, from falling between the cracks.

In the past six months little progress was recorded regarding transparency and access to information. Through Annex VII of the VPA, Cameroon has committed to make forest-related information publicly available. The Ministry of Forests established a dedicated website that posts about 80 per cent of the information. This website set an inspiring precedent for the Congo Basin region. The website has been frequently out of order



Photo: Cameroon, by Indra van Gisbergen



but has been operational for the past six months. Foder, a Cameroonian CSO, recently evaluated implementation of the transparency annex; their report reveals, among other things, that 73 per cent of the information that ought to be made public is available.

However, many pieces of the puzzle are still missing, including some information which communities need to be able to claim revenues they are due. Despite a January 2016 decision operationalising the manual of procedures' provisions regarding public availability of Annex VII information, no new information seems to have been uploaded on Ministry of Forestry website since early 2016. Providing regular updates, and making all of the required information accessible remain challenging, and must be prioritised in the VPA implementation roadmap to be developed in early 2019.

## Central African Republic

**VPA Status:** Entered into force in July 2012

A large part of the Central African Republic (CAR) is still controlled by armed militias. Instability plagues its capital, Bangui, particularly in the Muslim quarters, largely due to rampant criminality rather than sectarian and community violence. Despite the lingering insecurity, national growth has picked up and the economy is slowly recovering. According to the International Monetary Fund, this should help to accelerate governance reforms, which in turn will hopefully benefit all citizens.

The VPA structures are working to implement decisions from the last meeting of the Joint Implementation Committee (JIC), in May 2018. VPA stakeholders are keen to see progress on the recommendations on independent forest monitoring, led by civil society, and for the administration to tackle persistent breaches of forest legislation by logging companies that fail to pay taxes to communal authorities who are in



Photo: Baka community in Cameroon, by Indra van Gisbergen





dire need so that these can provide basic services to impoverished communities. CSOs would also like to see more rapid progress on the creation of community forest pilots in the Bayanga and Moloukou areas, to boost local livelihoods and halt forest destruction fuelled by illegal logging.

The government is increasingly sharing civil society's vision of how local communities can be involved in forest management. Following a mission from the Projet de Développement Régional du Sud-Ouest, a donor-funded development scheme to revitalise forested areas, the project recommended that the Forest Ministry set up a permanent framework for consultation on community forestry, and adapt the national legislation to strengthen local livelihoods and halt forest degradation. This spirit of dialogue is already evident through participation of the Gestion des Ressources Naturelles et de l'Environnement (GDRNE) in ongoing land reform and development of the forest policy.

Representatives from local communities in VPA structures are taking a more prominent role in monitoring forest illegalities and claiming their rights. Thanks to increased communication work by the GDRNE platform, communities living near the Centraboïs forest concession in the Lobaye area have asked for access to unused wood for

building houses and other social facilities. This is an example of how improved access to information and increased community participation is having a positive impact on local livelihoods.

**Transparency** has (somewhat) improved, at least in some areas: The website [www.apvrca.org](http://www.apvrca.org) now carries information on all logging permits.

While this is progress, civil society believes it is important to also publish other crucial information – for instance, concerning company revenues that should go to communities, and export volumes – so that stakeholders have a better understanding of the forest sector. This will also ensure that CAR meets its commitments to include financial flows from the timber sector under the Extractives Industries Transparency Initiative (EITI), and the overarching constitutional requirements on transparent management of the country's natural resources.

It is important that these transparency advances be mirrored also in the REDD+ process as CAR begins to develop its national REDD+ strategy and identify mitigation objectives at landscape and community level, because these will necessarily interact with VPA objectives. It is more efficient to coordinate them at the outset rather than address difficulties downstream.



## Ghana

**VPA Status:** Entered into force 1 December 2009

Since 2009, Ghana has been developing the systems required for exporting Forest Law Enforcement, Governance and Trade (FLEGT)-licensed timber and is now ready for the final assessment of their system. A great deal of positive groundwork has been laid in the run-up to this.

Ghana's Forestry Commission (FC) has led the development of Ghana's electronic wood tracking system, which forms the basis of their legality assurance system. This system has improved transparency within the chain of custody by providing a ledger of information from the initial logging to exporting of timber products. The credibility of this system is enhanced by civil society-led Independent Forest Monitoring groups, which complement the FC's law enforcement.

Ghanaian authorities and CSOs seem well prepared to enforce the VPA's provisions. It's important to note that CSOs participated as observers in audits carried out by the Timber Validation Department

(TVD). As a result of their participation, CSOs have a better understanding of how companies are complying with law enforcement under the VPA legality definition and how detected infractions are addressed.

CSOs also collaborated with the Forestry Services Division (FSD) to implement Real Time Monitoring of the implementation of the VPA legality matrix: communities report forest infractions in real time and CSOs provide the FSD with evidence of infractions to enforce action and apply penalties.

In short, Ghana has made large strides in **transparency** in the last two years. On 8 November 2018 at Chatham House, Ghanaian CSOs demonstrated how their [Ghana Timber Transparency Portal](#), a window into the legality assurance system, works. By providing information such as the type and specification of timber logged, contract, area logged, destination and vehicle transporting the timber, it provides an avenue for competent authorities and timber trade associations to access due diligence information on companies, shipment of timber and other codes. The presentation demonstrated the overall



Photo: Kakum National Park, Ghana, by Erik Cleves Kristensen / Flickr cc.



credibility and integrity of the Ghana Wood Tracking System.

Overall, local CSOs believe that the FC has shown significant acceptance of their input into the system development and that the system once implemented will further improve forest governance.

The **conversion of timber** leases into Timber Utilisation Contracts (needed in order to implement The Timber Resources Management Act of 1998) has reached its final stages: timber operators and the FC have concluded negotiations and reached an agreement on the basis for the calculation of the Timber Rights Fee; this has now been approved by the FC Board. Thus, the final hurdle has been cleared for timber industry members to apply for conversion of their leases.

What remains now is for the independent assessment team, contracted in mid-2018, to be mobilised. Ghana has declared themselves ready for this assessment to commence and once this process starts, are hopeful that a decision on readiness for licensing will be reached before the end of 2019.

## Liberia

**VPA Status:** Entered into force 1 December 2013

In his inaugural speech, 22 January 2018, President George Weah promised Liberians “a future of hope and prosperity”. Ten months into his presidency, Liberians are still experiencing economic problems as the price of commodities rises daily. Despite such difficulties, notable forest governance-related achievements have occurred since his inauguration.

President Weah is credited with the **passage of the Land Rights Act** (LRA) in September. The Act outlines four types of land ownership and, by accurately defining and attributing land rights in Liberia, could be a major step toward preventing land conflicts. It is the direct result of collaboration between the Government and CSOs. Members of the CSO Working Group on Land Reform joined with Members of Parliament to develop and finalise the bill.

The LRA will empower communities and advance their involvement in the governance of Liberia's natural resources. Prior to its passage, the CSO



Photo: Liberia, by Terry Sunderland / CIFOR, Flickr cc



Working Group on Land Reform stated that the Act would “meet the requirements of a truly pro-community land rights bill that is in the interest of all Liberians”.

Significantly, while the LRA provides a progressive framework, increased donor support will be needed to implement it successfully and to help communities use it to protect their traditional land rights.

In his inaugural address, President Weah also stated that he inherited a “broken economy”. This may explain why **no land rental fees** have been allocated to communities in the national budget. The omission is considerable: the National Forestry Law requires the Government to allocate 30 per cent of land rental fees paid by logging companies to communities and another 30 per cent to counties. However, from 2015 to the present, communities have received only a little more than USD 2 million through the National Benefit-Sharing Trust account. Liberians hope that the situation will be corrected before the next National Budget formulation.

**Accountability and transparency** both remain key issues within the forestry sector. Liberia expanded its national Extractive Industries Transparency Initiative (EITI) to include timber; more problematic is the fact that Liberia’s EITI has since been suspended for missing a deadline.

At the National Multi-Stakeholder Monitoring Committee (NMSMC) meeting in October 2018, the NGO Coalition of Liberia followed up on transparency and compliance issues raised by Sustainable Development Initiative’s (SDI) and civil society Independent Forest Monitors concerning the Sewacajua Community Forest Management Agreement (CFMA) process, and one logging company’s lack of transparency regarding community benefits and multiple issues of compliance with the CFMA process. The coalition called on the NMSMC to address these issues in order to bring community forestry in compliance with the Community Rights Law and to allow communities to benefit, as opposed to only logging companies.

While participants remain committed to the multi-stakeholder VPA platform, the new managing director of the Forestry Development Authority (FDA) has yet to attend any of the meetings since his appointment in February 2018. Members of civil society and the EU hope that the new director will become more involved: his absence from the VPA process has led to difficulties in coordinating the JIC meetings. This must not be allowed to diminish Liberia’s VPA progress or to delay setting up the new CFMA monitoring committee, to be composed of EU and Liberian representatives.

As indicated above, the FDA still lacks the ability to manage the CFMA process, leading to conflicts within communities. However, two CSOs, SDI and Foundation for Community Initiatives (FCI), are working with community forest leaders to build their capacity to manage community forests. FCI works directly with women representatives to increase their expertise and, over the last year, has held workshops and trainings to increase awareness and encourage their participation in both Community Assemblies and Community Forestry Management Bodies. SDI also provides technical and financial support to forest leaders and has worked with communities to increase their representation at community forums. CSOs remain committed to the VPA process and hope to work closely with the Government in order to improve natural resource governance in Liberia.

## Republic of the Congo

**VPA Status:** Entered into force March 2013

The Congolese Ministry of Forest Economy has been in turmoil in recent months, following the launch of an investigation by the state general inspectorate into the Forest Products Export Control Service. Several high-level officials were arrested on allegations of mismanagement and are awaiting a judicial decision. Civil society has long called for greater accountability and zero impunity in the forest sector; they believe the government response, especially to reports on illegalities, weak tax recovery rates and land use conflicts inside forest concessions, must be more ambitious.



The timeline for the adoption of a new **Forest Code**, one of the key VPA requirements, is still uncertain as the Government's internal services are making further changes to the text. CSOs fear that the most advanced provisions and innovations related to community forestry, rights and participation are being watered down. During the last meeting of the JIC in June, participants agreed that the process for drafting the Code's accompanying decrees should be as inclusive as possible and involve an expanded working group. Civil society also received indications that the implementing regulations for the 2011 law on indigenous peoples had been finalised.

Paradoxically, the parliament passed a new tenure law that may hamper communities' ability to uphold customary rights, as it establishes an administrative procedure for all land titling that contradicts provisions of the law on indigenous peoples. The latter recognises indigenous peoples' customary rights; the land tenure act does not. While the government sees the legislation as a step forward to clarify land tenure, governance advocates condemned the speed with which the text had been adopted and the lack of consultation with CSOs and local communities. A legal challenge has been brought, although not by civil society.

As Congo moves to the REDD+ implementation phase and receives support from the World Bank for the further development of the projects and programmes foreseen in its investment plan, it is important that the Government's land use plans be robust and serve both its emissions reduction and development objectives. Reports of continued mining exploration in forest concessions, and of the development of large infrastructure projects such as dams in forested areas do not bode well for national efforts to combat conflicting land use and 'unplanned deforestation'.

On a positive note, more forest management plans are being validated and implemented that will pave the way for increased community areas inside forest concessions, and possibly community forests. As logging companies start to put their house in order, one of the priorities

for 2019 will be for the government to deploy the *Système Informatisé de Vérification de la Légalité* or computerised legality assurance system (TLAS) and ensure that companies and the forest administration are trained to use it and to monitor compliance with the forest legislation.

**Transparency and access to information** remain a considerable challenge. A persistent request from communities is improved access to information on the VPA, REDD+ and community forestry so that they can be better informed of their rights and potential benefits, and better equipped to take action.

The publication of the 2017 VPA annual report is a welcome development, as is the increasing availability of data on forest revenues and logging permits. There is, however, a question of how accessible this information is for local communities? For instance, do they really know how much timber comes out of their forests, and do they have access to Government receipts for it? Often local communities are not aware of social benefits that are negotiated for them because of a lack of access to company contracts.

This concern was echoed at the 11th Forest Governance Forum in October 2018, hosted by the Congolese government in Brazzaville (FW 240). The country clearly wishes to lead the way when it comes to protecting forests and strengthening livelihoods in the Congo Basin and beyond; however, it must do much more to ensure proper community participation. This begins with giving communities the right information in an accessible manner, including in local languages.



## ASIA

## Indonesia

**VPA Status:** FLEGT licensing started 15 November 2016

At the last VPA Joint Expert Meeting (JEM), November 2018, the Indonesian Independent Forest Monitoring Network (JPIK) inquired about progress in relation to the action plan for 2018 adopted earlier this year. The action plan was supposed to address a number of issues highlighted in JPIK's February report, "SVLK: A Process toward Accountable Governance," (VPA Update June 2018), and it recognised the need for independent monitoring organisations to be formally established and to ensure that they receive sufficient funding.

Concerning **transparency**, the JEM agreed that detailed information about the timber supply chain should be accessible; nonetheless, in practice access to information for independent forest monitors (IFM) is problematic. Log tracking

information, as well as export and import data are difficult and time-consuming to obtain. In June 2018, the Ministry of Environment and Forest (MoEF) adopted a new regulation on public information disclosure; however, obstacles still exist and IFM organisations face problems getting public disclosure of information coming from provincial authorities.

In addition, in September 2018, JPIK provided evidence of timber being logged in protected areas such as the Sebangau National Park, in Indonesia's Central Kalimantan. Instead of the peat being protected and conserved to maintain the region's hydrological cycle and to act as a carbon sink, JPIK's monitoring shows systematic and extensive encroachment of agriculture on protected areas as well as illegal logging: forests had been cleared and burned to make way for oil palm plantations. JPIK also found that timber harvested illegally in the national park was allegedly being used to supply local timber industries. Despite a report submitted to the Government (Director General for Law Enforcement and MoEF) by JPIK and several news articles about this case, the DG Law Enforcement has still not taken action, leading to



Photo: Indonesia, by Aulia Erlangga/CIFOR, Flickr cc.



serious concerns about the fate of the national park.

In October 2018, the Rainforest Action Network published an in-depth investigation into the Korean-Indonesian conglomerate Korindo Group. The report provides evidence of illegality, environmental destruction and community rights violations. Korindo claims to be in possession of timber 'legality certificates' under the Indonesian Timber Legality Assurance System (SVLK). In addition to submitting a complaint to DG Law Enforcement and MoEF, JPIK shared their findings in the November JEM meeting, as well as with the JIC secretariat.

These cases must be tackled properly or they risk undermining the credibility of the entire FLEGT process.

## Laos

**VPA Status:** In formal negotiations since 2017

Discussions between the EU and Laos have advanced in some areas, particularly on some timber legality definitions. There is near agreement on what constitutes a 'production forest', what

labour standards companies must apply and what activities fall under 'wood-processing and trade'.

Other aspects of the VPA negotiations have lost momentum, however. Draft timber legality definitions concerning plantations, conversion areas, village-use forest, confiscated timber and imported timber will not be ready by the end of the year as originally planned. Delays here are linked to ongoing reforms of forestry and land laws as well as the plantation decree. Adoption of these regulations has been postponed until 2019 as several issues still need to be addressed.

Disrupting matters further, over the past few months, Laos had faced major floods and natural disasters as well as the collapse of a hydroelectric dam in the southern part of the country, leaving many dead and thousands homeless. These dramatic events have understandably shifted policy priorities. The timing of the next face-to-face negotiation is therefore uncertain.

Progress has been made on issues regarding land-use conversion such as improved clarity on procedures for applying for concessions in conversion areas, the location of the permit for conversion and sizes of targeted conversion areas.



Photo: Laos by Anthony Guegen



Lao CSOs have been quite vocal during their participation in formal technical working groups. One of their main concerns is how forest communities will benefit from timber use: the Lao government has refused to agree to a timber legality definition of 'village-use forest', asserting that these are for customary and subsistence use only, not for commercial use ([VPA Update June 2018](#)). Lao CSOs are currently completing research and will present the results in the upcoming technical working groups. Other research led by Lao CSOs focuses on improving communities' and NGOs' understanding of compensation mechanisms in situations where communities must be resettled due to conversion of forested areas. Again, initial findings should be available before the end of the year on [Logging Off](#).

Formal negotiations have not yet begun on **transparency**. Lao CSOs, however, are conducting an exhaustive analysis of the legal framework surrounding transparency and public disclosure of information in the forest sector that should be completed by spring 2019. They are assessing gaps in existing provisions by comparing them with international standards and good practices in investment projects and highlighting the challenges. Particular attention will be given to community access to information in forest areas that are targeted for conversion to other uses. The outcomes of the research will inform VPA discussions and emphasise the need to develop a VPA annex on transparency.

## Myanmar

**VPA Status:** Continuation of the informal preparatory phase is uncertain

The UK Department for International Development (DFID), which has been the main source of funding to support Myanmar's preparations for FLEGT VPA negotiations, has [refocused its activities in response to the crisis in Rakhine State](#). As a result, the UK Secretary of State for International Development decided to suspend DFID's support, effective 31 December 2018. Supported activities will be stopped by 30 November.

The Myanmar Government has applied for interim funding from the [UN Food and Agriculture Organisation's \(FAO\) EU FLEGT programme](#), but this is not seen as a long-term solution. Activities proposed to be covered by FAO grants include keeping the newly established multi-stakeholder group (MSG) going, maintaining a FLEGT secretariat, and training stakeholders in verifying and monitoring the chain of custody (CoC) of timber from natural managed forests, from forest to export.

The main role of the MSG, which at the national level comprises nine members each from government, civil society and the private sector, is to prepare Myanmar's negotiating positions. [Since the last update](#), the group has been formally established and similar sub-national groups have been set up in all of the country's 15 states and regions. However, CSOs in Kayah – Myanmar's smallest state – have so far decided not to participate in that state's MSG.

With DFID support, Myanmar's current CoC process has been defined and sample documents that need to be completed at each step have been reproduced and translated into English. This "**dossier**" describes all 30 steps from assigning the annual timber harvest, felling by the Myanmar Timber Enterprise (MTE, a state monopoly), sales to private sector operators, and processing and export of wood products. It will facilitate both verification of legal compliance by independent bodies and monitoring by CSOs. Verification that the process for each shipment has been correctly carried out, and that shipments have not been contaminated by illegal timber at any point, may be used by EU operators to demonstrate due diligence, as required by the EU Timber Regulation (EUTR).

The publication of the dossier has improved **transparency**, showing what documents are needed to cover each step, making them available to operators and verification bodies and allowing CSOs to monitor compliance. Now it is critical to train those responsible for implementing the system, verifying compliance and monitoring implementation.



Although the EUTR has provided an economic incentive to open CoC processes, this so far affects only timber from natural managed forests, which is available for processing for export. The gain in transparency is therefore limited. Since timber from **forest conversion** – to agricultural or hydroelectric use, for instance – is now intended only for the domestic market, the incentive for greater transparency in these supply chains, including prescribed environmental and social protection when converting forest land to these uses, is still lacking.

Indeed, a fundamental contribution that the VPA process could make to improving governance, if carried forward, would be to stimulate clarification and reform of **land tenure and traditional rights**. Although a new land use policy was adopted in 2016, so far no new legislation supports its application. By contrast, a law on Virgin, Vacant and Fallow Land (VVFL) considers ungazetted land ‘vacant’; this has been **amended in a way that fails to improve, and likely weakens the position of traditional occupants**. While Parliament has passed a new forest law in 2018 giving communities stronger rights to forest lands and allowing them to commercialise the timber they sell domestically, how this interacts with wider land tenure issues remains uncertain.

The future of the VPA process in Myanmar is tenuous. The Government, private sector and civil society wish to continue working towards a VPA, but in the current political climate, the prospect of official negotiations is seen as remote. Establishment of the MSG is the only key milestone achieved towards preparing for negotiations; work on a legality definition has not started, although the CoC dossier could provide a starting point. The FAO has yet to decide on the grants applied for but, even if secured, such funding would only be short-term, carrying the process forward perhaps half a year. A more stable solution is needed.

## Vietnam

**VPA Status:** Signed 19 October 2018

Since the previous [VPA Update](#), both the EU and Vietnam prepared intensively for the **official signing** of the VPA ([FW 240](#)), which took place in Brussels, Belgium, 19 October 2018. It is expected the agreement will be ratified by the Prime Minister of Vietnam before the end of 2018, beginning the official implementation phase; and on the EU side, in early 2019.

Work continues to integrate the VPA requirements into Vietnam’s national legal framework. The



Photo: Vietnam, by Sustainable Rural Development (SRD)

Vietnamese Forest Administration (VNFOREST) has been busy finalising four Government Decrees<sup>1</sup> and seven Ministerial Circulars to be approved and issued by the end of 2018. These documents are to guide the implementation of the new Law on Forestry, which will enter into effect in early 2019.

The provision on Vietnam's Legality Assurance System (VNTLAS) was included in a separate chapter of the draft decree guiding implementation of certain articles of the Forestry Law. However, after the first round of consultations, VNFOREST decided not to include it in the final decree, mainly because more time is needed to develop the Organisations Classification System (OCS; a register of companies exporting timber and timber products) and other elements of VNTLAS. The Multi-stakeholder Implementation Core Group (Core Group) learned in July 2018 that a separate decree will be proposed to cover elements of VNTLAS, including the OCS, timber import controls, timber export verification and FLEGT licensing. Drafting of this decree has not started yet, which might slow down VPA implementation.

In the three surveys conducted by the VNGO-FLEGT Network in recent months, the regulation focuses more on document control, although there is a significant need to monitor how the regulation is implemented in practice. Households, and micro and small enterprises are reluctant to undertake administrative procedures with government officials because they feel officials would create difficulties.

The VNGO-FLEGT Network mobilised its members to provide comments on a draft circular of considerable interest, providing detailed guidance on a **Forest Product Dossier and Traceability of Product's Origin**, which the Government opened for public comment. This circular will update and replace eight existing legal documents, and is expected to ease the implementation of all procedures related to handling forest products generally, and timber in particular. The Network, together with the Vietnam Union of Science and Technology Associations (VUSTA), submitted a 19-page written comment to VNFOREST, but as yet have had no indication of whether these will

be taken into consideration – nor even regarding whether this important decree has been finalised.

The Core Group held its fourth meeting to agree an action plan for the remainder of 2018 and to introduce the new chair and elect a new co-chair of the group. The new co-chair is a Timber Association representative; the previous co-chair was a CSO representative. In this meeting, the Core Group agreed that a website for the group will be developed and a regulation on administration and management of the website will be drafted.

It is hoped that the website will be an effective channel for **disclosing information**, as required by Annex VIII of the VPA.

According to this Annex, information that is difficult to access (forest land use planning and allocation, forest management, information on forest related crimes and sanctions) or has never been previously public (data on timber industry) will be made available. In 2019, Vietnamese authorities will assess the current state of transparency in the forest sector and develop an action plan to implement Annex VIII, in collaboration with the Core Group.

VNFOREST released an official letter requesting organisations working on the FLEGT-VPA not to carry out consultations, communication or training without prior agreement of VNFOREST to avoid miscommunication and the conveying of inappropriate messages.

CSOs raised concerns that this may delay their activities. VNFOREST held a meeting with these CSOs to clarify the issue, at which they asked NGO to submit VPA communications to see how long it would take for VNFOREST to endorse them.

Since the last update, the minutes of the first JPC meeting have been uploaded on VNFOREST's website. In the minutes, there is a tentative roadmap for VPA approval and priority actions for the year 2018, according to which it is expected that the Prime Minister will ratify the VPA by the end of 2018.

<sup>1</sup> The four decrees include a main decree for implementation of the new law, one on CITES, one on organisation of the forest protection service, and one on sanctions and penalties.





Photo: Raphael Trotman, Guyana's Minister of Natural Resources and Marjeta Jager, the European Commission's Deputy Director-General for International Cooperation and Development initialled the text of VPA. By Javier Bernal Revert, EU FLEGT Facility

## LATIN AMERICA

### Guyana

**VPA Status:** Initialled 23 November 2018

The final draft of the VPA was completed in September 2018; initialling took place on 23 November 2018 in Brussels and involved the National Technical Working Group (NTWG), the Government of Guyana and the European Commission. While several improvements have been made, others must be secured during implementation.

Now begins a period during which the Commission and the Government of Guyana carry out internal consultations before submitting the text to their parliaments for ratification. Eventual entry into force would officially kick off the implementation phase, expected to take up to seven years, during which time the Legality Assurance System (LAS) and other mechanisms would be tested. If found to be operational, and following a final joint review,

FLEGT licences for specific shipments of timber could be issued.

The VPA's very existence and the issues it attempts to address are positive, and there are significant elements to applaud in the last version of the text. The most prominent example is the **increased transparency in relation to concession allocation**, which recognises that concessions must be revisited if they overlap with indigenous land titles, as these lands are gradually being formally recognised through the Amerindian Land Titling Project.

That said, there is uncertainty about how the last draft addresses the most fundamental ask of the Amerindian Peoples Association (APA). The APA has consistently called for protection of indigenous peoples' (IP) customary land through the inclusion of Guyana's Constitution and relevant international human rights treaties signed by Guyana in the matrices of the Legality Definition (LD). The Constitution and reference to applicable international treaties have now been included in the LD, but in a separate "legal references" section

that is not part of the national legal and regulatory framework.

On 22 November 2018, in Brussels, EU and Guyanese negotiating parties addressed the confusion about what this means in practice for the definition of legality. Both parties reassured stakeholders that the position of the Constitution and applicable international treaties is strictly a matter of format, and that nothing in the VPA can be interpreted to mean that these legal references have a different impact on the definition of legality than the other legal references.

This clarification is most welcome and will necessarily inform a number of key components of the LAS to be developed during the implementation period, such as detailed procedures for concession allocation, verification and monitoring, as well as a grievance mechanism and strengthening of the legal framework. All these processes must ensure the effective participation of indigenous communities.

The strengthening of the legal framework must be closely related to the **ongoing process to revise the Amerindian Act**. This would allow the VPA legality matrices to be updated to contain clear safeguards for indigenous peoples' traditional rights to land and resources (without the current distinction between titled and untitled lands). It would also allow for the inclusion of the right to give or withhold their consent for concessions or timber extraction on such land. Notably, the National Toshias Council (NTC), representing all indigenous Villages in Guyana, issued a public statement in July 2018 calling upon the Government of Guyana and the Commission to refrain from initialling a VPA text until revision of the Amerindian Act was completed. The VPA does refer to this revision process, but currently contains no commitment to amend the VPA accordingly.

As the VPA has now been initialled, it will be even more important to ensure that, until the legal framework can be updated, the procedures to ensure concessions are not allocated on indigenous lands without their free, prior and informed consent (FPIC), also apply to the customary lands of communities that have not yet

been titled. Even though a grievance mechanism is important, prevention of rights violations in the first place must be the focus.

As part of efforts to improve transparency in the concession allocation process, the Government has also committed to develop a "**vacancy list**" of forest areas available for concession allocation, a highly positive step. The list must be developed in a participatory manner, using existing information on indigenous customary lands. This includes sources including records held by the Ministry of Indigenous Peoples Affairs (MoIPA) about lands where title or extension has been applied for (worryingly, various applications have been mislaid over the years); communication with the District Toshias Councils currently mapping their customary lands; and research on the extent of IP's customary lands carried out by APA, communities and the Forest Peoples Project during the Land Tenure Assessment work ([here](#) and [here](#)).

As for next steps, it is important that the National Implementation Working Group now being established have broad indigenous representation. Also, the annex on supporting measures envisages multi-stakeholder dialogue on the issue of land tenure; however, as yet no clear terms of reference, list of participants or timetable have been issued. It is hoped that defining these will be high on the list of priorities, and that the dialogue will be broadly inclusive.

## Honduras

**VPA status:** VPA signed 14 June 2018

One of the most striking aspects of the Honduran VPA process is that the collective enthusiasm for resolving problems is seemingly unsinkable. Linked to this, one of the VPA's most significant contributions is the will to take advantage of its opportunities: the Honduran VPA process has set in motion demands that go beyond the forest sector.

The **signature of the agreement**, 14 June 2018, took place after intense debate among all players. A legal review is being carried out by the Presidency of the Republic, to ensure that



the Agreement is in line with the Honduran legal framework. Once this step is taken, it will be referred to the National Congress for discussion and approval, allowing progress towards ratification.

The shadow cast by post-election uncertainties on VPA participants has seemingly been dispelled. Stakeholders on the **national working group** (Comité técnico) are elaborating a five-year plan to establish priorities for inserting the VPA into the social context. CSO relations with the government officials responsible for day-to-day tasks continue to be positive, and cooperation runs smoothly.

“We are beginning the most important phase, implementation, and working very hard,” says José Filadelfo Martínez, a member of the working group and of Fundación Democracia sin Fronteras. “We have the major goal to issue FLEGT licences in five years’ time, but to do this we must address a broad range of details. We need small victories already by next year.”

Where to begin? At present, the debate revolves around the simplest, most effective way to reinforce the powers and resources of the institutions responsible for implementation, such as the national-level Institute of Forest Conservation (ICF).

The VPA is seen as an opportunity to address the historical problem of **regularising land tenure for small communities**, indigenous and otherwise. Difficulties concern coordination between the institutions involved – the ICF, Instituto Nacional Agrario, Instituto de la Propiedad – and the significant resources it takes to work on the issue. Nonetheless, they are now defining goals and timetables, including how many hectares to regularise each year.

One goal is to strengthen the institutions in charge of **enforcing obligations** stemming from the VPA framework, and to develop the expertise needed to check for infractions in the forest sector; environmental issues are not currently a priority of the national police and the public prosecutor’s office (Ministerio Público). Initially, the institutions concerned (Ministerio Público, Procuraduría General y Corte Suprema) must devise a joint plan

in this sensitive issue for governance in Honduras.

The numbers of actors involved creates another enforcement problem. Directly or indirectly, the VPA affects some 30,000 small producers – perhaps more, as numbers are uncertain, especially in the informal sector – located across a variety of municipalities, implicating a host of controllers and local authorities. To create a culture of legality, it is necessary to build the capacity of small producers, so they can comply with the legal timber trade requirements. Efforts here would have a positive effect on the domestic timber trade as well.

Another goal is **transparency**. So far this has been positive; the government understands that implementation is not a matter only for authorities, but for all stakeholders. Still, the time needed to obtain documentation from the national-level ICF and confidence in official information must be improved to allow effective participation.

More difficult, practical implementation of the VPA’s transparency requirements goes far beyond Tegucigalpa. It must be instituted in far-flung municipalities in forested areas. Problems arise, in part due to the multitude of actors involved. Also, a problem of trust exists in small municipalities, where the power of local mayors is greater, and where jobs may depend on a powerful employer; instructions from the capital seem distant. Even local CSOs charged with watching the forest sector have difficulty determining what is going on exactly, and who is responsible for what.

A great deal more information must be shared for local and indigenous communities to defend their interests, and for all stakeholders to obtain a picture clear enough to understand the effectiveness of initiatives.

**Consultation of IPs** remains a priority, but processes have stalled. Indigenous organisations are questioning a consulting process that treats them as a homogenous bloc, rather than as separate groups with varied cultures. IP communities wish to be differentiated and are exploring the creation of a protocol concerning FPIC that would allow them to exercise their rights more effectively.





Indeed, **the Honduran VPA seems to have triggered a national groundswell.** By reducing the power of bureaucracy, Hondurans working to implement the VPA are sending a strong signal to other sectors. In terms of transparency and methods of consultation, the forest sector is by far the most advanced industrial sector in Honduras. The VPA has opened a crucial, but difficult issue:

indigenous and other communities are asking, why can't the VPA's transparency requirements and consultation processes be applied to other sectors with far worse records on such issues, such as the mining and water sectors? Could a national-level law on consultation across the board be elaborated? So far, these excellent questions have not been answered.

These occasional Forest Watch Special - FLEGT VPA updates represent civil society perspectives of VPA processes around the world. They are curated by Fern, and are a collaborative effort of civil society representatives across numerous countries, including the co-managers of LoggingOff.info, the online resource for civil society perspectives on VPAs.

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