



December 2015

FLEGT: Review, Review, Review, and then act?

In October the European Court of Auditors (ECA) published the results of its report on the EU Action Plan on Forest Law Enforcement, Governance and Trade (FLEGT). Some of the recommendations are welcome – including a call for the EU to ‘put its own house in order’ by ensuring stronger enforcement of the EU Timber Regulation, which prohibits the import of illegal timber products to the EU; and a call for more support and a sharper focus on fewer VPA countries to really achieve the needed governance reforms.

Some key insights appeared to be missing from the report. For instance in the case of Liberia, the ECA states that “illegal logging nevertheless continues to be a major problem, as does the abuse of private use permits”. In fact, the VPA has been instrumental in halting the use of private use permits, with landmark indictments of officials exploiting them. Liberian Goldman Prize winner, [Silas Siakor, has observed](#) of Liberia’s timber deal with the EU: “[it] is the only vehicle we have at the moment...[without the support of the VPA] illegal logging will immediately intensify.”

In a statement released shortly after the ECA report was published, Fern’s Saskia Ozinga said “The auditors have looked at FLEGT as one simple programme with one simple aim, when the situation in different timber producing countries varies greatly. While progress in some countries has been painfully slow, the FLEGT Action Plan remains the EU’s most effective policy on tropical forests to date; it’s the first scheme of its kind to address the root causes of illegal and unsustainable logging.”

The ECA report is one of three evaluations of FLEGT carried out this year. The results of a review commissioned by the European Commission into the overall effectiveness of the FLEGT Action Plan, and another on the effectiveness specifically of the EU Timber Regulation are expected to be published in the new year.

Once all three reports are published, it will be up to the Commission to respond to the findings and recommendations and propose a way forward for the future, which will then be discussed by the European Council and the European Parliament.

The Director General for DG DEVCO, Mr Fernando Frutuoso de Melo told an audience in the Netherlands that the FLEGT approach takes time – more than we wanted – but that in the long run the outcome will be better and that we should increase and further develop the FLEGT approach. We agree!

AFRICA

Cameroon:

Official VPA status: implementation since 2011

In November 2015, Cameroon and the EU finally published the [2014 joint annual report](#). The report is optimistic and highlights the progress made with, among other things, legislative reform and transparency. Despite this upbeat report, the VPA process in Cameroon seems to be in serious trouble in a context where illegal logging is on the rise and civil society is increasingly under pressure.

Five years after VPA was signed, space for civil society to engage effectively in the VPA process and be part of the political decision making seems to be closing. As an illustration, the last two Joint Follow-up Committee meetings (Comité Conjoint de Suivi - CCS), held on 7 July and 28 October, were not preceded by a preparatory meeting of the National Follow-up Committee (Conseil National de Suivi – CNS). The CNS is a VPA institution in which civil society has an official seat at the table and through which it is supposed to be able to feed in positions in preparation for the national CCS meetings. The most recent CNS meeting was held in August but served merely to give feedback rather than collect inputs and prepare for the next CCS. This is particularly problematic in a context where the role of civil society in the CCS is being sidelined. In July civil society was only invited to join the CCS on the day of the meeting itself, meaning that they did not have the time to properly prepare. The civil society representative was not even invited to the October CCS.

Nasako Besingi, director of Struggle to Economise our Future Environment (SEFE) and a leader of community opposition against the development of the US-based Herakles Farms' destructive palm oil project, has been [convicted for defamation and sentenced to three years' imprisonment or a high fine](#). This judgement is a very intimidating signal for all critical voices in Cameroon and beyond, who dare to challenge land grabs which lead to forest destruction.

Civil society is being sidelined in this way amidst serious concerns about the legality of exported timber. In August the report of the Cameroon FLEGT Independent Auditor finally entered the public domain

(originally written and circulated internally in August 2014), but [only through a leak to the media](#). The report highlights numerous problems with the documentation associated with concession titles, concluding that not a single title could be considered legal according to the VPA legality grid.

Recognising the seriousness of these findings, the EU and Cameroon created a joint working group in April in charge of formulating recommendations in response to the report, and to map out next steps regarding the controversial issue of conversion timber. The working group recommended more flexible procedures around concession titling as a means of addressing concerns in the Auditor's report, which the CCS accepted in its August meeting. Despite the concerns over participation highlighted above, civil society and other stakeholders were able to participate in this working group, and supported the recommendation on titling procedures. The Communities and Forest Platform (CFP) however, rejected government proposals around conversion timber, and this dissent was recorded in the report of the working group, published in July.

[Greenpeace reported](#) that the company CCT (Compagnie de Commerce et de Transport) trades timber from illegal sources and imports it to Europe via Antwerp, the port through which most Cameroonian timber enters the EU. The fact that the EUTR is not effectively implemented allows illegal timber from Cameroon to enter the EU and severely affects the political will of Cameroon to implement the VPA. Effective EUTR implementation must therefore be a high priority for EU member states.

Another issue of concern relates community forest royalties under Cameroon's finance law. Cameroon's 2015 budget, adopted in December 2014, abolished the long-standing provision for 10% of forest royalties (revenues forestières annuelles) paid by logging companies to the government, to reach affected communities for development purposes including education, health, access to water and electricity. Parliament will soon debate the 2016 budget, and [civil society is urging the parliament](#) to reintroduce the 10% annual forest royalties for communities. A petition signed by more than 2,000 community representatives backs up this position.

Central African Republic

Official VPA status: implementation since 2012



A still from Fern's film 'How FLEG is making a difference in CAR' (2015)

The situation in the country remains highly volatile. In September, dozens of people were killed following violent sectarian clashes in Bangui. More recently, the vice president of the National Transition Council was kidnapped briefly along with several UN peacekeepers. This insecurity is hampering faster progress with the VPA, although there have nonetheless been some notable results this year. The local civil society platform was able to provide important inputs to the drafting of the complementary regulations foreseen by the VPA. These regulations should pave the way for better civil society oversight of the bidding process for logging permits and more adequate compensation for forest communities.

The government recently adopted a ministerial [decree on the allocation of community forestry](#) following intense work from the CSO Maison de l'Enfant et de la Femme Pygmées (MEFP). The CSO platform has started to deploy independent observers who were recently trained by Centre pour l'Information Environnementale et le Développement Durable (CIEDD), Fern's local partner. This work is part of the platform's broader independent monitoring strategy and a VPA mandated responsibility. CIEDD expects CSO monitoring to shed light on law enforcement in forest concessions across the country including those that were recently awarded in dubious circumstances.

In the meantime, discussions on a more focused and realistic VPA roadmap are ongoing including the best approach for developing the Legality Assurance System (LAS) in a country where government controls are extremely feeble and efforts are focussed on the country's reconstruction. Isabelle Gaudeville, the CAR Forest Minister visited Brussels in September to

reconfirm her government's commitment to the VPA. The Minister announced plans to audit the forest sector to identify the most pressing governance challenges and inform measures to strengthen controls over logging operations. It will be important that the audit process is as transparent and inclusive enough and that findings lead to effective measures, including continued oversight of the sector by civil society.

Cote d'Ivoire

Official VPA status: in negotiation since 2013

VPA negotiations are still being conducted in three groups: one about the legality grid and legality assurance system (SVL), a second about regulating the domestic market, and a third about communication and transparency. Civil society is meeting in three working groups to feed into these negotiation streams. Discussions around the domestic timber market are proceeding slowly, as the participants try to build their understanding of this complex issue. Work on the legality grid will likely continue into at least the beginning of 2016, as some of it depends on the content of the new implementing regulations for 2014's Forest Code.

These implementing regulations are yet to be drafted, but will have an important impact on a number of issues central to the VPA. One particularly important issue is the ownership of trees, which the new Forest Code has conferred to the owner of the land. The process for drafting the regulations was delayed throughout 2015 because of complications around funding and recruiting the legal drafting cabinet, and then the presidential elections in October. Now that these elections have concluded, with a resounding victory for incumbent Alassane Ouattara, the process for drafting the Forest Code implementing regulations can finally commence. The Forest Ministry kicked off the process with a national forest strategy meeting from 16-19 November, which gave civil society and other stakeholders the opportunity to input to the future vision of the forest sector in Cote d'Ivoire.

Civil society will be involved via several rounds of consultation, though this falls short of the initial commitment they obtained from the Forest Ministry for direct CSO inclusion in the drafting committee. The CSO platform has formed an internal Technical Committee to prepare their contributions to the implementing regulations.

Democratic Republic of Congo

Official VPA status: in negotiation since 2010

VPA negotiations in DRC are on hold. In the meantime, new worrying legislation has been adopted which could severely affect forests and local communities. In September, a new Ministerial Order (Arrêté 050) created a new category of artisanal logging concessions. The new type of concession has no legal basis in the DRC Forest Code nor in the DRC constitution, and allows a moratorium on the allocation of logging concessions that has been in place since 2002, to be bypassed.

This legislation, passed without public consultation, opens the door for individuals and companies to increase logging under the cover of so-called “artisanal logging”. This could result in serious environmental damage, uncontrolled exploitation, loss of valuable resources and widespread corruption. New allocations under Arrêté 050 confirm the risk that land available for community forestry is likely to be reduced as a result of this legislation. NGOs have expressed their concerns about Arrêté 050 in a letter to international donors. They also plan to file a complaint at the Constitutional court.

Gabon

Official VPA status: in negotiation since 2010

While the VPA process in Gabon is not making progress, Gabon’s forest law is under revision. The revision of Gabon’s forest law, ongoing since 2011, is not transparent nor inclusive. CSOs have asked to be consulted in the reform process and [point of incoherences and gaps in the draft of the new forest law](#). They also highlight that the draft forest law would be in violation of Gabon’s international commitments.

Ghana

Official VPA status: implementation since 2010

A host of political challenges are still delaying Ghana from issuing its first FLEGT licenses, although progress picked up speed towards the end of 2015. One of the major obstacles is the need to bring existing logging permits in line with the latest legal requirements in order that they can be converted into Timber Utilisation Contracts (TUCs). Ghana’s Attorney General has advised the Forestry Commission (FC) to begin

the process of converting the leases, including the possibility of prosecution for those who fail to convert. The Attorney General has also stated that Timber Rights Fees incurred since 1998 must be paid when existing licences are converted to TUCs. Timber Rights Fees are supposed to mostly benefit communities in which concessions are located although the funds go initially to the government. Historically though, these fees have rarely been paid, resulting in the loss of about \$100 million each year, according to some sources.

Other important challenges to being ‘FLEGT licence ready’ are the development of forest management plans for remaining forest reserves, and whether ministerial permits, which could provide a potential loophole for avoiding normal legal requirements for logging operations, should be allowed to continue. The Forestry Commission (FC) has set up a working group comprised of civil society representative and FC staff to develop guidelines for ministerial permits. There is an emerging positive consensus on setting limits on the size, duration and scale of such permits in the future. The FC is proposing these guidelines be made part of the Manual of Procedures—a relatively weak legal status; Ghanaian civil society organisations insist that they must be fully legally binding.

Another outstanding issue is reforms to the domestic market. There is a push for waiving taxes on sawn lumber imports into Ghana, in order to help meet the shortage of legal lumber in the domestic market. For the domestic market to be reformed, more attention must be paid to ensuring sustainable access to legal timber, as well as greater efficiency in the processing and use of lumber.

The consolidation of forest laws is finally making some progress. A consultant has been hired to draft the new laws. The parliament is currently discussing the Wildlife Resources Management Bill, to be included as a section of the consolidated Forest Resources Management Act.

A national study on tree tenure and benefit sharing, commissioned by the government, has now commenced and is expected to conclude imminently with clear recommendations. Civil society hope this could pave the way for a national consensus on benefit sharing schemes for different forest and tree tenure regimes.

Liberia

Official VPA status: implementation since 2013

Liberia has been under attack from logging companies, palm oil companies and mining companies; half the country has now been given out in concessions. At the same time Liberia has made more international commitments to stop deforestation, increase transparency and improve governance through signing up the EITI, VPA, New York Declaration, and REDD as well as the Norway-Liberia agreement worth \$150 million. This means there is a lot of donor and INGO interest in Liberia, numerous initiatives overlap each other but it can seem that nobody has an overview or is ensuring coordination across them. Local NGOs, ignored in many of these initiatives, are struggling to keep on top of developments.

The VPA implementation is moving ahead with a number of regulations under discussion. From an NGO perspective the key regulations are those dealing with conversion timber and taxation. The demand of some NGOs is to say no clearly to conversion timber coming from the industrial logging of agriculture concessions. As most palm oil companies and the Government of Liberia have made zero deforestation commitments, this NGO demand should chime with that of the government and companies. Nonetheless there is growing evidence that there is (industrial) logging ongoing in palm oil concessions and there are growing conflicts between communities and the companies.

The most positive recent news is that the first one million USD owed by the Government to communities [has been handed over](#) to the National Benefit Sharing Trust; the communities now need to prove they are able to manage it wisely. This has certainly boosted the interest of the communities in the VPA now they see the concrete benefits coming their way.

Underlying many of these developments are the tensions around the draft Land Rights Act (LRA) currently before the Parliament. The LRA is one of the most progressive land rights acts on the continent, and is being hotly debated. If passed, it will provide communities with ownership over their customary land. The hope of many is that the draft act will pass in January, which would be the first step on a long and fraught road to a more inclusive development model.

There seem to be divisions within the Forestry Development Authority (FDA) over how the LRA relates to the forestry sector. These became clear at a conference hosted by the FDA, the NGO coalition of Liberia, Global Witness and RRI where the [FDA's Managing Director made strong and supportive statements](#) including concerning the LRA while his second in command challenged the draft act. Overall capacity in the FDA remains problematic, given the challenges it faces in regulating the logging sector and specifically the new permits, the Community Forest Management Areas (CFMAs). Ten CFMAs have now been approved, opening up the way either for genuine inclusive community forestry or the largest yet sell-off of forests to logging companies - or something in between. Without a lot of guidance, education and training there is a real risk that communities will sell too quickly to logging companies or others, without securing long-term benefits and possibly destroying the forests. Another 100 CFMA applications are currently on hold as they go through the steps required in the law.

Republic of Congo

Official VPA status: implementation since 2013

The VPA Joint Technical Group continues to meet regularly to ensure effective implementation of the VPA workplan. Work on the development of a Legality Assurance System (LAS) is making progress with international and local technical experts developing software that can soon be launched. The Independent Auditor's activities have commenced with an initial mandate of assessing how robust Congo's VPA process is at this stage. Adoption of the new Forestry Code is still pending, although at the most recent Joint Implementation Committee (JIC) in November the government reiterated its commitment to make progress on this. Civil society is worried that the adoption of the code will be considerably delayed while other reforms and processes such as REDD are picking up pace without proper civil society oversight.

The Plateforme de Gestion Durable des Forêts (PGDF) is finalising a set of proposals related to the Forest Code and working to strengthen its participation in the VPA process through renewed structures and an updated strategy. The PGDF hopes that the political unrest linked to the upcoming referendum will only be brief so that their activities can go back to normal. However,

the process for further developing the forest decrees is not yet clear, and the recent involvement of the World Bank does not help to clarify this. CSOs are asking for initial proposals to be taken forward and have called on the Minister of Forestry Economy to ensure that further consultations are held. Azur Développement and FGDH, Fern's local partners will soon launch a civil society monitoring project with funding from the EU. The project will monitor implementation of VPA social indicators and REDD+ safeguards and feed recommendations to the government on improving governance of the country's forests.

AMERICAS

Guyana

Official VPA status: in negotiation since 2012

Although the government in Guyana changed for the first time in 23 years this May, the agency focusing on the FLEGT VPA process remains the same, as do the concerns of civil society groups there.

A fourth formal negotiation scheduled for November was postponed as a result of the high terror alert in Brussels. A new date has not yet been set, but it is expected to be in the first quarter of the new year. The government roadmap for negotiations is still unchanged – with official plans to conclude negotiations in 2016. The Amerindian Peoples' Association (APA) however, and the communities they represent, argue that more time needs to be built in to allow genuine community participation in the VPA process. A local community member reflected this sentiment, [reported in an APA press release](#), by saying "If we don't understand, we should not sign".

The APA wrote to the government this year requesting space as an observer at the negotiations. Despite verbal assurances from a number of government and other sources that a space has been approved, the APA is yet to receive any formal notification of this. Most strikingly, the recommendations from APA, chief among them a demand to include free prior and informed consent of indigenous forest communities, and protection for customary land rights, within the scope of the VPA negotiations, have yet to be translated in to positive developments within the process.

Honduras

Official VPA status: in negotiation since 2013

Honduras and the EU held their [fourth formal VPA negotiation in Brussels](#) on 12th and 13th October, with representatives of indigenous peoples, CSOs, small and medium enterprises, the Honduran parliament, and the Ministry of Forest and Ministry of Environment, as well as one Vice President in the Honduras delegation. Progress was made on the legality definition, transparency, and complementary and supporting measures. Traceability and verification discussions will be the subject of the next negotiations, in April 2016 in Honduras. While in Brussels, the Honduras delegation also had a meeting with European Parliamentarians to discuss views and expectations of the VPA process.

After the negotiation session in January 2015, CSOs were optimistic about the 'open position and political will' of the Honduran government towards the VPA process (see previous VPA update). It is less clear now how well indigenous peoples' rights will be tackled within the VPA, although if current provisions within the 'additional measures' section of the agreement for interministerial coordination around issues such as land tenure are maintained, there is potential for a positive outcome.

ASIA

Indonesia

Official VPA status: implementation since 2014

Indonesia's bid to become the first country to issue FLEGT-licensed timber suffered a setback in October when the country's Ministry of Trade issued a regulation which exempted 15 product types from requirements to undergo compliance audits under the SVLK (Indonesia's timber product licencing system, which will form the basis for FLEGT VPA licences). The move was met with swift opposition from the Ministry of Environment and Forestry, as well as the EU Ambassador to Indonesia, who wrote a letter to the Trade Minister voicing his concerns for VPA implementation. Some media reports have suggested the Ministry of Trade may relent on this deregulation move, but that remains to be seen. Indonesia's [civil society independent monitoring network, JPIK](#), also raised the alarm at the new Trade regulation.

Meanwhile, in July the EU-Indonesia VPA Joint Implementation Committee (JIC) met, and published a [first annual report](#) in September. Another JIC meeting is scheduled for December 2015, where parties will review progress against the joint action plan for implementation, including reviewing how the EU market has prepared to respond to the arrival of FLEGT-licenced timber from Indonesia. The role of civil society, and JPIK in particular, will be crucial as, if FLEGT licenced timber is to be credible, the independent civil society forest monitors must endorse it.

Laos

Official VPA status: In negotiation since April 2012.

The VPA negotiation process was officially approved by the prime minister's office in August. This high-level endorsement removes one of the barriers that had previously kept progress at a snail's pace. This first meeting of the National Steering Committee took place in October, during which an action plan for 2015-16 was discussed. One important goal for this period will be the elaboration and agreement of the Timber Legality Definition (TLD). A Forest Legality Compendium has been completed and will provide the foundations for an informed discussion on the TLD.

The organisational structure of the VPA negotiation process is in place with a formal role in all instances for Non-Profit Associations (NPAs – the name for local civil society groups in Laos), including one representative in the National Steering Committee.

This formal role for NPAs is a positive signal from the Government of Laos. However, it remains to be seen whether NPAs will be able to participate in the negotiations in an effective and free manner. Since early last year, the Ministry of Home Affairs has been amending the decree on NPAs and foundations, adding stricter requirements and paperwork that complicate the way NPAs can operate and collaborate with INGOs. More recently, Laos declared that it will not host a meeting of Southeast Asian CSOs on the sidelines of the ASEAN summit next year.

A group of regional NGOs submitted a [Statement of Concern](#) to the regional ASEAN steering committee highlighting the difficulty for Lao civil society to publicly mention sensitive issues such as land seizures. The statement declared that in this context of prevailing

fear, there cannot and will not be opportunity for open dialogue on issues of regional importance in Laos. If the VPA is providing the first tentative steps to open the space for effective civil society involvement, maintaining the current political momentum to pursue negotiations will be crucial.

Other areas of concern are the lack of transparency and corruption. A WWF report made public this year exposed that in 2013, Laos exported 1.4 million cubic metres of timber to Vietnam and China. That's more than 10 times the official timber harvest in Laos. The ban on exports of logs and sawn timber imposed by the Government of Laos from 1999-2002, in order to encourage depp processing of timber to be developed in the country, but it is either not enforced or circumvented due to numerous permissions issued in "exceptional cases".

Despite this difficult context, local NPAs have organised to make the most of their formal role in the VPA, by selecting five people to represent and defend the interests of forest people during the negotiations. At the first National Steering Committee meeting last October, the NPA representative reminded participants of some of the key criteria to legalize the timber trade, i.e. improved ownership and access of communities to forests, participation of all parties to the negotiations, increased transparency in logging and addressing corruption. He added that the current absence of transparency and corruption are two areas of concerns in Laos.

Malaysia

Official VPA status: in negotiation since 2007

The VPA process in Malaysia is still stalled (see previous VPA updates). In December a group of [MEPs issued a motion denouncing the deteriorating human rights situation](#) and in particular the crackdown on civil society activists, and requesting a debate on an urgent case of a breach of human rights, democracy and the rule of law in Malaysia. VPA negotiations cannot go in the right direction unless the Government of Malaysia addresses these, and other, concerns.

There has been renewed controversy around the Netherlands' procurement policy for Malaysian timber. In 2014, the Dutch government took the controversial step of accepting timber certified under

the Malaysian Timber Certification Scheme (MTCS) within its sustainable procurement rules for a limited period of two years, after which time the position would be reviewed again due to persistent concerns about the MTCS standard. In July this year, after a visit to Malaysia, the Dutch State Secretaries for Economic Affairs and Environment notified the House of Representatives that they will allow tropical hardwood from Malaysia with the MTCS label to enter the Dutch market without any conditions, and that Malaysian CSOs, including JOAS (a collective of Malaysian human rights and indigenous rights NGOs), were satisfied with the quality of the standards and the implementation of the MTCS. However JOAS has publicly denied its involvement and complained about the flawed or non-existent consultation process under the MTCS. JOAS also reaffirmed that 'free and prior informed consent' is not properly integrated into the MTCS guidelines and not correctly implemented in practice.

Vietnam

Official VPA status: in negotiation since 2010

Negotiations in Vietnam are continuing, although civil society still has no formal role in the process and is hampered by this. The latest version of the legality definition has still not been made available to CSOs.

On 2nd December 2nd, the Prime Minister of Vietnam Nguyễn Tấn Dũng came to Brussels to conclude the negotiations of a European Union-Vietnam Free Trade Agreement. Together with the President of the European Commission Jean-Claude Juncker and the President of the European Union Donald Tusk, they also reaffirmed their determination to conclude the FLEGT VPA negotiations by the end of 2016, although experience in other countries indicates that these predictions for the end of negotiations are often overly optimistic. In response, the NGO network working on FLEGT (the VNGO network) and Fern [issued a statement highlighting some of the issues that need to be addressed](#) before closing negotiations on the VPA.

The main focus of the VNGO-network is currently to establish a civil society independent forest monitoring system. The network has completed a baseline study in four provinces where they intend to pilot the system. The baseline study provides the starting point for the monitoring of compliance with the timber legality definition at household level, which will be

implemented by the network over time. A training workshop on GIS application has been held in Vietnam. Facilitated by international trainers, the workshop is an opportunity to learn about GIS and its application to VNGO-FLEGT's areas of work. The network now has one more powerful tool at its disposal to monitor the implementation of the VPA.

However, the issues of participation and legitimacy remain in Vietnam. With no formal role in VPA negotiations, and no clear indication from the government that the results of civil society forest monitoring will be taken on board by the government, it is difficult to assess what political impact the VNGO network can have. It is hoped that the results of the network's monitoring activities will speak for themselves. The completed baseline studies are already beginning to reveal important findings about non-compliance at the household level, which will be communicated to the government forest department (VNForest) and other FLEGT VPA stakeholders via policy papers in the new year.

These occasional ForestWatch 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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