

Fred Pearce

# FOREST STANDS

**How new EU trade laws help countries protect both forests and peoples**



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Photo cover: Fishermen draw nets to collect their catch of the day on the Congo River

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Photo by Oliver Grand / CIFOR

Wood market — Yaoundé, Cameroon

## Introduction

March 2013 could be a critical month for the survival of the world's forests. It will be the month when the European Union's Timber Regulation comes into force, outlawing all illegally sourced timber in one of the world's largest timber markets.

The regulation is not the first to ban imports of illegal timber. The US did the same with its 2008 amendment to the Lacey Act. But the EU has gone much further. For the regulation forms part of an action plan that has already reached legally binding trade agreements with a number of countries on reforms to forest governance. The reforms include better recognition of the rights, including tenure rights, of forest communities and indigenous peoples.

These Voluntary Partnership Agreements (VPAs) provide for greater transparency and accountability. Their ambition is to both curb corruption and empower forest communities. They have the potential to transform how the world's largest tropical forests are run, in nations stretching from Latin America through west and central Africa to Indonesia.

This report charts the progress being made by the VPAs in encouraging forest reform and improved social justice in forests. It suggests that, while progress has not been universal — and forest exploiters are adept at finding the weakest link in any form of governance — the VPAs are succeeding. They are unique initiatives in governance. By providing a key to unlock wider actors in civil society, they offer a template for better governance far beyond the forests.



Photo by Charlie Pye-Smith/CIFOR

Illegal logs from natural forest, Riau, Indonesia

## Revolution in the Rainforests

An estimated one tenth of all logging round the world is illegal. In the Brazilian Amazon, Indonesia and parts of West Africa, the figure may exceed 50 per cent. A study by the UK think tank Chatham House in 2010 found that more than 100 million cubic metres of timber are being cut illegally each year — enough logs to stretch ten times round the Earth. These criminal acts degrade or destroy an estimated 5 million hectares of forest a year and deprive governments of up to \$10 billion in state revenues.

Properly managed, forest timber could be a source of wealth and development; instead it often becomes a curse. In countries such as Cambodia, the Democratic Republic of the Congo (DRC), and Liberia, illegal timber has funded the purchase of arms and sustained civil wars.

But at least we are talking about it. Two decades ago at the Rio Earth Summit, when tropical deforestation first reached the top of the international agenda, illegality was the unspoken problem. Only in 2001, after a meeting in Bali, did a ministerial declaration for the first time acknowledge that “illegal logging and the associated illegal trade directly threaten ecosystems [and result in] serious economic and social damage, particularly on local communities, the poor and disadvantaged.” Today combating illegality has become a prime method of fighting forest loss, able to unite consumer and producer countries.

Enforcement of existing laws in the traditionally lawless jungles of the world offers a global potential in combating deforestation. It breaks down the sometimes antagonistic relationship between exporting countries, who are keen to maintain sovereignty over ‘their’ forests, and importing countries. By joining forces to fight trade in illegal timber, importing countries are offering their power over international markets for use in support of the domestic forest laws of exporting countries.

But this will only work if there is justice in the forests, and if traditional forest communities and indigenous peoples, whose activities have often been criminalized, are protected and their rights secured. This often requires fundamental reform of forest laws and governance. By combining a ban on imports of illegal logs with legally binding agreements on

fundamental forest reform, the European Union is attempting to help countries achieve this dual strategy for sustainability in forests.

European policies are going with the grain of political progress in many developing countries. Improved law enforcement within forests has become a major item on the domestic political agenda of many in recent years. According to Chatham House, illegal logging in deforestation hotspots like the Brazilian Amazon, Indonesia and central Africa fell by between 50 and 75 per cent in the first decade of the 21st century. Since 2004, Brazil has cut deforestation rates in the Amazon by 70 per cent, largely through better policing.

Indonesia, home of the world's third largest area of surviving rainforest, is on a similar path. Not long ago, its forests were a byword for corruption and illegality, with up to 90 per cent of the logs emerging from the rainforests taken illegally. The country's reforming president, Susilo Bambang Yudhoyono, has made a determined effort to tame the forces of forest destruction. It has become a defining feature of his term of office.

One lesson of these success stories is that fairness is vital. Rigorous enforcement of laws requires that those laws are just, or it brings injustice and conflict. That has put centre-stage the need for reform of forest law — to bring fairness, accountability and openness to regions that have all too often harboured secrecy, corruption, lawlessness and violence.

Such change has to begin at home. But importing regions such as the European Union can assist this process greatly through bilateral trade agreements that promote and lock in reform in return for access to their markets.



Photo by ODI





Photo by Michael Padmanabha/CIFOR

Certified timber, East Kalimantan, Indonesia

## Strengthening Law and Improving Forest Governance

From March 2013, the European Union will require all importers of timber and timber products to be able to demonstrate that each shipment has been legally produced.\* This follows similar regulations passed in the US in 2008 under the Lacey Act. But the EU goes further in seeking to reach legally binding agreements with exporting countries on helping them achieve legality and forest reform.

This package is known as the EU Action Plan on Forest Law Enforcement, Governance and Trade (FLEGT), published in May 2003. The centrepiece of FLEGT is a series of Voluntary Partnership Agreements being struck with major timber exporting countries. The agreements are designed to ensure the legality of all timber exported to the EU from those countries. They require the tracking of timber from stump to port, the licensing of the timber and regular auditing of timber companies. Once the agreements are operational, importers can circumvent the responsibility of showing due diligence in where their timber comes from, as required by the EU Timber Regulation.

But first, exporting countries have to persuade the EU that their internal rules to prevent exports of illegal timber will stick and will be fair. The aim is to meet the goal set by the EU Council when adopting the FLEGT action plan in 2003 that “VPAs should strengthen land tenure and access rights specifically for marginalized rural communities and indigenous peoples; strengthen effective participation of all stakeholders, notably non-state actors and indigenous peoples in policy making and implementation; increase transparency; reduce corruption...”

That involves a complex process of in-country negotiation about the governance of the forests. The EU has insisted that the negotiations involve all key stakeholders, from both the timber trade and, most importantly, from civil society. Environmental groups and social and human rights organizations have been heavily involved in most negotiations. In some cases, there have been direct representatives of forest communities.

\* This includes any operator that puts timber on the market, including EU grown timber

Speaking in 2009 at a conference on illegal logging at Chatham House, London, Philip Mikos, the head of the environment and rural development unit at the European Commission, said stakeholder involvement was “fundamental” to VPAs. “The EU relies on stakeholders to identify any confusion, gaps and misinterpretations in laws regulating timber”, he said. Without the buy-in of civil society, reforms will falter and law enforcement will fail.

By August 2012, the EU had signed VPAs with six exporting countries. Ghana was first, in 2009. Then came the Republic of Congo and Cameroon in 2010, and Indonesia, Liberia and the Central African Republic in 2011. Negotiations are also under way with the Democratic Republic of Congo (where the sheer size and chaos of the country makes it hard to police), Gabon (where they are reportedly stalled), Malaysia (where there are problems ensuring the engagement of civil society), and Vietnam.

Four other countries have formally asked to start negotiations — Cote d’Ivoire, Guyana, Honduras, and Laos. And interest has been expressed by others, including Bolivia, Burma, Guatemala, Ecuador, Madagascar, Mozambique, Paraguay, Sierra Leone, Thailand, Uganda, and Zambia.

Most negotiations for VPAs have gone well. Exporters welcome the certainty it gives them in the face of the new EU member states’ border regimes. NGOs have welcomed the way that most agreements legally enshrine both the rights of civil society to be involved in framing forest policy and law, and the rights of forest communities to a say when and under what conditions logging concessions are handed out. The negotiations have proved empowering for many civil society organizations and community representatives in an area of national policy too often dominated by the violent, the corrupt and the illegal.

But the process is not perfect and there are major challenges ahead. For most countries, signing a VPA is only the start of a much longer and more complex process of implementation. Not least is ensuring that greater law enforcement should not end up targeting the poorest. As the FLEGT action plan noted in 2003: “The challenge is to ensure that actions to address illegal logging, particularly enhanced law enforcement, do not target weak groups, such as the rural poor, while leaving powerful players unscathed.”

Take the case of the first signatory: Ghana. Ghana began negotiations in 2005 and became the first to reach agreement in 2008. The VPA was signed the following year. But a change of government slowed progress. In mid-2012, the new government had still not appointed a company to track timber, and did not expect to issue any licences to exporters for at least another year — late 2013 at the earliest. Clearly, the failure to issue licences by the time the EU Timber Regulation comes into force in March 2013 will create problems for law enforcement. But equally it will allow more time for the implementation of the forest reforms that will be the ultimate test of the success of FLEGT.

“From the start, we saw FLEGT as a possibility to enforce reforms, like competitive bidding and transparency for concessions and changing ownership rights to forests in favour of farmers,” says Elijah Danso, a social activist and forest consultant in Ghana for two decades. It has helped engage civil society in policymaking on forests. But it has not yet ensured

the reforms he believes are necessary. He fears that some within government want to use the VPA to ensure continued access to EU markets without creating genuine sustainability and justice in the country's forests. "We need power at the local level. If the VPA doesn't deliver that, it will be a failure," he says.

Albert Katako, of CARE International, who represented NGOs at the VPA negotiations in Ghana, warns that "implementation has been frustratingly slow. The companies are cutting as much timber as possible before the VPA is implemented. We want the EU to put its foot down."

Despite such concerns, VPAs have already chalked up a series of remarkable successes in promoting reform in forest. They have been achieved in some of the least well governed environments in the world, where past regimes have usually been imposed on forest dwellers without any option for objection or dissent.

One instance is a critical new law in the Republic of Congo, adopted in 2011, giving new rights to indigenous peoples. The tortuous seven-year passage of the law was stalled until it became a condition of the continued involvement of civil society organizations in negotiations. It will grant equal access to schools and medical help to the 10 per cent of the country's population categorized as indigenous, including the Baaka people (also known as pygmies) who live on the margins of society.

James Anaya, the United Nations Special Rapporteur on the Rights of Indigenous Peoples, said that the law, the first of its kind in Africa, "provides an important example of a good practice in the region for the recognition and protection of the rights of indigenous peoples." The law itself was a high priority of civil society during VPA negotiations and is now an annex to the VPA, thanks to which its implementation will directly involve civil society.

Ghana's new forest and wildlife policy, approved by the cabinet this year, began with the VPA and the surrounding process of stakeholder consultation about forest law. The policy aims to get Ghana up to international standards on issues like sustainable management. One of its distinctive features is reference to the need for tenure reform, noting that "sustainable development of forest and wildlife resources" requires accepting the "importance of appropriate and efficient land use and security of land tenure."

In both Ghana and Liberia, controversial logging permits have been suspended or cancelled after concerns raised during the VPA process. In Ghana, salvage permits were issued as a means to bring timber cut as a by-product of other development projects, such as mining or road construction, onto the market. But the provision turned into a loophole in the law under which large areas of land were allocated for clearance. While only two salvage permits were issued in 2009, more than a hundred were issued in 2011. "They became a conduit for illegal logging, undermining the essence of the VPA", says Danso. However, when it became clear that the VPA rules would not allow the export of logs extracted under salvage permits, the government acted to close the loophole.



In Liberia, there were similar concerns about the misuse of private user permits (PUPs), which blossomed because they allowed foresters to avoid the rules for engaging with forest communities and civil society. This abuse was highlighted by the European Union and others. Partly as a result, the Liberian president put new PUPs on hold and imposed a logging moratorium on existing PUPs. This too is widely seen as a victory for the VPA process, which both legitimized civil society concerns and provided a legally binding international framework where they could be addressed.



Photo: The Rainforest Foundation

Validation of land rights in Cameroon. Without the buy-in of civil society, reforms will falter and law enforcement will fail.

This is just the start. Much wider forest reform is under way in all VPA countries as a result of the agreements. Some of that reform involves changes to the law. But much is about improved process. The VPAs have ensured that many documents on forest concessions and other matters that were previously kept under lock and key will become open to the public — often on official web sites. The reports of independent monitors and civil society monitors under VPA licensing systems will be added to this. The result will be hugely increased transparency, and through that accountability, of commercial activities in the forests.

To help realise the fruits of this new-found power, the EU has invested in capacity building for NGOs at all levels from national leaders to forest community representatives, as well as helping government officials and others in the sometimes novel task of dealing with civil society. In Indonesia, the EU is funding the work of NGOs in auditing the issuing of VPA licences, and in Liberia it is paying for civil society to monitor the impact of VPAs on communities.

None of this yet ensures that the hoped-for reforms will always be carried through, or that they will bring reduced corruption, better livelihoods for communities, secured tenure rights or better management of forests. But the advances made under VPAs are almost certainly an essential ingredient in advancing those aims, and they will greatly increase the prospects of achieving them. The belief is that, as the European Forestry Institute puts it, “improved resource governance results in positive socio-economic outcomes and poverty alleviation for communities dependent on forest resources.”



Photo by David Brown

Community consultation in Rivercess, Liberia

## Building Civil Society

Many NGOs in countries negotiating VPAs are impressed, and often surprised, that the EU has taken their involvement in negotiations so seriously. Silas Siakor, the founder of the Sustainable Development Institute in Liberia, wrote after that country's VPA was signed in May 2011, that "a major strength of the VPA is that... it involves the EU", and that as a result the Liberian government had to "ensure that stakeholders from industry, civil society, local communities and other people dependent on forests, are involved in implementing and monitoring." He saw the agreement as an essential curb on the instinct of his country's Forestry Development Authority to bypass civil society in trying to harness the forestry industry for reviving the national economy.

Liberia has been exceptional in providing direct representation for forest community groups in VPA negotiations through the NGO Coalition for Liberia. That should become a model for other countries to achieve similar levels of engagement.

In Cameroon, which has some of the largest forest stands in central Africa and exports most of its timber to Europe, NGOs say their involvement in the VPA negotiations was "unprecedented". According to Rodrigue Ngonzo, head of Forêts et Développement Rural, it helped them make the case for community forestry, and to secure village land and forest rights. Symphorien Azantsa, coordinator of the NGOs involved in drawing up the agreement, emphasises the practical value of having NGOs at the table. "The VPA has identified major shortcomings in the Cameroonian legal framework. Addressing those shortcomings will largely depend on... the stakeholder processes that will inform the law reform", he said.

But dialogue has sometimes been difficult. The Republic of Congo had no history of civil society involvement in forest policies. Preliminary meetings, organised initially by European NGOs, broke tensions between the government and civil society, but neither Congolese timber companies nor Asian companies working in the country would join in. Despite such inauspicious beginnings, however, a study of stakeholder engagement by FERN concluded afterwards that "a framework has been established with the potential to give local communities... influence over what happens to the forests." And Roch Euloge N'Zobo, of the Observatoire Congolais de Droits de l'Homme (OCDH), a human rights

organization, said the talks “give us hope that local forest people will be heard, their rights respected and their concerns addressed.”

In Gabon, one person involved in trying to arrange talks called the initial atmosphere “tense and nasty”. Another said: “At first it was not even possible to meet [but] at least now there is the possibility to talk.” In the Central African Republic, civil stakeholders felt weak and unsupported but also failed initially to share information or coordinate action among themselves. They had no prior experience of such cooperation. Now there is a well functioning civil society network.

Despite such difficulties, the involvement of civil society in VPAs has been much more extensive than in other spheres of governance, such as negotiations over REDD. “Old antagonisms have in some cases been broken down,” according to FERN, whereas “REDD+ negotiations tend to either sideline local groups or, in some cases, act against civil society involvement.”



Photo by John Nelson, PPP

DR Congo, industrial logging while forest communities have not been properly consulted

## Box 1 Talks collapse in Malaysia

In Malaysia, VPA negotiations have so far foundered, in part because of the European insistence on comprehensive consultation with civil society NGOs. "There has not been a genuine multi-stakeholder consultation," says WWF-Malaysia's Ivy Wong Abdullah. Unlike in every other country, representatives of civil society have not been invited onto any of the internal committees deciding on the definition of the legality of timber. Some NGOs and indigenous peoples' organizations are boycotting the "stakeholder" process as a result.

One bone of contention is that the Malaysian States of Sarawak and Sabah don't want to be part of the agreement. These provinces contain much of the Malaysian forested area. Those forests, particularly in Sarawak, have for a long time seen extensive overexploitation and the abuse of customary land rights, resulting in frequent standoffs and conflicts. Some NGOs are blacklisted and community members imprisoned when they protest against logging on their land. "Indigenous people believe... timber harvested from areas being claimed by native groups, or in dispute, should be considered illegal timber," says Ramy Bulan, director of the Centre For Malaysian Indigenous Studies at the University of Malaya.

Europe appears uncertain how to proceed. The stakes are especially high because the status of Sarawak could undermine the outcome of a VPA agreed with

neighbouring Indonesia, which shares the island of Borneo with Malaysia. The fear is that Indonesian logging companies could avoid complying with their own country's VPA by smuggling timber into Sarawak across the long and porous border.

"Leaving Sarawak out would not be acceptable for us," says Mardi Minangsari of the Indonesian NGO Telapak. "If it happens, the private sector here will think the EU is not serious. They will ask why Malaysia is getting an easy ride. If exports from Indonesia have to go through inspection and those out of Sarawak do not, then our companies will ship their timber to Pontianak [in western Borneo] and then send it by road into Sarawak." Hapsoro, the director of Forest Watch Indonesia, says: "If the EU makes a wrong step here it will blow up the whole institutional arrangements to ensure legality here in Indonesia."



Photo by defrisch / Flickr cc

Semmonggok Orangutan rehabilitation center, Malaysia





Photo by David Turner / Flickr cc

Vietnam, Mekong delta

## Third Parties: China

A big challenge for the integrity of the EU Timber Regulation is imports from countries that process timber from yet other countries. Timber processing and exporting countries such as China often have rules on legality that are more lax than in the ultimate markets for the products, which remain primarily in Europe and North America. They could become a back door for illegal timber to reach Europe. So it is of special concern that a number of exporting countries, including Ghana, Indonesia and Malaysia, have reported a shift in exports towards less fastidious countries.

The complicated international timber processing chain is part of the reason that VPAs cover all exports from a country, not just those destined for the EU. The EU also wants countries like China to enact their own regulations to ban illegally sourced timber. And, perhaps most important of all, for international banks and other financial institutions to set assured legal supply chains as a benchmark in due diligence assessments before making their investments.

An important test case will be Vietnam, which is currently in negotiations with the EU for a VPA. It is also a major timber-processing hub, often handling timber from other countries. Much of its garden furniture is made from timber harvested in neighbouring Cambodia and Laos. In theory, Laos has a ban on exporting logs. But, according to Nguyen Thi Minh Thuong of Vietnam Administration of Forestry, there is a loophole, because the ban does not extend to a category of exports explicitly approved by the Lao prime minister. A researcher from the UK-based NGO, the Environmental Investigation Agency, said: "We were offered thousands of cubic metres of logs by a company that is owned by the Vietnamese military." A successful Vietnamese VPA will have to find a way of closing that loophole.



## Box 2 Ghana, the good news about chain saws

The giant hardwood tree lay on the hillside. Close by, drenched in sweat and sawdust, George Ayisi painstakingly cleaned the teeth of his chainsaw, then resumed his labours, cutting the freshly-felled trunk into five-metre lengths, and sawing the first of them lengthways to take out a quarter segment.

His companions from the nearby village rolled that quarter segment onto the ground, where they took it in turns to cut planks. It was precision work. Barely a slither of timber was left behind when they downed tools, balanced the planks on their heads and picked their way down the hillside, through a cocoa farm to the road. “The government says this is illegal,” said Ayisi, spitting out sawdust, “but how can they tell us not to do this? This is our land; these are our trees.”

This scene, close to the village of Brakumans near Asamankese in the country’s Eastern Region around 80 kilometres from the capital Accra, is the illegal face of logging in Ghana. Around 100,000 villagers across the country are involved in this work, supporting perhaps a million people. Ayisi’s planks would later be trucked to a large lumber market in the nearby town of Oda. The market, which employs some 600 people, is one of dozens across the country — all entirely open and all entirely illegal.

I toured Oda market with Kwame Attafuah, local organiser for DOLTA, Ghana’s national union of chainsaw operators. Dozens of sheds held huge volumes of timber, some



Photo by Fred Pearce

Ghana chainsaw millers at work

of it being made into furniture and doors, but most of it sawn into crude planks awaiting a sale. “The government says we destroy the forest and create deserts. But it’s lies told by the big milling companies. They have ministers and officials in their pockets. We supply almost all the timber used in Ghana. All the officials and ministers buy from us, but they still blame us and make us illegal,” Attafuah said.

“We think the chainsaw is better and produces less waste than the big sawmills,” he insisted. Certainly, beside sawdust, I saw as little waste at the market as I had seen earlier on the hillside. Their labour, and their profit margins, make it bad economics to be wasteful.

Since 1998, all production, transport and trade in chainsaw-milled lumber in Ghana has been illegal. But that trade still supplies almost all the timber used in the country, from humble chairs and wardrobes on sale

at the roadside in almost every town to the giant beams in the new national stadium.

The trade operates in parallel with another, legal, industry which cuts up timber at sawmills rather than using chainsaws, is dominated by a handful of large companies, and is largely devoted to exports for Europe, the US and Asia. Both industries are of a similar size, but one is encouraged and the other banned. With Ghana's natural forests almost gone, clearly there isn't room for both.

The issue is a priority for Europe too. A rampant illegal domestic lumber industry in Ghana is always at risk of "leaking" its logs into the export business, poisoning the international trade and undermining the VPA that aims to keep illegal logs out of Europe. Moreover, the criminalizing of chainsaw millers seems a violation of its aim to strengthen the rights of marginalized rural communities.

Few can doubt the flagrant nature and corrupting effect of the current state of affairs. Sitting in his office in the provincial town of Asamankese, Patrick Agyei, secretary of DOLTA's eastern region, calculated for me the bribes paid to police for the daily passage of 20 trucks carrying lumber from his region to Accra daily. At \$750 per truckload, it worked out at just over \$100,000 a week. Routine traffic patrollers were getting rich, he said.

The activities of the chainsaw operators are frequently criticised, not least by environmentalists. But independent forest researchers I spoke to said this was pandering to propaganda from their bigger, legal, rivals. Small-scale chainsaw millers are the selective loggers, taking



Photo by Fred Pearce

Patrick Agyei, secretary of the eastern region of Ghana's national union of chainsaw operators, DOLTA

individual trees from farmers' land rather than ransacking natural forests.

The demonization is misplaced, according to Ghanaian forest consultant and activist Elijah Danso. Illegal chainsaw operators are probably cutting as much timber as the legal companies, while doing less environmental damage and more social good than the legal sector, he says. A study by Ghanaian forest economist Gene Birikorang, for the Washington-based Rights and Resources Institute, suggested they also deliver more than twice as much GDP as the legal sector.

Agyei hopes that the VPA will be the political catalyst that makes his members legal. "We are looking to the VPA to help, because the EU requires lumber in the system to be legal, domestically as well as for export. While we are illegal the status of the VPA is shaky. We have been to Liberia, where it is legalised, and to Guyana, where the forests have been given to the communities. This is what we want." He also believes that the VPA should be about supporting the rights of his members to harvest their own forests.

Ghana's government certainly seems to want to take a hard line with its chainsaw millers. "We are not legalising chainsaw operators," said Chris Beeko, director of the timber validation department at Ghana's Forestry Commission in Accra. Instead, the plan is to encourage them to switch to other, legal forms of low-tech milling, such as using mobile sawmills. "It's more environmentally friendly," Beeko said. "We want to create a separate industry by encouraging them to move into it and by tightening law-enforcement."

But the chainsaw millers I met dismissed this idea. Mobile sawmills cost a great deal more than chainsaws, are far more difficult to take into the field, and do not even do a better job, they said. They see the dispute as part of a more fundamental issue: the ownership of the forests.

Right now, the Forestry Commission hands out logging concessions, mostly to the large timber exporting companies. In theory, communities have to give written consent, and are entitled to compensation. But, since the trees are not theirs, their power to call the shots is meagre. As Barfour Kwame Ackom, the chief of Brakumans community near Asamankese told me: "The big companies just come onto our land and do what they want. We don't have any right to stop them." This is why tree tenure reform is included in Ghana's VPA.

It is little wonder that farmers and rural communities in Ghana prefer to invite the illegal chainsaw millers, many of them their own neighbours, to cut their timber. Even though the price of domestically-traded timber is much lower than that for export, the communities get a bigger

return from the chainsaw millers. The chief of Brakumans was in no doubt. "We want the government to legalise the chainsaw people because they are part of our community."

Elijah Danso, a social activist and forest consultant in Ghana for two decades, argues that, ultimately, ensuring a legal trade in timber requires a fundamental reform of the ownership of the forests. "If we changed ownership so that farmers could profit legally from every tree that was cut on their land, then they would be much more likely to protect their trees," he says.

That should be on the Ghanaian agenda, thanks to the VPA, which commits the government to making "significant reforms" in forest governance, "notably concerning tenure rights of communities". It suggested timeframe for completion within five years. Danso says that, since a change of government, there has been less zeal for forest reform inside the Ghana administration, and the forces of inertia, conservatism and commercial self-interest remain strong. "Those of us who want reform don't see it happening," he told me. "The government and its civil servants have learned to please the European Union and our own NGOs with rhetoric, but without delivering reform."

A study this year by Jens Friis Lund and colleagues from the University of Copenhagen agrees: "The [existing forest] governance regime has served the entrenched interests of an economic and political elite [that has] resisted any attempts at reforms that could threaten its favourable position." It is the declared task of the VPA to change that.



Photo by Nora Bowler

Children in Gbarpolu, Liberia

## The Law and the Poor

A founding principle of FLEGT is that, as the European Forestry Institute puts it, “improved resource governance results in positive socio-economic outcomes and poverty alleviation for communities dependent on forest resources.” But this may not be automatic, says Louis Putzel of the Centre for International Forestry Research (CIFOR) in Bogor, Indonesia. One form of “improved” forest governance, crackdowns on illegal exploitation of natural resources, can increase income inequality, especially in the short term.

One problem, he says, is the paperwork. Corporations and those rich enough to jump through the official hoops — applying for permissions, buying licences and submitting reports — end up capturing resources at the expense of smaller operators, for whom this is expensive and time-consuming.

His conclusions followed a wide-ranging study of different sectors and countries, funded by the European Union. The conclusions apply to mining, fishing and many other extractive industries. But forests show the findings graphically.

Smallholder foresters are generally more efficient than big commercial foresters, supply local markets first, and are more likely to be selective in their choice of trees. But in a world where cutting trees requires official approval, they lose out. Their income from logging may be barely enough to pay for the permits they need in order to operate. And extra regulations like putting barcodes on every tree (see Box 4 on page 21), just make things harder. Chainsaw millers face similar battles to prove their commercial worth and environmental virtue.

Putzel’s colleague Pablo Pacheco says governments traditionally have little interest in the small operators. Their forestry officials are trained in industrial forestry and governments want the secure streams of revenue that the big companies can deliver.

The solution, says Putzel, is not to abandon the search for legality. It is to widen that quest by ensuring that better governance extends beyond simple enforcement of existing law



to the pursuit of justice. It means, he says, ensuring the legal rights of poor people to their resources, and establishing strong institutions to back them up, including a strong and fair judiciary. This is what the VPA should be about.

A detailed analysis by British social anthropologist Mary Hobley in a report for the European Forestry Institute reached similar conclusions. She found that the necessary conditions for poverty alleviation in forest communities included secure local property rights, control over forest products such as trees, access to information, a capable civil society, proper accountability of government and others in authority, financial and legal support, and fair access to justice.

These are precisely the values and aims encapsulated in the VPAs. Hobley therefore found that, if fully implemented, “VPAs have the potential to have positive direct and indirect poverty alleviation impacts”.



Photo Rainforest Foundation UK

Minvoul, Gabon



### Box 3 Indonesia, shifting tectonic plates

In the past half century, no country has lost its forests faster than Indonesia — nor seen more disputes over forest tenure rights. The country with the second largest stock of tropical rainforest saw logging become a huge industry, after the forests were nationalised by President Suharto in 1967. A handful of companies that supported his rule grew hugely rich by controlling giant logging concessions across the archipelago. Indonesia became for a while the world centre of the tropical plywood industry. More than a million hectares of forests were cleared annually.

But under President Yudhoyono, the government has attempted to rein in the criminality. Illegal logging has been reduced by up to 75 per cent. The push for legality began in 2003, when Indonesia began developing a system for tracking logged timber by licensing operators throughout the supply chain. The system will become the bedrock for demonstrating legality under its VPA, signed with Europe in May 2011.

The push has been accompanied by efforts to engage civil society in forest governance, something that would have been unheard of before. Many NGOs have been involved in negotiating first the national system and then the VPA. For them, the signing of the VPA was a victory after years of campaigning against the Indonesian logging industry. But they warn that implementing the agreement in such a large country with such long traditions of illegality, will be hard.



Trucks carrying logs in Gunung Lumut, East Kalimantan

The government plans to license an initial 4500 commercial producers, processors and exporters of timber, who will face annual audits of their supply chains by independent commercial auditors. The main exports to Europe are furniture and pulp and paper. The licensing system will eventually cover all these.

This will be hard to achieve. Hapsoro, director of the Forest Watch Indonesia, an umbrella organization for social and environmental NGOs that has been central to civil society's participation in the negotiations, fears the bureaucratic workload could be too great, especially if the independent auditors turn out not to be independent enough.

Some international specialists have established expertise and reputations to sustain, he says. But "new certification bodies are being set up here in Indonesia, and there is a suspicion that they are being

set up by consultants who already do environmental impact assessments for the industry.”

If it works, NGOs see the Indonesian system as a model for other countries. But there are doubts. Traditions of secrecy and collusion between the industry and its regulators may not go away. “The core issue at the heart of illegal logging has always been [official] corruption, and credible transparency is the key to this VPA process,” said Faith Doherty of the UK-based Environmental Investigation Agency on the day it was signed.

The industry remains close to untouchable, particularly in parts of the country where it dominates the economy. And land rights remain the most toxic issue. In one well-publicised instance in the Sumatran province of Riau, the centre of the pulp industry which is notorious for logging on land it does not own, a long-running land dispute between Akit hunter-gathers and a supplier to a major pulp mill boiled over in 2009. Staff from the supplier armed themselves with spiked clubs and attacked people protesting against the invasion of their land. Three villagers died in the resulting battle, and dozens were injured. Two months later, the company bulldozed the lands, but nobody was ever prosecuted over the violence.

Some are sceptical that, in the wild lands of Sumatra, the European regulation can do much to deliver justice and legality. “I wonder whether FLEGT can deal with such issues. Focussing on legality in Indonesia does not always save forests, wildlife or people,” says long-time WWF campaigner in Sumatra, Yumiko Uryu. Only land reform through the VPA can deliver.

“You can’t sell timber to Europe under the VPA till you are clear about ownership,” says Andy Roby, a FLEGT facilitator for the European Union. The tradition of using subcontractors is no excuse. “You cannot outsource your fibre production and then deny responsibility,” he says. “So companies with a history of relying on timber from suppliers with a reputation for abusing forest tenure rights have a clear incentive to clean up.” “If there is a conflict, then they won’t be able to sell paper to Europe,” Roby says.

As in other countries, there is concern that the systems being devised to ensure legality may impact badly on the smallest players on the timber market, including community forestry projects. This industry is in its infancy. The current government is keen to promote community forests, but two-thirds of the country’s forests remain state-owned production forests, with most of the rest protected.

The most progress has been made in the densely populated island of Java, where several million hectares are under community management. There, community forests supply much of the timber for furniture, and as much as 80 per cent of that for plywood. Community forests are also the main reforesters.

Some fear the new VPA licensing system could impact badly on these vibrant new players on the forestry scene. Will they be able to join the licensing system, or will its costs and bureaucratic obstacles marginalise them? “There is a big risk of smallholders getting left out,” warns Neil Franklin, of Bogor-based forestry consultants Daemeter. “The Java furniture industry is largely run by small companies

and is mostly for export, with Europe a big market. It is quite possible that they will lose big time. If that happens it could wipe out whole communities.”

One solution, Franklin says, is for European NGOs and other well-wishers to put resources behind helping communities get licensed. Another is to make the licensing system less onerous for community forests. But some express caution. For a lesson from other countries is that such special dispensations for communities can end up being exploited by commercial companies that muscle in. In Liberia commercial loggers took over PUPs and in Ghana they annexed TUPs.

Ultimately, however, as in other countries, the legality of logging cannot be separated from the fairness of ownership of forest lands, says Myrna Safitri of the Epistema Institute, an Indonesian think tank on land rights. There are 33,000 villages in Indonesia in or near forests that may have claims to forest. That is perhaps 50 million people. “The legality of tenure and access rights to these forests is the key question,” she says. The Indonesian VPA acknowledges customary ownership. But there is much work to do on implementing reforms, she says. “Current policy and law criminalises many forestry activities by communities and farmers.”

## Box 4 **Barcoding a nation’s forests**

Liberia has nearly two-thirds of West Africa’s remaining rainforests. Its forests cover an estimated 3.4 million hectares, or just over a third of the country. Another quarter of the country is partly-forested farmland, where many of the predominantly rural population still practise shifting cultivation, and rely on bushmeat and fish for their animal protein.

All this is a small miracle. A decade ago, Liberia’s accessible forests were being stripped bare by warlords to fund a vicious 14-year civil war that left 150,000 dead. Back then, in the days when warlord Charles Taylor ran the country, timber and



Photo by Fred Pearce

Barcode on some “buried” timber

terror went together. Cronies like Dutch adventurer Gus van Kouwenhoven ran timber companies that shipped out huge volumes of timber and allegedly brought in arms for Taylor by way of payment.

The extent of this activity was first exposed by civil society activist Silas Siakor — who later founded the Sustainable Development Institute, one of the most active Liberian NGOs working with forest communities. Thanks in large part to his efforts, the United Nations in 2003 imposed an embargo on Liberian “logs of war”. Revenues crashed and the war swiftly came to an end. The country’s post-war government, under President Ellen Johnson Sirleaf, cancelled all existing forest concessions and started from scratch to create a new legal forestry industry as an engine to revive the country’s economy.

The European Union, as Liberia’s largest market for timber, is central to that effort. In 2011, Sirleaf signed a VPA with the European Union to place timber sales on a permanently legal footing. The deal makes use of a unique national timber-tracking system that requires every legally harvestable tree and every cut log to carry a barcode that will enable it to be tracked from its origin to its final destination.

It’s as simple and as foolproof as that, says Ivan Muir, the local managing director of SGS, the Swiss specialists in forest certification systems in charge of making it happen. Muir’s staff also issues export permits for the timber — which mostly gets turned into furniture and panelling — and monitor royalty payments by concession holders to the government. The intention is to hand the system over to the Liberian government’s Forestry Development Authority, though at present the authority has neither the cash nor the human resources to take over.

Many see the commercially supplied barcode system as the prototype for timber

tracking throughout VPA countries and round the world. But will it tame the illegal loggers? Can a technology borrowed from supermarket checkouts enable Liberia to resume its timber trade while still protecting its forests? Or, as pessimists predict, will putting the country’s natural resources back on sale without first resolving issues of forest governance plunge Liberia back into conflict?

Muir admits that great uncertainties remain about how fast the trees grow within the concessions. “We don’t know what the true sustainable harvesting rates are and how much logging we should allow,” he admits. And many concession holders don’t have the consent of the communities who own the forests. It remains to be seen whether the system will prove robust enough to defeat would-be forest plunderers outside the concessions. The country has notoriously porous borders with neighbouring Sierra Leone, Cote d’Ivoire and Guinea, across which un-barcoded timber could head for markets in West Africa and beyond.

Moreover, it seems that bar-coded but low-value trees are cut by company foresters but never removed from the concession areas. Often the cutting is in breach of concession licence conditions, so companies bury the evidence, as I saw myself at one site. I took pictures of some of the half-buried trees. Back at SGS’s offices, they told me that the barcode MNWL K49W, which was attached to one half-buried trees I saw, had been allocated to a concession holder, but it had no record of a tree carrying the barcode having been logged. “Burying logs is surely not legal,” said Muir. “But we rely on the FDA to do the law enforcement in the forests.”



Photo by Fred Pearce

Libera, a timber truck stuck on a steep hill

## Conclusion

When the EU Council in 2003 adopted the FLEGT action plan it stated that “VPAs should strengthen land tenure and access rights specifically for marginalized rural communities and indigenous peoples; strengthen effective participation of all stakeholders, notably non-state actors and indigenous peoples in policy making and implementation; increase transparency; reduce corruption...” It was a tall order, but one that is on its way to being fulfilled. Even though there is not yet any FLEGT timber on the market.

VPAs can and have improved forest governance. They meet a number of criteria for reform proposed by organizations such as the World Resources Institute, by requiring greater involvement from civil society, by improving the transparency and accountability of governance, and by identifying legal injustices such as tenure, access to markets and recognition of customary rights.

In most cases it still remains to be seen how far these gains from the agreements translate into actual improvements in lives in and near forests. Africa in particular is littered with good laws badly implemented. Often too, the engagement of civil society is not accompanied by extensive participation in governance by forest communities themselves, and especially of indigenous peoples. That too remains work in progress.

Some in civil society fear their members becoming “co-opted” to a bureaucratic process and losing both their roots and their radicalism. But others are much more hopeful, seeing how leading figures in NGOs in different countries have for the first time been able to collaborate and swap notes with their fellows in other countries.

Fears have also been raised that the FLEGT Programme might encourage legal crack-downs on technically illegal artisans in the forests, and could create a permit system that makes life harder, or impossible, for other small-scale economic actors in the forests. These risks are real. But they do not relate to the VPAs, which encourage reform and improved social justice. Rather, they point to what could happen if the EU Timber Regulation was



enacted without parallel agreements on reform. They are an argument for the VPAs, not against them.

VPAs are playing a pivotal role in what could become a revolution in the rainforests, in which the law prevails and nostrums of social justice prevail. By reconciling issues of local justice and wider global interests, they suggest a way forward for REDD, which has been bedevilled with concern that it is riding roughshod over the wishes and interests of forest communities.

In so doing, VPAs might finally tame the destroyers of the world's forests. It might even secure the wish expressed by many at the recent Rio+20 Earth Summit, for an end to net global deforestation by the end of the decade.

But they might prove even more valuable than that. VPAs form part of a different kind of trade agreement — one founded in concerns for justice and poverty as much as law and market economics. They are a template for ensuring civil society engagement and changing the balance of power that could be applied in other controversial arenas — such as agricultural land tenure, mining, misappropriation of water and many others.



Photo by Michael Padmanabak/CIFOR

West Kalimantan, Indonesia