do FLEGT VPAs improve governance?
Examine how FLEGT VPAs are changing the way forests are owned and managed.

This briefing note outlines the preliminary and partial findings of a larger forthcoming study into the forest governance impact of FLEGT VPAs. Fuller references and access to source material will be provided upon publication of the full report, later in 2016.
Ensure effective implementation of the FLEGT Action Plan and the VPAs in particular.

Learn from the success of the VPAs in other commodity sectors that require governance change to be effective.

Ensure FLEGT VPAs remain a core element of future EU action to tackle deforestation and forest degradation.
In the last twenty years, practitioners have come to appreciate that governance is often the weak link in addressing unsustainable use of forests and trees. Technical knowledge alone is insufficient, and no natural forest management, protected area, plantation, or agro-forestry project will succeed if the resources are poorly governed.

– FAO
Many of the world’s remaining tropical timber forests grow in countries where governance is weak, corruption is rife, government officials operate with impunity, and concerned citizens have neither the knowledge, skills, resources, legislative framework or access to information they need to change things.

Ever since the G8 Action Plan on Illegal Logging in 2008, international attempts to tackle illegal logging have recognised the importance of improving forest governance, but have struggled to have any lasting impact. For over a decade the EU’s Forest Law Enforcement, Governance and Trade Voluntary Partnership Agreements (FLEGT VPAs) have been taking governance as their starting point.

This research examines the five key pillars of good governance identified by Fern and others (accountability, transparency, coordination, participation and capacity), and adds an additional question about the quality of pro-poor legal reforms and implementation in the forest sector. These six indicators broadly correspond to the ‘principles of governance’ outlined in the FAO-PROFOR framework for assessing and monitoring forest governance (2011), and the FAO-PROFOR Guide for assessing forest governance (2014).

We ask to what extent the VPAs, and the process of negotiating and implementing them, have catalysed positive governance changes in the forest sector. The results reflect the views of representatives of civil society networks from each country examined, triangulated with other supporting evidence where available. Looking at the six VPAs that have been signed to date, significant positive changes are clear. The results show that clear and potentially long-lasting changes are now emerging, and that FLEGT VPAs have been a key catalyst for these changes.

Key findings

- Civil society regard the VPA as integral to the forest governance improvements experienced in their countries, which have reached beyond the VPA process itself (especially legal reform, coordination and accountability).

- Enhanced capacity and participation for CSOs display the most striking improvements. Across all countries there has been a rise of 16 points against the baselines for CSO participation, and 14 points for community participation.

- Civil society describe the role of the VPA in improving governance as one of providing the political space and structures in which CSOs were better able to be agents for change.

- The least dramatic perceived change is in government coordination, which rose eight points against the baselines across all countries.
The FLEGT Action Plan (2003) emerged out of a growing international consensus that action was needed to reign in rampant illegal logging (see the G8 1998 Action Plan on illegal logging, the 2001 Bali Declaration and the 2002 Convention on Biological Diversity among others).

At the core of good governance is:

ACCOUNTABILITY
COORDINATION
TRANSPARENCY
STAKEHOLDER PARTICIPATION
STAKEHOLDER CAPACITY

Strengthening these five pillars can be a catalyst for pro-poor legal reforms to emerge, for laws to be made more coherent, and for these better laws to be more consistently enforced. In this study, in addition to examining the five key pillars, we also record perceptions of how the relevant legal frameworks, and their enforcement, have changed over the course of a VPA process.

why measure governance?

The VPAs, as a central pillar of the FLEG T Action Plan, were an innovation based on the correct analysis that tackling illegal logging requires significant governance reforms in timber-producing countries. Without these governance reforms, no regulation will be effective. VPAs are uniquely placed to contribute to governance improvements.

This briefing does not compare governance indicators across countries in absolute terms; it makes an assessment of the extent to which there has been a change in these aspects of forest governance over the life of the VPA process. We draw on the assessments of those directly involved in the VPA process in various capacities, to reach conclusions about the importance of the VPA process in achieving this change.

Respondents are members and representatives of the civil society networks that coordinate efforts to improve their country’s forest sector, including by participating in VPA processes. The size and composition of these networks vary.

The findings and recommendations in this brief have been endorsed by the Community Rights Network (CRN), which met in April 2016 to discuss common strategies to improve forest governance and strengthen community rights worldwide. The CRN is a meeting of civil society representatives from countries around the world, who share a common interest in community rights and forest governance.
For each governance indicator examined in this briefing, a graph has been created to illustrate the results. A baseline score is assigned by combining respondents’ input and comparing this against available corroborating data. Another score is created for the situation in 2016. All scores range between 0 (extremely poor, non-existent), and 5 (very good). More detail about the scoring system for each indicator, and more information about the methodology of this study, are covered at the end of this brief.

Both the baseline and the 2016 score for each country are plotted along an axis labelled with the relevant country. Each country axis is arranged so that the 0 point lies at the centre of the graph while point 5 is at the extreme outer edge. Hence in the example graph above, for Liberia the baseline score is 2.5 while the 2016 score is 4. In Cameroon, the baseline score was 1, the 2016 score is 3.

The light green area at the centre of the graph describes the baseline situation across all countries, and the darker green area shows the 2016 situation.
Government accountability is intractably linked to corruption. All of the signed VPAs include, on paper, accountability mechanisms and structures, and channels through which civil society can highlight cases of lawbreaking and corruption, some more concrete than others. In all countries that have signed a VPA, accountability has improved not just on paper but in reality. In the Republic of Congo, civil society independent forest monitoring has shed light on forest infractions and has held companies and the government to account in some cases.

Liberia has experienced the most dramatic change, with 2 million ha of illegal concessions suspended and the head of the Forest Development Authority jailed. Respondents are clear that the VPA process played a crucial role in bringing this about.

In Ghana, CSOs credit the VPA for helping them and some communities to gain greater understanding of forest-related laws, which has enabled them to hold local officials and government accountable for upholding them.

“Even though these non-compliant actions have not stopped entirely, it is no longer with the impunity of the past, knowing CSOs will be exposing such violations.”

- Ghana

At the national level Ghana’s civil society has used the structures initiated by the VPA to begin to institutionalise accountability.

“From 2010 the engagement between CSOs and [a committee established within the VPA framework] have been one of the useful platforms to hold government accountable, particularly on thorny political issues.”

- Ghana

Enhanced awareness of government responsibilities is also recognised within Cameroon, which has led to “a little more rigour in forest management”. The implementation of the VPA transparency annex is also identified as a catalyst for improving the forest administration’s accountability.

“Thanks to the VPA, the term corruption is no longer a taboo; in fact high ranking government officials no longer hesitate to say that corruption is a major problem that they need support to address.”

- Cameroon

* Existence and extent of use of accountability mechanisms at local and national levels, effectiveness of channels for reporting corruption and infractions, and implementation of appropriate follow-up action, including sanctions, when corruption is reported.
In Central African Republic, a civil war preceded a wholesale change in government which clearly impacted accountability and makes assessing the role of the VPA more complex. Nonetheless, CSOs consider the establishment of civil society independent monitoring in the country enabled by funding and political space provided by the VPA as a “real innovation” that “enabled access to information on forest activities and engagement with key stakeholders”.

Indonesia has perhaps the most complex story for attributing governance change to the VPA process. Following the fall of the Suharto regime, Indonesia began developing a legality verification system (the SVLK) in 2003, in what became an multi-stakeholder process. VPA negotiations began in 2009, and the VPA draws on the SVLK as the basis for its legality definition. Processes to develop the SVLK and processes to negotiate the VPA therefore overlap and differentiating their impact is difficult. CSOs involved in the VPA process are typically also involved in formulation and revision of the SVLK. They contend that, while some structures for governance improvements, and precedents including multi-stakeholder negotiation were established by the SVLK before the VPA began, the VPA and the enhanced political pressure associated has played an important role in strengthening and sustaining the gains made.

In Republic of Congo, government accountability remains very weak. Civil society do see some hope from the VPA process however, which has provided a context in which they can begin to carefully pressurise for greater accountability.

“Very few corrupt people go to jail in Congo, if at all. Impunity is total. [But] the VPA and the independent monitoring allowed within it has played an important role...leading to a little more attention in forest governance from the forest administration because they know they are not involved alone.”

– Republic of Congo
The implementing structures established under the VPA are recognised as valuable forums for bringing different government agencies together and promoting greater coordination. A number of countries in particular identify the VPA as useful for highlighting the need for greater government coordination (Cameroon, Republic of Congo), and others credit it with generating spaces where it was possible to successfully agitate for this (Ghana, Liberia, Indonesia).

“One of the key successes of the Cameroonian VPA so far, resides in its capacity to have identified the issues of ‘lack of coordination’ as a major governance challenge in Cameroon and to have provided potential solutions to address it.”

- Cameroon

* Extent, appropriateness, and adequacy of coordination and cooperation between and across national and sub-national government agencies on forest-related activities. Consistency and coordination of relevant policies including land, forest and economic policies.
Independent Monitoring was a real innovation and has enabled access to information on forest activities and engagement with key stakeholders.

– Central African Republic

Transparency remains a difficult issue across VPA countries, but the improvements have been significant. Respondents see the VPA transparency annex as a particularly useful tool for opening up transparency in the forest sector more generally.

In Ghana, where the VPA did not initially contain a transparency annex, the process itself has nonetheless proved pivotal in improving transparency.

“It is only in the context of the VPA that transparency has been discussed with the government.”

– Ghana

In Cameroon, transparency improved significantly under the VPA, with the creation of a website and more systematic publishing of relevant information (dedicated information websites have been a feature of many VPA processes).

“[the] VPA provided a framework for the implementation of the citizen’s right to information embodied in the constitution. It is one of the first legal instruments to incorporate a comprehensive transparency annex.”

– Cameroon

Unfortunately, momentum around the VPA in Cameroon has stalled and transparency is suffering. In August 2015 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. That this was not shared willingly gives an indication that more work is needed to internalise a more transparent way of working.

On the other hand, an indication of the increased accountability within Cameroon is demonstrated by the response once the report was finally made public: a joint EU-Cameroon working group was established to respond to the damning report. Civil society and other stakeholders were able to participate in this working group, and supported the recommendations produced (except around conversion timber, see legal reforms section).

Civil society-led independent monitoring is also a key aspect of the VPA process which respondents view as vital in improving transparency, across all countries.

“The VPA imposed the publication of documents in the public domain. Moreover, CSO-led independent monitoring exists as a direct result of the VPA....”

– Republic of Congo

* Extent to which information is available in appropriate languages and formats, in a timely fashion.
Thanks to the VPA, CSOs have strengthened their capacity to influence and monitor the development and implementation of policies and legislation, not only in forestry but also in other sectors (land, mines, agriculture) having impacts on forests.

– Republic of Congo

VPAs have improved the capacity of all actors (private sector not analysed here) who took part. In countries where civil society capacity was lowest before the VPA began, the change has been particularly dramatic (Central African Republic, Cameroon). In those countries where civil society was stronger at the outset, the results across other indicators have been more significant (see Ghana, Liberia, Indonesia).

“VPA has been very instrumental in building the capacity of CSOs. Thanks to the VPA we witnessed the emergence of a more professional civil society with specific areas of specialisation.”

– Cameroon

Government capacity has also improved across all countries, in some cases (like Ghana) this means human capacity, while in others the VPA has contributed to increased technical and technological capacity (RoC).

“The VPA implies changes in practices and attitudes of forest managers. This is a huge paradigm shift brought by the VPA, hence the Forestry Commission has made effort to improve the capacity of their frontline staff to meet their legality compliance.”

– Ghana

* Extent of the knowledge, understanding, technical ability, financial resources and time available for actors.
The enhanced participation of civil society and, in some cases, communities, enabled through the VPA process is perhaps the most well-documented governance aspect of VPAs (from Fern’s own back catalogue alone, Stories from the ground, Improving Forest Governance, Community representation and participation in VPA process, and civil society VPA counter-briefs all deal with this topic). The importance of broad participation for governance is also well understood:

VPAs have facilitated levels of civil society and community participation in decision-making previously unheard of in these contexts.

“The VPA played an important role in ensuring effective CSO participation in relevant policy debates...[there have been] clear improvements and irreversible gains.”

- Central African Republic

Some civil society stakeholders have observed a ‘virtuous circle’ in engaging in the VPA, where enhanced capacity has enabled them to win greater participation, while greater participation has enabled them to strengthen their capacity to engage.

The role of communities has been particularly impressive in Liberia and Indonesia, while in other countries there have also been improvements.

What makes the biggest difference to the quality of governance is active involvement by citizens...it’s the only thing that can in the long run transform the quality of decision-making in developing countries and the effectiveness of the state.

- UK Department for International Development, 2006

* Extent to which actors are meaningfully involved in decisions that affect them, including having timely notice of meetings and access to relevant information.
“Not just civil society, communities themselves are actively going out, seeking issues, and bringing them to the table.”
- Liberia

“FLEGT support mechanisms have allowed CSOs to reach out to communities (even if to a limited extent).”
- Republic of Congo

For most countries, enhanced participation has not been limited to strict VPA processes alone.

“The VPA has put an emphasis on community participation. This expansion led to their participation in forest policy and code review.”
- Republic of Congo

In Cameroon, despite improvements overall, space for civil society participation does seem to be closing again. The CNS, the main committee on which civil society sits, is no longer being convened as a matter of course in order to feed into the positions of the national implementation committee (the CCS).
The VPA was the ideal vehicle for implementing forest sector reform...the forestry sector has become a trailblazer for reforms in the natural resource sector.

– Liberia

Legal reforms have been kick-started or otherwise encouraged via VPA processes in a number of countries.

“The VPA also ensured that a commitment to governance reform was made and this was subsequently used by NGOs to push for the review of the Forest and Wildlife Policy.”

– Ghana

Laws are being reformed in a participatory way, and in some countries (Liberia, Ghana), proper application of these pro-poor laws is beginning to emerge.

The Liberian forestry law and regulations contain provisions establishing community rights concerning different revenue streams from the forestry sector. For example, communities are entitled to thirty per cent of the Land Rental Fees paid by logging companies as well as cubic metre fees on all timber harvested within their community. Prior to the signing and ratification of the VPA, none of the communities’ share of Land Rental Fees had been transferred to them. Civil society and community representatives raised the non-payment of the communities’ thirty per cent of the Land Rental Fees at different pre-JIC meetings. Following the ratification of the VPA, civil society and community again tabled their concerns at the JIC.

The Government of Liberia has now paid the first US$1 million to the National benefit Sharing Trust Board for redistribution to communities. This is the first direct transfer of portion of Land Rental fees to communities where the timber is extracted and is seen as another VPA success.

– Liberia

In Cameroon, after the VPA was signed it became clear that the issue of conversion timber- trees felled in the process of clearing forests in order to use the land for another purpose- were not dealt with either in the VPA or in the relevant Cameroonian laws. Civil society raised this issue within the context of the VPA. A working group has been established, with broad stakeholder involvement, to consider the issue and draw up recommendations for the required legal reforms to close this loophole. Civil society sees this progress as directly related to the VPA.

* Extent to which forest-related laws are pro-poor, respect community rights, coherent, and are fairly and consistently applied.
FRAMEWORK FOR ANALYSIS

The methodology for this study has been adapted from the guidelines established in the FAO-PROFOR Framework for assessing and monitoring forest governance (2011), with reference to the 2014 FAO-PROFOR guide for assessing forest governance, to which Fern was a contributing author.

The results have been endorsed by the Community Rights Network (see Whose perspective? section above).

For each country examined, respondents were drawn from representatives of the civil society network working on forest governance and community rights issues in that country. Respondents were asked to reflect on the six governance indicators detailed in this briefing, sometimes in semi-structured interviews and sometimes via email questions. Each respondent was asked to give details about the situation regarding a particular governance indicator before the VPA process began in their country, the situation as they see it today, and to offer reflections and evidence of the role of the VPA process in bringing about any change they observed.

We consolidated this information using input from other actors involved in the VPA process— including insights from EFI FLEGT facilitators in some cases, and corroborating external studies and reports. In each country these consolidated data was then assessed to ascribe baseline (before VPA process began) and 2016 scores along a scale from zero to five. Indicative explanations for the scores are detailed on the final page of this brief.

ACCOUNTABILITY

1. No or virtually no accountability mechanisms exist within the forest sector, corruption goes unchallenged and no mechanisms exist for reporting or following up on infractions.

2. Channels for reporting corruption and infractions, and mechanisms for follow-up action exist in principle, but are not put into practice. Corruption continues with impunity.

3. Channels for reporting infractions and corruption exist, and are being used, but results are not timely and follow-up action is rare/non-existent. International monitoring mechanisms exist and are operational, but are slow, or it is not clear the extent of their independence or whether follow-up sanctions results from their findings.

4. Channels for reporting infractions and corruption exist and when used, sometimes result in follow-up action but it is not always timely or is incomplete. Internal accountability mechanisms are operational and public, and have identified issues, and the results of these findings are acknowledged by the authorities although follow-up sanctions may be slow to emerge.

5. Effective channels for reporting corruption exist and are being used, with appropriate follow-up action. Internal accountability mechanisms (such as independent auditor) exist and are fully operational.

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* TI's Corruption Perception Index (CPI) is one of the most widely used index on corruption. Since 1995 the annual assessment of the now 187 countries is published and cited by academics, the media, NGOs, decision makers, amongst others to say whether a country’s ranking on the index has improved or worsened. The CPI is essentially a poll of polls. As such it does not provide a scientific measure of corruption and is perhaps flawed. Nevertheless, it is still the best-known and most cited measure of corruption in the world.
ATTIBUTION

The results outlined in this briefing represent two things: perceptions of the extent to which different elements of governance have changed, and perceptions about the role the VPA has played in bringing those changes about. For each change identified by respondents, they were asked to explain the role of the VPA process in bringing that change about, and to provide examples.

The graphs used in this briefing do not alone demonstrate a causal link between VPAs and the governance changes recorded, even though answering this question was an integral element of the research. Non-exhaustive quotations from the completed interviews are presented throughout the report, to give a feel for the importance which respondents place on the VPA process in provoking change in their country.*

ESTABLISHING BASELINES

As Independent Assessments have confirmed, the FLEGT Action Plan did not establish forest governance baselines. This study is therefore required to retrospectively impose baselines for the VPA countries it examines. Respondents were asked to provide their own baselines in the questionnaire, describing in as much detail as possible the situation, before the VPA process began. This input has been triangulated with supporting documents from the time.

Three major sources have been used as additional information to form baselines in the six countries with signed VPAs. ‘Forest Governance in…’, a series of studies produced by Fern providing an assessment of the state of forest governance within a country. These reports were typically produced at about the time the VPA process was

Indicators scale, 0-5

GOVERNMENT COORDINATION

1 Government agencies do not share information or coordinate with forest agencies on matters which impact forests. Within forest departments, information sharing or coordination of activities is very weak; national policies are not really reflected in local practice or vice-versa.

2 Some institutionalised information sharing exists with forest agencies but action is not coordinated and there is no coordination between national development plans and forest policies.

3 Information sharing does happen and there is some coordination between national and forest policies, but in practice different agencies regularly work in silos and national policies are only sometimes reflected in provincial practice.

4 Coordination within forest department is generally good and there is reasonable information sharing with other government agencies, but the emphasis is more on information sharing than joined up priorities and approaches.

5 Government agencies (including land, agriculture, mining, law enforcement) habitually coordinate and cooperate with forest agencies concerning forests. Elements of the forest agencies coordinate and compete, sharing information, and on the ground management of forests largely follows the adopted national policies and practices.

* In the upcoming full report, it is hoped we will be able to incorporate these attributive perceptions more fluidly.
produced at about the time the VPA process was beginning.

Second, Civil society VPA counter-briefs, a series of documents produced by civil society platforms engaged in VPA processes at the point of the finalisation of the agreement, assessing the quality of the process, the content of the agreements, the requirements for the future and background information. Third, results from an extensive study conducted by Fern and civil society representatives in VPA countries for EFI in 2013 (unpublished) in to the quality and process of VPA negotiations across countries, has been revisited to provide additional contemporaneous information. In addition to these sources, other relevant sources specific to each country have been referred to. A complete list will be available at the publication of the full report.

### MEASURING PERCEPTIONS

This briefing and the findings contained within, are based on the perceptions of civil society actors engaged in the forest sector in the six countries considered. While a measure of perception can be criticised as non-objective, it nonetheless provides important insights in to changes that can otherwise be difficult to capture. Measuring shifts in attitude, quality of relationships, consistency of behaviour, and other elements which feed in to the governance indicators above, rely on perceptions.

### MEASURING CHANGE, NOT ABSOLUTES

In assessing the impact of VPAs on governance in the forest sector, it is crucial to take the national context into consideration. The size of the country, the structure and complexity of the forestry sector, the existing institutional frameworks, the complexity of supply chains, the volume

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of the timber trade, the capacity of different stakeholders (including the government) and the historical background are all relevant. of the timber trade, the capacity of different stakeholders (including the government) and the historical background are all relevant. stakeholders (including the government) and the historical background are all relevant.

These and other factors can have an impact on both the potential for the VPA process to be a catalyst for positive change, and on the quality of forest governance overall. The civil war in Central African Republic undoubtedly had an impact on that country’s progress against different governance indicators. In Liberia several forestry reforms and community rights had already been put in place to prevent another natural resource-driven civil war and the VPA process was able to build on these foundations.

This briefing does not compare governance indicators across countries; it makes an assessment of the extent to which there has been a change in these aspects of forest governance over the life of the VPA process. We draw on the assessments of those directly involved in the VPA process in various capacities, to reach conclusions about the importance of the VPA process in achieving this change.

Indicators scale, 0-5

### TRANSPARENCY

1. Virtually no information available except occasionally.
2. Some information available on request and on an ad-hoc basis.
3. Most information is available on request within a reasonable time frame, some information habitually published.
4. All or almost all information is available on request, some is in the public domain.
5. All information is systematically made available and regularly updated, the VPA transparency annex has been fully implemented.

### FAIR AND COHERENT LEGAL FRAMEWORK

1. Laws are inconsistent and/or punitive to communities, no momentum for reform.
2. Some formal recognition that legal reform is needed but little action.
3. Laws are being reformed according to pro-poor agenda, but process is far from complete and generally not implemented.
4. Some pro-poor legal reforms have been completed and significant steps taken to implement them.
5. Legal framework is coherent and laws are pro-poor, fully implemented.
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