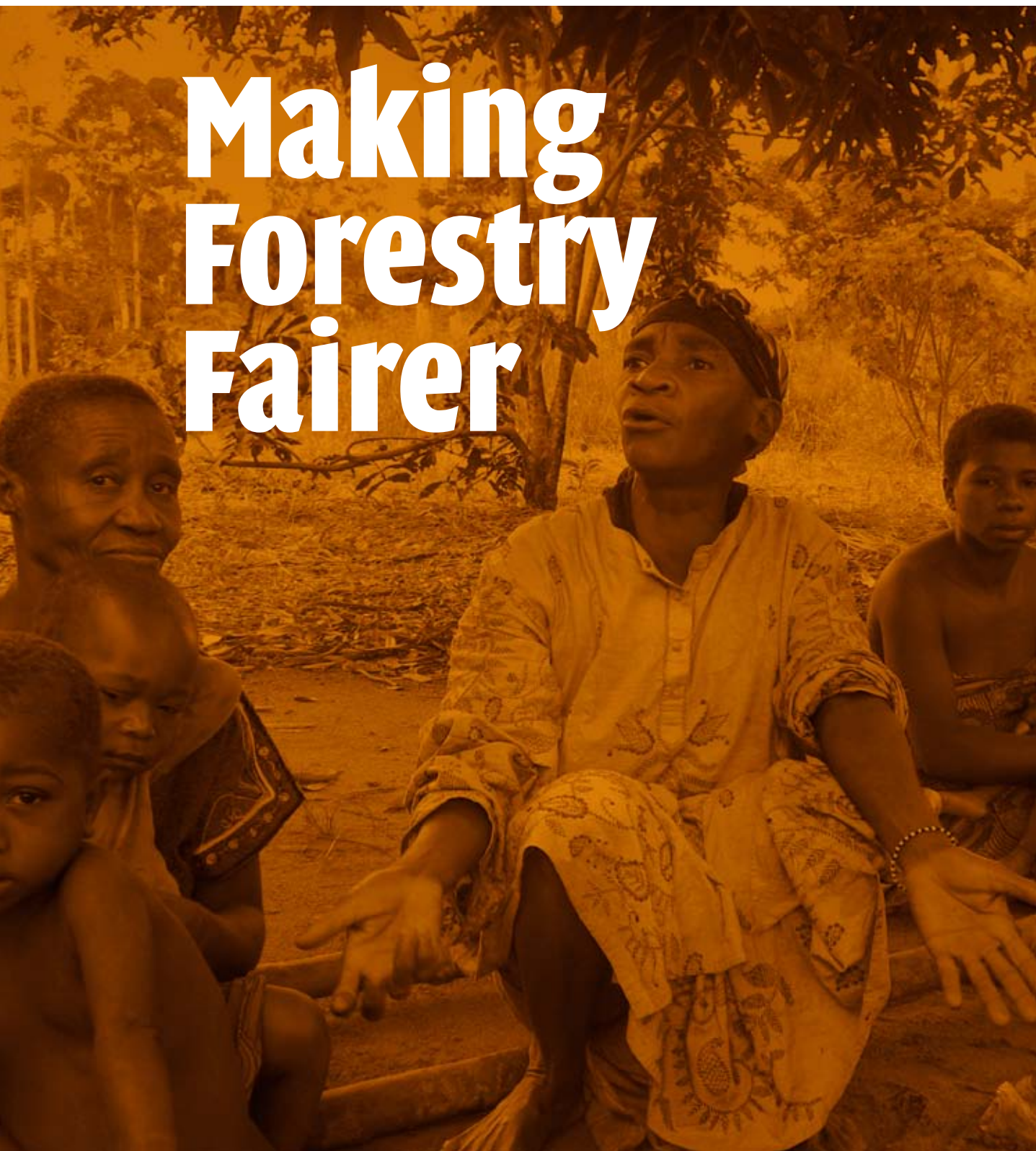


**A Practical Guide for Civil Society Organisations Taking Part
in FLEGT VPA Negotiations**

Making Forestry Fairer



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Glossary and acronyms

This glossary covers some of the main terms and acronyms you will come across when working on FLEGT VPA processes.

A more extensive glossary, with definitions, is available online at www.loggingoff.info/page/glossary

CAN

Climate Action Network (NGO network)

CAR

Central African Republic

CBD

Convention on Biological Diversity

CERD

Convention on the Elimination of Racial Discrimination

civil society

All-encompassing term for all those who are neither government nor business sector members. Includes e.g. communities, indigenous peoples, advocacy groups, churches, academics and unions

civil society organisation (CSO)

A kind of non-governmental organisation (NGO). Critical actors in the advancement of universal values, e.g. around human rights, the environment, labour standards and anti-corruption

CFDCs

Community Forestry Development Committees (Liberia)

communities

Refers to forest-dependent communities, including indigenous and non-indigenous tribal communities, who in some cases have been directly represented in VPA negotiations, while in other cases there has been only indirect or no representation

CSO

See civil society organisation

EFI FLEGT Facility

European Forest Institute (EFI) Facility which supports the

European Union in its implementation of the EU FLEGT Action Plan

EITI

Extractive Industries Transparency Initiative

EU

European Union

EUTR

European Union Timber Regulation

External, Self-mandated Monitoring

Self-mandated civil society campaigning organisations gathering information on forest governance. Monitoring activity is self-mandated, and NGOs undertaking it do not operate under a government contract

FCPF

Forest Carbon Partnership Facility (of the World Bank)

FLEGT

Forest Law Enforcement, Governance and Trade

FLEGT Licensing Authority

The authority that, in the context of a VPA, is designated the role of issuing FLEGT licences

FLEGT partner country

Timber-exporting (and often producing) country that has agreed a VPA with the EU or that has shown interest in engaging in negotiations towards the conclusion

FLEGT licence

A licence given, in the context of a VPA, to timber or timber products that have been verified as legal. Once a VPA has been implemented, only FLEGT-licensed timber from that country can be exported to the EU

Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan

EU Action Plan agreed in 2003 that sets out a process and a package of measures through which the EU proposes to address the problem of illegal logging and related trade

FPIC

free, prior and informed consent

IFM

Independent Forest Monitor, see Independent Monitor (IM)

IM-FLEG

Independent Monitor of Forest Law Enforcement and Governance, see Independent Monitor (IM)

Independent Auditor (IA)

Independent non-political body which assesses the implementation and effectiveness of the LAS as defined in a given FLEGT VPA. NB: The Ghana VPA uses the terms 'Independent Monitor' and 'Third Party Monitor' in different places, both to refer to the IA

Independent Monitor (IM) / Independent Observer (IO)

Independent organisation, often an NGO, undertaking analysis of the forest sector. The IM works under an agreement with the host country government and its findings are provided to the government NB: The IM has been also called Independent Forest Monitor (IFM) and Independent Monitor of Forest Law Enforcement and Governance (IM-FLEG)

IPCC

Intergovernmental Panel on Climate Change

IPO

Indigenous Peoples' Organisation

JIC

Once a VPA has been signed a Joint Implementing Committee (JIC) will be formed, consisting of EU representatives and partner country government representatives as well as in most cases CSO representatives. The JIC is called JMRRM in Ghana and JMC in Cameroon

Legality Assurance System (LAS)

System set up within the context of a VPA to trace legal timber through the supply chain and ensure it is not mixed with illegally sourced timber.

legality definition

Statement defining which set of laws of the FLEGT partner country will be enforced and monitored within the context of a VPA.

legality matrix

Defines the indicators and verifiers to clarify the laws whose enforcement will be monitored within the context of a VPA.

LIA

Livelihoods Impact Assessment

supply chain

A timber supply chain is a system of organisations, people, technology, activities, information and resources involved in moving timber and timber products from the moment the timber is harvested to the moment it is sold, including transformation and transport.

Supporting Measures

Section of a VPA outlining the actions that will have to be undertaken, in parallel to setting up the Legality Assurance System, to ensure the VPA is effectively operationalised.

Timber Legality Assurance System (TLAS)

See Legality Assurance System (LAS).

verification (of legality)

Means of assessing that the timber to be licensed as 'legal' is in compliance with all legal requirements spelled out in the legality matrix and LAS.

Voluntary Partnership Agreement (VPA)

A bilateral trade agreement between the European Union and a timber-exporting country (the FLEGT partner country)

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About this guide

This guide is designed to help civil society organisations (CSOs) understand the Voluntary Partnership Agreement (VPA) negotiation process, explore ways to make the most of the opportunities it opens up, and highlight some of the potential pitfalls. It is divided into five parts.

Part 1 explains what VPAs are, and the potential they offer for improving the way forests are owned and managed.

Part 2 suggests some issues for CSOs to consider when deciding whether to take part in a VPA process, and how best to prepare for negotiations.

Part 3 covers the VPA negotiation phase and specifically looks at creating a participatory process, highlighting some key issues to consider.

Part 4 makes suggestions for the implementation phase of a VPA.

Part 5 offers some useful resources, references and links for further reading.

Every VPA that has been agreed to date is different, uniquely tailored to fit the particular context of the country involved and drafted in collaboration with members of CSO in that country. This guide is based on the experiences from these VPA negotiation processes, both the mistakes and the triumphs. As most VPA processes are currently in Africa or Southeast Asia, the guide is based on experiences from these regions.

VPAs have been designed to allow each timber-producing country to develop an agreement that makes sense in their own particular context. For this flexibility to translate into a sensible, sustainable and socially just system, CSOs taking part in negotiations will have to be well informed, well prepared, confident and capable.



Part 1 **What is a VPA?**

The problem with illegal timber

The international wood and wood products market is flooded with illegally sourced timber. Illegal timber:

- **undermines the rights of communities** who live in and use forests,
- **encourages corruption**, which undermines good governance,
- **denies governments taxes** that could be used to improve the lives of their citizens,
- encourages **rapid deforestation and forest degradation** including by **depressing market prices** for wood products, which encourages forest to be converted for unsustainable and more lucrative uses (ranching, palm oil, soya, etc.), and
- can be used to **fund violent armed groups**.

Law enforcement is important, but will backfire if unjust and illegitimate laws are enforced. Even technically 'legal' wood can be illegitimate because of unfair laws that exacerbate, rather than mitigate, inequality and injustice (see Box 1). Campaigns to address illegal logging therefore have to strive for laws that are fair and legitimate, rather than chasing 'legality' for its own sake.

Box 1

Forest laws, a question of legitimacy as well as legality

Every country has laws that aim to regulate the management and protection of forests, as well as the way local people use the forest. These forest-related laws include:

- **customary laws** (e.g. laws that regulate land and resources tenure)
- **international laws** (e.g. international human rights and environmental conventions)
- **national or statutory laws** (e.g. laws that regulate land use, environment, tenure and forestry)

Rights of local communities to own, use and access forests are often not recognised in national laws. In many countries, therefore, national forest management laws tend to restrict local communities' use of forests, while allowing preferential access to large-scale industrial forestry.

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As noted by Centre for International Forestry Research (CIFOR), among others, it is clear that national forestry laws have typically been influenced by the timber industry. Illegal forest use is therefore not just an outcome of poor governance and corruption but is often an integral part of local and national political economies. Revenues from illegal forest exploitation keep existing political parties, policies and practices in operation. As the Indonesian NGO Walhi describes:

'illegal logging is connected to, and dependent upon, "legal logging". This is so because of the misuse of the permits which are issued by government officers, bribed police and military officers, usually with support of economically and politically powerful interests. A technical focus on "illegal logging" fails to target the real criminals; those behind the operations. Instead it risks targeting poor people who have no financial alternative, and are often forced to participate in the logging operations.'

Simple, uncritical, law enforcement in countries such as Cameroon, Gabon, Malaysia and Indonesia may therefore increase conflict and poverty, and not contribute to better forest management. As the European Commission noted in its FLEGT Action Plan and the European Council noted in its Conclusions, law enforcement efforts should start with a proper political dialogue with producer countries to instigate forest sector governance reforms.

Source: Adapted from 'Facing Reality', a FERN, Greenpeace and WWF report about FLEGT www.fern.org/facingreality

The EU FLEGT Action Plan

In 2003, the European Union (EU) proposed an innovative plan for tackling the problem of illegal logging by way of the Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan. The FLEGT Action Plan was developed to improve forest governance in tropical timber-exporting countries. It uses access to the EU market for legal products as an incentive for governance reform in the forestry sector in timber-exporting countries.

For more information see 'What is EU FLEGT' www.fern.org/what-is-flegt

The long-term aim of the FLEGT Action Plan is sustainable forest management and improved forest governance. The Action Plan includes a number of measures designed to bring this about.

For the purposes of this guide, the two most significant measures are

- **The EU Timber Regulation (EUTR)**, a new piece of EU legislation which came into force in March 2013 and makes it a criminal offence for companies to place illegally sourced timber on the EU market. It also requires companies to assess the risk that timber products they import may be illegal. This is known as due diligence.

- **Voluntary Partnership Agreements (VPAs)**, which are bilateral trade agreements between the EU and each of the concerned timber-exporting countries. Countries can choose if they want to enter into a VPA, hence they are voluntary, but if they do, the ratified agreement is legally binding for both the EU and the timber-producing country.

Box 2

VPAs – a different sort of trade agreement

VPAs are not like most trade agreements. The aim of most trade agreements is to increase economic growth by increasing the trade flow between the countries involved. In negotiating a free trade agreement, countries try to open up other markets for their products, while protecting their own markets. The most powerful will get the best deal. In the case of trade agreements between the EU and countries in the South, this usually means the EU will have the upper hand. For a critical look at EU trade agreements please refer to bilateral.org.¹

EU trade agreements are negotiated by the Directorate General for Trade (DG Trade) of the European Commission, with negotiations often taking place in secret without public consultation, and no participation of CSOs in the decision-making.

By contrast, the EU agenda regarding VPAs is to reduce imports of illegally sourced timber. Its aim for VPAs is therefore sustainable forest management and improved forest governance, not economic growth. The EU also requires that VPAs are negotiated with full participation of CSOs and, where possible, local communities. The EU has made funds available for local actors, CSOs, community representatives, and industry to actively participate in these negotiations, and has requested that governments of partner countries ensure there is a real consultation process.

VPAs are negotiated by different departments in the European Commission from other trade agreements (DG Environment and DG Development). The negotiations are more equal in the sense that the EU does not have any power or leverage to force an agreement through. If there is no agreement, there will be no VPA.

¹ For EU Free Trade Agreements see look at <http://www.bilaterals.org/?-eu-ftas->

VPA – NGOs grasp an opportunity

‘There is much work that remains to be done, but we believe a framework has been established with the potential to give local communities in the Republic of Congo unprecedented influence over to what happens to the forests that are so critical to their survival and their culture.’ – Roch Euloge N’Zobo, Programme Director of the Congolese Observer for the Rights of Man (OCDH)

The VPA sets out to:

- Get governments to **establish a clear definition** of legal timber, including identifying the need for specific legal reform where required.
- Develop **a system to track timber** and check whether it meets the new definition of legality.
- Undertake **law reforms** responsive to the weakness and injustices in the laws identified and agreed by stakeholders to ensure the integrity and legitimacy of the Legality Assurance System (LAS).
- **Monitor**, with input from NGOs and communities – if they wish to be involved – the implementation of the system.

Governments have to make sure that the VPA **does not undermine the rights of people** living in the forest, or end up making life harder for local communities who live in and use the forest.

Several European NGOs saw that, if the FLEGT Action Plan was going to have positive outcomes, local CSOs and community representatives would have to be involved in defining legality, developing a system to track timber, monitoring implementation of the agreement and, where necessary, playing an active part in reforming existing laws. These NGOs argued for the EU to ensure that local civil society had a genuine voice in the VPA negotiations, and the EU agreed. The European Council confirmed that VPAs should, among other things:

- **Strengthen land tenure and access rights**, especially for marginalised, rural communities and indigenous peoples;
- **Strengthen effective participation** of all stakeholders, notably of non-state actors and indigenous peoples, in policymaking and implementation;
- **Increase the transparency** of forest operations, including through independent monitoring;
- **Reduce corruption** associated with the award of forest sector concessions, and the harvesting and trade in timber.

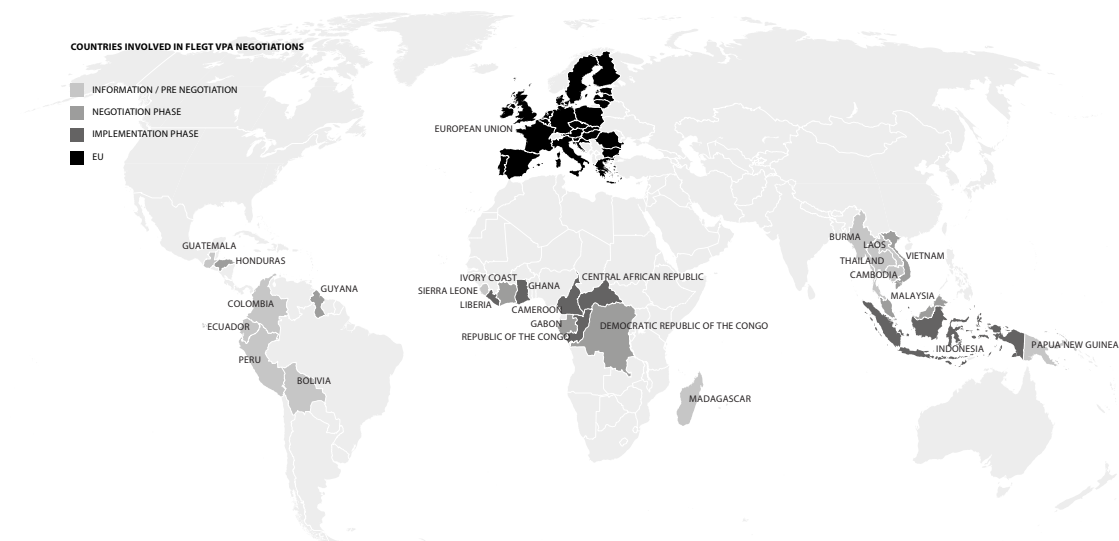
See the full text of the European Council Conclusions of FLEGT (2003/C 268/01) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2003:268:001:0002:EN:PDF>

This has opened up an opportunity for local civil society to have real influence over a legally binding agreement that impacts on the future of forests and forest dependent communities, even in places where the government has ignored them

in the past. The challenge for CSOs, if they wish to get involved, is to get ready to make the most of the opportunity.

VPAs – a theory of change

Figure 1 **VPAs processes worldwide, December 2012**



It is early days. None of the VPAs signed has yet been fully implemented. There is therefore little evidence of the effect of VPAs on people's livelihoods, but we do know what is required for an intervention such as a VPA to have the potential for positive livelihood impacts:

- There needs to be a space for negotiation based on proper representation of all relevant stakeholders.
- The stakeholders need to have the capacity (skills, money, time) to be able to make effective use of the space created.
- The 'rules of the game' need to be open. In other words the agenda of the VPA process and the procedures should not be set in advance. Stakeholders should have a strong say in setting the agenda. If a fixed agenda is set from the start, the process is flawed.

It is clear that in principle the VPA process is able to meet these three conditions.

- **There needs to be space for negotiation.**

The process requires participation of all stakeholders based on fair

representation. All six VPAs signed to date have been developed in an inclusive process;

- **The stakeholders need to have the capacity to be able to make effective use of the space created.**

There are funds available for building the capacity of CSOs, community organisations, industry and the government to allow all to make effective use of the negotiation space created;

- **The 'rules of the game' need to be open.**

There is no strict deadline or time limit within which a VPA must be concluded; The content of the VPA and notably the legality definition and demands for legal reform, can be developed in an inclusive participatory process. This depends though on the the strength of local actors in setting the agenda and the power of the government.

When these conditions are fulfilled, a VPA has the potential to be a positive tool for change in the forestry sector.

The principles of good governance

Improving forest governance – the way forests are owned and managed – and strengthening rights of local communities to forest land, are key aims of the VPAs and also of most CSOs that choose to take part in a VPA process. There are five key elements to good forest governance:

- **strong coordination:** government departments working well together
- **accountability:** people taking responsibility
- **transparency:** people making information accessible
- **participation:** elected or chosen representatives are involved in decision making
- **capacity:** people have the time, money, skills and knowledge to be involved

Civil society groups have used the VPA process to strengthen these five elements, by identifying opportunities and then acting on them. In Cameroon, civil society has used the VPA process successfully to call for a greater role in monitoring activities in the forest (improving transparency), while in the Republic of Congo the VPA process was used to strengthen CSOs generally (improving capacity).

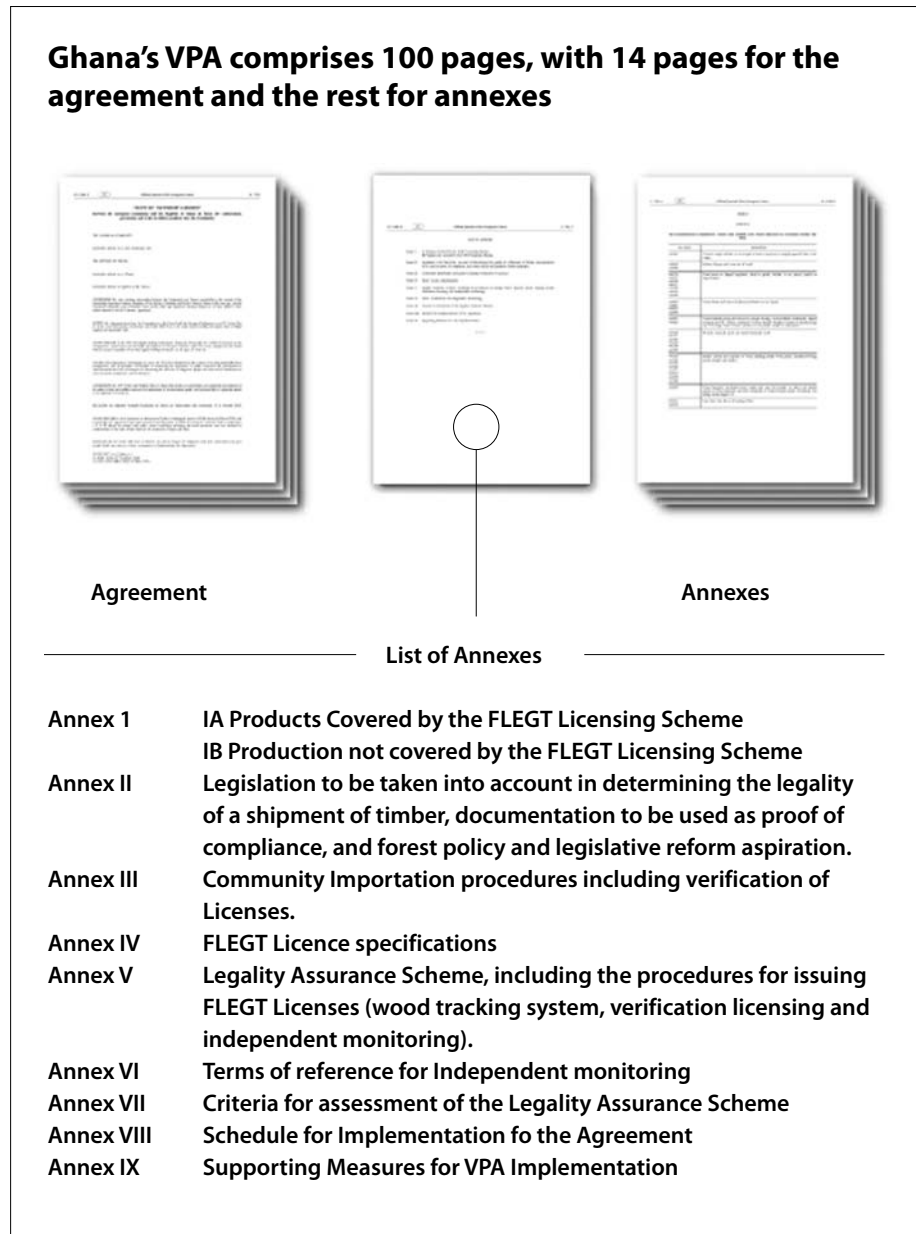
'There has been some large level of reform within the forest governance framework in Ghana and civil society has also been a major player within these reforms, so I think the VPA has actually done a lot of good in Ghana.' – Samuel Mawutor, *Civil Response Ghana* (2012)

The current state of play with FLEGT VPAs around the world

It is still early days for FLEGT VPAs. Work has been going on for just under 10 years. Different countries are at different stages of the process, and the global situation is constantly developing. At the time of writing, negotiations for six VPAs have been concluded, five of which are in Africa. Hence the information in this guide is based to a large extent on experiences in Africa.

For up to date information on VPAs visit www.loggingoff.info

Figure 2



What does a VPA look like?

VPAs, like most trade agreements, tend to be long and difficult to read. Although every VPA is different and adjusted to the specific country context (which is a great strength), there are certain core elements included in all the agreements. Much of the most vital information in the agreements is contained in the annexes, which form by far the greater bulk of the documents. The annexes are an integral part of a VPA, which means they are also legally binding.

It is easy to get confused by all the terminology and different parts to a VPA. Key elements are described below. A breakdown of different VPA terminology and sections is included in Part 5 of this guide. Exactly how a VPA is organised is less important than the main principles it embodies, and the role that civil society is able to play in its negotiation and implementation.

Key elements of a VPA

The Legality Assurance System (LAS)

The LAS is a key element of every VPA. In some countries it is called the TLAS – the Timber Legality Assurance System – but this is the same thing. It comprises the legality definition and the system set out in the VPA to make it possible to check whether timber classified as ‘legal’ actually meets the legality definition, including the social and rights elements of the definition.

The legality definition

The legality definition is part of the LAS. The VPA definition of legal timber must be based on the national laws of the timber-producing country, including the constitution, and the international laws ratified by the country. Ideally customary laws should be included. The definition should tackle land and resource rights (who owns the land and who owns the timber), and should be explicit about which forest products and which sources (permits, concessions types) are covered. To date insufficient NGO advocacy has focused on including customary and international law into VPA legality definitions, which rely heavily on national statutory law.

The Independent Auditor (IA)

All VPAs have an IA – a third party to check whether the VPA is being properly implemented. The Auditor is appointed by the government, and reports its findings to the government and the EU (in the form of the Joint Implementing Committee – see below) at least twice a year (initially). The IA must be separate

from the government's forest patrol or forest management departments. In fact, it must be completely independent of government. Every VPA includes an annex setting out the terms of reference for the IA, and describes the process by which an Auditor is to be appointed.

Other important elements of the VPA

Independent Monitoring

Some VPAs provide space for an extra Independent Monitor (IM), also called an Independent Observer in some countries. The IM works under an agreement with the government and monitors law enforcement against national procedures and legislation through systematic gathering information in Ministry offices and during field investigations – e.g. title allocation, inspections, legal follow-up of cases. The IM also proposes corrective actions and reports to the government and the international donor community. Its findings, after being validated, must be made public. While the Independent Auditor is only expected to examine how the system is working, an Independent Monitor has a wider remit.

Independent civil society forest monitoring

All VPAs envisage that information from civil society can and should be fed through to the Independent Auditor, even when civil society does not have a formal monitoring role. In Liberia, the VPA explicitly includes civil society monitoring of the impact of the agreement, and in Indonesia the main monitor is a network of CSOs.

The transparency annex

Although it is not a strict requirement that a VPA includes an annex on information to be made public, all but the first VPA (Ghana) has one. Ghana is in process of developing one. It can be assumed that all future VPAs will have a transparency annex.

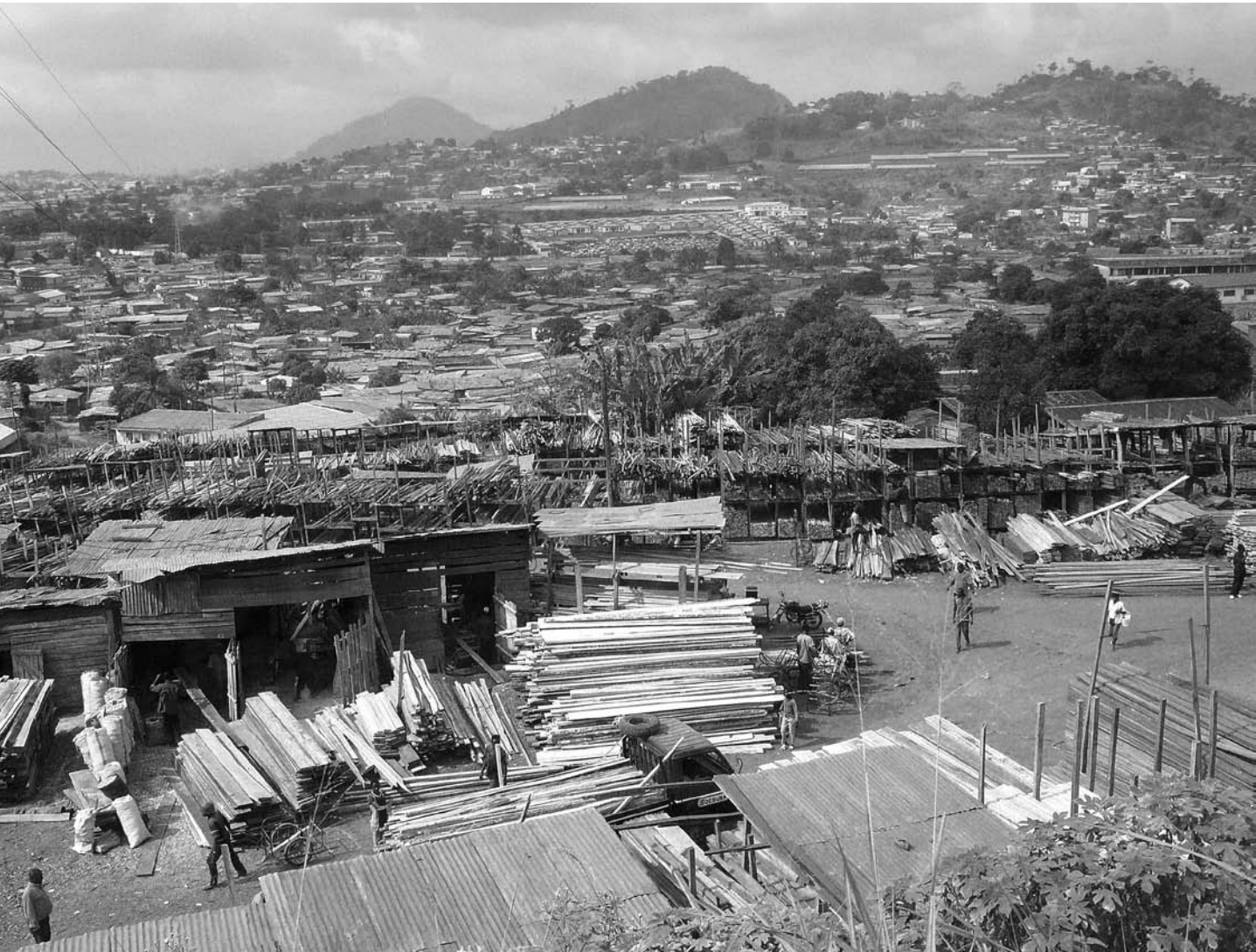
Schedule for implementation

Most VPAs include a timeline for implementation, also described as an 'implementation roadmap'. A good roadmap is important when it comes to implementing the VPA. Most roadmaps will have to be revisited over time.

Joint Implementing Committee (JIC)

Once a VPA has been signed, a JIC is formed, consisting of EU representatives and

government representatives, and in most cases CSO representatives of the VPA country. EU rules preclude European CSOs from having a seat. The JIC is tasked with overseeing the implementation of the VPA. In Ghana this body is called the Joint Monitoring and Review Mechanism (JMRM).



Part 2 Preparation

Negotiating the VPAs is only one part of an ongoing process. If VPAs are going to help bring about a lasting positive change in the way forests are owned and managed, civil society must be involved at every stage (Figure 3).

Figure 3



For civil society to be as effective as possible through each stage of the VPA, it is essential that it works together in a coordinated way and is well informed and prepared.

Forming coalitions

NGO coalitions have been vital for getting civil society voices heard in VPA processes. There is no blueprint for how NGO or community coalitions feed into VPA negotiations, and every country has a different experience. There is a consensus though that having a well-functioning coalition makes it much easier for civil society to get its voice heard. This is what enabled Ghana's civil society to drive the process in the negotiation phase.

'CSOs [in Ghana] made known their conditions for participating in the VPA. CSOs provided acceptable alternatives to challenges; were part of all working groups and ensured the process addressed governance challenges in the sector. It was at the insistence of CSOs that community rights got inserted into the VPA' – Albert Katako, Forest Watch Ghana

A strong coalition allows CSOs and/or communities to discuss issues, share information, and arrive at a common position before feeding into the formal negotiating process. The first step is therefore assessing whether there are existing coalitions that could fulfill this role, or which can be built on. If there is no suitable coalition, one can be started by gathering a group of organisations who understand what is at stake, share a similar agenda, and are willing to talk to each other.

Box 3

Stakeholders and rightsholders

As a member of a CSO, you are likely to be a **stakeholder** in VPA negotiations. Members of directly affected communities will be **rightsholders** since the content and process of VPA negotiation and implementation will directly impact on their legally protected rights. It is helpful to know the difference, and how it affects your position.

Local CSOs and representatives from the timber trade are examples of **stakeholders** in relation to VPAs, as they have a legitimate interest in VPA negotiation and implementation. **Consultation** of those stakeholders will help ensure that the VPA will work – i.e. that it will meet the various policy objectives, challenges, expectations and interests at stake. A reasonable government will consider the recommendations of all legitimate stakeholders, give them the weight they deserve (proportionate to the interest at stake), reach a fair balance between competing interests, and would need to have good reasons to disregard any recommendations made.

Rightsholders are a special category of stakeholders, as they have a legally enforceable right to participate meaningfully in VPA-related decisions that may affect them. The key rightsholders when it comes to VPAs are the forest communities, whose lives, welfare, livelihoods and culture are all likely to be impacted by VPAs. VPA-related decisions affecting the rights and interests of indigenous and tribal peoples should not be taken without their free, prior and informed consent. In Liberia, communities had their own platform to discuss the VPA process, separate from the civil society platform, and their own elected representatives in the VPA negotiating committee. In Cameroon, some local

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communities did take part in the NGO coalition discussions, which then fed into the VPA negotiations, but only to a minor extent. The right to consultation and consent are protected by international laws such as the American Convention on Human Rights, the Convention on Biological Diversity, the UN Declaration on the Rights of Indigenous Peoples and ILO Convention 169.

Broad or smaller coalitions

A broad coalition has the advantage that many will feel represented by it and can make their voice heard, meaning there is likely to be a lot of 'buy in' for the resulting agreement. This was the case in Ghana where academics, church groups, chainsaw loggers, environmental NGOs and social organisations were all represented in two coalitions that fed into the VPA negotiations. This only works if there is consensus about the starting point and objectives – otherwise the coalition may get stuck in internal disputes about fundamental principles, and be unable to take a united position to the negotiating table. In this case, a smaller coalition in which all organisations agree on a basic set of principles may be more effective, and ultimately more influential.

With the exception of Liberia, communities have so far not been directly involved in VPA negotiations. There are a number of reasons for this, including the fact that unlike indigenous peoples' organisations, local communities are less well organised.² Ensuring that local communities and indigenous peoples either create their own coalition and organise their own representation, or actively participate in the NGO coalition, is important to ensure they can play a key role in the negotiation and implementation of the agreement.

Creating a sustainable coalition

'Strengthening civil society and improving capacity' generally means **increasing the skills, knowledge and experience** of individuals to work more effectively together. In a process that will take years, like a VPA, there is a danger that people who have gained new skills, knowledge and experiences then leave to do other things without passing on their expertise to others. This has been a problem in Ghana, where some of the people working to implement the VPA agreement are not the same as those who negotiated it, and are finding it difficult to reproduce the same level of pressure on, and cooperation with, government.

2 For more information see forthcoming FERN report on community consultation, which will be available at www.fern.org

You can find details for *Provoking Change* in Part 5, or download the report (in English or French) at www.fern.org/provoking-change

Creating a sustainable coalition means making sure that skills and knowledge are shared, and that the agreements created are crafted with long term, real life implementation in mind. Some simple practical steps can help to ensure the skills and information gained are shared with others in the network. These include taking good notes at all meetings, setting up routines for sharing these notes with others, and setting up systems for sharing information with the wider coalition and communities. It is important to get into the habit of doing this. Some useful guidance on such practical issues as working in networks, taking notes and running effective meetings, can be found in *Provoking Change, an advocacy guide for NGOs*.

Considering gender

For more on gender issues see *Securing community land and resource rights in Africa: a guide to legal reform and best practices*, produced by FERN, Client Earth, FPP and CED; 2013. Available at www.fern.org/securing-community-rights

Community groups, other rightsholders and CSOs all have a responsibility to ensure both women and men are able to participate in coalitions, and have access to the information and skills being shared. Most CSO coalitions engaging in the VPA process have so far paid little attention to gender issues, but this oversight could be avoided in future processes. Being proactive in finding representatives that understand gender issues and proactively ensuring women are included in decision-making structures are both key to addressing gender imbalances.

When it comes to legal reform, notably of access to and ownership of land and resources, it is important to ensure that the reform process does not discriminate against women or minority groups. This is true whether legal reform is instigated by the VPA or otherwise. Changes may also need to be made to traditional mechanisms for sharing information or discussing issues if these exclude women.

Checklist for forming coalitions

- | | |
|--|---|
| ✓ Is there an existing coalition that could form the basis of your VPA platform? | Existing civil society structures can give you a head start in forming a strong coalition. |
| ✓ Has everyone in your coalition agreed on some basic principles or positions? | Establishing a strong, clear coalition position will help you make the most of VPA negotiations. Ensure there is a process to deal with disagreements within the coalition. |
| ✓ Has everyone in the coalition got a similar understanding of what they want to get out of the VPA process? | Establishing a joint understanding of what to realistically expect from the VPA will make it easier to work together through the process. |
| ✓ (In case of a new coalition) Are you creating a sustainable coalition that can survive beyond your involvement in it? | Remember that you are trying to build a process that will endure beyond just the VPA negotiations. |
| ✓ Are women involved in the CSO or community coalition? | Traditional decision-making systems that exclude women or other community stakeholders may need to be altered. |

Finding allies beyond your coalition

An ally is a friend; someone who will support your platform's position and help you pursue it. Your allies are likely to be a mixture of groups, organisations and individuals. For instance you may find community groups, religious organisations, trade unions, academics, traditional leaders, or other NGOs outside of the platform that agree with your position. It is easier to make convincing arguments if your position is endorsed by others. You may also find allies in different countries in your region. Building good relations with allies in the EU is very important to ensure they pressure the EU for the changes you want to see (see Box 4).

Finding and maintaining allies takes time and energy, so it is a good idea to start identifying and contacting allies early on in the process. Once the platform has identified potential allies, you need to think about how best to work with them, e.g. friendly journalists or sympathetic government officials need to be treated differently from international NGOs. Remember that your allies will have their own agenda and priorities, so you will have to see how you can work together.

Different allies can help achieve different goals. A journalist might help raise the public profile of any issues you have, or of the VPA process in general. A friendly government official might provide you with information or insights into how the government is tackling a specific issue. An international NGO may be in a better position to raise concerns directly with the EU – for example, if you think the process is being rushed or if you are not being included in consultations.

Box 4

Best practice example – allies working together in Ghana

Experience teaches us that when there is close cooperation between NGOs in the VPA country and European NGOs, this is a good basis to influence the final agreement and ensure your concerns are included. This is even more the case if NGOs have a working relationship with their government, and the NGOs in Europe have a working relationship with relevant EU officials.

In the case of Ghana, there were daily or weekly communications in which the Ghanaian NGOs alerted the EU NGOs (and vice versa) to positive developments and problems they encountered. EU NGOs in turn alerted the European Commission, who could then bring it up with its Ghanaian counterpart and vice versa. It was an elaborate and effective game of information ping-pong that contributed to ensuring Ghanaian CSOs were heard and their agenda taken seriously in the negotiations.

Checklist for finding allies

- ✓ **Has the coalition identified potential national, regional and international allies?** Allies can help strengthen your voice. Different allies may be able to help with different issues.
- ✓ **Has the coalition got the time and energy to inform potential allies about VPAs and other issues?** It can help to identify your allies at an early stage, and be prepared to spend time and energy informing them about the issues.

Owning the process

Your organisation is just one of a number of stakeholders, and there may be those that, intentionally or unwittingly, threaten to take your space in the negotiations. Forming a strong coalition can help ensure that genuine local civil society representatives are directing the NGO position. In most countries it took time before 'genuine' civil society could take up a seat at the negotiating table, as some governments initially gave their place to international (conservation) NGOs. However, once there was a civil society coalition capable and eager to step in, this became less of a problem (see Box 5).

In Liberia, where communities are organised through community forestry development committees (CFDCs), local NGOs ensured that CFDC representatives were given their own seats in the negotiations. Hence forest-dependent communities had seven representatives present at the negotiations, in addition to four NGO representatives.

Box 5

Best practice – Cameroon CSOs claim their space

Cameroon's CSOs took an active interest in the VPA process from 2004, before formal negotiations began. A renewed civil society platform was created, building upon an existing coalition, which – even before negotiations began – issued a statement highlighting 'the low level of involvement of national civil society organisations', and urging the government to 'guarantee' the legitimate representation of national CSOs. But initially the government did not see national CSO participants as key stakeholders, and invited international NGOs like WWF and IUCN to represent civil society in the VPA negotiations.

The civil society platform argued that international NGOs did not represent Cameroonian civil society. Under this pressure, a seat was awarded to national civil society, and during the course of negotiations the platform successfully lobbied for a second place. Although VPA negotiations in Cameroon were less inclusive or consensus-based than in Liberia or Ghana, civil society involvement was described as 'unprecedented' by the end of negotiations. Since ratification, civil society in Cameroon has successfully campaigned for direct community and indigenous peoples' representation in the implementation phase.

Setting the agenda

It is likely that the government will already have an idea of the path they want the consultation to take. CSOs and communities therefore need to consider **what they want** to get out of the VPA process. Are there specific aspects of forest governance that need to improve; perhaps issues of transparency, community forestry developments or recognition of local peoples' tenure rights? Or something completely different?

A first step for a coalition might even be to encourage the government to enter into VPA negotiations, as was the case in Liberia and Ghana.

In taking part in VPA negotiations, CSOs and communities have the opportunity to shape the agenda, so it makes sense to have your agenda agreed within the coalition beforehand. The CSO platform in Ghana, for example, wrote a position statement before entering VPA negotiations. It sets out a vision for good forest governance, and it was with the aim of taking steps towards achieving this vision that civil society representatives took part in VPA negotiations.

'Our minimum requirement is a guarantee of full participation of all stakeholders at all stages of the FLEGT process through e.g. a. representative steering/planning committee; b. support for development of "national forest forums" and other consultative mechanisms; and c. concrete support for civil society participation in these processes.' – National meeting on Ghana's proposed entry into a voluntary partnership agreement with the European Union, Civil Society Position, 27 May 2005

Representation and feedback – keeping up your end of the bargain

When negotiations begin, not all members of a coalition can sit around the negotiating table. It is therefore important to have systems for making sure that those in the negotiations share information with the wider coalition, so everyone can feed into the coalition's negotiation position.

This exchange must be more than just sharing information, although that is a vital first step. It will be important to clarify how CSO representatives at VPA negotiations are going to ensure that they present the position and views of the wider group, and not simply their own opinions.

It takes considerable time to inform and gather the views of a wider group, so this time must be built in to the negotiation process from the outset. In 2002, the EU adopted clear minimum standards for consultation. In part 5 of this guide a briefing sheet outlines how these standards should be applied to VPA negotiations, including ensuring there is enough time for rightsholders and stakeholders to be properly informed and to participate.

Both CSOs and communities have the right to participate in VPA negotiations. CSOs should not try to 'represent' communities or indigenous peoples, but they can play a role in encouraging governments to directly involve communities and indigenous peoples' organisations and, where required, support communities to select their own representatives, as happened in Liberia. Although communities were not directly represented in Cameroon's VPA negotiations, CSOs were instrumental in ensuring direct community representation on the VPA implementing committee.

'The NGO Coalition for Liberia including Community Forestry Development Committees (CFDCs) and local communities affected by logging operations have all expressed satisfaction over the open and participatory manner in which the VPA process was articulated with particular emphasis on the participation of civil society organizations and local communities.' – NGO Coalition for Liberia Press Release, 9 May 2011

Checklist for owning the process

- ✓ **Does your coalition have a clear agenda or set of priorities for taking part in VPA negotiations?** Knowing what you want to get out of the VPA process from the beginning will make it easier to achieve your goals.
- ✓ **Is there a formal or agreed role for civil society in the VPA negotiations?** If the government and you share an agreement of your role in negotiations from the outset, the process will be more effective. The exact role of civil society is not defined; you, the government, and the timber industry will have to negotiate it. The EU can support this process.
- ✓ **Is everyone included in negotiations who should be?** You may be able to influence decisions about who is allowed to take part in negotiations, especially if you form a strong coalition and work with allies.
- ✓ **Are there systems in place for exchanging information between CSOs or communities and negotiating bodies?** It takes significant time, effort and commitment to share information effectively, and representatives should get into the habit at an early stage.
- ✓ **Do members of your coalition have the skills and training to keep records and information?** If you don't have these skills, it will be important to get help to develop them, ideally before VPA negotiations begin.
- ✓ **Do members of your coalition have skills to reach out to communities?** Videos, cartoons, diagrams and recordings are very useful for community outreach. Many of these tools have been developed by others and you can build on them.

A dose of reality

VPAs are not a miracle cure. The national context will have a major bearing on the outcomes that can be achieved; the more difficult the political context, the less that can be achieved through the VPA process. If CSOs decide to become part of the process, defining realistic goals for involvement is paramount. In Liberia CSOs wanted the VPA to kick-start enforcement of the forestry sector legal reform process; in Ghana they wanted the VPA to recognise the need to improve forest governance and to reform the tree tenure system; and in Cameroon they wanted the agreement to focus on corruption. Even where the negotiation process and the resulting agreements are regarded positively by civil society, implementing the VPA is (so far) proving extremely difficult because of continued corruption, lack of skills, a culture of operating opaquely, and a host of other problems that existed before the VPA. Naturally, those who thrive on corruption will strongly resist efforts to promote a more transparent, accountable process.

It can be easy for CSOs, having put so much energy and effort into working with the government to negotiate a progressive VPA, to become disheartened when things seem to fall apart in the implementation stage. But real change does not happen overnight; the process of overcoming an issue as deeply entrenched as corruption, and even slightly changing the balance of power, is always going to be slow, difficult and frustrating. Nonetheless, in most countries where a VPA has been agreed, we have seen transparency improve and civil society become stronger and better coordinated.



Part 3 **Negotiations**

This chapter makes some suggestions for what to consider when deciding whether to take part in VPA processes and highlights some key negotiating themes if you do take part.

Effective participation

'A poor process leads to poor outcomes'



It can be useful to think of participation as a ladder of involvement, from the lowest rung where governments do little except inform stakeholders about what's going on, to the highest rung where stakeholders are empowered to influence outcomes and achieve their objectives. Each VPA negotiation so far has sat somewhere slightly different on the ladder, with correspondingly different levels of civil society influence over the outcomes.

A common factor in many of the VPA processes has been that the government has become more open to a 'higher rung' participatory process over time. This is

In Part 5, there is a briefing sheet on what a proper participation process looks like, as defined by NGOs that have been involved in the FLEGT process.

in part because CSOs demanded participation, in part because the EU supported it, and in part because governments have come to see that including, rather than sidelining, civil society can result in better, more workable outcomes.

Box 6

Dragging VPA consultation up the participation ladder

When the FLEGT VPA process started in 2003 there was no real intention by the European Commission to develop an empowering participation process. Whilst the FLEGT VPA Action Plan envisaged a *'process of consultation with major forest sector stakeholders and other relevant parties'*, there was little indication that the consultation would be truly participatory.

From the beginning European NGOs argued for *'a clear process that will ensure effective and meaningful participation of civil society, including local communities and indigenous peoples' organisations, consisting of democratically elected representatives of these groups in the negotiation and implementation of the VPA*. They made their position clear to the European Commission and the European Parliament, and started communicating directly with NGOs in the VPA countries.

Once the VPA process had started in some countries, local CSOs took up the baton, and made clear what they felt the process should look like. This pressure from civil society, and the openness of the European Commission officials handling the FLEGT Programme, led increasingly to the EU taking a relatively strong stand on the need for inclusive consultative processes.

Sensing the opportunity to set up a meaningful participation process, CSOs in the first six countries to enter VPA negotiations (Ghana, Malaysia, Indonesia, Cameroon, Republic of Congo and Liberia) signed off on a joint briefing note drafted by FERN. This spelt out what a proper consultation process should look like, and included as key elements:

1. Participation of stakeholders should happen right from the planning stage,
2. There should be enough time and funding for community consultations,
3. A balanced cross-section of participants should be ensured, and
4. Participants should be provided with sufficient information to make informed judgements.

This allowed CSOs in the EU and in most VPA countries, with support from the European Commission, to shift the consultative process from a focus on informing and consulting towards a process of collaboration and empowerment.

The full briefing note is in Part 5 of this guide

Making it count

Clarifying internal structures

'The VPA Steering Committee [initially] established by the government excluded the participation of civil society. It was only after protests by civil society actors that the government invited civil society to participate in the negotiations.' – Civil society counter-brief on the Ghana –EU VPA

To make the most of VPA negotiations, civil society needs to have an understanding with the government on how negotiations will be carried out and what its role will be. Some key questions to consider are:

- What will be the roles of stakeholders and rightsholders in drafting different elements of the VPA?
- Which stakeholders and right holders will be involved, and how will they be represented?
- What is the timeframe for completing the work?
- How will drafts and decisions be communicated to the stakeholders and rightsholders not directly responsible for drafting the definition?

For each VPA negotiation there is a **negotiation committee**, which conducts the formal negotiation with the EU, and a **steering committee**, which decides the negotiation position. In several countries these two committees have been the same group of people or been merged. In addition to these committees, some countries (Liberia, Republic of Congo and Ghana) used **working groups** for drafting the VPA text, while other countries employed experts or consultants to support the steering group discussions. Only in Malaysia did neither CSOs nor indigenous peoples' organisations have a formal role on either the negotiation or steering committee, while CSOs in Vietnam are still struggling to secure their roles. A lesson from the VPA experiences is the importance of clearly defining the role of CSOs and communities within the structures set up to pursue the VPA negotiation process.

It is important to clarify how the *internal* processes to form positions among country stakeholders (in the steering group and working groups) will influence the formal, *external* negotiation process between the government and the EU. If the internal processes are not seen to influence the external negotiations, it is a sign that the negotiations are not sufficiently participatory.

Experiences from VPA negotiations show that, when CSOs or the government were not sure of or did not agree on their respective roles, progress was difficult and slow. In contrast, where CSOs and community-based organisations had an

established, formal role from the beginning, they were able to take part with confidence, be proactive in the negotiations, and have a greater impact.

'This was the first time such a process had been used to encourage direct dialogue between the private sector, civil society and the Government of ROC.' – EU FLEGT Briefing Note, Republic of Congo, June 2010.

Being prepared

If CSOs or communities are successful in lobbying the government to ensure that they are involved in the negotiations and that the resources to make this possible are made available, it is important to make the most of this opportunity by being well prepared. This includes helping to set the agenda (jointly with other stakeholders and rightsholders) before the meeting, and ensuring the coalition has discussed the issues and obtained feedback from those not represented in the meeting.

Some key questions to ask at the outset, which indicate whether effective participation is likely to be possible, include:

Is there enough time?

It takes time to have meaningful discussions, explain information to people and gather their considered views. Meaningful participation is only likely to happen over the course of multiple meetings, with information going back and forth between the representatives sitting in the negotiating team, and the wider NGO community members taking part in the process. All of this takes time. Providing feedback to communities, who may live in remote areas and have no internet access, can be especially time-consuming. In some countries this includes walking for days from community to community.

Several NGO coalitions have had to urge governments and the EU to slow down the VPA negotiation process, as they felt that the desire to get the VPA signed quickly was impeding effective participation.

Is there enough money (and other resources)?

Effective participation does not necessarily have to be expensive. However, negotiators do need to recognise that communities with no or very little money, who live in remote parts of the forest, will find it difficult to take part in negotiation meetings or coalition meetings. They need sufficient time and funding (for travel) to organise themselves. Community representatives and

small CSOs may require help to pay for, for instance, travel and accommodation expenses when taking part in civil society platform meetings and VPA negotiations. The Liberian NGO coalition successfully lobbied the VPA secretariat to redirect money initially allocated for a secretariat car to pay instead for motorbikes and petrol for community members, allowing them to travel from village to village and attend negotiation meetings in the capital.

You can download a briefing sheet on accessing funding for VPA negotiations at <http://www.fern.org/fundingforFLEGT>

The Africa Community Rights Network (ACRN) decided to not pay NGOs and community members daily allowances in order to not attract people primarily interested in the money, hence only costs (food and accommodation) were paid for.

Is there enough timely information?

Transparency is vital for effective participation – without accessible and well-presented information, it is very difficult for communities or small CSOs to take part, and make informed judgements. The government or the negotiation facilitator should provide this information, but it is the role of CSOs and community representatives to make sure they do. The earlier they can make it clear that they need the information in order to participate properly, the more smoothly the process is likely to go.

Setting up information-sharing systems

As outlined in Part 1, representation and feedback are essential. Information, as well as being available, should be provided well in advance of important meetings – so that communities and CSOs have the time to understand and discuss it with their constituencies before offering any opinion or position. The amount of information available should grow as the process develops because everyone should be keeping accurate records of meetings. Setting up a system to share information with your constituencies and ensure that decisions taken are widely supported is therefore very important.

Box 7

Malaysia – consultation without participation

The Malaysian government has gone out of its way to publicise the ‘consultation’ they held with civil society. This ‘consultation’ consisted of presenting texts to civil society and listening to their comments, most of which were discarded, often without justification. There were no representatives of CSOs or indigenous peoples’ organisations in the steering committee or in the negotiation committee of the VPA, in contrast to the other VPA countries. Because their concerns were rejected, several NGOs and indigenous peoples’ organisations walked out of the process although some conservation NGOs and indigenous cultural organisations remained in it. It is unclear what influence they currently have over the process; the impression is that the government sees involving civil society groups as merely a formality, and most CSO input continues to be ignored. ‘Participation’ in Malaysia has not gone beyond information sharing sessions where NGO comments are being noted.

‘We will not allow our participation to be used to give validity to a process that is highly flawed and pays little regards to the rights of the indigenous communities and their sufferings. We also cannot allow our participation to give validity to a process that claims to stand for good governance but clearly does not express itself as so.’ – Statement submitted by JOANGO Hutan and Jaringan Orang Asal SeMalaysia to the EU FLEGT Delegation to Malaysia, 19 March 2008

Checklist for making it count

- ✓ **Have you agreed on a clear role for CSOs in negotiations?** Clarity from the beginning will make it easier to exert yourself throughout the process.
- ✓ **Are you taking a proactive approach to negotiations?** Experience shows that proactive CSOs will have more impact than those who wait for the government to include them.
- ✓ **Is there enough time for a participatory process?** Participation takes time – a rushed negotiation will most likely be ineffective, and unrealistic deadlines could harm the process.
- ✓ **Who will provide the resources (money, time, skills) to enable a participatory process?** Someone has to pay expenses (e.g. for travel and accommodation) to allow poor CSO representatives or forest communities or indigenous peoples to take part in negotiations.
- ✓ **Do you and the communities have access to enough information?** Transparency and good information sharing is vital for good negotiation. This means having both the information and channels for sharing it.
- ✓ **Is there a legitimate, representative civil society presence in the working groups?** Not all VPA negotiations involve working groups, but in some countries, CSOs have managed to establish a presence in all VPA working groups, which discuss technical aspects of VPAs.

Adopting a learning approach

It is useful to approach VPA negotiations with a 'learning-based approach'. This means recognising that everyone involved in the negotiations has something of value to share, and is creating a way forward together. Just as a government will have much to learn from civil society about the real-life impacts of policies and laws, civil society will have something to learn from government and even from the timber industry.

Box 8

Best practice – participatory consultation in Liberia

'The Liberian civil society has created a platform ... that is now regarded as a legitimate interlocutor by all stakeholders. ... [At first] the government took us more as enemies, but the VPA has brought us together' – Nora Bowier, SDI Liberia

Liberia's VPA negotiation experience has been unique in that it has involved direct representation from forest communities, alongside more general civil society representation. In the aftermath of the civil war, which ended in 2003, the Liberian government put into place forestry reforms, including a community rights law, which civil society was able to build on through the VPA negotiations. Local NGOs demanded that community representatives should have a seat at the VPA negotiation table. This resulted in communities and local NGOs having seven and four representatives respectively.

Through this experience both communities and NGOs became more organised. They developed systems for feeding back information from negotiations to communities, and feeding information from communities to the negotiators. This all added to the legitimacy of the process in the eyes of communities and civil society, as is borne out by the wide support for the final agreement. By adopting an open-minded, learning-based approach to the negotiations, NGOs and communities were able to begin to overcome deep mistrust between government and industry on one side and NGOs and community groups on the other.

Consensus based processes

'The different stakeholder groups hear themselves more and more, and understand more and more what the concerns of the other groups are, and then you can find win-win solutions.' – Mathieu Bousquet, DG Development, European Commission

Finding consensus means establishing common ground. This means being realistic about expectations, and will probably mean compromises and concessions from all sides. Building trust is a vital step in building consensus. Chronic mistrust makes it hard for people to compromise. But through repeated meetings, and a genuine willingness to find ways forward this can, with time, be overcome.

'In Liberia, the relationship between civil society, government and the private sector and even with the community has changed, has improved. ... The VPA has helped all stakeholders to identify issues, to identify problems that are affecting good governance, and come together and identify ways to address those problems. I remember before the VPA even talking to the government was difficult. Most of the engagement with them was confrontational.' – Nora Bowier, Sustainable Development Institute Liberia

Considering the national context

The national context is very important when considering how to engage with VPA processes. In Ghana, where civil society was relatively strong, CSOs were able to take on an adversarial approach and a more conciliatory approach when that was more appropriate. In Vietnam, however, where civil society is weak and young and the government is not averse to shutting down adversarial organisations, CSOs have adopted a non-confrontational approach, which seems to be resulting in reasonable progress given the political context (Box 9).

Forging and taking part in participatory processes is not easy. In countries with high levels of violence against CSOs and activists, where activists' lives are in danger, participation may not even be possible. In Laos, for instance, highlighting illegal logging has become a very dangerous activity. These risks will have to be factored in when deciding whether or how to engage with VPA processes.

Box 9

Vietnam – civil society engagement in VPA processes

Several factors present challenges to genuinely independent civil society participation in Vietnam's VPA process:

- A government which wants to control the process and move things quickly with the private sector.
- State control over foreign funding for Vietnamese NGOs (VNGOs) and the risk of VNGOs being 'tarnished' if they are too closely associated with foreign organisations.
- VNGO vulnerability due to their recent emergence in a society which, a decade ago, did not provide political space for people to organise.
- Strong suspicion or hostility at the first hint of any challenge to the authorities.

Faced with these challenges, VNGOs have adopted a culturally appropriate strategy to carve out a space for themselves. Adversarial approaches where organisations are able to dissent from an independent position would be seen to be confrontational, culturally frowned upon and politically unacceptable or even subversive. A vital development has been the formation of the VNGO-FLEGT Network in 2012, formed with the aim of ensuring that the voice of civil society would be heard in the VPA process. The Network is consolidating its position through constructive engagement and communicating to the government how their role, far from being a hindrance, strengthens and informs the process, add to its legitimacy, and at the same time is in line with its own grassroots democracy rhetoric.

Using this approach, the VNGO-FLEGT Network has been instrumental in developing community consultations in 35 villages that focused on community awareness of rights and forest dependency. It has also been involved in drafting the VPA legality definition and LAS, and is currently undertaking a livelihoods impact assessment (LIA) of the proposed VPA. This is empowering civil society in the negotiations by raising its understanding of policy options and threats (negative livelihood effects). It is also reported that these activities are beginning a process of changing attitudes.

From being reticent at the beginning of the VPA process, the government can now be considered 'ambivalent' towards the Network and occasionally welcoming, claiming to appreciate its constructive input. As one official put it, the VNGO-FLEGT Network is appreciated due to 'its position as a "bridge" between the issue and the government'. So while the desire to control and stage-manage cannot be expected to disappear, space has been opened and VNGOs have taken it. The political significance is that momentum is now such that Vietnamese civil society is making its mark, establishing its reputation, and it is less likely to be sidelined than in the past.

Legality and land tenure

The issues of defining 'legal timber' and identifying areas for legal reform are major elements in VPA negotiations. There is often a huge array of laws that relate to a country's forests and people, making it virtually impossible to know whether all laws are being complied with, or to monitor whether all the laws are being followed. Therefore it does not make sense to simply list all forest-related laws in a definition for legal timber. Instead, it is important to think about what the impact will be on communities and the forest if a particular law is not followed. If ignoring a law would result in significant negative impact, then that law is probably relevant to include in the legality definition.

The legality definition or 'legality matrix'

The process of coming up with a workable definition of 'legal timber' means identifying current laws that might impact on the way forests and forest lands are managed, how timber is harvested and traded, and where money from logging and trading goes. When identifying these laws, it may become clear that they contradict each other, undermine socially just or environmentally sound practice, or that there are gaps in legislation which need to be filled (for example, a law that has been passed may lack the implementing decree needed to put it into practice).

While the VPA legality definition is supposed to be based on the existing national laws, the need for legal reform has been identified in most countries where VPAs have been negotiated. The VPA specifies which laws need to be reformed.

Legal but unfair

Laws have been written by people, and they are not always fair or sensible. Laws that undermine community rights, which restrict community access to forest resources or which favour outside companies rather than local producers, are likely to be bad for society as a whole. If laws exclude local people from access to the forest, it is likely that they will be forced to act illegally just to meet their basic livelihood needs.

A law that effectively makes it illegal to provide for yourself and your family needs to be challenged. In fact under international law, a law that makes it impossible for people to legally provide for themselves and their families is itself illegal! VPAs provide an opportunity to challenge existing unfair laws specifically when they are in violation of international or customary law.

Box 10

Best practice example – chainsaw logging in Ghana

Chainsaw logging is illegal in Ghana even though almost entirely local people are involved and it is a relatively low-impact industry that supports the livelihoods of an estimated 300,000 people.³ On the other hand, sawmill logging, which supports far fewer people, is legal.

During the VPA negotiations CSOs were able to highlight this inconsistency and secure a commitment for legal reform to rectify this situation. The VPA states: 'Ghana wishes to indicate its intention to carry out legal and policy reforms in the spirit of good governance. It is expected that such legal reforms could be completed in the next five years' (Ghana VPA, 2008). Annex II of the VPA then lists all the areas that require policy and legal reform, including domestic market development, local forest tenure, and the import of raw material. It is now up to the government and CSOs to ensure these reforms materialise.

Tenure reform

The European Council, when adopting the FLEGT Action Plan, said that VPAs should help 'strengthen land tenure and access rights especially for marginalised, rural communities and indigenous peoples'. In international law customary land tenure rights are well recognised. This means that customary tenure rights should ideally be recognised in a VPA and that the VPA roadmap should include a plan to do this. Only a few VPAs have done that sufficiently, and future VPAs may be able to pay more attention to this aspect of reform. It can be argued that without clarifying the inconsistencies between customary law, often recognised in the constitution, statutory law and international law, 'legal timber' may remain legally questionable.

See the full text of the European Council Conclusions of FLEGT (2003/C 268/01) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2003:268:001:0002:EN:PDF>

³ An estimated 97,000 people are directly employed in chainsaw logging and the chainsaw milling trade supports the livelihoods of an estimated 200,000 people (Kwabena Nketiah, Tropenbos, personal communication).

Box 11

Tenure laws in Cameroon

Under Cameroon's national land tenure laws, lands whose ownership is not registered will automatically be considered 'national land' under government control. 'National land' that is undeveloped (not occupied with houses or farms or for grazing) is considered free of any effective occupation, and can be allocated to other uses, e.g. to companies for logging, agricultural or mining concessions, as national parks and reserves, or as areas for infrastructure development. National law provides communities with rights to hunt and gather from land that is considered free of occupation, but only if it has not yet been allocated for another purpose.

Under customary law, many communities in Cameroon claim collective customary rights over lands and natural resources they have used for as long as they can remember, regardless of whether the land is registered or considered developed or unoccupied by national law. The customary lands of rural communities with houses and farms will often also include areas of forests used as sacred areas or for hunting and medicinal use. Most if not all the traditional lands and territories of Baka and Bagyéli hunter-gatherer peoples will not be developed with houses or farms or for grazing, and will therefore be considered undeveloped and suitable for allocation to other uses. Only customary land owners who have developed their land can obtain registered property rights – and only if they have been able to access the national law's technical and costly registration procedure. This is beyond the reach of most rural communities and indigenous peoples.

Cameroon is legally bound by international and regional human rights laws that support the right of communities to own land, territory and resources that they have traditionally owned, used or occupied, including land owned under customary law. Furthermore, the constitution of Cameroon recognises the legal priority of international law over national law.

What does this mean?

Legally, this means that Cameroon's national law is currently in conflict with the constitution, as well as with customary and international and regional law. For communities, this means that Cameroon has huge areas of land considered as community-owned by customary, international and regional law, but that is considered unoccupied national land by the State and available for allocation to other parties. This is a recipe for conflict and confusion. In practice, it leads to large-scale dispossession and impoverishment of communities, through the destruction of their resources, sacred sites, livelihoods, food security, and undermines the cultural and physical survival of communities and whole peoples.

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(Source: Adapted from Securing community land and resource rights in Africa: a guide to legal reform and best practices, produced by FERN, Client Earth, FPP and CED; 2013. Available at www.fern.org/securing-community-rights)

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The VPA process would have been a good opportunity to clarify this legal uncertainty if this had been brought forward during the VPA discussions. Unfortunately it was not.

The VPA process may give you an opportunity to get your country to incorporate into domestic law the international laws that it has ratified (see Box 11). This may include international laws or conventions recognising community rights such as the Convention against Racial Discrimination (CERD) and the Convention on Biological Diversity (CBD).⁴ CBD articles 8j and 10c recognise the rights of indigenous peoples to respect, preserve and maintain traditional knowledge and their customary use rights, among other things.

In the Republic of Congo, the adoption of a pending national indigenous peoples' law recognising indigenous community tenure rights was a condition from the local NGOs for the signing of the VPA. This law has therefore now been adopted, although it has not yet been implemented.

For advice for integrating international and customary laws in the legality definition, see *Securing community land and resource rights in Africa: a guide to legal reform and best practices*, produced by FERN, Client Earth, FPP and CED; 2013. Available at www.fern.org/securing-community-rights

Customary, statutory and international law

Although the rights of forest communities are generally recognised in international law and customary law, and sometimes even in the country's constitution, they are often denied by national statutory law. There is therefore potential for CSOs to take steps towards rectifying this inconsistency when taking part in VPA negotiations (see Box 11). To date, few VPA processes have effectively integrated international and customary laws in their legality definition. This is an oversight that should be avoided in future VPA processes.

4 <http://www.cbd.int/>

Checklist for legal reform

- | | |
|---|---|
| ✓ Does the legality matrix integrate international laws ratified by the country? | VPAs so far have tended not to take much notice of international law, but it would strengthen the agreements if they do so in the future. |
| ✓ Does the legality definition respect customary rights? | Forest communities often have rights to land and resources under customary law and international law that should be reflected in the legality definition. |
| ✓ Does the VPA make commitments to reform unjust laws? | These processes take time but the VPA could set timelines for legal reform and spell out the expected outcomes. |
| ✓ Does the VPA set a timeline for the reform process? | A clear timeline makes it more likely that commitments will turn into actions, especially if issuing a FLEGT licence is conditional on legal reform moving forward. |

Corruption, transparency and monitoring

As is widely documented, corruption – the misuse of entrusted powers for private gain – undermines the rule of law and can threaten even the best treaties, including VPAs. A key way of fighting corruption, other than through a free press and alert civil society, is to **demand transparent processes**. By having clear systems in place, and keeping accurate and consistent records, it is easier to spot corruption and tackle it. All VPAs should include a list of ‘documents to be made public’, designed to:

- make it easier to know how owns what,
- make it easier to know who has right to what,
- make it easier to follow timber from forest to port, and to
- make it harder to hide corruption.

Legal clarity is also very important for reducing corruption – when everyone knows the law, and has faith in its value, it is harder for corrupt elements to operate. Similarly, having clear systems in place for checking legality makes it easier to expose and combat corruption.

Civil society can play a major role in fighting corruption and encouraging transparency through VPAs by demanding that documents and other information, such as fiscal information, are made public, and by highlighting corruption (or getting the media involved) when it occurs. It is harder for corruption to thrive in a context in which civil society is active and alert. Building strong networks, sharing information, being involved in monitoring implementation of the VPA, and using the VPA process to expose corruption, are all valuable steps in this difficult task.

Legitimacy and danger. Many CSO actors have felt the government and the police going after them after they exposed corruption. The more repressive the regime, the more danger for CSO activists. Spreading risks by sharing activities, presenting joint positions and linking up with allies in the region and internationally is essential. Weighing up the risks involved in exposing corruption is also likely to influence decisions about whether it is worthwhile to take part in VPA negotiations.

Box 12

Laos – too dangerous for a VPA?

In some countries it may not be possible to pursue a VPA process because there is no possibility for local CSOs or communities to freely and independently participate in the decision-making, or to voice opinions which differ from the government line without risking serious personal danger.

Laos is an example of a country where a VPA may not be possible. This is because in Laos, individuals or groups who challenge corruption or injustices face intimidation and threats to personal security, while others from civil society could be manipulated to lend credibility to flawed process. By negotiating a VPA without insisting on a safe environment for open dialogue with all stakeholders, the EU could make the situation worse for anyone whose cause is social justice for forest-dependent communities.

Some governments, notably those that have come to power in a coup d'état, may look to a VPA to get legitimacy, rather than or in addition to exporting timber. In these cases local CSOs must ask themselves if they want to be part of process that could legitimise an illegitimate government. It is up to them to decide whether or not the government should get support, and whether the process is worthwhile for other reasons or not.

Improving transparency. A 'verification protocol' needs to be developed after the VPA is signed, although none have been established yet. This is a tool that allows the Independent Auditor to check if timber meets the legality definition. It is vital that civil society is involved in approving the verification protocol to check that the most important elements of the legality definition to them are satisfactorily covered. While a VPA will not eliminate corruption or foster a culture of transparency overnight, it could well be a step in the right direction.

'The level of civil society involvement had been unprecedented in the country and has led to strong written commitments to make information publicly available; continue independent monitoring of the forest sector; carry out reform of the legal framework applicable to the forest sector; and include civil society representation in the monitoring of the VPA's implementation.' – Civil society counter-brief on the Cameroon–EU VPA, p.3

Checklist for corruption and transparency

- | | |
|--|---|
| ✓ Does your VPA contain a transparency annex? | It may be easier to demand information in future if the VPA specifically requires its publication. |
| ✓ Does the VPA specify what form information should be published in? | If many communities do not have access to the internet, it is necessary to think of communication mechanisms beyond the internet. |
| ✓ Is there a law on access to information in your country? | It is important at the outset to assess transparency and access to documents. If transparency is poor, the VPA transparency annex will need to be stronger. |
| ✓ Has there been any work done to analyse transparency in your country? (e.g. a 'transparency scorecard' from Global Witness) | If transparency has already been identified as a problem, this can be useful for identifying priority areas (in the VPA) for your attention. |
| ✓ Will civil society be involved in appointing or approving the Independent Auditor? | Although the IA must be appointed by the government, you may be able to influence the choice or veto corrupt appointments. |

Independent monitoring

Specific elements of the LAS and related legislation can be drafted to **enable civil society monitoring of forest land use and wider impacts of the VPA**. Some VPAs have mandated an **Independent Monitor**, and all except Ghana have allowed space for CSOs to report to the IAs. It is important to consider whether civil society should play a role in monitoring the agreement, and if so what sort of role. In Cameroon, civil society was reluctant to take on a formal monitoring role since it felt this might undermine its independence, while in Indonesia civil society has taken on a very prominent role, including independent monitoring⁵ of the SVLK, the Indonesian TLAS, as explained in Box 13.

⁵ This is different from the VPA Independent Monitor, which Indonesia also has.

Box 13

Best practice – civil society monitoring of Indonesia's SVLK/TLAS

A major achievement in Indonesia has been a very prominent monitoring role for civil society. There are several elements to this:

- Civil society is responsible for independent monitoring (this is not the same as independent monitoring of the VPA) of SVLK implementation, especially compliance (with SVLK Standards) of SVLK permit holders and the Ministry of Forestry nominated Conformity Assessment Bodies (CABs), which audit the legality of SVLK-licensed operations.
- To support this role, Indonesian CSOs have established JPIK, an SVLK monitoring network. JPIK consists of over 40 NGOs and 120 individuals from different parts of Indonesia – many provinces have their own JPIK focal point. Statutes, codes of conduct and working standards for monitoring have been developed.
- A vital component of the SVLK monitoring system is a very comprehensive complaints mechanism especially as regards auditor performance and impartiality. If this process does not satisfy civil society, it can also request a 'special audit' to investigate a complaint; the cost of this will be charged to the SVLK licence-holder.
- Civil society representatives are on a multiple stakeholder monitoring working group charged with conducting 'comprehensive evaluation' of the functioning of the SVLK.
- Civil society is on the Joint Implementation Committee, the task of which is to promote a balanced and transparent process of implementation of the SVLK.

Since 2009 there have been four evaluations, all informed by civil society feedback around community rights and other issues. These have influenced the SVLK Regulations of 2011 and 2012, especially as regards monitoring standards and procedures, and design of the complaint mechanism. Also the complaints system has already resulted in official complaints about the audit process.

Nonetheless, the SVLK system is based on existing forestry legislation that does not yet sufficiently take into account the rights communities have, as recently confirmed by the Indonesian Constitutional Court. A revision of the existing statutory laws is therefore required that will need to be reflected in the SVLK sooner rather than later.

Sources: Luttrell, C et al. 2011. Lessons for REDD+ from measures to control illegal logging in Indonesia, Working Paper 74. Center for International Forestry Research, Bogor, Indonesia, and interviews with civil society

Ultimately independent monitoring is only of real value if, when illegalities are pointed out, action is taken to remedy them. The formal government appointed Independent Monitor in Cameroon has regularly presented evidence that most logging is illegal, but the government has been reluctant to act on it.

The ‘social safeguards’ article and livelihoods impact assessment (LIA)

VPA's contain a commitment, usually in Article 17 – the ‘social safeguards’ article – to understand and monitor the livelihood impacts of the VPA on communities, and to try to minimise negative effects.

There are some serious risks for forest-dependent communities when there is stricter enforcement of forest laws and regulations, because the livelihoods of many people in forest areas depend on ‘illegal’ or informal use of the forest. This risk is recognised in the FLEGT Action Plan: ‘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.’⁶

One way to meet the Article 17 commitment is to conduct a livelihoods impact assessment (LIA), which Indonesia and Vietnam have done and which is planned in Honduras. Ideally the LIA should be conducted before the VPA process reaches the implementation stage, in order to understand the potential livelihood effects, and to develop strategies for minimising negative effects and enhancing positive effects for vulnerable stakeholder groups like forest-dependent communities (Box 14).

Box 14

Livelihoods Impact Assessment (LIA)

Livelihoods Impact Assessment (LIA) is the analysis of livelihood and other social impacts of a VPA with the aim of reducing livelihood risks and enhancing positive social impacts. It needs to be undertaken *ex ante*, i.e. before the VPA is implemented. An LIA can:

- Contribute to strategic design of the VPA and thereby enhance its social sustainability, through systematic analysis of the likely poverty or livelihood effects, identification of risks and ways of preventing or mitigating them, and by exploring options for how a VPA can achieve its social objectives, including avoiding negative livelihood effects.

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6 European Commission 2003. FLEGT Action Plan.

>

- **Empower civil society, especially if an LIA is undertaken at the pre-negotiation or negotiation stage. An LIA helps create political space and opportunities in policy dialogue, and contributes to transparency and stakeholder ownership in policy formulation. But to be empowering, the LIA must be participatory.**
- **Contribute to adaptive management of the VPA through a monitoring system based on indicators of progress in tackling the problems and achieving social objectives.**

There are usually three main stages to an LIA:

Stage 1: Stakeholder and institutional analysis;

Stage 2: Analysis of the direct and indirect effects of the VPA on vulnerable groups; and

Stage 3: Participatory theory of change analysis.

In this stage, stakeholder representatives, including representatives of vulnerable groups, come together in multi-stakeholder workshops to analyse the problems (informed by Stages 1 and 2) and develop 'theories of change' of how to reduce the vulnerability of stakeholder groups. A theory of change is a plan of how to overcome a problem (e.g., illegal logging) or improve something (e.g. forest governance). These theories of change could be used to develop a 'mitigation plan' of how to reduce the risk of negative livelihood effects if the country decides to.

(Source: Richards M & Hobley M. 2012. Poverty Impact Assessment for Reducing Social Risks and Enhancing ProPoor Outcomes of Voluntary Partnership Agreements. Forest Trends http://www.foresttrends.org/publication_details.php?publicationID=3267)

CSOs may be in the best position to monitor and report on the overall state of affected communities and forest governance. The information gained from this could, in turn, be used by communities to advocate for land tenure reform. Liberian NGOs are piloting this by creating a civil society monitoring team, while in Vietnam the LIA is being conducted by the Vietnamese NGO-FLEGT network as their contribution to the national VPA process. Civil society representatives in national negotiating teams can propose that an LIA is included in the VPA roadmap. Developing a stronger understanding of the likely livelihood effects, and how to reduce negative effects, is an important way of empowering civil society.

Checklist on independent monitoring

- ✓ **Is there already a timber tracking system operating in your country?**

There may be systems already established in your country that could be a useful base for a VPA tracking system, but take care that they cover the elements of the legality definition that are most important to you.
- ✓ **Does whoever is running the tracking system have the resources, skills and knowledge to do the job? Are they independent?**

There are no rules about who should run the verification system, but they must have the resources, skills and knowledge to do the job. Civil society could be involved.
- ✓ **Does the VPA mention that the Independent Auditor needs to ask for and act on information from CSOs?**

It could improve your legitimacy when reporting failures of the VPA or general bad forest governance, if the VPA makes it clear that CSOs are encouraged to report their findings.
- ✓ **Does the VPA specify a formal role for CSO monitoring, and if so what?**

If there is a formal role for CSO monitoring, make sure you know what you are agreeing to monitor – infractions of the LAS or general impacts on communities' livelihoods and rights.
- ✓ **Does the CSO coalition want to measure the impact of the VPA on livelihoods, poverty and governance?**

You can request that a LIA is included in the VPA roadmap with the European Commission.

Part 4 Implementation

'We are cautiously hopeful. The agreement provides a reasonable platform for strengthening community rights and resolving our biodiversity sustainability, rural livelihoods, official corruption and national revenue objectives. Now we must gear up for the real struggle – to move from print to practice' – Kyeretwie Opoku, Forest Watch Ghana (quoted in Ghana Gazette, June 2009)

The point of putting so much time and energy into effective, participatory consultation is to come up with a **workable agreement that will have to be put in to practice**. It is tempting to think that the agreement is an end in itself and hence there is a tendency to lose momentum when it comes to implementing it.

This has been a problem for some civil society groups involved in VPA negotiations. It is therefore important to consider, during VPA negotiations, what role CSOs and communities can play during the implementation phase, and how CSOs and communities can ensure they have the capacity to follow it through.

Governments may also lose enthusiasm for the VPA once it has been agreed. Civil society may need to work hard to push the government to effectively implement the agreement.

Staying in the driving seat

As the VPA process reaches implementation, recalling the original priorities for civil society in taking part may be worthwhile. Just as in negotiations, it is essential to establish implementation priorities early on, as well as identifying how best to ensure they are addressed in implementation.

In the Republic of Congo, CSOs were concerned that the government was rushing through legal reforms on the back of the VPA, without involving stakeholders. The CSO platform aired their concerns via a public letter and, as a result, the government has promised to reorganise the reform process to include genuine consultations, supported by the AFD (French Development Bank).

In Cameroon, CSOs are struggling to be involved in the legal reform process –

they have been excluded from this, in violation of the spirit of the VPA. These reforms include favouring provision of land to large agricultural companies, and have led to protests from the EU, though to no effect so far. Pressure from the agriculture lobby is driving the agenda in Cameroon leading to human rights violations and land grabbing.

Ensuring civil society representatives are involved in aspects of monitoring and implementing the VPA will make it easier to identify and expose corruption. This is something to consider when the implementing bodies for the VPA are being designed and their constitutions drawn up. Similarly, civil society can negotiate a say in the appointment of key figures during VPA implementation, including the IA. Securing CSO involvement in these practical aspects of VPA implementation is one tactic for curbing corruption.

Road map to implementation

A key element of implementation is the VPA roadmap. This should set out when, among other things, legal reform will be conducted. It also sets out the order of events, for example, whether legal reform must be completed before FLEGT licences can be issued. This schedule should incorporate time for community or civil society participation in legal reform, recruitment of the IA and other aspects. CSOs may be able to use the implementation roadmap to hold the government to account if it is either rushing through implementation without involving stakeholders, or if it is failing to implement the required reforms.

The JIC meetings will discuss and amend the roadmap if and when required. It is therefore important to prepare well for each JIC meeting. Examples of some JIC meeting minutes are available on Logging Off: www.loggingoff.info. All JIC minutes must be made public.

Different skills

Many of the individuals from CSOs who have been deeply involved in VPA negotiations have found it difficult to maintain the same level of involvement and influence in the implementation stage. The skills needed are a little different, as legal reform or procedure design and implementation is a long, technical process.

In some countries, the CSOs involved in implementation are not the same as those who had a major role in negotiations, and it is becoming clear that much of what was learned through negotiation has not been passed on to those working on implementation. Developing a strong civil society coalition can help to guard against these problems, with effective systems for sharing information and skills. This could also mean that, as the VPA process changes from negotiation to implementation, CSOs with more appropriate skills can take on a larger role.

Implementation roadmaps for existing VPAs can be found on the EU FLEGT facility, hosted by the European Forest Institute at <http://www.euflegt.efi.int/vpa-countries>

Keeping legal reform on the agenda

As the VPA agreements spell out the legal reforms required, it is essential that local CSOs are actively involved when these reforms begin. This has been a struggle in all countries. In Cameroon local CSOs have been excluded from the reform process, while in Ghana it was only after strong complaints from the NGO coalition that the government asked for the input of CSOs to the reform of the National Forest and Wildlife Act. This Act was subsequently adopted with CSO consent.

It is important that legal reform goes hand in hand with the development of the timber tracking system, rather than lagging behind. Otherwise there will be 'legal' timber without the required legal reforms, which undermines a key objective of most CSOs taking part in the process.

Expanding to other sectors

'The VPA has played a key role in strengthening the voice of communities and NGOs in national level decision making. If other processes like REDD and other sectors (palm oil) would have used a similar consultative process the situation in Liberia would be better than it is now.' – Matthieu Thee Walley, CFDC representative

The economic importance of the logging industry has decreased significantly in many VPA countries. In countries like Indonesia, the Republic of Congo, Liberia and Cameroon, most timber no longer comes from logging concessions but from the conversion of forests to agricultural commodities. Many of these conversions are illegal as shown by Forest Trends.⁷

In many VPA countries conversion timber cannot be commercialised and exported to the EU, once the VPA LAS is up and running. The EU FLEGT Regulation spells out that only timber with a FLEGT license can be imported from VPA countries. It depends on the text of the VPA if conversion timber can be licenced. If it cannot, as is the case in Liberia, such timber cannot be exported to the EU. This could provide a disincentive for land conversion as the timber revenue often forms part of the business plan for the conversion.

⁷ Lawson, Sam (2013) Illegal forest conversion for industrial agriculture, and associated trade in timber and agro-commodities: The scale of the problem and potential solutions available at [http://www.illegal-logging.info/sites/default/files/Sam%20Lawson%20\(2\).pdf](http://www.illegal-logging.info/sites/default/files/Sam%20Lawson%20(2).pdf)

If the main reason for CSO involvement in VPA processes is ultimately to strengthen community rights and control over forest resources, it is important to make sure that the multi-stakeholder consultation process of the VPA is reproduced and adapted to other sectors. As the agricultural sector is the major driver of deforestation it is important to see how CSOs and community representatives can inform this sector. The legal framework regulating this sector is often weaker than that regulating the forestry sector, so it is essential that the consultation processes initiated by the VPA processes, and hence the coalitions formed, can play an equally strong role in redefining the agricultural sector and wider land use discussions. This is not a plea for expanding the VPA process to other commodities, but for a similar participatory process to be applied to all decision making processes which impact on land use.

The road ahead

FLEGT VPAs are not a miracle cure for all the troubles of the forestry sector in any country. Nonetheless, in several African countries the advances that civil society has achieved by engaging positively and proactively with the process has been significant. Each country experience is unique, but we hope this guide has given you some idea of what to expect, what to think about, and what to do if you decide to take part in a VPA process.

You can keep up to date with all the latest developments in FLEGT VPA processes by visiting www.loggingoff.info

Part 5 Resources

Different parts of a VPA document

The main parts of a Voluntary Partnership Agreement document

The main Agreement (9 –15 pages)	All agreements include an article on social safeguards , which commits the government to understanding communities' forest livelihoods and monitoring the impact of the VPA on communities.
Annex: List of products included in the FLEGT licensing scheme	Annex 1 of all existing VPAs. A list of all wood products included in the VPA. In addition, all VPAs except that of CAR cover domestic timber products as well as export products.
Annex: Legality definition	In Republic of Congo and Cameroon, this annex is called the ' legality matrices '. In Indonesia and Central African Republic it is called the ' legality definition ', and in Ghana the annex is called ' legislation to be taken into account when defining legality '. Attached to the definition are a set of 'indicators' and 'verifiers', to be used in assessing legality. All together, the definition, indicators and verifiers are often referred to as the ' legality matrix ' or ' legality grid '. The legality definition is an integral part of the LAS.
Annex: Legality Assurance System (LAS)	In Malaysia, the LAS is called the ' Timber Legality Assurance Scheme ', and in RoC it is called the ' Legality Verification System '. The LAS outlines (but may refer to other annexes for details) the legality definition, the system for verifying compliance with the legality definition, the chain of custody system, FLEGT licensing and the Independent Audit.
Annex: Terms of Reference for Independent Auditor (IA)	In Ghana, the IA is called the ' Independent Monitor ', while in Indonesia it is called ' Periodic Evaluation ', and in the Central African Republic it is the ' Independent System Audit '.
Annex: Criteria for evaluating LAS	This annex describes a set of assessment criteria by which the LAS – both the description in the VPA and the functioning of the system in practice – can be independently evaluated before the licensing scheme is fully operational.
Annex: Implementing Schedule	This annex is the roadmap for putting the VPA in to practice , and also specifies at what point in the process FLEGT licences can be issued. For most VPAs all legal reforms have to be completed before licences are issued, but Ghana has a two-tiered approach and Indonesia does not have an implementing schedule.
Annex: Transparency Annex	This annex, usually called ' Published information ' or ' Public access to information ', details what information must be made available, and in what form. Ghana's VPA is the only agreement which does not have a transparency annex.
Annex: Supporting Measures	This annex outlines a series of measures necessary to put the VPA in to practice. This includes detailing any specific legal reforms that have been identified as necessary during the negotiations. All VPAs include some element of legal reform. In Ghana's VPA, anticipated legal reforms are outlined in the legality definition annex.
Annex: Joint Implementing Committee (JIC)	This annex outlines how the JIC is expected to function, and contains details about its composition including whether civil society or communities are included. In Cameroon, the JIC is called the Joint Monitoring Committee . In Ghana the Joint Monitoring and Reporting Mechanism

Consultation requirements under FLEGT



March 2008

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LOGGING OFF

This briefing note is developed by a group of NGOs from European and timber-producing countries involved in or monitoring the implementation of the EU FLEGT Action Plan, and specifically the implementation of the Voluntary Partnership Agreements between the EU and timber producing countries. They intend to provide joint North-South civil society positions. For information on each VPA see www.loggingoff.info

Consultation requirements under FLEGT

Introduction

*"The Commission has underlined that, in particular, its intention is to reduce the risk of the policy makers just listening to one side of the argument or of particular groups getting privileged access."*¹

In 2002, the EU adopted clear principles and minimum standards for consultation processes in Europe. (See Annex 1). To avoid double standards it is necessary to ensure that these principles and standards also apply to Voluntary Partnership Agreement (VPA) negotiations between the EU and a Partner Country. Unfortunately, up to now, the Commission has been unable to set clear minimum standards for an effective good faith consultation process.

This is despite the fact that it has been agreed that it should not be possible to adopt a VPA unless there has been a proper consultation process. Furthermore, most countries, and EU Member States, have signed agreements which clearly spell out the need for involving different interest groups and specifically indigenous communities in policy decisions on forests. (See Annex 2)

We believe that the legitimacy of the whole FLEGT process depends on whether civil society actors in Europe and rights holders and interested parties in VPA countries, continue to support the process. This briefing therefore details what we believe to be the minimum requirements for an effective consultative process.

Different perspectives

*"Trust is a prominent issue and key to poor people gaining a voice in policy making."*²

There have been countless occasions where environmental or social NGOs or indigenous peoples' organisations have participated in official and public consultation processes and subsequently found that their participation was used to legitimise the process with few or none of their concerns being addressed.³

*"We had agreed to participate and during the process we have seen how the NTCC is not able to resolve critical issues. More importantly, the NSC meeting and other processes give very little room for real dialogue and our presence may only be used to legitimise indigenous and local communities' participation in the process."*⁴

Before participating in any VPA consultation process, there are a number of questions that civil society actors and rights holders ask such as: Does this VPA process create a useful space for engagement, and if so how do we work towards developing some dialogue with governments without compromising our values and our autonomy? Is this VPA process just window-dressing? Will our participation just legitimise a flawed process, the outcome of which is decided already?

- 1 Communication from the Commission: Towards a reinforced culture of consultation and dialogue – General principles and minimum standards for consultation of interested parties by the Commission. COM(2002)704 final. Page 5.
- 2 From 'A review of lessons learned in enabling people's participation in policy making processes'. Paul Bulcock, Graham Haylor and William Savage. Published by STREAM in association with Gramin Vikas Trust, April 2003.
- 3 These include: the development of a national forest certification standard in Finland, the development of the MTCC certification standard in Malaysia, the development of the World Bank's Forest Policy in 2003.
- 4 Trading in Credibility Case study 8 Malaysia; Carol Yong; Rainforest Foundation UK. 2002.

Briefing note 1

At the same time, governments often think that civil society actors are not able to compromise and will never be satisfied no matter how good the consultation process is. Also, governments or intergovernmental bodies often don't understand why civil society actors and rights holders are upset after what was, in their view, a "good" consultation process.

"I don't understand what the problem is. We met with 1200 stakeholders from 35 countries. We dedicated three years, hundred of thousands of dollars and some of our best staff time. What is everybody complaining about?"⁵

Based on a careful analysis of several public consultation processes,⁶ we believe that the main risks for a genuine and effective consultation process are:

- limited trust and conflicts of interest and/or uneven bargaining power between different interest groups;
- differing perceptions of the participation process by stakeholders and the corresponding potential for misunderstanding and exaggerated expectations;
- insufficient sharing of knowledge;
- poorly planned processes;
- token efforts or lip service given to participation;
- lack of political will among government and policy planners as they fear loss of power or personal influence;
- limited resources for a genuine consultation process;
- being taken over by powerful interests.

These risks become visible as:

- poor facilitation and biased chairing of discussions;
- inaccurate and distorted records of inputs to the process by different rights holders and interest groups;
- bad quality or absent translation of background documents into languages and formats that are understandable to participants, including marginalised groups;
- prefixed agendas for dialogue set by the consulting body that fail to address the main issues and priorities of participants;
- poor or absent verbal translation into local languages during the dialogue;
- lack of clarity on how inputs, issues and recommendations presented by civil society organisations, rights holders and interested parties will affect the final policy, agreement or decision that is the subject of the consultation.

Ways forward

"A poor process leads to poor outcomes"

The main questions for a government involved in a VPA consultation process should be: What are the objectives of the process and how can it be best set up and managed? Sub-questions include:

- Which groups should the government invite to participate in order to ensure representation, and how can the interests of disadvantaged groups/communities be elicited?
- How can consultative processes be efficient, while fostering trust and remaining open and transparent, recognising the limited resources of governments and other participants?
- Which skills and capacities would need to be put in place by government to ensure that consultative processes are professionally managed and implemented, thus enhancing the trust of the partners?
- Which consultation techniques are most appropriate to obtain relevant input, e.g. notice and comment, face-to-face discussions, etc?
- How can the government ensure that stakeholders are satisfied with procedural aspects of the decision-making process, while recognising that disagreement may exist concerning the substance of the final decision?

⁵ Quality not quantity, lessons learned from consultation on the World Bank's Draft Indigenous Peoples Policy; a briefing note by Bank Information Centre; March 2004.

⁶ See Bibliography.

How to set up a consultation process under FLEGT

"Listen to and consider views of all key forest related constituencies and ensure that they have reasonable opportunity for involvement in the policy review and strategy development process"

What does this mean for a VPA consultation process? Consultation as part of a VPA process should not just be to seek information, or advice and opinion. It should be an exchange of ideas and the possibility to talk things over in order to ensure that the adopted VPA, is acceptable to affected and interested parties, including environmental and social NGOs and all right holder groups, such as local communities and indigenous peoples.

The first and most essential step for a VPA consultation process is therefore for the government to ensure that all participants have faith in the consultation process. The main condition for this is to develop clear terms of reference for engagement or requirements to be agreed by all participants, which outline the planning, programming and feed-back stages of the consultation process, and make clear how inputs may affect final outcomes.

What are requirements for a consultation process under FLEGT?

It is important to see FLEGT as a development of a process as well as a product

I Planning Stage

- Accept the need for sufficient time and resources. Quality participation demands space for trial and error and good translation of all relevant documents;
- Recognise 'governance' issues: take into account representation and accountability questions on the part of all actors;
- Adopt a learning approach to the process on the part of all actors;
- Define the objectives of the consultation process and terms of engagement at the outset;
- Are funds available to allow for an equitable consultation process which allows financially weak participants to attend and prepare for meetings?
- How are cultural and local considerations taken into account in organising the meeting and its preparations?

II Management stage

- Ensure a proper and equally balanced cross selection of participants from environmental, social and economic sectors are invited to participate in the process;
- Ensure all participants will have at least a 2 months notice period for meetings to allow them to prepare and organise their constituencies;
- Provide sufficient information to all participants: background material should be made available at least two weeks prior to consultation, including an explanation of the process and proposed substantive issues to be discussed etc. Ensure any necessary translation are made available;
- Ensure independent or shared facilitation by different stakeholder groups, approved by all participants;
- Ensure meetings have rapporteurs and minutes are approved by all participants;
- Consider the formation of a multi-stakeholder drafting committee to draft the final agreement with self-selected members from each constituency.

III Final stage

- Provide feedback to participants including how their input influenced decisions;
- Present the draft VPA text and ask for feedback, ensure participants have ample time and opportunity to review any final draft before it goes for approval;
- Present final VPA text;
- Evaluate the consultation process.

7 Participation and the World Bank, Success, Constraints and Responses, Draft for Discussion; Maria Aycrigg; Social Development Papers, Paper 29, November 1998.

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Practical conditions that need to be met:

- Facilitators should clearly state the purpose of the meeting, the role of the participants and ensure everyone agrees to common ground rules which should be circulated for feedback prior to any face-to-face meeting. Facilitator must not interject personal views and opinions, but be an active listener, accepting ideas and suggestions without evaluating them and encouraging all members to participate and respect differences in views and opinions. The facilitator will focus the group's energy on the task at hand.
- Rapporteurs will accurately record the proceedings and ensure that the group's findings are presented for approval.
- NGOs, CBOs and other stakeholders will be asked to represent their constituencies or their partners and therefore need to have sufficient time before and between meetings to consult, prepare positions and organise travel.
- Financial means need to be made available to those participants who are financially disadvantaged but whose views would not otherwise be heard.

Annex 1:

EU Principles and Minimum Standards for Consultation Processes⁸

Consultation means those processes through which the Commission wishes to trigger input from outside interested parties for the shaping of a policy prior to a decision by the Commission. Wide consultation is one of the Commission's duties according to the Treaties.

The Commission has underlined that, in particular, its intention to reduce the risk of the policy makers just listening to one side of the argument or of particular groups getting privileged access. This means that the target groups of relevance for a particular consultation need to be identified on the basis of clear criteria.

By fulfilling its duty to consult, the Commission ensures that its proposals are technically viable, practically workable and based on a bottom-up approach. In other words, good consultation serves a dual purpose by helping to improve the quality of the policy outcome and at the same time enhancing the involvement of interested parties and the public at large.

Consultation does not replace the procedures and decisions of legislative bodies, which possess democratic legitimacy. Only the council and parliament, as co-legislators, can take responsible decisions on the context of legislative procedure. The guiding principle for the Commission is therefore to give interested parties a voice but not a vote.

The Commission has adopted the following General Principles and Minimum Standards for Consultation Processes linked to the development of EU policies, processes and legislation.

General Principles

Participation: The quality of EU policy depends on ensuring wide participation throughout the policy chain- from conception to implementation.

Openness and accountability: The Commission believes that the processes of administration and policy-making must be visible to the outside world if they are to be understood and have credibility. This is particularly true of the consultations processes, run by the Commission which must be transparent, both to those who are directly involved and to the general public. It must be clear: what issues are being developed; what mechanisms are being used to consult; who is being consulted and why; what has influenced decisions in the formulation of policy. It follows that interested parties must themselves operate in an environment that is transparent. It must be apparent: which interests they represent and how inclusive that representation is.

Effectiveness: Policies must be effective and timely, delivering what is needed. Consultation must start as early as possible. A prerequisite for effectiveness is respect of the principle of proportionality. A better understanding of such factors and how the Commission works will help outside interested parties to have realistic expectations about what can be achieved.

Coherence: Policies and actions must be coherent. The Commission encourages interest groups to establish their own mechanisms for monitoring the process, so that they can see what they can learn from it and check that they are making an effective contribution to a transparent open and accountable system.

EU Minimum Standards for Consultation

Clear content of the consultation process. All communication relating to consultations should be clear and concise and should include all necessary information to facilitate response;

Consultation Target Group:

For consultation to be equitable, the Commission should ensure adequate coverage of the following parties in a consultation process:

- Those affected by policy
- Those who will be involved in implementation of it
- Bodies that have stated objectives giving them a direct interest in the policy

In determining relevant parties for consultation, the Commission should take into account the

⁸ Abstract from: Communication "Towards a reinforced culture of consultation and dialogue – General principles and minimum standards for consultation of interested parties by the Commission COM(2002) 704 final.

Briefing note 1

following elements as well:

- The wider impact of the policy on other policy areas, e.g. environmental interests
- The need for specific experience, expertise or technical knowledge, where applicable
- The need to involve non-organised interests, where appropriate
- The track record of participants in previous consultations
- The need for a proper balance

Publication

The Commission should ensure adequate awareness-raising publicity and adapt its communication channels to meet the needs of all target audiences. Without excluding other communication tools, open public consultation should be published on the internet and announced at the 'single access point'.

Time limit for participation

The Commission should provide sufficient time for planning and responses to invitations and written contributions. The Commission should strive to allow at least 8 weeks for reception of responses to written public consultations and 20 working days notice for meetings.

Acknowledgement and feedback

Receipt of contributions should be acknowledged. Results of open public consultations should be displayed on websites.

Annex 2

Government requirements for consultation in forest policy, as defined in different governmental processes

A. Requirements as spelled out by the EU in EU FLEGT Briefing Notes and Council Conclusions.

European Commission FLEGT Briefing Note 2 (2007)

"The process for deciding which laws are included in a definition of legality is the responsibility of the country in which the laws apply and, if a definition is to be a component of a legality assurance system to underpin a trade agreement, it must be endorsed by the country's government. However the nature of the process has a major influence on the definition's acceptability to different stakeholders."

"The potential harm caused by failure to comply with laws can affect different stakeholders in the timber-producing country – government, private sector, the general public, and local and indigenous communities – in different ways. Therefore the process to decide which laws should be included in a definition should generally involve wide consultation with all interested parties. In some countries with clearly-defined laws, developing a legality definition may be a relatively simple exercise. In others, inadequate, conflicting or inequitable laws might make a clear definition of legality more difficult to achieve.

In these cases several rounds of stakeholder consultation may be needed as well as field-testing application of the definition. There may be instances where the consultation process identifies laws which do not support sustainable forest management, or where an important right is not protected by existing law. In such cases, it may be necessary to adopt interim working definitions that give the best possible outcomes while a programme of regulatory reform is pursued."

European Commission FLEGT Briefing Note 6 (2007)

"Key elements to consider in designing and implementing VPAs are likely to include:

- **Social safeguards:** VPAs should seek to minimise adverse impacts on local communities and poor people by taking account of indigenous and local communities' livelihoods associated with forests. Partner Countries will also be encouraged to link FLEGT issues to their poverty reduction strategies and to monitor the impacts of VPAs on poverty;

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- **Stakeholder involvement:** Provision should be made for regular consultation with stakeholders during the design and implementation of VPAs. This should include ways to involve the private sector in efforts to combat illegal logging but should also ensure that any requirements imposed are not an undue burden on small-scale producers. In some Partner Countries, meeting these commitments will require considerable institutional strengthening and capacity building.”

Council Conclusions on the EU FLEGT Action Plan, October 2003.

“Urges the Community and Member States to enter into political dialogue with key target countries to instigate forest sector governance reforms, more specifically to:

- **Strengthen land tenure and access rights especially for marginalised, rural communities and indigenous peoples;**⁹
- **Strengthen effective participation of all stakeholders, notably of non-state actors and indigenous peoples, in policy-making and implementation;**
- **Increase transparency in association with forest exploitation operations, including through the introduction of independent monitoring;**
- **Reduce corruption in association with the award of forest exploitations concessions, and the harvesting and trade in timber;**
- **Engage the private sector of the timber producing countries in the efforts to combat illegal logging;**
- **Address other issues related to illegal logging as identified, such as the financing of violent conflict.”**

B. IPF Proposals for Action, adopted by Report of the Ad Hoc Intergovernmental Panel on Forests on its fourth session, New York, 11-21 February 1997

17 (a) The Panel encouraged countries, in accordance with their national sovereignty, specific country conditions and national legislation, to develop, implement, monitor and evaluate national forest programmes, which include a wide range of approaches for sustainable forest management, taking into consideration the following: consistency with national, subnational or local policies and strategies, and - as appropriate - international agreements; partnership and participatory mechanisms to involve interested parties; recognition and respect for customary and traditional rights of, inter alia, indigenous people and local communities; secure land tenure arrangements; holistic, intersectoral and iterative approaches; ecosystem approaches that integrate the conservation of biological diversity and the sustainable use of biological resources; and adequate provision and valuation of forest goods and services;

29 (c) The Panel also encouraged countries to undertake, as needed, to formulate policies aiming at securing land tenure for local communities and indigenous people, including policies, as appropriate, aimed at the fair and equitable sharing of the benefits of forests;

77f (f) Invited Governments, within their respective legal frameworks, and international organizations, in consultation with countries, to consider supporting indigenous people, local communities, other inhabitants of forests, small-scale forest owners and forest-dependent communities by funding sustainable forest management projects, capacity-building and information dissemination, and by supporting direct participation of all interested parties in forest policy discussions and planning;

58bVIn particular developing countries and countries with economies in transition, to embark on capacity-building programmes at national, subnational and local levels, including especially existing national institutions, to promote effective participation in decision-making with respect to forests throughout the planning, implementation, monitoring and evaluation processes, and taking full advantage of the wealth of traditional knowledge available in the country.

⁹ There is no common EU position on the use of the term indigenous peoples. Some Member States are of the view that indigenous peoples are not to be regarded as having the right of self-determination for the purpose of Article 1 of the ICCPR and the ICESCR, and that use of the term does not imply that indigenous people or peoples are entitled to exercise collective rights.

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Process to ratify timber trade agreements



June 2010

p 1 Negotiation process

Process to ratify timber trade agreements

p 2 Ratification process

The cornerstone of the European Union (EU) Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan is the negotiation of bilateral trade agreements with timber producing countries, known as Voluntary Partnership Agreements (VPAs). The aim of these agreements is to ensure that timber sold in the EU is legal.

The VPA process is undertaken by the EU on behalf of all its Member States. Although both parties (the EU and the producer country) enter into VPA negotiations voluntarily, when a VPA enters into force both parties are legally committed to only trade legal timber. The process leading to an operational VPA can be split into two stages: negotiation and ratification.

The negotiation process

The negotiation period aims for the parties to achieve agreement on the key elements of the VPA, especially the legality assurance system (LAS) which forms the basis of the VPA and is used to verify the legality of timber. If implementation of the agreement is to successfully achieve its aims, key stakeholders need to be involved in discussions, including civil society, the timber industry and rightsholders (such as indigenous peoples and local communities holding tenure rights). The negotiation period ends with the initialling of the agreement, normally including an EU-Partner Government ceremony marking the end of negotiations. The Commission negotiates on behalf of the EU, with representatives of the Member States contributing support to the EU negotiating team.



Kakum National Park in Ghana. Ghana was the first country to ratify an agreement.

Image: Joelle Dubois

The ratification process

The ratification period begins as soon as the agreement is initialled, and the agreement only enters into force once both parties have ratified. This process varies depending on the law making process in the timber producing country, but following the Lisbon Treaty's entry into force, in the EU it proceeds in two clear steps:

- i. The **'signing'** which ends when the EU Council, Commission and partner country sign the agreement. In preparation for signature, the VPA is translated into the 21 official EU languages. The Commission then proposes that the Council agree to sign the VPA, the Council decides if the VPA meets its expectations and if the Council agrees, the VPA is signed by the Presidency of the Council, the Commission, and the Partner Government.
- ii. The Commission then proposes to the Council that the agreement is **concluded** as the final step in its ratification. The Council sends the VPA to the European Parliament for its assent to the agreement. If the Parliament gives its consent, the Council adopts a decision,¹ which concludes the ratification of the trade agreement. The publishing of the decision marks the end of the ratification process from the EU side. As foreseen in the agreement, the EU Council then informs the other party that the ratification is concluded.

The process of ratification has to date taken from several months to over a year, but during that time, implementation of various parts of the VPA can begin, particularly measures which build capacity to implement the systems established through the VPA (such as awareness raising, training, developing policies around the LAS and legal reforms).

FLEGT licences will not be issued until the VPA enters into force and all the elements of the LAS put in place (agreement on laws and an independent auditor and systems to track, trace, and verify timber, etc). From the moment that the LAS is judged to be functioning properly and FLEGT licenses are issued and accepted in the EU, only timber verified as legally compliant can be exported from the partner country to the EU market and it must be accompanied by a FLEGT licence.

1. A decision is an EU legal instrument. A decision is binding on the person or entity to which it is addressed. The legislative procedure for adoption of a decision varies, and for trade agreements such as VPAs follows the 'Assent Procedure'. The Assent Procedure requires agreement of both the European Parliament and the Council of the European Union, but the Parliament can only agree or disagree to the text as a whole - it cannot propose amendments.

LOGGINGOFF

This briefing note is developed by NGOs from European and timber-producing countries involved in or monitoring the implementation of the EU FLEGT Action Plan, and specifically the implementation of the Voluntary Partnership Agreements between the EU and timber producing countries. They intend to provide joint North-South civil society positions.

For information on each VPA see:

www.loggingoff.info or

<http://www.fern.org/campaign/forest-law-and-governance>

If you would like further information on this briefing, please contact the author:

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Useful links and websites

Logging Off

www.loggingoff.info

Logging Off is the online resource for information on Voluntary Partnership Agreements. It is updated by NGOs working on FLEGT VPAs around the world.



The EU FLEGT Facility

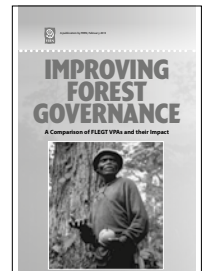
<http://www.euflegt.efi.int/portal/>

The EU FLEGT Facility, hosted and managed by the European Forest Institute (EFI), supports the European Union, Member States and partner countries in implementing the EU FLEGT Action Plan. The Facility was established in 2007 and mainly conducts activities in Africa, Asia and Central and South America.

Improving Forest Governance

http://www.fern.org/sites/fern.org/files/VPAComparison_internet_0.pdf

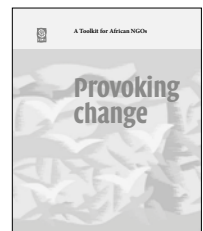
International and national NGOs have been part of their design, and have helped ensure VPAs include essential principles of forest governance. FERN's research shows these have been largely respected. (English and French only)



Provoking Change

<http://www.fern.org/publications/toolkits-reports/provoking-change-toolkit-african-ngos>

This Advocacy Toolkit is for local and national NGOs, but specifically for those based in West Africa, as the case studies and background information are focused on this region. This toolkit was produced by FERN at the request of a network of environmental NGOs in West Africa: the Green Actors of West Africa (GAWA). (English and French only)



Lessons learned from funding for FLEGT

<http://www.fern.org/fundingforFLEGT>

This briefing note provides useful suggestions for civil society with regards to applying for funding to work on FLEGT. It is based on lessons learned from past experiences as well as direct inputs from the donors themselves. The recommendations should increase the likelihood of obtaining future funding.

(English and French only)





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