

The Voluntary Partnership Agreement (VPA)  
process in Central and West Africa:

# from theory to practice



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## ACRONYMS

|              |                                                                           |
|--------------|---------------------------------------------------------------------------|
| <b>ATIBT</b> | International Technical Tropical Timber Association                       |
| <b>CIDT</b>  | Centre for International Development and Training                         |
| <b>ECFP</b>  | European Commission Forest Platform                                       |
| <b>EFI</b>   | European Forest Institute                                                 |
| <b>EU</b>    | European Union                                                            |
| <b>EUTR</b>  | European Union Timber Regulation                                          |
| <b>FAO</b>   | Food and Agriculture Organization of the United Nations                   |
| <b>FLEGT</b> | Forest Law Enforcement, Governance and Trade                              |
| <b>IIED</b>  | International Institute for Environment and Development                   |
| <b>IUCN</b>  | International Union for the Conservation of Nature                        |
| <b>LAS</b>   | Legality Assurance System                                                 |
| <b>REDD</b>  | Reducing Emissions from Deforestation and Forest Degradation (also REDD+) |
| <b>SME</b>   | Small and medium-sized enterprise                                         |
| <b>VPA</b>   | Voluntary Partnership Agreement                                           |

## EXECUTIVE SUMMARY

The year 2013 marked the tenth anniversary of the adoption of the Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan, so it seemed timely to reflect on the aspects that had worked well over the past ten years – and those that had worked less well – to draw the main lessons. The FAO FLEGT Programme thus started to analyze the experience of the FLEGT Voluntary Partnership Agreement (VPA) process. The Regional Conference on “*Experiences from the VPA Process in West and Central African Countries*”,<sup>1</sup> held in Ghana in October 2012, represented a first step toward sharing these experiences: for the first time, all of the VPA countries in Africa, Asia and Latin America met together to discuss the progress achieved and the lessons learned. Since then, the FAO FLEGT Programme has continued to examine the approaches, the factors of success and the challenges encountered by VPA countries, particularly in West and Central Africa, which is the region where the first VPAs were negotiated and signed.

Seven years after the first negotiations were initiated, the first FLEGT licence has yet to be issued. The implementation of the agreements has turned out to be more complicated than anticipated; in turn, a number of challenges must be addressed and major efforts must still be made. Even so, the negotiation and conclusion of VPAs have led to significant progress in improving forest governance.

The present study is intended to document and foster strategic reflection in partner countries already engaged in negotiating a VPA – or those who will be entering into such negotiations – by providing examples of “good practices”. These good practices were identified and recorded following interviews with the main stakeholders in the eight VPA countries in West and Central Africa,<sup>2</sup> the European Forest Institute’s (EFI) EU FLEGT Facility and the European Commission. A literature review then complemented the survey work carried out on the ground. The present document thus highlights a range of possible ways of meeting the challenges facing VPA countries. However, these “good” experiences come from a variety of contexts. As such, countries engaging in the VPA process should take these practices as useful guidelines, but should remember that a practice that is positive in one country will not necessarily provide the most appropriate solution in another. Lastly, this study is not exhaustive and should be updated as and when new lessons are learned and new data become available.

Chapter 1 considers lessons drawn from the pre-negotiation phase, focusing on the following issues: mobilization of stakeholders, awareness-raising and consultation, assessment of the present situation and the emergence of a national consensus. Chapter 2 addresses the issues raised regarding the VPA negotiation phase: mobilizing stakeholders (participation and consultation), capacity-building for stakeholders, improving access to information, adapting the development of the Legality Assurance System (LAS) to the local context, and adopting a differentiated approach for domestic and industrial production. For each of these issues, a rapid analysis is proposed, accompanied by examples taken from the experience of VPA countries in West and Central Africa. Recommended good practices are then suggested for each issue.

<sup>1</sup> The conference was organized by FAO in partnership with the Forestry Commission of Ghana, EFI’s EU FLEGT Facility and the Forest Governance Forum. For further information, see <http://www.fao.org/forestry/eu-flegt/83704/en/>

<sup>2</sup> Cameroon, the Central African Republic, Côte d’Ivoire, the Democratic Republic of the Congo, Gabon, Ghana, Liberia and the Republic of the Congo.



# Introduction

*“FLEGT does not only stand for ‘Forest Law Enforcement, Governance and Trade’, but also for ‘Fostering Local Empowerment and Grassroots Trust’. And in our forests, people need that more than anything else.”*

Civil society representative,  
Cameroon, 2013

The Forest Law Enforcement, Governance and Trade (FLEGT) process represents a first response to the worldwide problem of illegal logging. Logging is considered “illegal” when timber is harvested, transported, processed, bought or sold in violation of national or international laws.<sup>3</sup> It is challenging to give a precise figure for the volume of timber that is illegally logged in the world, but it is estimated that illegal extraction costs timber producing countries between US\$10 billion and US\$15 billion per year in lost revenue.<sup>4</sup> According to Interpol, illegal logging constitutes 50 to 90 percent of the volume of forest activities in tropical countries.<sup>5</sup> Apart from these economic consequences, illegal logging also has negative effects in environmental and social terms, particularly in the shape of the loss of biodiversity or the destruction and degradation of ecosystems and the livelihoods of local forest-dependent people. Such illegal logging is also usually closely

linked to poor governance. Lastly, the high demand for inexpensive wood on both domestic and export markets contributes to illegality in the forest sector.

In an effort to eliminate illegal logging and its associated trade, the European Union (EU), recognizing a shared responsibility with timber producing countries in the trade in illegally sourced timber, adopted the FLEGT Action Plan in 2003.<sup>6</sup> This plan envisages seven lines of intervention<sup>7</sup> affecting both producing countries and EU consumer countries, and seeks to bring about sustainable forest management by ensuring that wood imported into the EU is legally sourced. Two tools of the FLEGT Action Plan are particularly important, inasmuch as they focus on supply and demand: (1) the possibility for timber producing countries to negotiate and sign a Voluntary Partnership Agreement (VPA)<sup>8</sup> with the EU and (2) the EU Timber Regulation (EUTR).

<sup>3</sup> FAO Forestry Paper 145. 2006. Best practices for improving law compliance in the forest sector. Rome.

<sup>4</sup> World Bank. 2002. A revised forest strategy. Washington, DC.

<sup>5</sup> C. Nellemann. 2013. Green carbon, black market: illegal logging, tax fraud and laundering in the world's tropical forests. Interpol and UNEP. Available at <http://www.grida.no/publications/rr/green-carbon-black-trade>

<sup>6</sup> European Commission. 2003. Communication from the Commission to the Council and the European Parliament - Forest Law Enforcement, Governance and Trade (FLEGT) - Proposal for an EU Action Plan. Available at <http://eur-lex.europa.eu/LexUriServ.do?uri=COM:2003:0251:FIN:EN:PDF>

<sup>7</sup> Particular mention may be made of support to timber-producing countries, activities to promote the trade in legal timber, the promotion of public market policies, support to private-sector initiatives and implementation of guarantees for financing and investment.

<sup>8</sup> European Commission. 2007. Voluntary Partnership Agreements. FLEGT Briefing Note 6. Available at [http://ec.europa.eu/development/icenter/respository/B2\\_Flegt\\_Br6\\_2007\\_en.pdf](http://ec.europa.eu/development/icenter/respository/B2_Flegt_Br6_2007_en.pdf)

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<sup>6</sup> European Commission. 2003. Communication from the Commission to the Council and the European Parliament - Forest Law Enforcement, Governance and Trade (FLEGT) - Proposal for an EU Action Plan. Available at <http://eur-lex.europa.eu/LexUriServ.do?uri=COM:2003:0251:FIN:EN:PDF>

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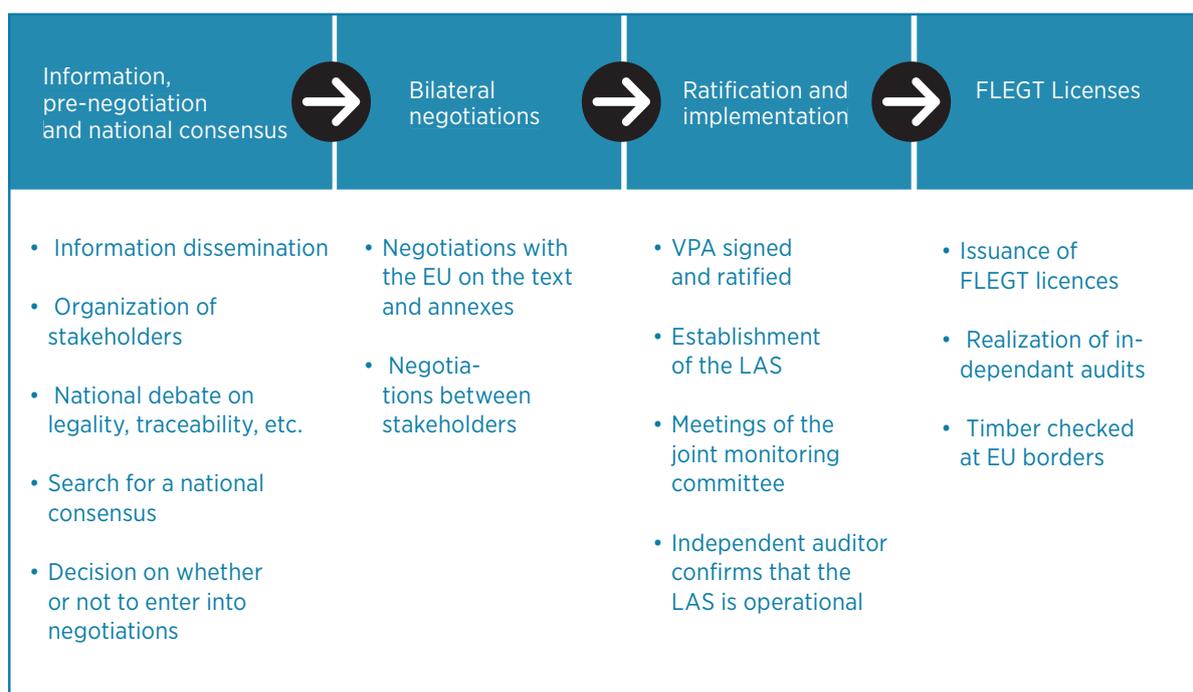
<sup>8</sup> European Commission. 2007. Voluntary Partnership Agreements. FLEGT Briefing Note 6. Available at [http://ec.europa.eu/development/icenter/respository/B2\\_Flegt\\_Br6\\_2007\\_en.pdf](http://ec.europa.eu/development/icenter/respository/B2_Flegt_Br6_2007_en.pdf)

## VOLUNTARY PARTNERSHIP AGREEMENT: IMPROVING FOREST GOVERNANCE ON THE SUPPLY SIDE

A VPA is a trade agreement between two partners. While the VPA is by definition voluntary, once it has been signed it becomes legally binding. The process leading to the signature and implementation of a VPA has four phases: (1) information, pre-negotiation and the search for a consensus among stakeholders in the “partner country”; (2) negotiation of the agreement; (3) signature and ratification of the agreement and its implementation; and (4) the issuance of FLEGT licences (Figure 1).<sup>9</sup>

By December 2013, six countries had signed VPAs and are now in the process of implementation; nine others are in the negotiating phase (Figure 2). A large number of countries in West and Central Africa have undertaken the VPA process. Ghana was the first country to negotiate and sign a VPA with the EU. This is because countries in West and Central Africa export a large proportion of their timber to the EU, which is their main trading and development partner, although there has been a considerable reduction in exports toward this market in recent years.

Figure 1: Stages in the VPA process



<sup>9</sup> For a definition of the phases in the VPA process, see the Annex 1: glossary.

Figure 2: Countries involved in the VPA process (December 2013)



Source: EFI's EU FLEGT Facility ([www.euflegt.efi.int/home](http://www.euflegt.efi.int/home))

VPAs are intended to guarantee that only legally sourced timber reaches the EU market. In other words, a country that has signed a VPA is under an obligation to export only timber that is accompanied by a FLEGT licence in order to enter the EU market.<sup>10</sup> This guarantee takes the form of the development of a reliable and credible Legality Assurance System (LAS) that allows legally and illegally sourced forest products to be distinguished. The LAS is thus composed of five key elements: (1) a definition of legal timber based on the legislation of the partner country; (2) a traceability system; (3) a system to verify compliance with the legality definition and the traceability system; (4) a FLEGT licensing scheme; and (5) an independent audit (Figure 3).<sup>11</sup> Each VPA contains these fundamental elements, but is also distinct and unique, partly because it is

drawn up jointly by the partner country and the EU, but mainly because it is based on existing national legislation<sup>12</sup> and on the governance issues faced by the partner country. The participation and inclusion of a set of local stakeholders in each step of the VPA process, including such non-governmental actors as civil society organizations and the private sector, also give it a distinctive nature. Non-state actors participate and contribute from the very start of the process; this degree of involvement is unprecedented for a trade agreement.<sup>13</sup> VPAs also allow stakeholders in these countries to discuss governance issues that very often go beyond the forest sector.<sup>14</sup>

The negotiation and development of the systems anticipated in the VPAs have not only allowed major progress to be made toward better governance

<sup>10</sup> Council Regulation (EC) no. 2173/2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community. Available at <http://faolex.fao.org/docs/pdf/eur111434.pdf>.

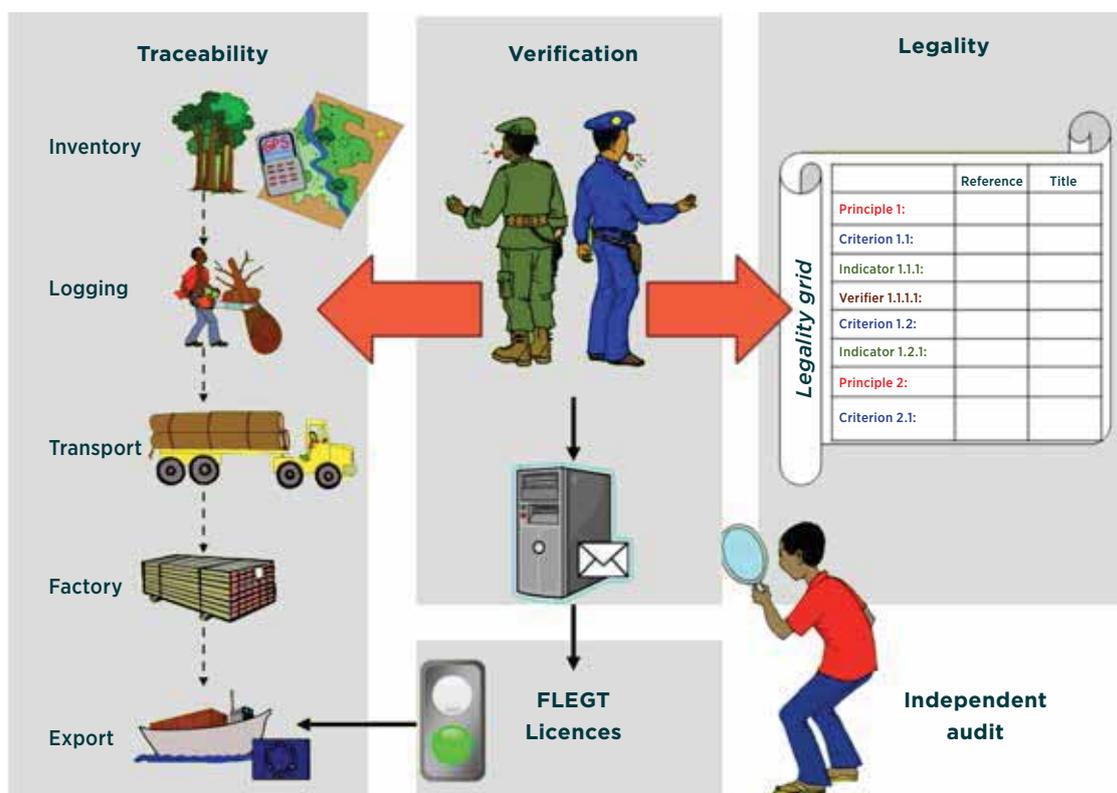
<sup>11</sup> For a definition of these terms, see Annex 1: Glossary.

<sup>12</sup> Which also encompasses all the conventions, treaties, agreements and international and regional legal instruments ratified by the country.

<sup>13</sup> Ozinga, S. 2012. "Voluntary Partnership Agreements, tools to empower civil society to take part in forest governance improvements", in *Compendium on experiences from the Voluntary Partnership Agreements (VPAs) Process in West and Central African countries*. FAO.

<sup>14</sup> Pearce, F. 2012. *Forest Stands: How new EU trade laws help countries protect both forests and peoples*. FERN.

Figure 3: Illustration of a LAS



of the forest sector, but have above all led to many changes in the sector. The most significant results include: ownership of the process by all of the stakeholders, a consensual dialogue among the various actors, greater transparency and better access to information in these countries, the establishment of control mechanisms based on existing arrangements and involving both government and civil society in some countries, and the recognition of the challenges of the domestic/artisanal market. Nevertheless, the VPA process faces a certain number of difficulties. The breadth of the changes required and the need to modify existing structures and systems mean that the VPA process takes time. It also requires strong political will that is expressed in action and long-term perseverance, considerable mobilization of

human and financial resources, as well as a whole range of skills at each stage in the process.

### THE EUROPEAN UNION TIMBER REGULATION: A DEMAND FOR LEGAL TIMBER

Complementing the VPAs and with a view to fostering and encouraging efforts to promote good governance and counter illegal logging, the European Union Timber Regulation (EUTR) was adopted in 2010.<sup>15</sup> Since 3 March 2013, the regulation has banned operators from placing illegally sourced timber on the EU market.<sup>16</sup> The distinctive feature of the EUTR is the fact that the responsibility for and burden of proof of legality

<sup>15</sup> Regulation (EU) no. 995/2010 of the European Parliament and the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market. Available at <http://eur-lex.europa.eu/LexUriServ.do?uri=OJ:L:2010:295:0023:0034:EN:PDF>

<sup>16</sup> For further information, see <http://ec.europa.eu/environment/eutr2013/> and also the guidelines for the regulation: [http://ec.europa.eu/environment/eutr2013/\\_static/files/guidance/guidance-document-5-feb-13\\_en.pdf](http://ec.europa.eu/environment/eutr2013/_static/files/guidance/guidance-document-5-feb-13_en.pdf)

rests with the operators, who are expected to exercise “due diligence” in order to reduce the risk of illegality and make sure that only legal timber, whether harvested inside the EU or outside its borders, is placed on the EU market. In order to exercise this due diligence, the operator must set up a “due diligence system” (or risk management system), which will allow him or her to:

- **have access to information**, such as the country of origin, the quantity, commercial name and type of product, the name and address of the supplier contracted by the operator, and documents/information on compliance with the legislation of the country of origin;
- **evaluate the risk of illegality** taking into account the complexity of the supply chain, the prevalence of illegal practices in the country or region of origin, etc.;
- **mitigate the risk** of having illegal timber enter the EU market by adopting additional measures<sup>17</sup> if the risk is considered high; a policy favouring timber accompanied by a private certificate of legality or sustainable management could constitute a risk mitigation measure.

It should be noted that timber coming from countries that have signed a VPA and accompanied by a FLEGT licence will automatically be considered to be of legal provenance, thus reducing the burden on operators and the control they have to exercise.

Moreover, the EU is not alone in adopting measures to counter illegal logging and the associated timber trade: the United States, with its Lacey Act (2008) and Australia, with its Illegal Logging Prohibition Bill (2012) have both adopted a similar approach.<sup>18</sup> All of these efforts should eventually lead to a situation in which only legal timber is traded and thus to better governance and sustainable management of forests.

## FLEGT-LINKED WORLD NETWORK

The EU provides support to a worldwide technical assistance network linked to FLEGT with a view to implementing the measures anticipated in the FLEGT Action Plan. The FAO FLEGT Programme<sup>19</sup> in particular is a part of this network. This programme supports groups of local stakeholders – government, civil society and private sector organizations – in implementing projects concerning issues linked to the FLEGT process in Africa, Asia and Latin America.<sup>20</sup> It also seeks to improve the availability of information on the FLEGT process and facilitate knowledge- and experience-sharing among groups of local stakeholders. The EFI’s EU FLEGT Facility is also a part of the same network. It was set up in 2007 to support the VPA process, particularly during the negotiation and implementation of VPAs, by providing technical assistance on certain aspects of the agreement. The facility can also carry out studies or provide information about FLEGT upon the request of a country, and ensure that information concerning FLEGT is shared and disseminated. Other organizations, such as international NGOs or private-sector associations, contribute to the network and help to move the FLEGT process forward. Lastly, cooperation programmes of EU Member States and international donors also play a major role in implementing the FLEGT Action Plan.

## OBJECTIVE OF THE STUDY

It is now ten years since the FLEGT Action Plan was adopted. During this time, eight countries in West and Central Africa – Cameroon, the Central African Republic, Côte d’Ivoire, the Democratic Republic of the Congo, Gabon, Ghana, Liberia and the Republic of the Congo – have undertaken the VPA process and some of these were among the first to negotiate

<sup>17</sup> The EUTR does not lay down the risk mitigation measures to be taken, but simply states that these procedures “consist of a set of measures and procedures that are adequate and proportionate to minimise effectively that risk and which may include requiring additional information or documents and/or requiring third-party verification” (Article 6, 1, c).

<sup>18</sup> *International developments in trade in legal timber: all you need to know about the US Lacey Act, the EU Timber Regulation and the Australian Illegal Logging Prohibition Act 2012*. (available at [www.forestlegality.org/sites/default/files/Booklet%20-%20International%20Developments%20in%20Trade%20in%20Legal%20Timber%20%28web%29%20%282%29.pdf](http://www.forestlegality.org/sites/default/files/Booklet%20-%20International%20Developments%20in%20Trade%20in%20Legal%20Timber%20%28web%29%20%282%29.pdf)).

<sup>19</sup> This refers more specifically to two successive programmes financed by the European Union: the ACP-FLEGT Programme (2008-2013) and the EU FAO FLEGT Programme (2012-2016).

<sup>20</sup> For further information, see the programme brochure ([www.fao.org/forestry/38128-03a61a04a78b397817dd30e4d77cb5aa5.pdf](http://www.fao.org/forestry/38128-03a61a04a78b397817dd30e4d77cb5aa5.pdf)) and the website [www.fao.org/forestry/eu-flegt/en/](http://www.fao.org/forestry/eu-flegt/en/)

and sign a VPA. It is thus a good moment to reflect on what has worked well during the VPA process and what has worked less well, and also on the challenges encountered during the various VPA phases.

*The present study is thus intended to document and foster strategic reflection in partner countries already negotiating a VPA – or those who will be entering into such negotiations – by providing examples of “good practices”.*

## METHODOLOGY

The study was carried out by the FAO FLEGT Programme. Interviews were held with the main stakeholders in the eight VPA countries in West and Central Africa, largely during the Regional Conference on “Experiences from the VPA Process in West and Central African Countries”, organized in Ghana in 2012.<sup>21</sup> A semi-open questionnaire was developed, structured around the major themes of the FLEGT Action Plan, such as the participation of stakeholders, the LAS, the domestic market, communication and information sharing. In addition, subsequent missions were carried out in six of these countries to complement the information gathered.<sup>22</sup> Follow-up to these meetings took the form of telephone conversations and e-mails with the stakeholders concerned. The staff of the European Commission and EFI’s EU FLEGT Facility was also interviewed. A literature review completed the survey work carried out in the field.

Although VPAs are tailor-made agreements that are adapted to particular national contexts, taking local needs and priorities into account, and are negotiated by stakeholders who differ depending

on the country, the stakeholders’ answers made it possible to identify a set of good practices adopted during the pre-negotiation and negotiation phases.

*The present study thus takes the form of a collection of “good practices” drawn from these two phases.*

The implementation phase is not examined here because not enough time has yet elapsed to see it in perspective and draw lessons.

The good practices were identified and documented following the semi-structured interviews held with the various stakeholders. A whole range of possible solutions to the challenges facing the various countries is thus proposed. These good practices contribute to knowledge-sharing on what has worked well and what has worked less well. Even so, they depend on socio-cultural factors, the national context, the availability of resources, etc. They are “positive” experiences drawn from a variety of contexts. In other words, a practice considered “good” in one country will not necessarily be the most appropriate solution for another country. While people are therefore advised to draw inspiration from these practices, it is vital to weigh them up and decide if they are the most appropriate to meet the needs of the country. Nor does this study claim to cover the full range of experiences drawn from the VPA process. Inasmuch as the process is new, it is a learning curve; these practices need to be constantly updated as new lessons are learned and new data become available.

## STRUCTURE

Chapter 1 focuses on good practices drawn from the pre-negotiation phase, while Chapter 2 highlights those from the negotiation phase.

<sup>21</sup> <http://www.fao.org/forestry/eu-flegt/83704/en/>

<sup>22</sup> A lack of time meant that missions could not be carried out to Gabon and the Central African Republic.



*“ The pre-negotiation phase was a crucial stage in developing a ‘national’ consensus regarding the advisability or otherwise of undertaking the negotiation of a VPA. It allowed the various stakeholders to iron out their differences and initiate a frank, constructive dialogue on the object, the purpose and the content of the VPA. ”*

Member of the civil society platform,  
Cameroon, 2013



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# Chapter 1

## Pre- negotiation

**T**he VPA process starts when a partner country approaches the EU, seeking to obtain information on the FLEGT VPA process. Following this show of interest by the partner country, the pre-negotiation phase for a VPA can start. A Member State of the EU is then identified as the “sponsor” of the process.

The pre-negotiation phase is intended not only to ascertain whether there is an interest and a wish to negotiate a VPA, but above all to find out if the VPA is in fact an appropriate tool for the context of the partner country. During this phase, stakeholders in the partner country are informed about the FLEGT VPA process and its challenges, benefits and implementation mechanisms. This phase enables these stakeholders to grasp the objectives of a VPA and what is really involved, while allowing the EU to gain a better understanding of the forest sector, the complexity of the timber market and the governance challenges facing the partner country. The pre-negotiation phase comes to an end when there is an agreement between the two parties to open negotiations or when the partner country indicates that it does not wish to negotiate a VPA.

A good understanding of the FLEGT VPA process and what it involves is essential in order to make a joint decision on whether to enter into negotiation and ensure its success. Disseminating and sharing information and carrying out studies or evaluations highlighting the existing structures and mechanisms also play a part here. All of the stakeholders who will be concerned with the negotiation and implementation of a VPA must also be identified and brought into the process. Lastly, the search for a consensus among the stakeholders on whether or not to enter into negotiation of a VPA with the EU is vital. All of these steps will allow the stakeholders and the EU to launch the negotiation of a VPA in the best possible conditions. The pre-negotiation phase will also allow identification of the issues involved in the process, and the advantages and opportunities it offers.

In addition, a certain number of challenges need to be addressed if all of the necessary conditions to facilitate the negotiation of a VPA are to be met and national ownership of the process is to take place. It is generally challenging to mobilize certain groups of stakeholders, such as the formal and informal private sector and local forest-dependent people. It is also

not easy to involve the various ministries, either at the central or the decentralized level. The ministry in charge of forests is not the only ministry concerned by the process. Nonetheless, the participation and ownership of the process by all of these groups of stakeholders are vital if the negotiation and implementation of a VPA are to be effective. Moreover, the involvement of all of the stakeholders is at the heart of the VPA process and is indeed its distinguishing feature. This mobilization could be carried out by organizing the various stakeholders so that their views and demands are voiced during the negotiation. It is therefore essential during the pre-negotiation phase to consider the best type of organization to set up for this purpose. The information gathered during this phase also gives the stakeholders a chance to find out what is involved in the process, develop their position with a view to the negotiation and seek a consensus; nevertheless, it often turns out that the players see the issues more clearly once formal negotiations have started. Finally, it is equally important that parliamentarians be involved from the very start, since it is they who will in due course endorse the results of the negotiation, together with the reforms proposed, with a view to comply with the VPA.

Assembling these various conditions before entering into negotiation means that a balance must be struck between the number of studies and actions to be carried out leading to a national consensus, and a partner country “politically” ready to enter into negotiation even if all of the issues have not yet been identified. A process that is too slow could lead to a loss of national momentum and a waning of enthusiasm among the stakeholders.

This chapter focuses on the lessons learned from the pre-negotiation phase regarding the following issues:

- 1.1. mobilization of stakeholders;**
- 1.2. awareness-raising and consultation;**
- 1.3. assessment of the present situation and identification of issues and challenges;**
- 1.4. emergence of a national consensus.**

## **1.1. MOBILIZATION OF STAKEHOLDERS**

The mobilization of all stakeholders during the pre-negotiation phase should lead to the identification of groups of actors who will be affected by the negotiation and implementation of a VPA, inasmuch as they will be responsible for putting in place the systems anticipated in the VPA, complying with them or controlling them. Involving various stakeholders will facilitate the ownership and understanding of decisions.

Identifying those who must be consulted and ought to participate varies from country to country. Generally speaking, three main groups of stakeholders are involved: government, civil society and the private sector. The identification, mobilization and organization of small-scale operators and the informal sector, as well as local forest-dependent inhabitants, often creates challenges. These groups of actors are generally not organized and some of those operating in the informal sector prefer to remain anonymous. Furthermore, they may sometimes be represented by intermediary organizations (often the case for the local population) that very often do not represent or serve their best interests. In countries where the informal sector occupies a considerable place in socio-economic terms, particular care must be taken to ensure mobilization and organization of the sector.





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### Example 1.1.1: Organization of the artisanal sector in Liberia

During the VPA implementation phase, the union of artisanal operators (the Liberia Chainsaw and Timber Dealers' Union) partially organized the artisanal and small-scale sector, training more than 200 chainsaw operators on the FLEGT/VPA process. This initiative gave the operators a voice in the process, so that they could be more fully involved. Although this organization kicked in after signature of the VPA, a similar methodology and mobilization effort could be adopted starting in the pre-negotiation phase to allow an authentic representation and also to ensure that the challenges and difficulties of this stakeholder group are taken into account in the negotiation phase.

Ideally, reflection on how stakeholders should organize should begin during the pre-negotiation phase so that the roles and responsibilities of each player can be considered from the start. The use of existing structures as a basis is a good way of ensuring the participation and mobilization of stakeholders, and can be done through platforms that are firmly anchored in the partner country. This organization and mobilization should be carried out by each stakeholder group according to its particular interests and views. It is equally important to avoid involving only organizations with sectoral interests – such as



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### Example 1.1.2: Mobilization of civil society in Cameroon

The European Commission Forest Platform (ECFP), a civil society platform, was involved in the FLEGT VPA process starting in 2003, two years before Cameroon stated its intention to take part in the VPA process. The members of the platform saw the process as having major potential for rectifying the weaknesses of the Cameroonian forest sector. They therefore decided to place FLEGT at the centre of the platform's action priorities. In order to participate effectively in the VPA process, the platform coordinated its position and issued public statements on issues linked to the VPA, meeting at least four times per year to discuss strategies, develop joint positions and decide on ways in which it could contribute to the process. This coordination, combined with intelligent advocacy action that made its commitment to the process visible, helped the platform to be accepted as the main dialogue partner for civil society in VPA negotiations.

the environment, welfare, human rights or land rights – but to promote an inclusive process that involves the participation of all of the stakeholders concerned, encompassing all levels and ensuring good geographical coverage.

### *Recommended good practices:*

**1.1.1. Carry out a mapping exercise and identify the typology of the various stakeholders** as the first step in an effective mobilization, while taking existing structures such as platforms as a basis. This mapping and typology are carried out under the responsibility of each group of stakeholders. The relevant government agencies must be involved, together with civil society organizations, private sector organizations – including the artisanal and informal sector, decentralized government authorities, parliamentarians and local inhabitants. This will provide the foundation on which the government can in due course define the exact composition of its Technical Commission for the VPA negotiation that can take decisions on behalf of the parties concerned.

**1.1.2. Initiate a preliminary reflection on the organization of stakeholders and mechanisms for their participation** (such as mechanisms for the election of representatives, communication and relaying information), in order to lay the groundwork for a participatory process to negotiate a VPA.

**1.1.3. Establish dialogue among the three main stakeholder groups** (government, civil society and private sector) and include non-State actors in the decision on whether or not to enter into VPA negotiations with the EU.

The decision on whether or not to initiate negotiations with the EU supposes that stakeholders understand the process and how it works, and also the specific challenges that must be addressed in the timber sector. This phase of awareness-raising and consultation is crucial, inasmuch as access to information puts stakeholders in a better position to decide whether it is in their interest to enter into VPA negotiations and whether the VPA is the tool best suited to the national context. The provision of information on the FLEGT VPA process also allows stakeholders to take part in the process.

In every VPA country, information and awareness-raising meetings have been organized with stakeholders to explain what a VPA is, what it involves, the issues to be addressed and the probable impacts of the process (environmental, political, social, commercial, strategic, financial or other), and also identify governance challenges in the forest sector. This information is provided in a language that is accessible and comprehensible to everybody, so that stakeholders can make an informed decision on whether or not they are interested in entering into negotiations. In addition, these meetings make sure that the basic concepts are understood and shared by all groups of actors.

In Ghana, Liberia and the Democratic Republic of the Congo, for example, these meetings were held over the course of about one year before the stakeholders reached an agreement and decided to move forward and negotiate a VPA with the EU. Missions can also be carried out to share experiences and information between the partner country and VPA countries, so that the former can reach a better understanding of how the process will take place and what to expect.

It is this understanding of the FLEGT VPA process that will allow the negotiation phase to run effectively and be accepted by all parties, inasmuch as the stakeholders will be in a position to express their concerns and hopes. During the awareness-raising and consultation period, the stakeholders also have an opportunity to discuss what is involved in a participatory process and how it should be organized, for example, who should take part, the significance of a good representation, the importance of working groups, etc. This allows them to be better prepared when the actual negotiation starts.



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### Example 1.2.1: Information and awareness-raising on VPAs at the central and decentralized levels in Côte d'Ivoire

With the support of the FAO FLEGT Programme, the Ministry in charge of Forests organized seven meetings in various regions to both present the VPA and the FLEGT process in a language accessible to all, and also to build a national consensus on whether or not to enter into the negotiation of a VPA. These meetings allowed the views of local stakeholders to be voiced. As a result, more than 800 stakeholders were informed of the process, including not only the three main groups of actors, but also the various ministries, deputies, mayors, traditional chiefs, landowners, youth associations, etc. The stakeholders judged this awareness-raising phase a success and it resulted in a national consensus in favour of entering into VPA negotiations with the EU.<sup>23</sup>



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### Example 1.2.2: Country exchange mission to Ghana to better understand the VPA process

Two members of the national working group on sustainable management and forest certification of Côte d'Ivoire travelled to Ghana to meet with the various stakeholders, including the Forestry Commission of Ghana, a representative of the timber industry and a representative of the civil society platform, to learn about their experience in negotiating and implementing the VPA. This exchange mission gave them a better picture of the expectations and consequences of the VPA process and also allowed them to reflect on how to avoid the challenges encountered in Ghana.

Similarly, the organization of events like the Regional Conference on "Experiences from the VPA Process in West and Central African Countries",<sup>24</sup> held in Ghana in 2012, allow VPA countries that are at different stages in the process to discuss and share their experiences.

<sup>23</sup> For further information, see <http://www.eauxetforets.gouv.ci/index.php/special-apvflegt/61-acp-flegt-la-cote-divoire-demarreeffectivement-son-processus-dadhesion.html>

<sup>24</sup> For further information on this event, see <http://www.fao.org/forestry/eu-flegt/83704/en/>

*Recommended good practice:*

**1.2.1. Provide information on FLEGT and VPAs** that is accessible and comprehensible to all stakeholders, both at the central and decentralized levels, by means of information- and awareness-raising meetings that include all actors affected by the VPA process, and the organization of meetings with local stakeholders in countries that have had a similar experience. Similarly, information should be shared within each stakeholder group. Put simply, each group of stakeholders should share information within their respective group to foster a fuller understanding and acceptance of the process.



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### **1.3. ASSESSMENT OF THE PRESENT SITUATION AND IDENTIFICATION OF ISSUES AND CHALLENGES**

Although partner countries entering the VPA process have often started the negotiation phase with a wealth of information at their disposal, this has generally been incomplete or inconsistent. It is therefore vital to carry out preparatory participatory studies (or assessments) in the pre-negotiation phase to assist the various stakeholders on such key elements as the legal framework, traceability systems or stakeholders. These studies can provide a sufficiently clear idea of the current situation and shortcomings in existing systems, highlighting ways of improving processes and systems. They place the partner country and stakeholders in a position to assess the breadth of actions to be undertaken in order to equip themselves with a system that is both efficient and compatible with VPA requirements, and also to make an informed decision on whether or not the country should in fact negotiate a VPA. However, the objective is not to review all of the existing structures and systems but to obtain an overview of what currently exists, with its weak points and inconsistencies, since these elements will provide guidance during negotiations. If this type of study is to be carried out, a range of skills and expertise needs to come into play. Above all, these studies must be participatory and include the various stakeholders affected by the VPA, otherwise certain aspects could be neglected, an erroneous analysis could be made, or certain groups could even be left out. In addition, these studies must take into account the human and financial resources needed during the negotiation phase. Including socio-economic aspects and analyzing the possible economic impacts of VPA implementation will also provide the partner country with additional input to help in its decision on whether or not to negotiate a VPA. Equipped with all of this information, the stakeholders can then select the solution best suited to their national context.

For countries hoping to include the domestic or artisanal sector within the scope of the VPA, it is important to have in-depth knowledge of the

sector. Little tends to be known about domestic wood consumption, but it is often considerably greater than the production intended for export. A good grasp of its extent and how it operates, particularly its relations with the formal large-scale sector intended for export, will make it easier to ensure that it is taken into account during negotiations. The result of these studies provides the partner country with information on measures to be adopted to allow for regulation. Very often these studies take time, since they require analysis of a full production cycle, with a complex production chain involving a large number of actors. However, inasmuch as it is an informal sector, it remains poorly documented. Even so, the importance of carrying out these studies must be stressed, given the close link between the domestic/artisanal sector and the export sector.

Lastly, it is vital to strike a balance between the precision and volume of the information that is needed before entering into negotiation and during the negotiation phase itself, in order to avoid straying into technical subjects that will be the object of later negotiation, all the while encouraging initiatives leading to a national reflection on governance issues. The example of Cameroon in particular demonstrates that a long pre-negotiation phase – leading to the agreement of stakeholders on technical issues such as the definition of legality or traceability – can result in the same issues arising during negotiations, inasmuch as these aspects must be defined by joint accord with the other party, the EU. Nevertheless, the pre-negotiation phase is important in that it not only allows progress to be made on technical matters, but above all it enables the partner country to prepare all of the stakeholders in the sector to negotiate – or not to negotiate – a VPA with the EU.



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### Example 1.3.1: Participatory assessment of legality and traceability in Côte d'Ivoire

With the support of the FAO FLEGT Programme, a feasibility study on the verification of legality and the traceability of forest products was carried out in Côte d'Ivoire. This participatory assessment was not exhaustive, but it did allow identification of the major issues linked to each of the main components of the LAS. It was also useful in determining the challenges that a VPA could represent for Côte d'Ivoire, thus helping to reflect on whether or not a VPA was indeed the best solution for the national context. This allowed other government agencies that could play a role in verifying legality to be involved from the very outset, providing them with a clear enough picture of the existing set-up to appreciate the breadth of the actions that needed to be undertaken.



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### Example 1.3.2: Analysis of Liberia's chain of custody

In the very first months of the VPA negotiation, the Liberian Government and the European party asked EFI to carry out an analysis of the national timber traceability control system, LiberFor, which was being developed at the time. The study highlighted the strengths and weaknesses of the existing system and its potential for contributing to implementing a LAS in the context of the VPA. It also allowed identification of the additional elements needed to develop a complete LAS and highlighted the efforts that Liberia had already made with regard to the traceability of timber. This evaluation of existing monitoring and controls provided input for the discussions between Liberia and the European party on the steps to take in implementing an operational and credible LAS based on reinforcing existing verification elements. This type of study could be carried out during the pre-negotiation phase, which would provide stakeholders in the partner country with the most accurate information possible so that they can make the best decision for the country on whether or not to enter into negotiations.



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### Example 1.3.3: Socio-economic features of the artisanal sector in the Central African Republic

The small-scale timber sector in the Central African Republic is poorly documented and data is scarce. For this reason, a study was carried out to learn more about the sector, obtain information on the volumes purchased and consumed and the socio-economic conditions under which these operations unfold.<sup>25</sup> This study contributed to a better understanding of the size of this sector and provided a foundation upon which to make recommendations on legislation. Similar studies have been carried out in Cameroon, the Republic of the Congo and Gabon.<sup>26</sup> This type of study should be carried out as early as possible in order to provide a clear picture of how domestic and artisanal markets work, so that the challenges and issues linked to this sector can be better taken into account during the negotiation.



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### Example 1.3.4: VPA Impact study in Ghana

Although there was a general consensus regarding the wish to enter into VPA negotiations in Ghana, there were also some lingering doubts. To ensure the support of all stakeholders, the Government of Ghana therefore asked the International Institute for Environment and Development (IIED) to carry out an assessment of the socio-economic impact that the VPA could have on a certain number of key players. The impact study examined three possible scenarios that could result from the negotiations and compared the probable impact of each. The results of the study clearly showed that pursuit of the “business as usual” approach would have the most negative impact. These results thus threw fresh light on what Ghana could expect to gain from negotiating a VPA.

<sup>25</sup> The report on this study is available at [www.fao.org/forestry/acp-flegt/projects/fr/](http://www.fao.org/forestry/acp-flegt/projects/fr/)

<sup>26</sup> P.O. Cerutti and G. Lescuyer. 2011. *Le marché domestique du sciage artisanal au Cameroun: état des lieux, opportunités et défis*. Document Occasionnel 59. CIFOR; G. Lescuyer et al. 2011. *Le marché domestique du sciage artisanal en République du Congo: état des lieux, opportunités et défis*. Document Occasionnel 71. CIFOR; G. Lescuyer et al. 2011. *Le marché domestique du sciage artisanal à Libreville: état des lieux, opportunités et défis*. Document Occasionnel 63. CIFOR.

### *Recommended good practices:*

**1.3.1. Analyze both the functioning of existing structures and systems** (legality, traceability, institutions, etc.) and the large-scale/industrial and domestic/artisanal sector, so that the partner country can make an informed decision and be better prepared for the negotiation. Carrying out participatory studies and evaluations, which include all stakeholders but are not necessarily exhaustive, will lead to a sufficiently precise understanding of the current situation.

**1.3.2. Establish a baseline** regarding economic, social and environmental aspects to complement this information, so that the impact of a VPA can be evaluated and its outcomes measured. Such an impact study or evaluation may be carried out not only at the government level, but also for each group of stakeholders, so that they can participate in negotiations with clear positions regarding what the VPA should include and what its aim should be.

## **1.4. EMERGENCE OF A NATIONAL CONSENSUS**

There is no upper or lower time limit for the pre-negotiation phase. It is up to the partner country to determine the time necessary for a national consensus to emerge or, in other words, for all stakeholders to decide by common accord whether or not to enter into negotiations with the EU and whether or not a VPA is the most suitable tool for achieving the objectives of legality and better governance in their country. The pre-negotiation phase is thus crucial, inasmuch as the various steps it entails provide the foundations for the decision and for the negotiation – if this path is indeed chosen by the stakeholders. Mobilizing stakeholders, awareness-raising among local actors, consultation on the FLEGT/VPA process and participatory assessments should all lead to a national consensus on the will – or lack thereof – to negotiate a VPA. These steps allow the issues, opportunities and challenges of the VPA process to be identified, but above all, thanks to the information gathered, the stakeholders can consolidate their positions and expectations regarding the VPA and prepare to defend their

interests to the best of their ability. The pre-negotiation phase thus generally ends with the organization of a national workshop, during which stakeholders decide by common accord whether or not to pursue the VPA process. This consensus generally takes the form of a statement signed by the various groups of stakeholders.<sup>27</sup>

<sup>27</sup> See in particular the statement of the Ministry in charge of Forests of Côte d'Ivoire and the report of the national workshop in Liberia.





*“Negotiation is not something you can ad-lib.  
It cannot be reduced to a dialogue of the deaf or a test of strength:  
it entails a desire to reach a compromise by means of a game  
whose rules need to be known. ”*

R. Fisher and W. Ury,  
United Kingdom, 1981



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## Chapter 2

# Negotiation

**T**he negotiation of a VPA begins when there has been an exchange of official correspondence between a partner country and the EU, confirming the joint wish to enter into formal negotiation. This second phase in the VPA process is intended to conclude with the signing of a trade agreement between these two parties, which aims to improve governance and promote legal timber products. The negotiation of this agreement is the main feature of the FLEGT Action Plan regarding the supply of timber products.

The task of negotiation concerns a relatively standard body of text and some ten annexes that are specific to each country and which lay down the principles for establishing a Legality Assurance System (LAS) for timber products intended for export. During the first formal negotiation session, a consensual roadmap is drawn up, noting the topics to be addressed and the timelines for negotiations between the partner country and the EU. A common declaration on this occasion publicly reaffirms the desire of the two parties to carry out these negotiations. Next, following the roadmap, discussions are held in a series of formal negotiation

sessions, interspersed with bilateral technical negotiations, often organized by videoconference. On the European side, the European Commission is responsible for negotiating the agreement on behalf of the EU.<sup>28</sup> For its part, the partner country sets up a multi-stakeholder committee or commission; this will include the main government departments concerned, civil society organizations, local peoples, representatives from parliament and the private industrial and artisanal sector. A facilitator is usually appointed with the support of an EU Member State. As the name suggests, his or her main role is to facilitate discussions between the two parties and among and within groups of stakeholders. Once an agreement on the text of the VPA has been reached, the negotiation phase ends, marked by the signing of the agreement.

This is a unique process. Never has the negotiation of an international trade agreement involved all of the stakeholders in a value chain to this degree. Although this approach is innovative and enjoys general approval, it admittedly creates a number of challenges. These include, among others, the intense mobilization and commitment of various stakeholders for a significant time period to guarantee widespread

<sup>28</sup> Because of the special juridical nature of the European Union, the European Commission is the only EU body entitled to negotiate in the name of the Union.



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support and ownership of what will be decided. Mobilization of financial resources must also be anticipated in order to organize meetings of the Technical Commission and other bodies linked to the negotiations, carry out diagnostic studies and field missions, develop communication tools, or cover the travel costs of members of the Technical Commission to the European Commission headquarters in Brussels. Even if such expenses are relatively modest, they must be planned for, so that they do not cause delays.

Although the VPA does not claim or seek to provide a solution to all of the issues in a sector, it is extremely ambitious in terms of its objectives, inasmuch as it is not confined to the negotiation of a trade agreement, but tries to address the underlying problems of a whole sector by laying the groundwork for better forest governance. This added value likely explains the requests to commence VPA negotiations from countries that have only a limited timber trade with the EU, such as Honduras and Guyana. Negotiation of a VPA is in fact an effective tool for initiating an inclusive national debate on the functioning of an entire value chain.

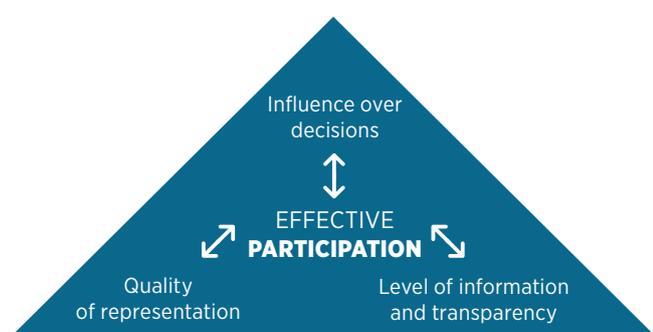
The present chapter focuses on lessons drawn from the negotiation phase with regard to the following issues:

- 2.1. mobilizing stakeholders: participation and consultation;***
- 2.2. capacity-building for stakeholders and improving access to information;***
- 2.3. adapting the development of the LAS to the local context;***
- 2.4. adopting an approach that differentiates between domestic and industrial sectors.***

## 2.1. MOBILIZING STAKEHOLDERS: PARTICIPATION AND CONSULTATION

The VPA rests upon the effective participation of various groups of stakeholders to ensure that all those who could be affected by decisions made during the negotiations have a chance to express their views during the discussions, that these views are taken into account and that the final decisions are accepted by all parties. Such participation guarantees transparency of future actions and also respects the interests of vulnerable communities. Three main factors are viewed as affecting the degree of participation (Figure 4):

Figure 4: Factors in effective participation



- The establishment of **information-sharing mechanisms**. Information on the negotiation must be disseminated in a timely, effective manner and be as accessible as possible. It is up to the stakeholders to examine and use this information and be proactive in requesting any missing information.
- The designation of individuals recognized as **representing the various stakeholders**. For practical reasons, it is hard to envisage negotiation sessions open to all, so it is vital for each group of stakeholders to organize according to its own rules so that it can identify those best able to defend its interests. These representatives will then relay information back to the other members, describing the various options discussed and the decisions taken.
- A fundamental aspect on which the EU is particularly insistent is that the chief negotiators should **take into account the positions and contributions** of the representatives of the various stakeholder groups, together with any solutions they may propose. This is a token of

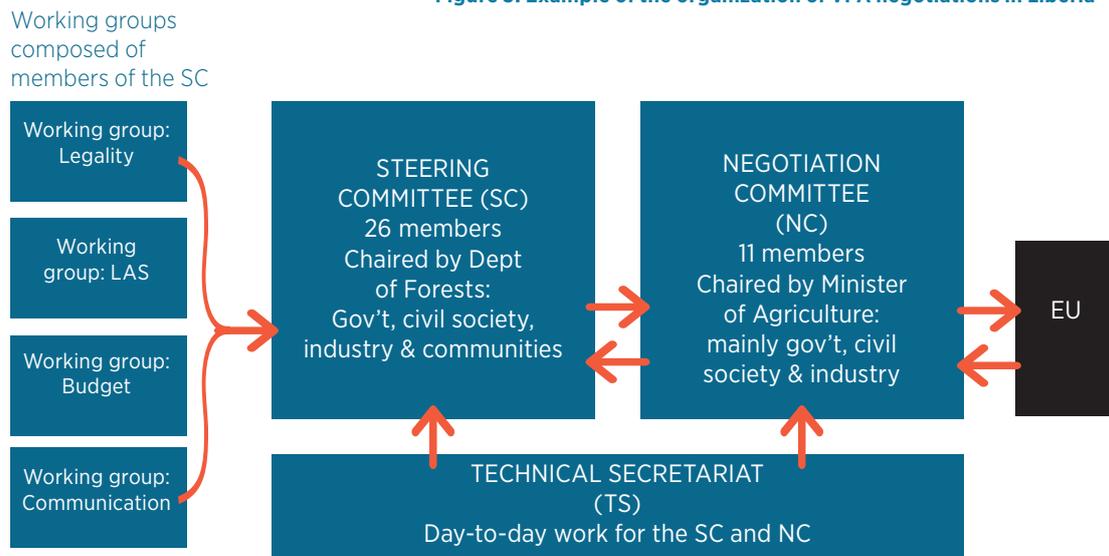


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### Example 2.1.1: An effective platform representing civil society in Cameroon

With support from FERN, an NGO platform was created under the title European Commission Forest Platform (ECFP). Acceptance of the role and importance of civil society in the negotiation has gradually grown and has led to an increasingly constructive contribution from this group of stakeholders (for example, during discussions on the social and environmental criteria in the legality grid). This platform has been very effective in ensuring that the voice of civil society is heard during negotiations. It has defined the framework and modes of participation of civil society, as well as those of local and indigenous communities in laying the groundwork for VPA negotiations, while also defining their expectations with regard to the VPA. Negotiation of the VPA has also given way to a shift in the balance of power between the administration and civil society, allowing non-State actors' voices to carry greater weight in decision-making.

Figure 5: Example of the organization of VPA negotiations in Liberia



ongoing, credible participation, which allows a consensus to be reached on the content of the VPA and avoids the loss of interest on the part of groups whose opinions are systematically ignored. A participatory approach is usually agreed and validated by the various stakeholder groups. This involves drawing up guidelines, protocols, decrees, etc. specifying the actual modes of participation.

The partner country generally sets up a Technical Commission for the negotiation, composed of three groups of stakeholders: civil society, the private sector and government. In some countries, other groups of actors may join, for example, the body representing local communities or traditional leaders. The representatives are appointed according to each group's own unique procedures, following a pre-established number of seats; in some cases the number of seats is negotiated with the government. They then receive an official mandate to sit on the Commission and represent their group during negotiations. The procedures within each stakeholder group in terms of communication, consultation and relaying positions are fixed by an internal process distinct to each group.

Mobilizing stakeholders within such a framework is both ambitious and complicated. Since the negotiations are carried out over several years, the stakeholders' commitment must be seen as long-term and intensive (with monthly or even



**Example 2.1.2: Incorporation of community representatives into the VPA Steering Committee in Liberia**

A steering committee was set up to support the negotiating team in its technical work and in decision-making. This committee was composed of 26 members representing government agencies, the private sector, civil society and local communities. The direct participation of local communities in such a structure is a unique case and has shown its very real value in relaying the concerns of these players during VPA discussions.



bi-monthly meetings). For some actors, such as the artisanal sector, which is typically informal in nature, mobilization is thus a difficult undertaking. Being by definition very poorly organized, if at all, these players prefer to remain in the shadows, often for fear of reprisals, and to be represented by proxy by intermediary NGOs, with the limitations this entails. Local communities and indigenous people, who often live in isolated or inaccessible zones, face similar difficulties. The difficulty of delegates in bringing the issues most important to stakeholders to the negotiating table should also be noted. This situation is exacerbated when there is a high turn-over in delegated representatives attending the negotiation, resulting in a loss of institutional memory that hampers the steady progress of the negotiation.

It is interesting to note that negotiations do not only take place between the two parties negotiating the VPA, but also among different groups of stakeholders, and even within groups of stakeholders (whose interests may diverge considerably). In a number of countries, civil society platforms in which a wide variety of interests are represented - human rights, biodiversity, conservation, environment, etc. - have often been

the scene of heated discussions that have not always led to a unified stance, thus weakening the group's position during negotiations. The same is true for the private sector, which does not always speak with a single voice because of the wide range of representatives (in terms of size, nationality, specialization, degree of commitment to sustainable management) and because they are in competition on the market. An often significant minority of the forestry profession also prefers to keep its distance from the negotiation process, for lack of time and/or interest. Lastly, with regard to government, it is particularly important to ensure multi-ministerial mobilization as negotiations start, as the verification of legality is under the jurisdiction of a number of ministries. In general, inter-ministerial collaboration is a very sensitive matter, since it is not rooted in normal practice, especially when the initiative of negotiating of a VPA comes from a ministry with little weight in terms of the country's economy. However, such involvement is vital, inasmuch as some of the topics addressed in the negotiations are cross-cutting, requiring a solution that entails coordination among the relevant ministries.



**Example 2.1.3: A good representation of the various groups of stakeholders in the Technical Commission of the Democratic Republic of the Congo**

In the Democratic Republic of the Congo, the Technical Commission for VPA Negotiations has no less than 33 members, including representatives of the country's three main forest provinces (Bandundu, Equateur and Orientale) and five representatives of the National Assembly. In order to make effective and practical progress, most of the working meetings are organized at the subcommission level and are thus smaller, with half-a-dozen members chosen according to their knowledge of the subjects being negotiated. The joint positions prepared in the subcommissions are then presented and validated in a plenary session.

The Technical Commission has also decided to produce technical notes on issues of forest governance that members consider important, and on which they feel discussions should be held beyond the restricted framework of the Technical Commission for VPA Negotiations.



**Example 2.1.4: Representatives of civil society initially selected by the Congolese Government**

This is an example of a practice not to be followed. Initially, two representatives of civil society were appointed by the Congolese Government and operated as consultants on their behalf. During the early sessions, these individuals did not defend the views of the platform's members, which caused many problems and led civil society to demand that new representatives be appointed. This took place following a consultation process among civil society.

### *Recommended good practices:*

**2.1.1. Develop a detailed programme to mobilize stakeholders.** This should be operative as soon as negotiations are opened and stay in place throughout the process (including during the implementation phase). This programme, which may, for example, be drawn up with the help of the facilitator, will identify the stakeholders, how they are organized, their roles and responsibilities, the steps in the programme, the mechanisms for relaying back any information arising from the consultations and the procedures for taking this information into account in final decisions. Lastly, it will identify the decision-making mechanisms within the various groups of stakeholders.

**2.1.2. Ensure mobilization of the various groups of stakeholders** in order to guarantee good representation. It is up to each group to decide who is best suited to represent them and how communication should be organized to ensure they participate fully and their views are taken into account. In the private sector, for example, care should be taken to ensure SMEs from both the formal and informal sectors are well represented. Similarly, a fair consultation process should allow the most disadvantaged and isolated participants to prepare themselves for and participate in meetings. Lastly, it is important to see that decentralized government departments and local administrations are involved, and also parliamentarians, who will have a role to play in ratifying the VPA.

**2.1.3. Make sure the groups of stakeholders are well organized.** This is essential in order to filter information from the grassroots up to the negotiators and back down again. Specialist international organizations (FERN, Well Grounded, IUCN, ATIBT, etc.) have shown that they can provide valuable support in this area, to both civil society organizations and the private sector. They work with these groups of stakeholders to help them identify their priority interests and become actively involved in the negotiation; all the while, local institutions should bear in mind the potential impact of the VPA on their activities. They also facilitate experience-sharing between countries (through global networks such as the Community Rights Network) and support platforms with regard to advocacy and strategic placement. In some cases they may play an important yet neutral role, without interfering directly in the actual negotiations.

**2.1.4. Stress the need to make decisions by consensus,** which is a token of credibility and success. This way of working, which is a feature of the VPA process, has also meant that the stakeholders' degree of commitment is maintained, since they realize that their voice carries weight.

## 2.2. CAPACITY-BUILDING FOR STAKEHOLDERS AND IMPROVING ACCESS TO INFORMATION

Capacity-building for stakeholders is essential in the VPA negotiation phase, since this is a new process and stakeholders do not necessarily have the skills or know-how needed for full involvement in negotiations. If they are to be in a position to

negotiate, defend their positions, present their arguments or just remain credible, they need to master not only the necessary strategic approaches, but also subjects that sometimes require advanced technical knowledge, as is the case for traceability. Where the most disadvantaged or isolated people are concerned, capacity-building must be accompanied by popularization of the various concepts. And in this case, those responsible for disseminating



**Example 2.2.1: The Technical Commission of Côte d'Ivoire receives training in negotiations**

With expertise from the Centre for International Development and Training (CIDT), the Technical Commission for VPA Negotiations in Côte d'Ivoire refined its negotiating capacities in a three-day course given to the various groups of stakeholders. This experience was enriched by the presence of first-hand witnesses from Cameroon, the Republic of the Congo and Ghana. Thanks to this training, the stakeholders equipped themselves with rules of conduct, which put them in a better position to defend their positions during negotiation sessions.



**Example 2.2.2: Key role of certain international organizations in capacity-building for civil society**

Certain international organizations (FERN, Well Grounded, Forest Peoples Programme, Client Earth, etc.) have specialized in supporting civil society organizations vis-à-vis the VPA process. They have provided technical and financial support to civil society so that it can involve itself effectively in the negotiations. For example, these international organizations have provided courses in advocacy, or offered expertise in analyzing the legal framework. During negotiations, however, these international NGOs recede, leaving national bodies to defend their positions within the negotiation framework.

information must use a language that is accessible to the target audience and manage to simplify the message without being reductionist.

Following the same line of reasoning, effective participation on the part of the stakeholders requires the availability of information. An observation shared by the eight VPA countries in Africa is that gaining access to legislative texts can resemble an obstacle course. Obtaining up-to-date documents from the various government services involved is not an easy task; even if in some cases technical assistance



with archives does exist and there are some private initiatives to compile documents, these are for the most part incomplete or obsolete (CD-ROMs, compendiums, online databases, etc.). The same applies to information regarding the VPA process and the progress made in negotiations. However, access to information can remove ambiguities and must therefore be a priority during the negotiations phase. For example, a recurrent confusion is noted between the roles of the independent auditor and the independent observer, who do not have the same



### Example 2.2.3: The Republic of the Congo provides information about the VPA

The Republic of the Congo has developed a website on the VPA process in the country ([www.apvflegtcongo.org](http://www.apvflegtcongo.org)<sup>29</sup>) and also developed its own logo. The site contains all of the basic information on the VPA process together with technical documents such as the minutes of the Joint Implementation Committee and the reports of the independent observer. A newsletter is regularly published and distributed to inform a wide audience about progress on the VPA. Such an initiative could be set up when negotiations start, in order to give all stakeholders access to information and keep them updated on progress made during negotiations.

function, despite their similar designations. This kind of confusion can easily be eliminated through better access to and wider dissemination of information concerning the VPA.

It is interesting to note that the various stakeholder groups that have established effective coordination are those able to make the best use of the resources made available to them for capacity-building.

<sup>29</sup> While this study was being prepared, the site was being updated, but should shortly be available.

### *Recommended good practices:*

**2.2.1. Set up an official internet site** for basic training on FLEGT. This would allow ad hoc initiatives to be carried out in response to ongoing requests from stakeholders. A certificate could be given to those passing an end-of-course test.

**2.2.2. Organize courses in negotiation**, such as the one that CIDT offers in various countries. These would allow actors to grasp the basic principles of a negotiation process, processes for revising legal frameworks, advocacy techniques, etc. It entails basic training and is recommended for all countries entering into negotiations.

**2.2.3. Plan for communication tools** on the progress of negotiations, such as internet sites, newsletters and press releases, so as to provide information on the subjects addressed in negotiations, “aides-mémoire” and technical documents, ensuring that the process is transparent and accessible to all.

**2.2.4. Promote south-south exchanges** keeping in mind that no two VPAs are the same. If countries less experienced in the VPA process can learn from countries in the more advanced stages of the process, this will help them draw on good practices and avoid making the same errors.

**2.2.5. Make legislative texts available to the general public.** This is vital. Since the legal framework is dynamic in nature, the internet is clearly the most appropriate tool in this regard. It also allows information to be more secure and facilitates research. In parallel, a mechanism to disseminate and popularize these documents could also be put in place.

## **2.3. ADAPTING THE DEVELOPMENT OF THE LAS TO THE LOCAL CONTEXT**

The LAS provides a reliable means of distinguishing between legally- and illegally-obtained forest products. If partner countries are to issue FLEGT licences, they must have a system capable of guaranteeing that only legally sourced timber and timber products are authorized for export. In other words, controls must be carried out at the logging site in the forest and then along the supply chain, from the point of origin through the point of export. Such a system to verify legality comprises five elements: (1) a definition of legally sourced timber; (2) control of the supply chain; (3) verification; (4) the issuance of FLEGT licences;

and (5) an independent audit of the system by a third party.<sup>30</sup>

In most of the countries that have negotiated a VPA, there were already a number of initiatives, tools, legal provisions and strategies regarding the verification of legality at both government and private-sector levels at the time negotiations commenced. A VPA represents a remarkable opportunity to capitalize on what already exists and make it more consistent in order to develop an operational national system. It is thus essential to build on what already exists.

The LAS must set up mechanisms that discourage opportunities and the temptation for corruption.

<sup>30</sup> See Annex 1 for a definition of these terms. For further information, see FLEGT Briefing Note 3, *A timber legality assurance system*, 2007.

The VPA must be a driver for simplifying and rationalizing controls. There are not many solutions in this connection: water-tight systems are needed and this entails a certain amount of computerization and the incorporation of information into databases to allow fully transparent cross-checking. Although the use of new technology seems indispensable, the establishment of a LAS cannot depend solely on technological solutions. A change of mind-set, a new style of working and the introduction of professional ethics are elements that must accompany these reforms. And if they are to become sustainably established, they require not only ongoing training, but above all a strong political will to put the reforms into practice. All this often leads to structural changes in how government departments – and also private operators – are organized and operate. Any reform of such a broad scope must perforce be a long-term undertaking. However, the implementation timetables that have so far been negotiated within VPAs have turned out to be far too optimistic, given the complexity and the time needed to set up a LAS suited to local conditions.

The keystone of a LAS is the definition of legal timber, which is accompanied by the “legality grid”, a list with a varying structure, composed of principles/criteria/indicators/verifiers and references taken from current laws and regulations. This exercise provides a chance to: (1) identify all of the laws, rules and regulations affecting the forest sector; (2) ensure that all of the stakeholders agree on a common definition of legality; and (3) highlight, where necessary, any gaps in the current legal framework and also the need to update certain basic documents, such as forest codes or certain implementation decrees, or to incorporate new concepts into the legal arsenal, such as REDD+ or respect for the rights of indigenous peoples and land tenure rights. In some countries such a reform of the legal framework was already underway before the VPA process started; and in such cases, discussions on the definition of legality should enrich the reform process. Countries where reforms have not preceded the VPA process are advised to wait until discussions on the legality grids are sufficiently advanced and shortcomings



### Example 2.3.1: The legality grid of the Central African Republic – a tool to reform the legislative framework

The Central African Republic’s legality grid comprises indicators grouped around three main subjects. For each indicator, it gives a precise reference or references to the associated law(s) or regulation(s). In order to facilitate revision of the legal framework, those indicators as yet lacking a reference to any law or regulation appear in the grid with the note “See Annex IX: the legal reference is yet to be created”. This annex to the VPA contains an exhaustive list of all the legislative documents that need to be created during the implementation phase.

identified, before initiating any reform of the legal framework.

In developing the grid, it is vital to plan for a participatory, consultative approach so that a definition can be reached that will be approved by stakeholders and will effectively take the three pillars of sustainability into account, namely the economic, environmental and social aspects. Apart from the obligation to set up a participatory

process, there is no detailed requirement and each country may shape and build its definition of legality according to its own understanding; hence the variation in the grids that have been negotiated to date. A guide to good practices<sup>31</sup> published by the EFI's EU FLEGT Facility in 2012 does, however, advise countries on how to obtain a sufficiently precise legality grid, especially with regard to means of verification, in order to clearly identify both the responsibilities and the tasks that are incumbent upon each actor, and develop targeted procedures that leave a minimum margin for manoeuvre during controls. The guide points out that the grid must be developed with an eye to its subsequent use. In other words, it should not be an abstract theoretical instrument of no practical value on the ground. During negotiations, several countries have also organized field missions to gain a better picture of how verification actually takes place and in turn, help the Technical Commission for the negotiations select only the strongest criteria for legality, i.e. those that reflect legal requirements closely enough, so that controls can be effective and easily carried out. It is often helpful here to draw lessons from private certification processes, which have established standards and protocols for legality verification and have been using these for ten years. However, the basic distinctions between the two approaches must always be borne in mind, especially the fact that FLEGT legality grids and the way they must be applied are based solely on the legal framework – and this, unlike private certification, does not envisage a system that allows progress by stages (for example, actions to bring up to standard, recommendations or requests for minor or major corrective action).

If, for one reason or another, practices observed in the field diverge from legislative documents, it is vital to draw the attention of those in charge of revising the law to the need to adapt the existing texts and thus make the legal framework more operational. Nevertheless, even if such differences between practice and implementation on the ground must be taken into account and documented during the negotiation with a view to subsequent revision, the grid must be based on the current legal framework.

Carrying out “trial runs” has been viewed as vital for in-depth analysis of how the legality assurance systems being negotiated work – or fail to work – on the ground. In addition, such trials mobilize the administration with regard to the new control procedures and send a signal to the private sector on its level of compliance and on what needs to be done to meet the requirements of the VPA. These trials must be carried out at the right time, that is, when discussions on the LAS are for the most part complete but there is still a little room for adjustments. If they are carried out too late, their results and the changes they entail may not be well received by the stakeholders, who may feel that this is casting too much doubt on work that is almost complete and has already obtained a consensus.

The other key element of the LAS is the development of a traceability system. This is the most complicated element to negotiate and can be a major obstacle in setting up VPA systems. Given existing environmental and logistical conditions, an attempt to ensure that all timber products in circulation in the countries concerned are accompanied by information on their provenance, and verifying the consistency of this information is particularly ambitious. Protocols will have to be developed that allow: (1) monitoring the traceability of products, even within processing units; (2) monitoring and maintenance of well-sealed customs corridors for products in transit, with the corollary in some cases of the adoption of letters of agreement between neighbouring countries; (3) incorporation of systems that already exist within the modus operandi of logging companies; and (4) development of new procedures for on-the-ground controls and for verifying the consistency of information; many of these elements are not generally practiced by agents responsible for monitoring forest operations. Experience of the VPA implementation phase has also led to doubts as to whether the stress laid – sometimes heavily – on developing a high-tech tool (bar codes, bar code readers, internet transfer, central database, etc.) is always appropriate and if they are sometimes carried out at the expense of other essential elements such as the development of procedures and above all training, which is a

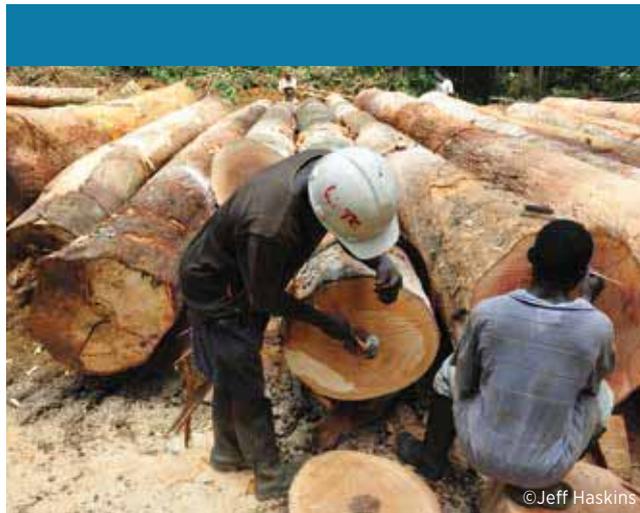
<sup>31</sup> EFI's EU FLEGT Facility. 2012. *Guide des bonnes pratiques pour l'élaboration des définitions de la légalité dans des Accords de partenariat volontaire FLEGT*.



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### Example 2.3.2: Lack of any reference to legality grids in certain VPA application decrees in Cameroon

Cameroon has adopted draft decrees for application of the LAS, especially the decree “fixing the criteria and procedures for issuance of certificates of legality in the framework of the FLEGT licensing system”. These certificates are a first response to the requirements of the EUTR. The problem that arises is the lack of any reference to the legality grids as a basis for verification prior to the issuance of a certificate of legality. The decree mentions a list of documents to be supplied that does not correspond wholly to the verifiers in the legality grids anticipated in the VPA. This choice was made because some requirements, or some grid verifiers, are not applied or applicable. Paradoxically, it was then decided to pass more legislation rather than revise the grids.



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### Example 2.3.3: A working traceability system in Liberia

By the end of 2012, the Société Générale de Surveillance (a Swiss company) had developed a centralized traceability monitoring system in Liberia known as LiberFor COCIS. This system ensures monitoring of the movements of products at the various stages: inventories (mapping of trees), logging (information on trees felled), standing timber (information on volumes), transport (waybills) and processing and export (export requests/export permits). The LiberFor COCIS system thus allows verification of the legal origin of products, traceability back to the stump in the forest, together with verification of the payment of the relevant taxes. Starting in 2013, the system will develop towards an integrated verification of legality, enabling verification of the correct application of laws and regulations with regard to the allocation of environmental and social permits (by establishing a Legality Verification Department).

prerequisite for ensuring that gathered data are reliable, up-to-date and consistent. Moreover, it is often felt that there is too great an outsourcing of the development of the traceability system. It is also believed that there is too little collaboration with government services. The same applies to logging companies, which complain about the inadequacy of operational links with their internal operating systems. Lastly, another observation drawn from the implementation phase is service providers' lack of skills, together with the lack of clarity of contracts made with the latter, especially with regard to ownership of the system and the costs of the software user licence. All of these factors have quickly brought these systems up against the harsh realities on the ground and led to a reluctance among stakeholders in both the private sector and public services.

In order to provide input into discussions on the development of a LAS, it may be necessary to carry out economic feasibility studies so that the costs and benefits can be evaluated. When making these studies, investment costs (development of a tool, training, change of habits, etc.) must be clearly distinguished from operating costs. The costs of applying laws that already existed prior to the VPA should not be lumped together with supplementary regulations arising from the VPA



#### Example 2.3.4: Basing traceability on existing systems – the case of the Central African Republic

The traceability system set up in the Central African Republic by BIVAC International (a subsidiary of Bureau Veritas) has all the features of a system capable of tracing products to be exported. The system is based on: (1) a highly trained body of inspectors and agents located in the field, and others responsible for data processing; and (2) a particularly well designed procedure that allows practically no room for error, thanks especially to a very effective internal monitoring system among agents in the field, inspectors at frontier posts and the services in Berbérati and Bangui. Thus, in the Central African Republic, the system set up by BIVAC, coupled with effective traceability systems within the various logging companies, ensures an excellent monitoring of wood from stump to export, so that the speedy implementation of a LAS that meets the requirements of the VPA can be envisaged.

itself. For example, it would be wrong to list the costs of forest management as a VPA cost when this is obligatory independent of the VPA. Existing studies report widely varying costs, depending on whether, in addition to the development of new procedures and the installation of a computerized system, they also incorporate building new infrastructure, purchasing specific equipment and financing training courses. In the Republic of the Congo, for example, the costs introduced by the VPA proper are only one-third of the total costs of implementing the LAS.<sup>32</sup> Other factors also affect these costs: the number of forest concessions and their geographical distribution, the considerable differences in titles allocated, the volumes harvested and exported, the types of product exported, the timber exit points, etc.



**Example 2.3.5: Trial runs of the LAS in the Republic of the Congo and field trials of legality grids in Cameroon, the Central African Republic, the Republic of the Congo and Ghana offer many lessons**

While field trials (of the legality grid or the whole LAS) have of course allowed verification of the degree of legality of enterprises, they have above all allowed an evaluation of the capacity of governments to undertake verification. These trials have also revealed the existence of verifiers that cannot be measured in the field, because of legislation that is not applicable or hard to apply, inconsistencies or simply the unavailability of documents to check. These observations have allowed a fine-tuning of the work of negotiation on the legality grids and the LAS.

<sup>32</sup> TERA. 2013. *Evaluation des coûts de mise en œuvre du SVL et identification des modes de financement potentiels.*

### *Recommended good practices:*

**2.3.1. Carry out a participatory assessment** of application of the legal framework. This facilitates the development of a logical framework, providing practical guidance for the negotiating process, so that it builds on a roadmap based on the real situation in the country and on national sectoral programmes.

**2.3.2. Develop legality grids in a practical manner**, based wholly on the existing legal framework. This does not mean that application decrees that need development or are contradictory or non-applicable should be omitted from the grids, for their inclusion will facilitate the eventual reform of the legislative framework.

**2.3.3. Initiate discussions on verification procedures linked to the definition of legality** as soon as a first version of this definition is on the negotiating table. This will mean savings in time and gains in efficiency. It is also worthwhile at this juncture to anticipate field missions to test the legality grid(s) and draw lessons regarding the most reliable indicators.

**2.3.4. Involve practitioners** and take their experience into account, both regarding the management of logging operations and the development of traceability tools that may already exist in certified companies. This would avoid the development of choices that are not practicable on the ground.

**2.3.5. Propose simple solutions** that are suited to the stakeholders' capacities and levels of training in the case of timber coming from logging permits but managed on a smaller scale (community forests, communal forests, artisanal extraction, pit saw operations).

**2.3.6. Describe the LAS clearly** thus facilitating its understanding and subsequent application. Particular attention should be paid to the structure and boosting of control and verification mechanisms: definition of an organization, procedures, responsibilities, human and technical resources, mandates, powers and authority needed in order to function. The mechanisms to be implemented in the case of non-compliance and the consequences of receiving FLEGT licences must be explicitly described.

**2.3.7. Organize "trial runs"** in a logging company. This allows theoretical work undertaken during negotiations to be measured against the real situation on the ground. It is a fundamental step in order to adjust the focus, but also to test government officials' ability to put what has been negotiated into practice. It may also fuel reflection on the institutional set-up most suited to carrying out this verification function: either by using government control structures as they already exist or with the addition of new structures, or by subcontracting verification to a service provider, or by relying on existing private-sector systems.

**2.3.8. Make the following obligatory in the terms of reference of service providers charged with developing traceability systems: (1) existing mechanisms must be taken into account; (2) context-related constraints must be considered; and (3) free-use software must be used.** The interface and maintenance must be developed according to the capacities of beneficiary government departments, inasmuch as internalization by beneficiary governments is a criterion of the validity of the product.

**2.3.9. Carry out cost-benefit studies** of the LAS as soon as a proposal is laid on the negotiating table. This should certainly be encouraged, since such studies can clarify how investment and operating costs are to be divided among the government, logging companies and donors, but above all they allow an estimate to be made of supplementary revenue for the State once production is taxed in compliance with the law.



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## 2.4. ADOPTING AN APPROACH THAT DIFFERENTIATES BETWEEN DOMESTIC AND INDUSTRIAL SECTORS

Studies have shown the considerable importance of the domestic market, which is mainly supplied by a small-scale or artisanal value chain, both in terms of the volume of timber traded, the geographical extent, the number of those involved, its organization and also its major socio-economic impact. In addition, in some countries artisanal extraction supplies not only the domestic market, but also a significant proportion of large-scale processing plants. The question of whether or not the domestic market should be incorporated into the VPA has thus arisen during negotiations of each VPA. All the countries (apart from the Central African Republic<sup>33</sup>) have realized that this component needs to be included in the VPA, citing a number of reasons. First of all, from a practical viewpoint, failure to consider the domestic market in VPA negotiations would make the legality verification system more complicated, for it would require the establishment of a two-tier system of differentiated management of flows entering factories, based on the source of supplies and whether they were controlled or not. In addition, the VPA offers a political opportunity to rationalize the operation of this poorly controlled sector, break up the well-established corruption networks that often catch government agents in

<sup>33</sup> Although artisanal extraction is recognized in the 2008 Forest Code, no application decree has yet been adopted. For the Government, this legislative gap justifies the fact of not taking the domestic market into account in the VPA, especially since, although this market is similar in size to that of official industrial logging, it is relatively localized in the area around Bangui and does not affect the country's main forests as a whole.

<sup>34</sup> Marfo. 2010. *Chainsaw milling in Ghana: context, drivers and impacts*.



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### Example 2.4.1: The VPA in Ghana – trigger for the preparation of a law on artisanal logging

In Ghana, artisanal logging represents an annual harvest of 2.5 million cubic metres (while the annual authorized cut for the formal industry is only 1 million cubic metres), providing about 84 percent of the timber on the domestic market.<sup>34</sup> In turn, during the pre-negotiation phase, the stakeholders clearly agreed on the importance of including the domestic market and not only the export market in VPA negotiations. A technical working group was therefore set up to identify measures that would allow the challenge of artisanal logging to be addressed. Since the VPA was signed, a new policy has been adopted for the domestic market. This policy encompasses a series of measures intended to impact on both the demand and the supply of legal wood on the domestic market. The measures include the development of a legal value chain for artisanally produced timber and the adoption of legislation supporting a policy of ensuring the supply of legal timber to public markets. There is certainly still much to be done. Nevertheless, the VPA gave rise to widespread support among stakeholders to implement identified measures to prevent illegal timber from supplying the domestic market.

their nets, and enable this sector to become a pillar of socio-economic development locally. It is thus a question of using the VPA to push this activity into a completely separate economic sector, one that is known and regulated and whose promotion is



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#### Example 2.4.2: Differentiated treatment of the domestic and export markets in Liberia

Liberia is currently the African forest country that is the most engaged in reforming the operation and regulation of its domestic forest sector – and this was the case even before starting VPA negotiations with the EU. By adopting the National Forestry Reform Law in 2006, the Liberian Government had in effect recognized the need to formalize and regulate artisanal logging, with a view on the one hand to maximizing the socio-economic benefits of the sector, and on the other to reducing the impact of this type of logging on the environment. Even so, Liberia was a long way from having completed the reform of its domestic sector before signing its VPA. A specific calendar for taking this issue into account was therefore incorporated into Annex VII of the agreement.

ensured in a transparent, clear framework. Lastly, it is an opportunity to bring about a gradual reduction in unfair competition that distorts markets but is a reality of many economic operators who have to respect the law and cannot offer the same prices as those of informal operators. In other words, incorporating the domestic market into the VPA represents the choice of a management approach that regulates artisanal, small-scale extraction, making a break with the informal activity that has long been carried out in the shadow of existing policies.

However, if this sector is to be made formal, thoroughgoing reforms are needed. The studies carried out by CIFOR on this issue put forward a series of suggestions that should help countries to meet the challenge, particularly the following: (1) place the economic aspect at the heart of reforms and avoid adopting prohibitive taxation, so that formalization of the sector can be rooted in the stakeholders' daily practice; (2) set up training programmes for the stakeholders involved in the value chain and improve access to markets and forest resources; (3) review the conditions of "ownership" of forest resources;<sup>35</sup> (4) develop a type of tailor-made management with the creation of new types of licences or modification of the current conditions and procedures for obtaining licences; and (5) improve the overall governance of the sector, especially through greater regulation of the actions of government officials (particularly in order to avoid the persistence of a parallel informal taxation system, despite the reforms).

In practice, it must be recognized that this will to avoid creating a two-tier legality, albeit legitimate, has very quickly had to face the fact that the time needed to regulate domestic markets is not the same as that for the industrial or large-scale timber sector. The question then is how to address the legality requirements in the case of domestic timber when the legal framework concerning it is not appropriate. The adoption of a single roadmap implicitly means that the rhythms and timescales for developing systems will be dictated by the speed of reforms in the domestic market. This is also certainly one of the reasons why the VPA implementation phase is encountering the delays we are witnessing today.

<sup>35</sup> Access to forest resources is often through the intermediary of "customary" owners, who not only sell "their" wood at extremely low prices, but also prefer to sell it rather than conserving it. This is because they know that the State, as "legal" owner, could sell the resource in their place to large-scale companies, giving them less possibility of profiting from the transaction.

### *Recommended good practices:*

**2.4.1. Expand and refine analysis of the domestic timber value chain**, broadening it to all the areas concerned and providing a precise description of the production zones, transport flows, volumes logged and extracted, economic impacts of each of the stages, legal logging conditions and market dynamics.

**2.4.2. Keep a realistic approach in the adoption of regulations for the domestic market**, to ensure that they are adapted to national contexts and are thus more easily accepted by the stakeholders concerned. Administrative formalities must be incentivizing, lead to a reduction in informal taxation and be easy for the stakeholders to grasp. Simplicity is vital, on the one hand in restricting artisanal extraction to the most degraded and most accessible zones, and on the other to fixing easily understood rules of extraction.

**2.4.3. Adopt a realistic calendar** and above all incorporate the specific features of the stakeholders, together with proposals for tax incentives, into planning regarding the inclusion of domestic market issues into VPAs. The aspects of training and skills-transfer must also be addressed in parallel with a review of access to resources (type of licence, loggable zones, rules of extraction, etc.). Ownership of the process by these small-scale actors is a key to successful implementation of the VPA.

**2.4.4. Recognize the extent of corruption** at the local level as one of the main constraints preventing effective implementation of regulations concerning artisanal logging, and plan corrective actions, focusing, for example, on an improvement in transparency (an explanation of rules and regulations, the role of taxation, the ways that various taxes are viewed, establishment of a complaints mechanisms, etc.) and the accessibility of information at every point in the production chain.

*“ What would have been the point of improving the governance and transparency of the part of our forest sector that is oriented toward exports, if we had left aside our domestic forest sector, which handles greater volumes and is considerably more important for our people? The VPA is a negotiation. We have accepted the concerns of the European Union, which is primarily worried about the legality of its imports of timber from our country, but we have asked it to understand our concern to achieve better regulation of our large domestic markets, moving them toward greater transparency and with a view to a greater contribution to poverty reduction at the local level. ”*

Member of the Government,  
Democratic Republic of the Congo, 2013

## Conclusion

Through their participatory and inclusive nature, VPAs seek to change the way in which those involved in forests – whether in the private sector, government or civil society – operate in this sector, in order to ensure that only legally sourced timber is produced. The VPAs have been negotiated in such a way as to reflect the priorities of each partner country and the challenges encountered, with a view to improving forest governance. Each VPA negotiated is hence unique, inasmuch as it is adapted to the situation of the country, albeit always with the common objective of contributing to the sustainable management of tropical forest stands.

In view of the ambitious nature of these agreements, implementation has admittedly been more complicated than anticipated. We must therefore accept that the development of systems and their implementation take time. Seven years after inception of the first negotiations, none of these agreements is yet fully up and running on the ground and no FLEGT licence has yet been issued. Even so, the groundwork is being laid and significant progress is worth noting:

- The opening of a policy dialogue within and among groups of stakeholders has had the notable result of allowing the most disadvantaged groups, such as the representatives of local forest-dependent people, to play an increasing role and to influence decisions that have an impact on their way of life.
- The VPA process has led to the emergence of a consensus among stakeholders on a variety of issues.
- The negotiation of a VPA leads to an open and participatory evaluation of how a whole value chain functions, something unprecedented. These discussions enable certain taboos – such as corruption – to be considered and appropriate corrective measures to be suggested.
- Greater clarification of the concept of timber

legality and the reforms carried out, which is vital to make the legal framework more consistent, allows better application of legislation.

- The development of more transparent and clear control procedures should facilitate application of the legal framework.
- The establishment of measures intended to control the domestic market more effectively and to suggest viable alternatives that encourage stakeholders in this sector to declare their activity and become officially recognized in a cost-effective framework will allow the sector to become a pillar of socio-economic development at the local level.
- Lastly, south-south collaboration and exchanges are expanding, enabling VPA countries to discuss and share their experience of the VPA process, and also to share their know-how (for example, the transfer of skill in independent observation carried out by civil society).

However, now that we have a clearer perspective, it is equally evident that if the VPAs are to be put into full operation, major efforts need to be deployed in the following spheres:

- The VPA must be implemented jointly by the EU and the partner country, ensuring the participation of all stakeholders. The latter must be constantly on the alert about this aspect, which is the only guarantee of success of the VPA. The challenges that arise throughout implementation must also be discussed regularly and openly.
- The traceability system must be described in very strict, practical terms and developed by experienced structures with a clear mandate, basing themselves on existing elements, involving all of the stakeholders and ensuring that not only skills but also the system are transferred to local government structures.
- Transparency of activities in the sector is among the foundations of the commitment

made by the partner country when signing a VPA. The collection and publication of information on the forest sector, as presented in an annex to the agreement, is a measure that seems fairly simple to adopt but that in practice often is confronted by a classic reflex towards data protection.

- Certain VPAs anticipate the recognition of private certificates in the framework of the LAS. Formal recognition of these certification systems must be backed by an analysis of the standards and procedures used, to ensure that they are in line with the requirements of the VPA.
- The domestic market, which is mainly informal, needs specially designed measures to bring it into line with the requirements of the VPA. The time needed to implement these measures is greater than in the case of the export market.
- Lastly, a reform of the legal framework is essential, inasmuch as it must allow partner countries to equip themselves with simple and consistent regulatory tools. Reform processes must be given a priority on the agenda in implementing a VPA and be as participatory and inclusive as possible.

Fifteen countries are currently in the negotiation or implementation phase of a VPA. The countries of West and Central Africa have been among the first to negotiate and implement VPAs. The present document therefore offers a non-exhaustive reflection on what has worked well and less well in the pre-negotiation and negotiation phases for VPAs in West and Central Africa, identifying a series of practices considered “good” by these countries. The pre-negotiation phase is crucial, since it should allow the partner country and stakeholders to start a national reflection on the country’s priorities and needs, and take the decision that is best suited to its context i.e. decide whether the VPA is the most appropriate way of achieving the objectives of timber legality and improved forest governance. The negotiation phase should lay the groundwork for better governance but should also be realistic, inclusive and participatory if the VPA is to be successfully implemented. This study thus offers a set of tools and lessons that could help future countries interested or involved in a VPA process to make the decisions best suited to their local contexts. Although new countries engaging

in the VPA process can learn certain lessons from the experience of countries already further ahead in the process, they should always remember that the solutions proposed in country “A” may not be appropriate to the context of country “B”, and vice versa. This fact, which is a strength of VPAs but also a source of their complexity, also likely explains the time needed for successfully carrying out the reforms proposed in these ambitious agreements. This is certainly the main lesson learned from these ten years of implementing the FLEGT Action Plan, suggesting that countries engaged in the VPA process need to show unwavering perseverance and political will if the objective set out in these VPAs is really to be achieved.



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## ANNEX 1: GLOSSARY

**Action Plan for Forest Law Enforcement, Governance and Trade (FLEGT):** Recognizing its role as the main consumer of timber products in the world, the European Union adopted the Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan in 2003 in order to promote better forest governance and avoid illegal timber from entering its market.

**Voluntary Partnership Agreement (VPA):** Legally binding bilateral agreement between the European Union and a timber-producing country to guarantee that only legally sourced timber is imported into the EU.

### Phases of the VPA:

- 1) Information, preparation and consensus building:
  - information sharing;
  - stakeholders gather to discuss and understand the VPA process and reach a consensus on whether or not to pursue a VPA.
- 2) Bilateral negotiations:
  - negotiation on the content of the VPA (text and annexes) with the EU.
- 3) Ratification of the VPA and implementation:
  - VPA ratified by the producer country and the EU;
  - implementation of the systems agreed in the VPA;
  - independent auditor verifies that the LAS is up and running.
- 4) Authorisations FLEGT:
  - issuance of FLEGT licences.

**Legality Assurance System (LAS):** The LAS is intended to provide a reliable way of distinguishing between legally and illegally sourced forest products. The LAS is composed of five key elements: (1) a definition of legal timber based on the legislation of the timber producing country; (2) a traceability system; (3) a system to verify compliance with the legality definition and the traceability system; (4) a licensing scheme; and (5) an independent audit.

**Definition of legality:** This definition gathers together all the laws of the partner country that help in determining what “legal timber” means. The definition of legality is a participatory process distinct to each partner country. Formulation of the definition must be validated by the stakeholders.

**Legality grid:** This element of the LAS defines the legal requirements that must be met and verified in order to guarantee the legal provenance of timber. This grid provides criteria and specific indicators enabling verification of compliance with the legislative framework.

**Traceability:** The requirements for systems capable of monitoring timber and timber products all along the production chain, from the point of origin in the forest up to the point of export.

**Verification:** The requirements in terms of verification of the respect for the legality definition and the control of the supply chain. Verification lies at the heart of the LAS; it is the mechanism that will guarantee that exported timber products are legally sourced. The concept of “verification” means confirmation by tangible proof that the requirements laid down have been met, which in turn entails a need to:

- define the requirements (those of the legality grid and the traceability system);
- define control or evaluation activities to verify that these requirements have been met.

**Issuance of FLEGT licences:** These licences are issued when it has been demonstrated that sufficient controls have been put in place and that the timber concerned respects the definition of legality. With this licence, it will be possible to enter the EU market.

**Independent audit:** The independent auditor will verify every three to twelve months that the VPA is working in line with what is laid down and that it effectively guarantees the legality of timber. This independent audit gives FLEGT licences

full credibility, once they have been issued. The independent audit is distinct from other elements of the LAS in that it is not a verification of legality and traceability (the auditor does not replace the administration of the partner country)..

**European Union Timber Regulation (EUTR):** The EUTR, in effect since 3 March 2013, is legally binding on all 28 Member States of the EU and bans the entry of illegal timber into the EU market. Within the framework of the EUTR, operators who place timber or timber products on the EU market – whether logged within the EU or outside its borders – must exercise “due diligence” in order to minimize the risk of perpetuating forest illegality.

**Due diligence:** It means that operators undertake a risk management exercise in order to minimize the risk of having illegally logged timber or timber products containing illegally sourced wood enter the EU market. The three key elements in the “due diligence system” are:

- information: the operator must have access to information describing the timber or timber product, the country of origin, the species, the quantity, information on the supplier and information on compliance with national legislation;
- risk assessment: the operator must assess the risk of illegal timber being present in his or her supply chain on the basis of the information listed above, and take account of the criteria laid down in the EUTR;
- risk mitigation: when the assessment reveals that there is a risk of the presence of illegal timber in the supply chain, this risk must be mitigated by requiring supplementary information and verification on the part of the supplier.





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