



Human Rights and Timber Supply Chains

A rights-based analysis
of EU FLEGT VPAs



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executive summary

This review of existing and draft VPAs,¹ carried out by the Forest Peoples Programme (FPP) finds that, across the board, VPAs do not require the incorporation of human rights laws (and more specifically, laws governing the fundamental question of community tenure in forest areas). Similarly, while there have been positive developments on the ground in some countries (in particular Ghana and Liberia and, to some extent, the Republic of Congo),² in other countries it seems that to date the VPAs have had only a limited role in encouraging or actually prompting pro-human rights reforms as part of the harmonisation and rationalisation of forestry sector laws.

This is symptomatic of a problem across the forestry industry and conservation sector of the failure properly to integrate and account for human rights impacts in forest governance and, in particular, the critical underlying issue of local peoples' security of tenure. The result is that, in at least some countries, the FLEGT process in its current form risks lending legitimacy to existing (or new) property law and forestry governance regimes which dispossess indigenous peoples and forest-dependent communities to the benefit of business enterprises and (sometimes) national governments, and in violation of human rights law.

At the same time, and again with some exceptions, the VPA certification systems tend towards bureaucratic, highly-technical and top-down verification processes, which can serve to facilitate corruption and do not support local participation or accountability. While in some cases independent civil society monitoring may be able to collect some community feedback and unearth some irregularities, this is no substitute for systematic community-level input to and checks on the verification process, which equally requires clear community rights to access information.

Some specific findings of this review include the following:

Lack of any systematic evaluation of human rights law compliance

There is no systematic framework within the VPAs to evaluate national laws by reference to international human rights laws related to indigenous peoples' or local communities' customary rights to land, or to require (or even encourage) the incorporation of these standards. As a result, incorporation of community tenure rights and the principle of free, prior and informed consent in legality verification systems has so far been largely non-existent (although with some exceptions) and dependent primarily on the existing policy of the country with which the VPA is concluded.

Even the VPAs which appear to incorporate more progressive provisions (based on existing national laws), such as those with Liberia, Republic of Congo or Ghana,³ fall short of international

¹In the course of this study, FPP reviewed the signed VPAs from Cameroon, Liberia, Ghana, Republic of Congo and Indonesia, and considered draft texts from the Democratic Republic of Congo, Côte d'Ivoire, Guyana, Honduras and Vietnam.

²Personal communication, J Christian, Fern, August 2015.

³Principle 1 of Ghana's legality annex states that in order for timber to be legal, it must have "*originated from prescribed sources and concerned individual, group and owners gave their written consent to the land being subjected to the grant of timber rights*". It is not clear from the VPA alone, however, how "*concerned individuals and groups*" are identified, who represents them legally, and broadly whether their right to withhold consent is consistent with international law. Principle 2, Indicator 2 of Liberia's legality matrix requires that "*All communities within 3,0 kilometres of the proposed concession area (called 'affected communities') have been consulted by FDA and have given their informed consent to the proposed concession*".

standards: they are unclear in their scope and they do not clearly and unambiguously incorporate a requirement to secure customary tenure rights and obtain the free, prior and informed consent of the community as a condition of the purchase or use of customary forest lands.

No reference to human rights law compliance in any VPA

Aside from labour standards in the forestry sector, and one reference in criteria 3.2 of the Republic of Congo legality definition,⁴ international human rights laws are not referred to within the legality annexes of any of the signed VPAs, nor are any human rights treaties listed as international laws which must be incorporated in any reform.⁵ In a positive step, the initial draft of the Honduras VPA makes reference to compliance with ILO Convention No. 169 as a requirement of legality, but to date this is the only draft VPA to incorporate any direct reference to obligations of compliance with human rights requirements.

The lack of inclusion of human rights treaties in the VPAs is the case even where the national constitution provides that international law is directly incorporated within the national legal system and treated as superior to national law.⁶ This is not to say that there are not any human rights protections contained in national laws in any of the countries with whom VPAs have been or are in the process of being negotiated; rather, that the VPA does not concern itself with whether any such laws exist, or their adequacy.

In contrast, there are several VPAs which include a requirement to incorporate (some) international environmental standards. See for example Annex II, Part I to the Cameroon VPA, which refers to the Treaty on the Conservation and Sustainable Management of Forest Ecosystems of Central Africa and establishing the Central African Forests Commission (COMIFAC),⁷ the Convention on the International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the Convention on Biological Diversity (CBD) as “relevant legal instruments”. References to CITES and/or the Convention on Biological Diversity are also found, inter alia, in the Ghana, Republic of Congo and Indonesia VPAs, and the draft legality definition for the Guyana VPA. A lack of reference to human rights instruments is therefore inconsistent, as well as incomplete.

⁴There is also a reference to the United Nations Declaration on the Rights of Indigenous Peoples in the preamble to the Republic of Congo VPA. [The text can be found in Appendix II on page [x].]

⁵Human rights are also referred to in passing in the legality annex to the Cameroonian VPA; however, as discussed further below, these standards are not in fact integrated in any way in the legality or law reform requirements.

⁶For example, Article 45 of the Cameroonian Constitution provides that duly ratified international treaties shall, after their publication, override other national laws. As a result, national laws that are inconsistent with international human rights obligations entered into by the Cameroonian government are likely to be unlawful, at least to the extent of the inconsistency. Despite this, the Cameroonian VPA does not require the integration of these human rights obligations, leaving the overall legal framework incoherent and uncertain.

⁷COMIFAC makes some passing references to increasing participation of local communities, including in Article 1 (where State Parties commit to “step up efforts to increase the rapid participation of rural populations in the planning and sustainable management of ecosystems and allot adequate areas for their socio-economic development”), but its focus on industrialization and on ‘allotment’ of territories to rural population (as opposed to recognition of customary land rights) belies genuine respect for community rights.

Inconsistency between standards and verification measures

In some cases, there is a mismatch between the legality standards described in principle to be applicable, and the procedures for verification of compliance with those standards. This is apparent, for example, in the case of Cameroon, where the broad description of legality (including a general reference to human rights) is not replicated in the Timber Legality Assurance System (TLAS) or the legality matrices.

Similarly, in almost all the VPAs reviewed, the verification process relies on top-down assurances or certification by a government body or company that appropriate procedures have been followed. There is no interrogation of the broader process of land allocation, nor of procedures for issuing such approvals, permits or certification. Similarly there are generally limited checks and balances normally associated with good governance in relation to the approval processes or procedural steps to ensure they have been carried out lawfully, such as simple and accessible information systems, and complaint and/or redress mechanisms.

For example, the Liberian VPA requires, as evidence that a social agreement has been reached, “minutes reflecting actual discussions and agreements reached by the contract holder and authorised representatives of affected communities” (see Indicator 3.1, Verifier 3.1.1). It is not clear whether the community itself (or its authorised representatives) must approve the minutes, who the “authorised representatives” of the community are and how their legitimacy and accountability is ensured, what information must be provided, etc.

Similarly, evidence of compliance with social and environmental standards under the Indonesian VPA requires only that the permit holder has its EIA documents approved by the competent authorities and has developed environmental management and monitoring plans (see Annex II, 4.1.1 and 4.1.2). The adequacy of EIA requirements by reference to objective human rights standards is not assessed, nor is there any external check (e.g. by communities or civil society) on the approval process.

The Republic of Congo (“RoC”) VPA requires that local populations are “sufficiently well informed” of their rights (Criteria 3.1), but the sole check on this is minutes of meetings of the platform for dialogue (which is to include “representatives” of communities). These types of arrangements undermine the rights granted to communities, and are highly vulnerable to corruption. There are no obvious or straightforward ways set out in VPAs for communities to dispute compliance with these steps, nor to demand additional information or respect for their rights.

No consultation standards included

Even in the limited cases where consultation with or consent of communities does feature explicitly in national requirements (for example, the need to obtain “written consent” from “concerned” individuals, groups and owners under Criterion 1.1 of the Ghana VPA), the laws and standards specified are generally unclear or non-existent. This leaves open the possibility that consultations will not comply with international law requirements of consultation and free, prior and informed consent. For example, insufficient information may be provided, or means of coercion (including bribery, pressure, harassment or even violence) may be employed to obtain consent. Similarly, no VPA provides details of the method to be used to resolve “tenure disputes” where these arise. There have, nonetheless, been instances where law reforms anticipated by the VPA have contributed to an improved legal regime, notably in the Republic of Congo.

Recommendations

- Adopt a specific, unequivocal stance in support of partner countries' recognition of customary tenure rights and all other legally protected human rights, consistent with international human rights laws and the standards set out in the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests;
- Take steps to improve policy coherence between the FLEGT Action Plan and other EU policies, including the EU Action Plan on Human Rights;
- Make integration of partner countries' international human rights obligations a compulsory agenda item in discussions over the VPA (and in particular in discussions about legal reforms);
- Require the inclusion of specific citizens' direct rights to access relevant information as part of the transparency agenda, not merely obligations on government to publish information;
- Recognise directly the positive linkages between secure community tenure rights, sustainable management of forests and decreased deforestation;
- Include measures to reduce conversion timber stemming from forest clearance for agribusiness and other developments;
- Ensure individuals and communities have accessible and effective methods to challenge verification methods and the grant of concessions;
- Strengthen import rules so that timber produced in violation of human rights standards is not accepted for sale within the EU, including by integrating human rights due diligence into all existing EU due diligence and public procurement requirements, and create mechanisms whereby citizens of importing countries can raise issues of non-compliance with the EU;
- Provide technical advice and guidance on creating more accountable and community-focussed verification mechanisms.

introduction

Sustainable forest governance is a concept integrating three distinct strands: the economic, the environmental and the social. The economic and environmental interests are well understood and hotly debated at the global and national level. In the technical discussions of global environmental politics, however, policymakers have often lost sight of the third dimension, and in particular the millions⁸ of indigenous peoples and other forest-dwelling communities whose livelihoods and culture depend on the forests in which they have lived for generations. Those peoples and communities have recognised legal rights to their customary territories under international human rights law, but these are frequently ignored or only partially recognised by national governments in timber producing countries.

One of the largest initiatives aimed at improving forest governance in recent years has been the EU Action Plan on Forest Law Enforcement, Government and Trade (“FLEGT”), developed by the EU in 2003. FLEGT seeks to encourage sustainable forest governance primarily through restricting imports into the EU of illegal timber. This programme has both a demand-side and a supply-side element.


The key part of the demand-side element is the European Union Timber Regulation EUTR scheme, which aims to restrict import of “illegal” timber into the EU. The supply-side element, and the focus of this briefing paper, is the development of voluntary partnership agreements (“VPAs”) with timber-exporting countries. Broadly, a VPA sets out the requirements for timber produced in (or sold in) the partner country to be “legal”, and the procedure by which it is certified as such. Once certified under this procedure, the timber may be exported to the EU.

Although it notes the existence of a relationship between forestry and local communities’ security of tenure,⁹ the FLEGT Action Plan explicitly chose not to embrace a substantive approach to forest law reform, which would have obliged partner countries to address insecure community land tenure and address broader compliance with human rights laws. Instead, the Action Plan focuses primarily on issues of “governance” and compliance with existing national laws, and a few international environmental conventions such as CITES. It encourages, but does not require, a deeper review of the contents of the legal framework. This is noted expressly in the Action Plan, which states that FLEGT:

... deals only with the question of legality [under existing laws], but it should be noted that the EU’s wider objective is to encourage sustainable forest management. Since in many countries forest legislation is based on the premise of sustainable forest management, better law enforcement will in general lead to more sustainable forest management. Where this is not the case the EU should encourage a review of the legal framework. Better forest governance is therefore an important step on the path to sustainable development.¹⁰

⁸Chao, S, *Forest Peoples: Numbers across the world*, Forest Peoples Programme, 2012, available at www.forestpeoples.org/sites/fpp/files/publication/2012/05/forest-peoples-numbers-across-world-final_0.pdf (accessed 20 January 2016).

⁹At page 6, the FLEGT Action Plan notes: “Existing forest laws and policies frequently promote large-scale forest operations and may exclude local people from access to forest resources. This inequity breeds resentment and conflict. It also forces local people who depend on forest resources to operate illegally, since they often have no choice in the way they meet their basic livelihood needs. However, given the correct incentives, forest-dependent communities can become key allies in the drive to reduce illegal logging.”



The obvious risk in this approach is that the EU may ignore, and thereby tacitly “approve”, a framework for forest tenure governance which is directly contrary to human rights law obligations in relation to indigenous peoples and local communities, and which may promote forestry programmes which result in dispossession of such peoples and communities, potentially on a large scale. Moreover, in the many countries where international law is incorporated indirectly by the constitution, this approach undermines the stated goal of legal certainty and the rule of law by tolerating a continuing incoherence between human rights and other sectoral laws. Unless inconsistencies are addressed, both existing sectoral laws and new laws developed as part of the VPA process will remain open to challenge on the basis of non-compliance with human rights law obligations.

Six countries have currently signed VPAs (all, with the exception of Indonesia, within Africa). Another 9 VPAs are presently under negotiation in Africa, Latin America and Asia, while a further 11 countries have expressed interest in negotiating a VPA. As yet, no timber has been certified as “legal” in accordance with a VPA process, although at the time of writing both Ghana and Indonesia are anticipated to complete certification of their first batches of timber within the next 12 months.

This briefing paper – which is based primarily on a desk-based review of existing and draft VPAs, together with inputs from FPP’s fieldwork in Cameroon, Guyana, Democratic Republic of Congo (“DRC”), Indonesia and Liberia – examines the existing and draft VPAs from the perspective of indigenous peoples and other forest-dwelling communities. For these peoples, the FLEGT process represents an opportunity, but also potentially a threat. It will prove an opportunity if it opens up the possibility for national level reforms which support and strengthen indigenous peoples’ and local communities’ security of tenure, and help to prevent illegal incursions into their territory. However, if reforms adopted as part of the VPA process sideline indigenous peoples’ and local communities’ customary rights to their lands, the FLEGT process may contribute to legitimising, however unintentionally, the large-scale dispossession of communities in the name of forestry and other economic projects. Such an outcome is not only contrary to human rights law, but also a short-sighted approach to governance. It would also likely lead to conflict, resistance and non-compliance at the local level, as well as continuing legal uncertainty where laws are open to challenge.

Unfortunately, as the analysis below shows, there has been little or no systematic integration of human rights laws (whether explicitly or implicitly) within the definition of “legality” as part of the VPA process – even where international human rights obligations are directly applicable under national law. This reflects a broader trend in the timber industry, evidenced by the majority of industry certification standards, which frequently adopts a forest governance approach that excludes human rights. Unless this is addressed, the FLEGT Action Plan risks becoming an instrument that allows the dispossession and further disempowerment of indigenous peoples and local communities, and facilitates access to EU markets of timber that is the product of serious human rights law abuses.

¹⁰GT Action Plan, page 5.

summary of international human rights obligations

There are a variety of international human rights laws which potentially touch upon activities pursued under the FLEGT Action Plan, but the most significant in this context is the rights of indigenous peoples and many local communities¹¹ to own and use their customary lands and territories, as well as related rights including the right to self-determination and the principle of free, prior and informed consent. There are a variety of human rights standards and principles, both binding and non-binding, at the international and regional levels which have a bearing on these rights. In addition, national constitutions often protect these rights, either directly or by the incorporation of international law into the national legal framework.¹²

A brief explanation of some of the key principles of international human rights law relevant to this area are set out below.¹³

Right to ownership of customary lands, territories and resources

Under international human rights law, indigenous peoples have the right to recognition of communal title over their customary lands and territories. The customary title of indigenous peoples must be recognised on an equal basis with other forms of title, such as individual private property, and indigenous peoples have a right to have their customary property rights delimited and demarcated by the State. Moreover, because land is generally essential to the social, economic and cultural integrity of indigenous peoples, alienation of indigenous peoples' customary lands is only permitted in specific and limited circumstances prescribed by international law.¹⁴

Self-determination

Indigenous peoples have a right to self-determination. This means that they are entitled to local self-governance (including their own legal systems in respect of local matters), and to control their own social, economic and cultural development, within the larger nation in which they live and in accordance with human rights.

¹¹We note as a matter of international human rights law there is currently a distinction between the rights recognised to belong to indigenous peoples and the rights held by other local communities. The rights of the latter group have on the whole not been tested directly, and so are less well-defined in international law. This is addressed briefly below.

¹²A table showing the ratification/accession and/or adoption/endorsement of relevant human rights instruments for each of the countries involved with the VPA process is annexed at Appendix 1.

¹³Of necessity, this paper provides only a short overview and therefore simplifies complex areas of law.

¹⁴Specifically, indigenous peoples' property rights can only be impaired where such impairment is necessary and proportionate to a legitimate public objective in a democratic society, and the restriction has been previously established by law. In addition, the action must not threaten the survival of the indigenous people in question. See *Saramaka People v Suriname* (2007) IACtHR, judgment of 28 November 2007, at paragraphs 127-8.

Free, prior and informed consent

The principle of free, prior and informed consent (“FPIC”) requires that indigenous peoples must be entitled to participate effectively in decisions which will or are likely to affect their territories or their way of life. While the specific requirements of FPIC depend on context and the community concerned, at a general level this principle requires that communities are:

- given full information about any proposal which will, or may, affect them, in a form which is appropriate and intelligible for them (including in an appropriate language). This information should include details of the nature and scope of the proposed project, its likely duration, and likely positive and negative effects on the community, including environmental and health risks;
- provided with this full information from the outset, i.e. when a proposal is first being considered, and are given further information when there are any changes or in response to queries or requests;
- given adequate time to consider the proposal within the community, in accordance with the community’s own practices for decision-making;
- not pressured, coerced, intimidated, bribed or manipulated to support the proposal, and that no action is taken to undermine community cohesion (for example, by offering future jobs to individual community members while consultation and consideration by the community as a whole is ongoing).

At a minimum, communities must be consulted in accordance with these principles, and their position must be genuinely taken into account in any decision on the proposal. In some circumstances – specifically, where the proposal is a major or large-scale project, or is likely to affect the physical or cultural survival of the community¹⁵ – the community also has a right of veto in relation to the proposal.¹⁶

Indigenous peoples and local communities

The above principles have been developed specifically in relation to “indigenous peoples”, as this term is understood in international law.¹⁷ However, many similar issues in relation to control of and title to land also arise in relation to other forest-dependent local or customary communities who may not strictly be considered, or self-identify as, “indigenous peoples”.

¹⁵This is, for example, almost certain to include any proposal which would require relocation of the community or loss of a substantial part of their traditional territories, or which has serious effects on the environment within customary lands or on livelihood activities.

¹⁶See e.g. *Saramaka v Suriname* (2007) IACtHR, Judgment of 28 November 2007, paragraph 134.

¹⁷There is no firm definition of this term in international law (although the status of a number of peoples as “indigenous peoples” is not controversial). In his influential 1986 report, Martínez-Cobo enumerated a number of characteristics which were frequently present among indigenous peoples, which included: historical continuity with pre-invasion and pre-colonial societies; a sense that the group is distinct from other social groups; forming a non-dominant sector of society; occupation of some or all ancestral lands; common ancestry with original occupants of the lands; cultural distinctness; distinct language; residence in specific areas; self-identification as part of this distinct group: José R Martínez Cobo, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Study on the Problem of Discrimination against Indigenous Populations*, UN Doc. E/CN.4/Sub.2/1986/7/Add.4, paras 379-82. In the 2002 *Report of the African Commission’s Working Group on Indigenous Populations and Communities*, which was adopted by the African Commission at its 28th session, the Working Group identified 4 characteristics of indigenous peoples in Africa: self-identification as indigenous; a culture which is distinct from the dominant national culture; the survival of their way of life depends on access and rights to their traditional lands; and they experience marginalisation or discrimination within the society more broadly: see page 89.

The application of these principles to non-indigenous peoples and communities has not been directly tested in international law, and jurisprudence in this area is still under development. However, there are a number of circumstances where these principles have been held to apply to groups beyond “indigenous peoples”, including:

- the African Commission has commented that the rights, interests and benefits of traditional African communities in their traditional lands constitute ‘property’ under Article 14 of the African Charter of Human and Peoples’ Rights, and that “special measures may have to be taken to secure such rights”.¹⁸
- in the Americas, the Inter-American Commission and Court have held that, where Afro-descendant communities “possess an ‘all-encompassing relationship’ to their traditional lands”, and own territory communally rather than individually, they are entitled to property protections under Article 21 of the American Convention on Human Rights akin to those of indigenous peoples.¹⁹ This provides a legal basis for ‘tribal’ peoples’ rights to ownership of customary lands, territories and resources, self-determination, and FPIC as outlined above.

In addition, local communities who, although not “indigenous” within the international law meaning, are ethnically distinct and whose customary land rights are discriminated against on that basis (including where the lack of recognition of customary property affects them disproportionately), may be entitled to protection from racial discrimination under the terms of the International Covenant on the Elimination of All Forms of Racial Discrimination (ICERD).²⁰ In some countries, communities’ customary land entitlements are also protected by incorporation of customary law in the national legal system.

Procedural safeguards to ensure recognition of land rights

Human rights deals not only with *outcomes* but also with *processes*. Human rights-compliant tenure governance needs to engage procedural safeguards which empower communities, reduce the likelihood of corrupt or inequitable allocation or transfers of land, and prevent procedural steps from being falsely documented by officials (which increases the risk of corruption), or from being treated as a tick box exercise without genuine community involvement. In the context of FLEGT VPAs, we suggest it would be beneficial for more bottom-up, accountable procedural requirements to be included within the TLAS.

¹⁸Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya (the “Endorois” case), ACmHPR, Case no. 276/2003, para 187.

¹⁹Moiwana Village v Suriname (2005) IACtHR, Series C, 124, at para 133. See also Saramaka v Suriname, paras 85-6.

²⁰For further discussion of the rights of non-indigenous local communities, see Forest Peoples Programme, “The Rights of Non-Indigenous ‘Forest Peoples’ with a focus on Land and Related Rights: Existing International Legal Mechanisms and Strategic Options”, 18 September 2013, available at <http://www.forestpeoples.org/topics/rights-land-natural-resources/publication/2013/rights-non-indigenous-forest-peoples-focus-lan> (accessed 5 February 2015).

Some examples of effective procedural steps²¹ include:

- providing clear rules on the requirements for companies and governments in relation to large-scale acquisitions or operations;
- governments and/or companies being obliged to advise communities of their tenure rights under international law during consultations (including in relation to tenure rights which are not formally recognised or registered at national level);
- developing community capacity to engage in consultations, including providing professional assistance;
- providing comprehensive, timely information to communities about any proposals which would affect their tenure or use of their territories;
- operating transparent processes and policies in relation to large-scale land use proposals, and allowing timely public access to all pertinent information including concession agreements, environmental impact assessments and permits, and other steps;
- allowing adequate time for consultations and internal community discussions to take place;
- permitting or requiring independent overview of any land lease or sale transactions;
- providing a clear criteria-based administrative decision-making framework in law for decisions made by public bodies that may impact forest communities, alongside a duty to give reasons for decisions that are made, a community right to independent appeal of such decisions and/or recourse to judicial review, and reasonable periods for notification of decisions and appeal deadlines;
- providing swift, adapted and accessible complaint and grievance procedures for communities (including the capacity to challenge officials' actions or inaction).

²¹These are partially drawn from the FAO's Voluntary Guidelines on the Responsible Governance of Tenure. Available at: www.fao.org/nr/tenure/voluntary-guidelines/en/ (last accessed 20 January 2016). See in particular Part 3, sections 7-9.

VPAs

Structure of VPAs

VPAs generally follow a common structure and format, although there is significant variation in the content of the legality framework between the existing signed VPAs. This variation reflects the diversity of legal systems in which the agreements are being developed, as well as the different political priorities of the counterparty governments.

The key features of the VPA structure as it relates to legality are as follows:

- In the main body of the agreement – generally article 1 or 2 – there is a definition of “**timber legally produced**” (or a close variation of these words). In all VPAs, “**timber legally produced**” is defined by reference to the legality annex (which is contained in Annex II of each VPA, as discussed below).
- There is also a clause in the main body of the agreement requiring the home country to establish a system, called the “**Timber Legality Assurance System**” (“**TLAS**”) or “**Legality Assurance System**” (“**LAS**”), designed to verify that timber has been legally produced. In some cases the requirements of the TLAS are incorporated in the legality annex (e.g. Liberia); in other cases (e.g. Cameroon, Indonesia, Republic of Congo) the TLAS is set out in a separate annex, or remains to be developed after signature.
- Within the legality annex, there will normally be several “**legality matrices**”. Each matrix itemises the specific requirements for timber to be “legal” within the meaning of the VPA, by reference to existing national laws. There is generally one matrix for each nationally-defined “type” of timber source (e.g. plantation timber, community-owned forests, government forests, private forests). Because this framework is defined by national laws, the number and type of timber sources (and therefore matrices) varies between VPAs.
- Where the legality annex integrates the TLAS requirements, the matrices will also include details of the means of verification for each item that is required under the TLAS framework. Where the TLAS forms a separate annex, the requirements for verification are set out separately.
- In addition to the legality/TLAS annexes, the VPA also generally sets out an **implementation framework**, which in most cases anticipates reform of the existing legal framework regulating the timber industry, among other things. Law reform requirements are generally expressly aimed at creating a coherent and consistent regulatory system that will provide legal certainty. Where legal reforms are anticipated, it is envisaged that the legality matrices/ TLAS will be revised to incorporate changes in the legal requirements which flow from those reforms.
- Some VPAs also contain a “transparency annex”, which details the information which must be published by the State and/or the EU. This annex includes data and reports “to give the actors involved access to information to enable monitoring of implementation of the Agreement”, as well as to “enable strengthening of governance in the forestry sector”.

International human rights law within VPAs' legality frameworks

There is no systematic framework within the VPAs to incorporate any international laws on indigenous peoples' or local communities' tenure rights and other human rights. Rather, the focus of the VPA is on ensuring *legal certainty* about entitlements to land (irrespective of the outcomes in terms of dispossession of indigenous peoples and local communities), so that verification of the legality of timber can occur.

As a result, the incorporation of standards on indigenous peoples' and local communities' rights is ad hoc and highly dependent on the policy of the specific country with which the VPA is concluded. The position, therefore, varies significantly between countries.

Recognition of customary land rights

None of the VPAs concluded to date has involved, or specifically requires, any assessment of the compliance of existing tenure laws with international human rights law in relation to indigenous peoples' or communities' customary tenure rights, nor does any mandate (or even encourage) that local tenure laws must meet international legal standards. Although (as mentioned above) certain VPAs predicate the certification of timber on enactment of legal reforms, the requirement for reform is generally focused on achieving legal coherence rather than adhering to any particular human rights law.

In several VPA countries, the existing tenure laws (especially where these have been inherited from colonial systems) expropriate forest lands for the State, thereby depriving indigenous peoples and local communities of much or all of their customary territories. For example, in Cameroon, private property rights based on customary use can only be asserted in relation to "improved" land (i.e. areas on which permanent structures have been constructed, or which are under use for agriculture), which dispossesses many rural communities (and in particular forest-dwelling Baka and Bagyeli indigenous communities): see Box 1 for further details. The Cameroon VPA does not impose any standards (even minimum standards) in relation to the land from which timber is sourced, meaning it will be possible under the VPA for timber to be lawfully imported from Cameroon from a concession that has resulted in the dispossession of local communities. This is a particular risk with conversion timber, which is not dealt with by the Cameroonian VPA and which increases the chance of local communities being excluded wholesale from their customary lands, in contravention of the international human rights obligations of Cameroon and contrary to international standards on good governance of forest tenure.

Box 1: Land laws in Cameroon: case study

The Congo Basin Forest covers an area of more than 750,000 square kilometres, and extends into six countries: Central African Republic, the Democratic Republic of Congo, the Republic of Congo, Gabon, Equatorial Guinea, and Cameroon, where it spans large parts of the south and east of the country. Rural communities in southern and eastern Cameroon rely heavily on the forest for their livelihoods, and local communities (both Bantu communities and indigenous communities such as the Baka or Bagyeli) have held forest lands in accordance with their own customary laws for many years. While all rural communities make significant use of forested areas to support their livelihoods, indigenous forest communities such as the Baka and Bagyeli are particularly reliant upon forested areas, as they are gatherer-hunters and live primarily from the forest, supplemented by relatively limited agricultural activities.

Despite the centrality of forested land to rural communities, customary title to forested areas is generally not legally recognised. Under the 1974 Property Law, customary rights only have priority over other interests if they are registered, a requirement which many rural communities are unaware of, or do not have the means to undertake.²² There is no provision for communal ownership, although much customary ownership is traditionally communal. In addition, customary ownership may only be registered in relation to “improved” land,²³ which means land that has been developed for agriculture, or on which a permanent structure has been built. Even when land has been customarily used and occupied by communities and is essential to their livelihoods, if it is not considered “improved” land it will be considered “vacant land” and claimed by the State. Communities who rely on these lands therefore only have usage rights that may be displaced by the State at any time.

The effects of the 1974 Property Law in depriving communities of customary forested lands are slightly mitigated by the 1994 Forestry Law, which gives communities the opportunity to obtain control of (some) forested lands in specified circumstances. Under this law, communities are granted certain customary use (although not ownership) rights, which nonetheless remain subject to extinguishment in the case of a future government allocation of the land for another, inconsistent purpose. In addition, administratively-recognised communities can apply to manage land as a “community forest”, in accordance with a management plan agreed with the government.²⁴ The creation of a community forest permits the village(s) concerned to exploit the forest (including potentially commercially or in ways which are different from customary usage) and retain the benefits of that exploitation, in accordance with the agreed management plan (although the uses to which the forest can be put are proscribed by law).²⁵ However, the creation of a community forest does not grant the community any rights to obtain a certificate of title in respect of the community forest area, and the area may still be allocated by the State for other uses.

²²Under article 14 of Ordinance No. 74-1 of 6 July 1974 to establish rules governing land tenure (the “1974 Property Law”), all land is private property, public property, or “national lands”. Article 2 creates 5 categories of private land: the only pertinent category in relation to rural communities is “registered lands”. Under Article 17(2), certain customarily-held lands can be registered.

²³Article 15 of the 1974 Property Law divides national lands into two categories: “land occupied with houses, farms and plantations and grazing lands manifesting human presence and development”; and “lands free of any effective occupation”. Under Article 17, only the first category can be registered as private property. Article 17(3) permits the continuation of hunting and fruit picking rights on national lands, but only “until such time as the State has assigned the laid lands to a specific purpose”.

²⁴1994 Forestry Law, Articles 37 and 38.

²⁵Ibid., Art 37(3).

Box 2: Guyana: the incomplete and insecure recognition of Amerindian title

The customary lands and territories of the nine indigenous peoples of Guyana are estimated to cover over half of the country's forest area, yet the indigenous population lacks secure tenure rights to extensive parts of their customary lands. The non-recognition of customary tenure has persisted, with only minor improvements, from the time of Dutch and British colonisation into the post-independence era. Despite the fact that Guyana's Independence Agreement in 1965 included recommendations on indigenous land rights and that an Amerindian Lands Commission consequently was established to carry out these recommendations, indigenous peoples today only hold legal title to 14% of Guyana's land area and even this legal tenure seriously restricts community control over traditional lands. What is more, holding a legal title does not translate to full security against external pressure on the land.

The lack of land tenure security for both legally titled and untitled land can partly be explained by flaws in national legislation, particularly the Amerindian Act (2006). Contrary to international law, this Act fails to recognise that indigenous peoples' property rights are inherent and that they do not depend on acts of recognition by the State. Instead the Act gives discretionary powers to the Minister of Amerindian Affairs to 'grant' areas of 'state land' to indigenous peoples. Even where indigenous peoples do possess land titles 'granted' by the State, these are generally inadequate, covering only a fraction of the peoples' collective territories; and, moreover, the customary owners were not consulted over the final boundaries.

Those parts of indigenous peoples' customary land that are not included in formal legal titles are left open for the State to issue forestry and mining concessions to third parties without consultation with, and consent from, the peoples to whom it belongs - in the case of logging, even without notification that a concession has been granted to a third party. Even within titled lands, rivers and other water bodies are not included and large-scale mining concessions may be imposed without the consent of the affected village, in direct violation of Guyana's obligations under international law.²⁶

The tenure insecurity faced by so many indigenous communities has serious negative impacts on people and the environment. Deforestation, pollution and damage of soil and water due to mining and forestry operations cause great problems for farming, hunting, gathering of materials and fishing. The extractive industries also have serious negative social impacts on life in communities, including sexual violence and abuse of alcohol and narcotic drugs.

Indigenous communities have called for their land tenure situation to be addressed and resolved in accordance with Guyana's international obligations on the rights of indigenous peoples, before the country signs a VPA with the EU.²⁷ They are worried that if this does not happen, concessions will continue to be issued on their customary land (and concessions may indeed increase), and their trees exported as 'legal timber' to the EU with a FLEGT licence. So far, their call has not been reflected in the formal negotiation process, which has noted that the VPA process will be framed around existing legislation and that the land tenure issues will be better addressed through other fora.²⁸ Steps taken by the newly elected

²⁶Griffiths, T and La Rose, J, "Searching for justice and land security: Land rights, indigenous peoples and governance of tenure in Guyana", in *Indigenous Peoples' Rights, Forest and Climate Policies in Guyana: A Special Report*, Amerindian Peoples Association and Forest Peoples Programme, 2014, pp 11-40.

²⁷Statement by indigenous peoples regarding the EU FLEGT process in Guyana, 20th February 2015. <http://www.forestpeoples.org/sites/fpp/files/news/2015/07/Statement%20of%20indigenous%20peoples%20regarding%20the%20EU%20FLEGT%20Process%20in%20Guyana.pdf>

president - including addressing the land issues in a Ten-Point Plan of Action for Hinterland Development²⁹ - do, however, raise hopes that the land tenure issue can be addressed fairly in the final VPA to ensure alignment with Guyana's international commitments to uphold the rights of indigenous peoples. At present, however, the existing draft legality definition and legality matrix does not contain adequate protection for customary land rights.

As noted above, in several cases VPAs incorporate an "implementation framework" which anticipates that legal reforms will be carried out prior to the commencement of TLAS certification. The existence of a reform framework is potentially positive, since in some circumstances it may provide an opportunity for communities, together with local civil society organisations, to advocate for increased protection for indigenous peoples and local communities' rights. However, communities and CSOs are severely disadvantaged in their advocacy by the lack of any requirement (or even encouragement) in the reform agenda in relation to the incorporation of human rights standards. Governments complying with these provisions are often reluctant to include human rights on the agenda, and by not specifically including it, the EU is in effect acquiescing in this approach (and risks also giving its imprimatur to a verification system that involves serious violations of human rights). The lack of reference to human rights means that as yet there has been only limited success in achieving reforms which address these issues in any significant way (see Boxes 3 and 4 below).

Box 3: Reform experiences in Cameroon

Annex IX of the Cameroon VPA contains the "Schedule for Implementation of the Agreement". Section 5 of the table set out in that Annex relates to "Reform of the Legal Framework". The items contained in that section are:

- Review of the forestry law and its implementing texts
- Improvement of the legal framework relating to the domestic timber market
- Improvement of the legal framework relating to forests (community, communal and private forests)
- Improvement of the legal framework relating to social and environmental aspects
- Integration of the relevant provisions of international legal instruments duly ratified by Cameroon³⁰
- Any necessary readjustment of the legality matrix
- Improvement of the legal framework in relation to the industrialisation of the forestry sector and advance processing

²⁸Aide Memoire: Third Guyana-European Union negotiation session on a forest law enforcement, governance and trade (FLEGT), voluntary partnership agreement (VPA), 16 April 2015, Georgetown, Guyana.

²⁹Guyana's indigenous people. Identity, inclusivity and prosperity. Text of an address by Brigadier David Granger, President of the Cooperative Republic of Guyana, to the National Toshias' Council meeting at the Arthur Chung Convention Centre, Georgetown, on 28th August 2015.

³⁰This reference to international instruments duly ratified by Cameroon is promising, in that it leaves open the possibility of compliance with international human rights instruments. However, such an interpretation is undermined by the list of "relevant" human rights instruments contained in the legality annex (Annex II) of the VPA, which does not include a single human rights instrument.

The use of the word “improvement” in the above steps is highly ambiguous – it does not specify any objective standards by which the framework is to be improved, leaving open the possibility that its procedural/technical aspects, rather than any substantive content changes, are required.

Although revision of the 1994 Forestry Law had been envisaged for some time, in accordance with its obligations to review the forestry law and improve the legal framework, between 2010 and 2012 the Cameroonian government prepared a Forestry Bill to replace the 1994 Forestry Law. However, both the process by which this law was developed and the contents of the law itself were inadequate from the perspective of human rights law. For that reason, and with its passage through parliament then expected imminently, on 20 January 2013 FPP, together with two Cameroonian NGOs, Centre pour l’Environnement et le Développement (CED) and Okani, submitted a request to the UN Committee on the Elimination of all forms of Racial Discrimination (the CERD Committee) under its Early Warning and Urgent Action procedure.

Under international human rights law the government must ensure the effective participation of indigenous peoples and minority groups in proposals, including legislative reform, which will affect them. However, as noted in the Request:

... public participation [in development of the law reform] was mainly limited to development of submissions by civil society and other stakeholder groups ... at no time was there a publicly available structured timetable detailing what form the reform process would take ... nor was there any government-led process for ensuring the meaningful participation and consultation of indigenous peoples ... At no stage was there any official publication of any ... drafts to the public. Drafts only became available informally. As a result, even civil society groups in Yaoundé were unclear of what stage had been reached by the Government in this process ... The Government has made no steps to inform communities of the content of the draft Forest Law, or seek their input in revising these drafts.³¹

The Request also raised several concerns about the content, including that it did not resolve (and indeed continued) the discriminatory and expropriatory provisions in relation to indigenous peoples’ land rights in forested areas; that the proposed regime did not guarantee indigenous peoples’ right to participate in, and consent to, proposals which affected their lands; and that it denied access to justice for indigenous peoples, because (inter alia) the limited rights which the new Forest Law granted to them were unclear, subject to suspension, and did not have procedural mechanisms for their enforcement.³²

In its 1 March 2013 response to the Government of Cameroon, the CERD Committee asked the State party to provide information on measures taken to organise meaningful consultations with indigenous peoples and to implement their right to effective participation, and to review the draft forest law in order to check compliance with international laws relating to indigenous peoples and to make any necessary amendments.

³¹Forest Peoples Programme, CED and Okani, “Request for consideration of the implications for the Indigenous Forest Peoples of Cameroon from the imminent adoption of a racially discriminatory new Forest Law under the Urgent Action/Early Warning and Follow Up Procedures”, 20 January 2013, paragraphs 15-20, available at: <http://www.forestpeoples.org/sites/fpp/files/publication/2013/07/cerduacameroonforestlawjan2013english.pdf> (accessed 7 February 2015).

³²Ibid., see especially paragraphs 21-23, 35-38, 46.

The experience of indigenous and local communities in relation to the reforms to the forest law demonstrates the problems entailed in the VPA “reform agenda” with respect to human rights. While reforms may be required under the VPA, the VPA contains no clear, and certainly no binding, indication of the content which these reforms should contain or the manner in which the reforms should be undertaken. It has only been the efforts of national civil society that have prevented this non-participatory approach from succeeding to date: but the ultimate effects on the content of reforms remains unknown.

Box 4: Positive reform experiences

Although not perfect in relation to human rights, VPA processes have given rise to a number of positive experiences, particularly in relation to fostering greater inclusion and national debate. There are several examples where the VPA is reported to have opened political space for positive reforms, or given additional momentum to civil society advocacy and reforms already underway.

In Liberia, progressive reform of forest sector laws was initially a response to the UN sanctions placed on timber and other resources whose trade had been found to have fuelled Liberia’s civil conflict. Revision of Liberia’s land tenure law arose from the process of addressing the underlying causes of the conflict in order to prevent a repetition. The negotiation and eventual ratification of the VPA with the EU has helped to maintain momentum in the reform agenda in relation to both land and forests. A Land Rights Policy was concluded in 2013 and the adoption of a new Land Rights Act is expected soon. While the Land Rights Policy and associated Bill do provide for legal recognition of customary rights (a significant milestone), it remains to be seen what the final Bill will include and the impact it will have on communities in practice.

One key hurdle is the fact that the Land Rights Bill maintains pre-existing concessions on lands recognized as customary lands, which has the potential to limit significantly the enjoyment of community land rights, given that state-granted concessions cover at least one third of Liberia’s land area. It remains unclear how the VPA will address forest sector legality in situations where timber is extracted from these concessions, already established on customary lands against the wishes of communities. Such situations may be consistent with the new Land Rights Law, but will remain in violation of both Liberia’s international human rights law commitments and Liberia’s domestic human rights laws, to the extent that those international human rights laws have been enacted in domestic legislation.

In another example, in the Republic of Congo, law reforms anticipated by the VPA have brought about an improved legal regime in relation to consultation and consent requirements. Part 3 of Annex IX of the RoC VPA sets out legislation and regulations to be supplemented as part of the VPA process, and requires the introduction of:

4. Framework decree laying down conditions for joint and participative forest management as set out in Article 1(2) of the forestry code and covering in particular:

- the terms of involvement of local, indigenous populations and civil society in the process of classifying and declassifying forests,
- the involvement of resident populations and civil society in the management of forest concessions.

5. Decree laying down the terms of involvement of local communities, indigenous populations and civil society in making decisions relating to the drafting of terms and conditions.

6. Implementing regulations specifying three different aspects of community forests: the concept of community forests, the processes of parcelling and procedures for the management of these forests guaranteeing the involvement of all parties concerned.

7. Implementing regulations laying down terms for the involvement of local communities and indigenous populations in the management plan (parcelling of community blocks etc.).

The requirements of the VPA in this case are more targeted at achieving greater participation as a result of the law reform (requiring conditions for “joint and participative forest management”) than, for example, those in the Cameroon VPA, whose stated aims were to “improve the coherence of the legal framework applicable to the forestry sector” and to “complete existing aspects that are inadequately structured or regulated” (Annex X, II.m), without specifying the substantive aims of reforms.³³ One CSO which FPP spoke to noted that the VPA gave an added push to civil society efforts to support the Indigenous Peoples Rights Law, which was passed by the parliament on 30 December 2010.³⁴

There is also considerable progress towards greater tenure security evident in the draft Honduras VPA, which is to date the only VPA (albeit still in draft) to make explicit reference to an international human rights law in relation to tenure rights, specifically ILO Convention No. 169 on Indigenous and Tribal Peoples.³⁵

Free, prior and informed consent

As mentioned above, in international human rights law, proposals which may affect the customarily-held territories of indigenous peoples can only proceed after consultations which permit their effective participation and, at least where the proposal is of large scale and/or threatens the physical or cultural survival of the community involved, with their free, prior and informed consent.

Some VPAs (finalised or in draft) appear to provide some protection to local communities and/or indigenous peoples’ rights in this regard, such as the VPAs in Liberia and Ghana, and to a lesser extent, the Republic of Congo. However, implementation remains a key challenge in relation to FPIC, and a full understanding of the application of these principles is not evident from the VPA itself and would require an in-depth understanding of the national laws to which they relate – and compliance in practice – and the observations below should be read with that caveat.

Principle 1 of Ghana’s legality annex states that in order for timber to be legal, it must have “*originated from prescribed sources and concerned individual, group and owners gave their written consent to the land being subjected to the grant of timber rights*”. While this appears consistent with the FPIC requirement, it is not clear from the VPA how “concerned individuals and groups” are identified (and whether it includes all affected communities/ community members),

³³Likewise, Annex IX, which sets out the schedule for implementation, requires in relation to legal reform “an improvement of the legal framework relating to social and environmental aspects”, but without giving any indication of how this needs to be improved or minimum standards for its content.

³⁴Personal communication, J Christian, FERN, August 2015.

³⁵Kipalu, P, et al., *Securing Forest Peoples’ Rights and Conserving Forests in the Democratic Republic of Congo*, Forest Peoples Programme, forthcoming (2016).

nor who is entitled to provide the consent (for example, whether it is a community-wide process or only a specific representative, who may be subject to capture). In addition, the consultation and discussion process is not the subject of any explanation (the requirement is only “written consent”); it is unclear whether this provision is consistent with the requirements for consent to be free, prior and informed.

Liberia’s VPA contains a similar provision. Principle 2, Indicator 2 of Liberia’s legality matrix requires that “All communities within 3,0 kilometres of the proposed concession area (called ‘affected communities’) have been consulted by FDA and have given their informed consent to the proposed concession”. While this provision is clearer about the groups from whom consent must be sought, it is not clear that the requirements of “informed consent” meet international law standards (nor does the VPA appear to have concerned itself with this). In addition, the 3 km limit is arbitrary, and may not result in the consultation and consent of all affected customary communities.

These more progressive provisions generally reflect the (existing) currently more progressive approach to community land rights in Liberia and Ghana compared to many of the other countries considered in this briefing paper – it is not a requirement that has come from the EU or the VPA process itself. Consistent with this, in several of the other countries under consideration, there is no requirement for community consent, nor necessarily even a requirement for consultation.

Box 5: Forestry without consultation or consent in the Democratic Republic of Congo

During the colonial period, the land tenure system established by the Congo Free State dispossessed indigenous peoples of their traditional lands. Dispossession occurred inter alia by means of creation of colonial plantations, the construction of parks and reserves for biodiversity conservation purposes and the development of farming or infrastructure projects.

The concept of *terra nullius* was used to legitimise the colonial appropriation of lands and territories. Post-colonial laws have hitherto been based on an archaic doctrine of State ownership of the “land occupied by local communities,” assuming that any land not transformed into a “modern” mode of use, or that is left “vacant”, can be allocated to third parties. Subsequent post-colonial laws including land and forestry legislation dispossessed indigenous peoples of their customary rights, and transferred land ownership to the State. The historical injustices imposed on indigenous communities by the colonial State, and which the law of 20th July 1973 was expected to correct, remained unaddressed in the post-colonial era.

In 2012, the DRC Government engaged in a land reform process, with a view to clarifying the customary rights of indigenous and local communities, secure their land rights and bring appropriate solutions to the issue of legal pluralism in the current legal framework. Prior to engaging in the land reform process, a new Forest Code was adopted in 2002, which provides that forests are State property. However, forest usage rights can be granted by means of forestry concessions. The Forest Code does not directly address the issue of local peoples’ rights in production forests. However, in general, local communities have usage rights in accordance with their customs and traditions (Articles 41 to 44), although these rights are severely restricted.

The 2002 DRC Forest Code abolished existing types of industrial logging title, replacing them with a “*Contrat de concession forestière*” (CCF), to which existing titles were to be converted if they passed the requirements of a legal review. In May 2002 a moratorium on the awarding of new industrial titles was signed, but was immediately violated³⁶ In July 2003 the World Bank estimated that the total number of new titles awarded since the moratorium covered some 9.5 million ha.³⁷ It is in this context that on 25 September 2015, the government

passed a new Ministerial Order (Arrêté 050) that creates a new category of artisanal logging concessions. The law was passed without public consultation, but will have severe impacts on local communities and forests in the country. The new law effectively bypasses the moratorium on new logging concessions that has been in place since 2002.

Forests cover 60% of the DRC and most of the indigenous and local communities living in DRC depend on forest resources for their livelihoods. Therefore, policy decisions about the forest have profound and lasting impacts on a large proportion of the population. Forest policies are influenced by land tenure in the DRC, and because of this forest dependent communities are arbitrarily deprived of their customary lands. Conflicts between local communities and logging companies, as well as violations of human rights, have emerged as a result of illegal logging.

Free, prior and informed consent is not a requirement under the new Forest Code of 2002. Instead there are vague mentions of a “public enquiry” before the allocation of concessions (Article 10) as well as prior consultation before the classification of forests (Article 15). But in reality the logging companies generally do not comply with this requirement. Indigenous communities, therefore, are usually only informed of the existence of a logging concession on their land when their access to the forest is prohibited or restricted. For example, forest concessions issued to companies such as *l’Industrie de Transformation du Bois* (ITB) were established on indigenous peoples’ customary lands in the territories of Ingende and Bikoro in Equateur Province, without prior consultation and without having obtained the consent of the affected communities. Indigenous peoples have also occasionally been forcibly removed from their lands, often reducing them to a state of extreme poverty. For example, indigenous communities were dispossessed of their lands as a result of forest concessions established at Béni in North Kivu Province and at Ituri in Orientale Province. In addition to that, failure by logging companies to respect their contractual obligations stipulated under the social investment agreements (“cahier des charges”) with affected communities has also generated resistance from communities and conflict between communities and the companies.

Transparency and access to information

One of the achievements of the VPA process in several countries has been to incorporate provisions, in the annex known as the “transparency annex”, which require the publication of certain types of information about forestry concessions and operations. This is an important step for many countries, where access to information has been traditionally quite limited, facilitating corruption and preventing informed participation by citizens, and in particular affected communities.

There is no doubt that the VPA process has prompted some steps towards greater openness in the forestry sector, although the progress has varied between different countries. In Guyana, the relationship between the Guyana Forestry Commission and civil society organisations has arguably been strengthened, and become more open and direct, through the VPA process. Government websites which set out VPA-related information have also been set up in several countries (see for example that of Ghana).³⁸

³⁶Greenpeace, (2015) “Trading in chaos, the impact at home and abroad of illegal logging in the DRC”, p 4.

³⁷World Bank (2003) Aide-Mémoire, Mission de suivi du secteur forestier (1er – 12 juillet 2003).

³⁸www.fcghana.org/vpa/

However, these efforts have not always been backed by a clear political will (or in some cases lack the resources needed) to make information both publicly available and more widely accessible. In Cameroon, although a government website has been set up to publish forestry concession information,³⁹ it is frequently out of date. The information that is released – and there is certainly some, reflecting an improvement on previous practices – is often only published well after decisions have been made (for example, 6 months after concessions have been granted). Moreover, large sections of information envisaged to be published are yet to be released.

In addition, despite these efforts at an aggregate level, FPP has on numerous instances, including in conjunction with members of affected communities, sought access to details of specific forestry concessions directly from the Ministry of Forests and Fauna, both at national and departmental level. These efforts have without exception been met with evasion or outright refusal, with the administration only having provided a copy of the documents sought on one occasion.⁴⁰ While the push for transparency has been useful and important, it needs in our view to be backed up by specific rights, held by all citizens, to demand and receive information from the government (under general access to information laws), rather than focussing solely on government obligations to publish specific details, which can be subject to delays and obfuscation, and can leave out critical information to which communities and citizens need access.

General references to human rights standards

Apart from references to labour standards in any timber operations, there are generally no international human rights laws referred to within the legality annexes of the VPA. This omission is concerning – it suggests that not only are human rights laws not being imposed as a prerequisite by the EU, they are not even being included within the frame of reference for discussions on the issue.

There are a few exceptions to this position. The first is the Cameroonian VPA, which states in its legality annex:

*The definition of the legality of the commercial timbers is based on the knowledge and application of the laws and regulations in force in Cameroon, **and on compliance with the international legal instruments duly ratified by Cameroon in the forest, commercial, environmental, social and human rights fields.** [Emphasis added]*

³⁹<http://apv.minfof.cm>

⁴⁰This document, which was merely a map of a particular area showing existing forestry and other allocations, was provided after several efforts to obtain these details, and only a small section was provided, with no GPS details.

As a matter of law, this statement is factually incorrect. While the legality definition set out in the Cameroon VPA is based upon existing tenure laws, these laws do not respect customary land rights of communities (including indigenous communities), and therefore directly contravene Cameroon's obligations under several human rights laws it has ratified, including the African Charter on Human and Peoples' Rights⁴¹ and the International Convention on the Elimination of All Forms of Racial Discrimination,⁴² among others. Moreover, the credibility of this reference to human rights is undermined by the fact that when the Cameroon VPA subsequently lists "relevant international instruments", not one international human rights instrument is listed. Moreover, there is neither explicit nor implicit incorporation of any relevant human rights standards within the legality matrices.

A more promising example is the draft legality definition in the Honduras VPA. The initial draft includes compliance with an international human rights instrument, namely the ILO Convention No. 169 on Indigenous and Tribal Peoples, in relation to assessing legality under the proposed matrix. Specifically, the draft proposes that, in order for timber to be legal, there must be both recognition of land rights of indigenous peoples and Afro-descendant communities (draft criteria 3.3) and compliance with the principle of free, prior and informed consent under ILO Convention No. 169 (draft criteria 3.1). However, the negotiations for this VPA remain in an early stage, and it is not yet clear whether these proposals will survive wider negotiations within the government.

Overview of VPA protections

The lack of any systematic incorporation of international human rights laws means that there is a wide variation in the protection offered to indigenous and communities' rights contained in VPAs. As noted above, the draft Honduran VPA, and the already-signed Ghanaian and Liberian VPAs, appear to require some degree of participation in decisions relating to, and consent for, forestry activities on customary lands. These VPAs therefore appear to offer the strongest protection to indigenous peoples and local communities.

At the other end of the scale, some VPAs make no reference to indigenous peoples or community rights at all, and have very limited scrutiny of social impacts. For example, the legality matrices for the Indonesian VPA generally do not have any social or community indicators (despite the fact that Indonesian law recognises the rights of forestry communities). The only social safeguards are those required by (and contained within) the environmental impact assessment undertaken for the project. However, environmental impact assessments do not require FPIC nor do they recognise indigenous peoples' rights to customary lands. While in theory there is an obligation to consult, in fact the Environmental and Social Impact Assessment ("ESIA") process is rarely carried out as intended (for example, ESIA's are prepared by copying older ESIA's: see Box 6 below) and the requirement to consult is rarely respected in practice.

In between these extremes is a range of VPAs and draft VPAs which include some protections for local communities, but fall far short of international law requirements. For example, the current draft of the legality annex in the Guyana VPA does not require consent from local users for the

⁴³See e.g. the important 2013 decision of the Constitutional Court of Indonesia: Decision Number 35/PUU-X/2012. For a more detailed explanation of the shortcomings of the Indonesian VPA from a human rights perspective, see Rainforest Action Network, *False Assurances: A briefing for international buyers and customs authorities on how Indonesia's timber legality verification system fails to protect community rights*, RAN, April 2015, available at https://d3n8a8pro7vhnmx.cloudfront.net/rainforestactionnetwork/pages/5790/attachments/original/1429822653/RAN_False_Assurances_LOW.pdf?1429822653=&awesm=a.ran.org_b26 (accessed 14 December 2015).

⁴⁴See Indonesian VPA, Legality Matrix 1, Principle P4 (and associated criterion and indicators), which requires that the forestry operator has an approved EIA document and implements the measures identified in it, and that reports on the environmental management plan indicate the actions taken to provide social benefits. There are no other social safeguards. Similar provisions exist in the other pertinent Indonesian legality matrices.

grant of a concession, but nonetheless prevents forestry operators using their concession in a way which interferes with recognised customary use rights (see Indicator 1.2.2). However, as noted in Box 2 above, this apparent protection masks the fact that the recognition of customary land rights within Guyana is limited, and significantly less than their recognition in international law.

Other examples of VPAs which provide some protections to communities but fall short of FPIC are those requiring forest operators to compensate customary users for damage caused by their activities (see e.g. Republic of Congo, Annex II, Indicator 3.2.3; DRC draft legality annex, indicator 3.3.4; Ivory Coast draft legality annex, indicator 7.2.3). For indigenous peoples and many local communities, compensation for damages does not in fact compensate for real losses, and in any event is not equivalent to protection of their property rights. Moreover, the existence of (and levels of) compensation depend upon the degree of national recognition of customary users rights. Where communities are entirely dispossessed, compensation assessed on the “market” value of the land acquired or damaged – and often compensation is capped at less than that – rarely makes up for the lifelong loss of a livelihood which dispossession normally entails. There are often no alternative livelihood options available for communities, and no alternative land to pursue traditional activities. In these circumstances, even in purely economic terms (and leaving aside the equally important cultural and social losses), communities are generally significantly disadvantaged in the medium to longer term by the loss of their lands. The social and cultural impacts for indigenous and tribal peoples can be devastating.

Verification processes

There is also in some circumstances a potential for mismatch between the standards required for legality and the procedures for verification. This is apparent, for example, in the case of Cameroon described above, where the broad description of legality (including reference to human rights) is not replicated in the Timber Legality Assurance System (TLAS) (or indeed, the legality matrices also contained in Annex II).

There is also already evidence of the difficulty of effectively using official certification to ensure compliance in the context of FLEGT. Even when complex documentation requirements are developed, that is no guarantee that they will be followed. The Report of the Independent Auditor of the FLEGT system in Cameroon, finalised in August 2014 but still not officially published more than 15 months later (it was leaked in the French press in August 2015)⁴⁵ reviewed documentation for all forestry concessions granted between 1996 and the end of 2013, all ventes de coupe (sales of standing timber) allocated between 2011 and the end of 2013, all community forests which were the subject of a final agreement at the end of December 2013, all municipal forests as at the end of December 2013, and other permits⁴⁶ active in January 2014.⁴⁷ The Report found that, three years after ratification of the VPA, not one of the forestry concessions, sales of standing timber or “special permits” had sufficient documentation to demonstrate full compliance with the VPA legality matrix.⁴⁸ It found that timber removal licences (*Autorisations d’enlèvement de bois*, AEBs) were globally not compliant (there were insufficient examples to conclude in relation to timber recovery

⁴⁵See Fanny Pigeaud, “Un rapport européen dénonce l’illégalité de l’exploitation forestière au Cameroun”, 19 August 2015, *Médiapart.fr*, available at: www.mediapart.fr/journal/mot-cle/exploitation-forestiere (accessed 14 December 2015). Reports were subsequently published in the Cameroon media. A response from the Ministry of Forestry and Fauna, in which the findings of the report were largely denied, was published in *Le Quotidien le Jour* on 28 August 2015.

⁴⁶These permits included “autorisations de recuperation de bois” (ARB), “autorisations d’enlèvement de bois” (AEB), and “special permits”.

⁴⁷Audit Indépendant du Système FLEGT au Cameroun, *Evaluation de la conformité des documents associés au processus d’attribution de chaque titre foncier en vigueur au Cameroun*, August 2014, page 12. Hereafter “**Cameroon FLEGT Evaluation 2014**”. The audit covered 104 forestry concessions (“Unités Forestières d’Aménagement” or UFAs), 61 ventes de coupe, 410 community forests, 10 municipal forests, and 20 special permits.

licences (Autorisations de recuperation de bois, ARBs).⁴⁹ By contrast, about 56% of community forests could show compliance with the legality matrix.⁵⁰ This may be indicative of the fact that enforcement and compliance generally weighs more heavily on (marginalised) communities, and/or that more broadly community management increases compliance with legal requirements.

Box 6: False Assurances in Indonesia

SVLK [TLAS] Reliance on Often Fraudulent Social Impact Documents

In its approach to community rights, the SVLK legality standard relies on environmental and social assessment (known by the Indonesian acronym AMDAL) and the reporting on mitigation activities through various annual reports submitted by companies, known in Indonesia as RKT (annual work plan) and RKL/RPL (environmental management/monitoring plans). These documents are nominally intended to identify social and environmental impacts from forest conversion and forestry company activities, and the means by which companies avoid, reduce, mitigate and offset these negative impacts.

However, it is widely acknowledged that in practice AMDAL documents are routinely fraudulent, with entire sections cut and pasted from the documents of other, unrelated operations. For example, Certisource (an independent UK timber-monitoring body in Indonesia) confirmed this widespread practice and the inability of certification to address it:

This is a very valid and worrying concern (and Certisource has experienced such occurrences). However, this is to a large extent the responsibility of the government. If the government approves these (often blatant) cut-and-paste documents, it is ultimately the government's responsibility. It is not the mandate of CertiSource auditors to audit the government. The auditors can only verify documents according to legal requirements.

While the approval of blatantly fraudulent documents constitutes illegal behaviour on the part of the government officials, it is also illegal behaviour on the part of the companies to falsify and submit such documents. The SVLK in its current form does nothing to curtail such illegal behaviour because, as previously mentioned, its auditors do not investigate the legality of even blatantly fraudulent documents.

It is arguably well within the scope of a legality audit to assess a company's monitoring and mitigation of their social impacts through examination of their annual management and monitoring reports. Unfortunately, independent monitors report that, in practice, these documents are often verified only for their existence, and not for their accuracy with actual field performance. The environmental impact assessment and mitigation process in Indonesia, in its current form, is too shaky a foundation on which to rest the safeguarding of community rights. To provide credible assurance of legality, the SVLK must, therefore, include a more rigorous investigation of field performance by auditors and independent monitors.

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⁵¹Extract reproduced from Rainforest Action Network, False Assurances: A briefing for international buyers and customs authorities on how Indonesia's Timber Legality Verification System fails to protect community rights, RAN, 2015. The full report is available at https://d3n8a8pro7vnm.cloudfront.net/rainforestactionnetwork/pages/5790/attachments/original/1429822653/RAN_False_Assurances_LOW.pdf?1429822653=&awesm=a.ran.org_b26 Footnotes have been omitted, but can be found in the original report.

Even where the legality matrix provides some greater formal protection to communities, where verification mechanisms are inadequate and top-down there is a risk that this will provide limited protection in practice. For example, the verification guidance associated with Liberia's provision requiring consent is as follows:

Verification method

Description:

The LVD shall verify that FDA plans its forest land use through statutorily required consultations with communities and other stakeholders. In the case of consultation with communities, the LVD shall confirm the fact and quality of the consultations by review of documentation, including the report of the socio-economic survey and the timing and arrangements relating to the conduct and discussions at the meetings. If necessary, other government agencies such as the Ministry of Internal Affairs and the relevant affected communities may be consulted.

Verification means:

- 1. Consultation with the FDA and, if necessary, the Ministry of Internal Affairs and affected communities*
- 2. Document Review*

Once during the contract period

Although obviously seeking to incorporate community consent, the verification process relies on top-down assurances that the appropriate procedure has been followed (the responsible entity to confirm this is a government body). Verification is therefore based on the existence of a limited number of official written documents, which can be falsified relatively easily. Discussion with the affected communities for the purposes of verification is not universally required, and it is unclear when this would be considered "necessary". There are no standards specified for the consultations, and importantly nor is there any stated mechanism for communities to contest the validity of consultations (and invalidate any procedure). This limits the accountability of government officials to the community, and also leaves the process more vulnerable to corruption.

Basing certification on the mere existence of government-approved documents, in countries where corruption is known to be a problem, is not a sufficient safeguard for communities. Safeguards need to be much stronger: they need to involve audits of the actual position on the ground, and the processes involved, and they need to involve affected communities. The input of communities can be a useful check on the "official" record, which in most or all VPA countries is at risk of falsification because of corruption at worst, or a cursory tick-box verification at best. Unfortunately, at present this type of full compliance audit is generally considered beyond the scope of VPA auditing processes, which creates a high risk of false certifications.

conclusion and recommendations

Sustainable and equitable forest governance is inescapably linked with questions of tenure, including in particular community tenure and the division of property rights. As has been recognised in the FAO's Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forestry in the context of national food security, tenure security is a central question in good forest governance. Equitable and secure customary tenure for indigenous peoples and local communities is critical for managing sustainable forests and equitable outcomes.

While recognising there may be practical limits to the ability of the EU to insist on the implementation of human rights laws in non-member state countries, questions of tenure and related human rights standards and obligations cannot be left out of discussions of forest governance. Doing so not only risks acquiescing in or even increasing the risk of human rights violations in partner countries, it is also likely to lead to land conflict and to adverse outcomes for forest governance, as marginalised and dispossessed communities are forced to overuse remaining forest resources for survival. On the demand-side, a FLEGT licence cannot reassure European consumers of the legality of timber products they purchase without full compliance with the laws applicable to export countries, including human rights laws.

It is important that the EU presents real incentives and a clear position of support to the recognition of customary tenure rights in accordance with international human rights law (most or all of which have been ratified by the partner countries with whom it is negotiating, and many of which are also legally binding for the EU and its member states). Such an approach will help promote a legal and sustainable timber supply chain. It will also encourage progressive developments and provide much needed support to civil society in pressing for human rights-compliant reforms. In addition, standards accepted by the EU are likely to be a benchmark for timber and other trade with other countries; in these circumstances, omitting human rights from the equation could cause lasting harm to forest-dependent communities, who remain highly vulnerable to dispossession under many current national laws.

Conversely, it is important that the EU provides real disincentives, including a clear position of the economic consequences for market access, in instances where VPA countries consistently fail to make real progress in implementing human rights laws to which they are a party.

This comparative assessment of FLEGT VPAs from a human rights standpoint gives rise to a series of recommendations pertinent to the consolidation and update of the EU Action Plan on Forest Law Enforcement, Governance and Trade. FPP's recommendations in this regard are that the EU:

- Adopt a specific, unequivocal stance in support of partner countries' recognition of customary tenure rights and all other legally protected human rights, consistent with international human rights laws and the standards set out in the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests;
- Take steps to improve policy coherence between the FLEGT Action Plan and other EU policies, including the EU Action Plan on Human Rights;
- Make integration of partner countries' international human rights obligations a compulsory agenda item in discussions over the VPA (and in particular in discussions about legal reforms);
- Require the inclusion of specific citizens' direct rights to access relevant information as part of the transparency agenda, not merely obligations on government to publish information;
- Recognise directly the positive linkages between secure community tenure rights, sustainable management of forests and decreased deforestation;
- Include measures to reduce conversion timber stemming from forest clearance for agribusiness and other developments;
- Ensure individuals and communities have accessible and effective methods to challenge verification methods and the grant of concessions;
- Strengthen import rules so that timber produced in violation of human rights standards is not accepted for sale within the EU, including by integrating human rights due diligence into all existing EU due diligence and public procurement requirements, including where that timber has been imported via intermediary countries, and create mechanisms whereby citizens of importing countries can raise the issue with the EU for non-compliance;
- Provide technical advice and guidance on creating more accountable and community-focussed verification mechanisms.

appendices

Appendix I

International human rights instruments ratified/adopted by countries considered in this study

	Ghana	Cameroon	Liberia	Indonesia	Republic of Congo	Guyana	Honduras	Vietnam*	Democratic Republic of Congo	Côte d'Ivoire
GLOBAL INSTRUMENTS										
ICCPR	x	x	x	x	x	x	x	x	x	x
ICESCR	x	x	x	x	x	x	x	x	x	x
CERD	x	x	x	x	x	x	x	x	x	x
CEDAW	x	x	x	x	x	x	x	x	x	x
CAT	x	x	x	x	x	x	x	SIGNED BUT NOT RATIFIED	x	x
CRC	x	x	x	x	x	x	x	x	x	x
CED	SIGNED BUT NOT RATIFIED	SIGNED BUT NOT RATIFIED		SIGNED BUT NOT RATIFIED	SIGNED BUT NOT RATIFIED		x			
CRPD	x	SIGNED BUT NOT RATIFIED	x	x	x	x	x		SIGNED BUT NOT RATIFIED	x
ILO Convention No. 169							x			
REGIONAL INSTRUMENTS										
ACHPR	x	x	x	n/a	x	n/a	n/a	n/a	x	x
Maputo Protocol	x	x	x	n/a	x	n/a	n/a	n/a	x	x
ACHR	n/a	n/a	n/a	n/a	n/a		x	n/a	n/a	n/a

In addition to the above, all of the above countries save for Côte d'Ivoire (whose representative was absent during the vote) voted in favour of the adoption of the United Nations Declaration on the Rights of Indigenous Peoples in the UN General Assembly in 2007.

*Vietnam has also endorsed the ASEAN human rights declaration, although this is not a treaty per se.

Appendix II

Table of VPA legality extracts – GHANA

Definition of legally produced timber	Legality annex	TLAS / Verification system	Supporting measures and/or implementation schedule
<p>Article 2(i)</p> <p>“Legally produced timber” means timber products harvested or imported and produced in accordance with the legislation as set out in Annex II.</p> <p>Article 7: For the purposes of this Agreement, a definition of “legally produced timber” is set out in Annex II. The definition sets out Ghana’s national and sub-national legislation that must be complied with in order for timber products to be covered by FLEGT licences. It also sets out the documentation including criteria and indicators that shall serve as proof of compliance with such legislation.</p>	<p>Annex II</p> <p>PRINCIPLE 1 Source of Timber: Timber originated from prescribed sources and concerned individual, group and owners gave their written consent to the land being subjected to the grant of timber rights.</p> <p>CRITERION 1.2 Land owner, individual or group consent</p> <p>4. LAWS AND REGULATIONS IN FORCE IN GHANA</p> <p>CONSTITUTIONAL PROVISIONS, 1992</p> <p>2. Article 267(1) vests stool lands in the appropriate stools in trust for their subjects in accordance with customary law and usage.</p> <p>6. Article 268 Requirement of Parliamentary ratification of agreements relation to the grant of a right or concession for the exploitation of any natural resources.</p>	<p>Article 8 and Annex V</p> <p>Critical Control Points</p> <p>For the purpose of tracking and controlling timber flows, the following critical control points are identified and described in the supply chain:</p> <p>(i) Source of Timber</p> <p>(ii) Timber Rights Allocation</p> <p>1. Source of Timber and Allocation of Rights</p> <p>Wood products coming from Ghana will be derived from legally designated areas and will be allocated according to legal prescription. Such products will come from designated areas within forest reserves, plantations, off-reserves areas or submerged forests. Timber rights will accordingly be obtained in the form of Timber Utilisation Contracts (TUCs), Salvage Permits and Plantation Felling Permits according to the provisions in the legal standard, specifically to principles 1 and 2. The controls will therefore start from the enumerated tree in these designated areas. The allocation of use rights (TUCs) are governed by procedures and the bidding sessions are conducted publicly. The record of bid winners is public. The procedures for allocating TUCs are available on the website of the FC. Additionally, public summary reports of all other use right holders (Salvage Permits, and Underwater use rights) will be indicated as an output of the verification process to increase transparency.</p> <p>CRITERION 1.2 Land owners/ individual / group consent</p>	<p>Article 15:</p> <p>The Parties have agreed that in order to address the root causes and drivers of illegal logging, supplemental measures are required to strengthen sector governance and the legal framework. Particularly with regard to tackling the challenges of growing domestic demand and the need to retool industry to remain competitive, Ghana shall endeavour to undertake measures as outlined in Annexes IX and II.</p> <p>Annex II</p> <p>Ghana recognises that the provisions in the existing law which provides grounds for the forgoing legality definition framework needs to undergo significant reforms to be able to address existing inadequacies as well respond to emerging issues in the sector that bothers on the principles of good governance. Ghana wishes therefore to indicate its intention to carry out legal and policy reforms in the spirit of good forest governance. It is expected that such legal reforms could be completed in the next five years.</p> <p>Areas that require policy and legal reforms include:</p> <ul style="list-style-type: none"> – affirmation of local forest tenure and of different stakeholder rights, particularly farmers in different types of forests and clarification of the respective scope of local; (including customary) and national institutions in forest management to: <p>(a) sustain forests</p> <p>(b) develop and exploit forests (both timber and non-timber).</p>

Definition of legally produced timber	Legality annex	TLAS / Verification system	Supporting measures and/or implementation schedule
		<p>CRITERION 1.2 Land owners/ individual / group consent</p> <p>Responsibility FC-FSD checks on Public notification through districts quarterly reports.</p> <p>Procedure On-reserve <ul style="list-style-type: none"> • Consent embodied in the reserve management plan (FC-FSD). Off-reserve <ul style="list-style-type: none"> • Land owner and affected farmer(s) identified through District Assembly, Traditional Council, Unit area, District Forest Office as part of the consultation process; • Constitute field inspection team as stated by law (FC-FSD); • Any tenure disputes resolved through arbitration (FC-FSD); • Local stakeholders (e.g. land owners, affected farmers) consented in writing to harvesting of the resource. Output <ul style="list-style-type: none"> • District Notices; • Written consent; • Consultation Minutes; • Records Arbitration of Proceedings. </p>	<p>Annex IX</p> <p>Industry restructuring and expansion of plantations will play major roles in achieving Ghana's vision of a sustainable forest sector. Industry restructuring will require capacity building of trade associations and the wood industry training centre, recapitalisation and retooling of the wood processing industry to support downstream processing. Plantation development, which in addition to expanding domestic wood supply will create opportunities for CDM related activities, will require land reforms, development of benefit sharing arrangement and significant levels of investment.</p> <p>3. Legal Reforms</p> <p>3.1. Introduction of subsidiary legislation</p> <p>3.2. Review and consolidation of forestry laws</p>

Appendix II

Table of VPA legality extracts – CAMEROON

Definition of legally produced timber	Legality annex	TLAS / Verification system	Supporting measures and/or implementation schedule
<p>Article 1(k):</p> <p>“Timber produced or acquired legally” means timber originating from one or more production or acquisition processes, including imported timber, which conforms entirely to all the criteria laid down in the laws and regulations in force in Cameroon and applicable to the forestry sector, and verified/controlled in accordance with the terms and conditions set out in Annex II.</p> <p>Article 8:</p> <p>1. For the purposes of this Agreement, a definition of timber legally produced or acquired appears in Article 1(k) and in Annex II.</p> <p>2. Annex II also sets out the Cameroon legislation which must be complied with before a FLEGT licence may be issued. It includes “legality matrices” with criteria, indicators and verifiers enabling compliance with the law in force to be established</p>	<p>1. Definition of legality</p> <p>The legality of timbers placed on the market is based on compliance with national laws and regulations and duly ratified international legal instruments, the application of which is necessary in order to guarantee the viability of forest management by the producing and/or exporting enterprise, its suppliers and subcontractors, in the name of the owners of the forest (the State, the local government district, a private owner or a community).</p> <p>The definition of legality drawn up by consensus by all the stakeholders in this spirit may be summarised thus:</p> <p>Any timber which has been verified/controlled as originating or coming from one or more production or acquisition processes that meet all of the statutory or regulatory provisions in force in Cameroon applicable to the forest sector shall be deemed to be legal timber.</p> <p>The definition of the legality of the commercial timbers is based on the knowledge and application of the laws and regulations in force in Cameroon, and on compliance with the international legal instruments duly ratified by Cameroon in the forest, commercial, environmental, social and human rights fields. The national laws and regulations under consideration include in particular:</p> <p style="padding-left: 20px;">the Constitution of the Republic of Cameroon</p>	<p>Article 9:</p> <p>1. Cameroon shall establish a system for verifying that timber and derived products have been produced or acquired legally and that only shipments verified as such are exported to the Union. The system for verifying legality includes compliance checks in order to provide the assurance that the timber and derived products destined for export to the Union have been legally produced or acquired, and that FLEGT licences have not been issued for shipments of timber that have not been legally produced or acquired, or that are of unknown origin. The system shall also include procedures to ensure that timber of illegal or unknown origin does not enter the supply chain.</p> <p>2. The system for verifying the legality of timber and derived products is described in Annex III-A.</p> <p>Annex III-A</p> <p>With the exception of the UTB matrix, which has certain specific features, all the legality matrices are based on five (5) common criteria, covering the aspects of administration (criteria 1), logging and management (criteria 2), transportation (criteria 3), the social area (criteria 4) and the environment (criteria 5). Dependent on the matrices, these criteria are broken down into a variable number of indicators, which are in turn broken down into verifiers.</p> <p>Verification of the conformity of the situation of every forestry entity with its verifiers is based on the technical documents stipulated in the</p>	<p>Annex IX – Schedule for Implementation of the Agreement</p> <p>5. Reform of the legal framework</p> <p>5.3. Improvement of the legal framework relating to forests (community, communal and private forests)</p> <p>5.4. Improvement of the legal framework relating to social and environmental aspects</p> <p>Annex X – Supporting measures</p> <p>II m. Reforms of the legal framework</p> <p>Justification</p> <p>— Improving the coherence of the legal framework applicable to the forestry sector</p> <p>— Completing existing aspects that are inadequately structured or regulated</p> <p>Planned action</p> <p>— Review of forestry law and its implementing texts</p> <p>— Improvement of the legal framework relating to the domestic timber market</p> <p>— Improvement of the legal framework relating to community, communal and private forests</p> <p>— Improvement of the legal framework relating to social and environmental aspects</p> <p>— Integration of the relevant provisions of international legal instruments duly ratified by Cameroon</p> <p>— Any necessary readjustment of the legality matrix</p> <p>— Improvement of the legal framework in relation to the industrialisation of the forestry sector and advanced processing</p>

Definition of legally produced timber	Legality annex	TLAS / Verification system	Supporting measures and/or implementation schedule
	<p>The international legal instruments referred to above include, inter alia:</p> <ul style="list-style-type: none"> -the Treaty on the Conservation and Sustainable Management of Ecosystems of Central Africa and establishing the Central Africa Forests Commission – COMIFAC (February 2005) -the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), signed on 3 March 1973 and amended on 22 June 1979 -the Convention on Biological Diversity (CBD), signed in June 1992 <p>The application of the provisions of these international legal instruments shall follow their transposition into national legislative texts.</p> <p>Any amendment to these texts and any new legislation in this field will give rise to a subsequent amendment to this Annex.</p> <p>LEGALITY MATRICES</p> <p><i>Matrix 1 (Logging Agreement)</i></p> <p>Criterion 1: The logging/ processing forestry entity is legally authorised</p> <p>Indicator 1.2: The forestry entity holds a forestry concession and has a logging agreement concluded with the administration responsible for forests</p> <p>Criterion 4 The logging/ processing forestry entity meets its social obligations</p> <p>Indicator 4.2: The forestry entity respects the social obligations prescribed by the Forestry Code</p>	<p>regulatory texts issued by the various administrations and are, for the most part, available for consultation in the central database of the Ministry responsible for forests (SIGIF II). This verification work in relation to the legality of the forestry entity is undertaken within a formal structure of the Ministry responsible for forests in Yaoundé (see Annex III-B), using a flexible and rigorous procedure culminating in the issue of the certificate of legality to the logging/processing forestry entity, for every right awarded to it and/or every timber processing facility it owns. The procedures for issue of the 'certificate of legality' (identification of the documents of the administrative file, proper functioning of the system that reconciles the data from the various Ministries involved, procedure for renewal of the certificate of legality etc.) are defined in a special regulatory provision of the Ministry responsible for forests.</p> <p>The detailed procedure for verifying the legality of the forestry entity, and in particular the methods that will be used by the central departments responsible for verifying legality, will be drawn up during the preparatory phase.</p> <p>Annex VIII: This Agreement provides for the implementation of a Legality Assurance System (LAS) intended to guarantee that all timber and derived products specified in the Agreement and exported from Cameroon to the Union are produced entirely legally. The LAS should include:</p>	<p>Annex IX</p> <p>Industry restructuring and expansion of plantations will play major roles in achieving Ghana's vision of a sustainable forest sector. Industry restructuring will require capacity building of trade associations and the wood industry training centre, recapitalisation and retooling of the wood processing industry to support downstream processing. Plantation development, which in addition to expanding domestic wood supply will create opportunities for CDM related activities, will require land reforms, development of benefit sharing arrangement and significant levels of investment.</p> <p>3. Legal Reforms</p> <p>3.1. Introduction of subsidiary legislation</p> <p>3.2. Review and consolidation of forestry laws</p>

Appendix II

Table of VPA legality extracts – CAMEROON *continued*

Definition of legally produced timber	Legality annex	TLAS / Verification system	Supporting measures and/or implementation schedule
	<p><i>Matrix 2 (State logging of a Communal forest)</i></p> <p>Criterion 1: The logging forestry entity is legally authorised</p> <p>Indicator 1.1: The forestry entity has legal personality and has a forest that has been classified on its behalf or that it has itself planted</p> <p>Criterion 4 The logging/ processing forestry entity meets its social obligations</p> <p>Indicator 4.2: The forestry entity respects the provisions of its terms and conditions in relation to the local communities within its area(s) of work</p> <p><i>Matrix 3 (Authorisation to recover standing trees)</i></p> <p>Indicator 1.2: The forestry entity holds a salvage licence issued by the administration responsible for forests, in accordance with the law</p> <p>Criterion 4 The logging forestry entity meets its social obligations</p> <p>Indicator 4.2: The forestry entity respects the provisions of its terms and conditions in relation to the local communities within its area(s) of work</p> <p><i>Matrix 4 (Timber removal licence)</i></p> <p>Criterion 1: The logging forestry entity is legally authorised</p> <p>Indicator 1.2: The forestry entity holds a timber removal licence issued by the administration responsible for forests, in accordance with the law</p>	<p>— a definition of legally produced timber that lists the laws that must be complied with in order for a licence to be issued.</p> <p>I. Definition of legality</p> <p>Legally produced timber needs to be defined on the basis of the laws applicable in Cameroon. The definition used must be unambiguous, objectively verifiable and operationally workable and, as a minimum, include those laws which cover:</p> <p>Other users: respect for other parties' legal tenure or rights of use of land and resources that may be affected by timber harvesting rights, where such other rights exist.</p>	

Definition of legally produced timber	Legality annex	TLAS / Verification system	Supporting measures and/or implementation schedule
	<p><i>Matrix 5 (Cut timber sale in the national forest domain)</i></p> <p>Criterion 1: The logging forestry entity is legally authorised</p> <p>Indicator 1.2: The forestry entity is the holder of a cut timber sale licence legally awarded by the administration responsible for forests</p> <p>Criterion 4 The logging forestry entity meets its social obligations</p> <p>Indicator 4.2: The forestry entity respects the social obligations prescribed by the Forestry Code</p> <p><i>Matrix 6 (State logging of a community forest)</i></p> <p>Criterion 1: The logging forestry entity is legally authorised</p> <p>Indicator 1.2: The community is the beneficiary of a legally awarded community forest and a management agreement signed with the administration</p> <p>Indicator 1.4: The community is not the subject of a measure withdrawing or suspending the existing management agreement by the administration responsible for forests</p> <p>Criterion 4: The logging/ processing forestry entity meets its social obligations</p> <p>Indicator 4.1: The forestry entity respects the provisions of the PSG in relation to the local communities within its area(s) of work</p> <p><i>Matrix 7 (Ebony logging)</i></p> <p>Indicator 1.2: The forestry entity is the holder of a special permit legally awarded by the administration responsible for forests</p>		

Appendix II

Table of VPA legality extracts – LIBERIA

Definition of legally produced timber	Legality annex	TLAS / Verification system	Supporting measures and/or implementation schedule
<p>Article 2(j)</p> <p>“legally produced timber” means timber products acquired, produced and marketed by processes that comply with all the statutory and regulatory provisions in force in Liberia, as set out in Annex II.</p> <p>Article 7</p> <p>For the purposes of this Agreement, a definition of “legally produced timber” is set out in Article 2 and Annex II of this Agreement. The definition sets out Liberia’s national legislation and accompanying regulations that must be complied with before timber products may be covered by a FLEGT licence. Annex II also includes “legality matrices” along with “legality indicators” and “legal verifiers” and detailed verification procedures to be followed to determine compliance with Liberian law.</p> <p>Article 8</p> <p>1. Liberia shall establish a system to verify that timber has been produced or acquired legally and to ensure that only shipments verified as such are exported to the Union. This system for verifying legality shall include compliance checks in order to provide assurance that the timber and derived products intended for export to the Union have been legally produced or acquired and that FLEGT licenses have not been issued for shipments of timber that have not been legally produced or acquired, or that are of unknown origin. The system shall also include procedures to ensure that timber of illegal or unknown origin does not enter the supply chain.</p>	<p>1. INTRODUCTION</p> <p>The legality assurance system (LAS) of Liberia aims to ensure the legality of the allocation of forest use rights and of harvesting, transport, processing and selling of timber. It is based on the national legislation in force and existing governmental control systems and was designed by a national multi-stakeholder process which included representatives of communities, civil society organisations (CSOs), government agencies and the private sector.</p> <p>LEGALITY MATRIX</p> <p>Principle 2 – Forest Allocation</p> <p>The Forest Use Rights covered by the contract was awarded pursuant to the National Forestry Reform Law and the Community Rights Law.</p> <p>Indicator 2.1</p> <p>All communities within 3,0 kilometres of the proposed concession area (called ‘affected communities’) have been consulted by FDA and have given their informed consent to the proposed concession.</p>	<p>Verification guidance</p> <p>Objective:</p> <p>The law emphasizes the vital role of public participation in participatory governance, transparency and the decision-making process. The purpose of this procedure is to ensure that adequate adherence is given to this aspect in the determination and allocation of forestry resources within Liberia.</p> <p>Regulatory Control:</p> <p>The FDA is mandated to decide on the use and allocation of forestry resources held in trust by the Government. In the decision of land use planning and validation of forestry resources, public participation fulfils a key role and there exists a duty on the FDA to engage with the relevant affected communities. With a view to ensuring adequate participation, requirements are placed on the FDA in terms of notifying, informing, conducting meetings, recording comments and considering the input of such communities. Such a participatory approach ensures that the views of relevant stakeholders are taken into consideration and that an informed decision is taken in terms of land use planning and the validation of forestry resources. Pursuant to an approved manual issued by the FDA following a participatory preparation process, the affected communities include those within 3,0 kilometres of the concession area.</p>	<p>Annex II</p> <p>LEGALITY DEFINITION, MATRIX AND VERIFICATION PROCEDURES</p> <p>1. Plan for forestry policy and law reform</p> <p>The legality definition set out below has been developed through a participatory process with a wide range of stakeholders. During development of the legality definition, Liberian stakeholders identified a number of ambiguities, gaps and inconsistencies in the existing laws, regulations and policies that underlie the legality definition, which need to be addressed in order to achieve the good governance desired in the Liberian forestry sector. The Government of Liberia therefore plans to carry out legal and policy reforms in respect of the forestry sector in consultation with all relevant stakeholders. It is expected that such legal reforms would be completed by 2013, and that the legality definition will be updated thereafter to reflect these amendments. Areas that require policy and legal reforms include:</p> <p>(a) Social Agreements: Establishment of procedures to govern negotiations of Social Agreements, including (i) timing of negotiations; (ii) timeliness of both the payments and transfers of funds to communities; (iii) minimum content of social agreements and enforcement of provisions; (iv) community user rights in respect of concession areas, and (v) employment of non-skilled workers, etc.</p>

Definition of legally produced timber	Legality annex	TLAS / Verification system	Supporting measures and/or implementation schedule
<p>2. The system for verifying that shipments of timber products have been legally produced is described in Annex II.</p>		<p>Verification method</p> <p>Description:</p> <p>The LVD shall verify that FDA plans its forest land use through statutorily required consultations with communities and other stakeholders. In the case of consultation with communities, the LVD shall confirm the fact and quality of the consultations by review of documentation, including the report of the socio-economic survey and the timing and arrangements relating to the conduct and discussions at the meetings. If necessary, other government agencies such as the Ministry of Internal Affairs and the relevant affected communities may be consulted.</p> <p>Verification means:</p> <ol style="list-style-type: none"> 1. Consultation with the FDA and, if necessary, the Ministry of Internal Affairs and affected communities 2. Document Review Once during the contract period <p>Verification guidance</p> <p>Objective:</p> <p>The objective of this procedure is to ensure that a contract holder adheres to all the relevant statutory and FDA requirements pertaining to social obligations prior to obtaining its Annual Harvesting Certificate for the FMC, TSC, or FUP.</p> <p>Regulatory Control:</p> <p>The NFRL and Regulations 105-07 promulgated under the NFRL both place a duty on holders of FMC, TSC and major FUPs to negotiate a 'Social Agreement' with affected communities through</p>	<p>(b) Promulgation of Community forestry regulation to provide specific guidelines for community forest management.</p>

Appendix II

Table of VPA legality extracts – LIBERIA *continued*

Definition of legally produced timber	Legality annex	TLAS / Verification system	Supporting measures and/or implementation schedule
		<p>their authorized representatives in respect of forests to be harvested.</p> <p>The Regulations defines affected communities as 'a community comprising less than a statutory district (including chiefdoms, clans, townships, towns, villages, and all human settlements) whose interests are likely to be affected by operations carried out under a forest resources license. "Interests" for purposes of this definition may be of an economic, environmental, health, livelihood, aesthetic, cultural, spiritual, or religious nature.'</p> <p>In practice, the affected communities are defined and identified by FDA during its pre-allocation forest use planning and socio-economic survey.</p> <p>According to Regulations 105-07 the duration of such social agreements are five (5) years for FMCs and FUPs, and three (3) years for TSCs. The signing of a social agreement is a pre-felling requirement for FMCs and TSCs.</p> <p>Verification method</p> <p>Description:</p> <p>The LVD must verify that the requirements are met through consultation and verification with the FDA Community Forestry Department.</p> <p>Verification means:</p> <ol style="list-style-type: none"> 1. Consultation with FDA Community Forestry Department and affected communities 2. Document review 	

Appendix II

Table of VPA legality extracts – INDONESIA

Definition of legally produced timber	Legality annex	TLAS / Verification system	Supporting measures and/or implementation schedule
<p>Article 2(i):</p> <p>“legally produced timber” means timber products harvested or imported and produced in accordance with the legislation as set out in Annex II.</p> <p>Article 5:</p> <p>1. Indonesia shall implement a TLAS to verify that timber products for shipment have been legally produced and to ensure that only shipments verified as such are exported to the Union.</p> <p>2. The system for verifying that shipments of timber products have been legally produced is set out in Annex V.</p>	<p>Annex II</p> <p>Legality standard 1 (state-owned forest land)</p> <p>Principle P1: Legal status of area and right to utilise.</p> <p>Criterion K1.1: Forest management unit is located within the production forest zone.</p> <p>Indicator 1.1.1: Permit holder can demonstrate that the timber utilisation permit (IUPHHK) is valid.</p> <p>Principle P4: Compliance with environmental and social aspects related to timber harvesting.</p> <p>Criterion K4.1: Permit holder has an approved EIA document and has implemented measures identified in it.</p> <p>Indicator 4.1.1: Permit holder has EIA documents approved by the competent authorities which cover the entire work area.</p> <p>Indicator 4.1.2: Permit holder has environmental management plan and environmental monitoring plan implementation reports indicating the actions to take to mitigate environmental impacts and provide social benefits.</p> <p><i>Legality standard 2 (community managed land)</i></p> <p>Principle P1: Legal status of area and right to utilise.</p> <p>Criterion K1.1: Forest management unit is located within the production forest zone.</p> <p>Indicator 1.1.1: Permit holder can demonstrate that the timber utilisation permit (IUPHHK) is valid.</p>	<p>Article 14(5)</p> <p>The JIC shall:</p> <p>(e) agree on the date from which the FLEGT licensing scheme will start operating after an evaluation of the functioning of the TLAS on the basis of the criteria set out in Annex VIII.</p> <p>Annex VIII</p> <p>1. DEFINITION OF LEGALITY</p> <p>Legally produced timber should be defined on the basis of the laws applicable in Indonesia. The definition used must be unambiguous, objectively verifiable and operationally workable and, as a minimum, include those law [sic] and regulations which cover:</p> <p>— Other users: Respect for other parties’ legal tenure or rights of use of land and resources that may be affected by timber harvesting rights, where such other rights exist.</p>	

Appendix II

Table of VPA legality extracts – INDONESIA *continued*

Definition of legally produced timber	Legality annex	TLAS / Verification system	Supporting measures and/or implementation schedule
	<p>Principle P3: Compliance with environmental and social aspects pertaining to timber harvesting.</p> <p>Criterion K3.1: Permit holder has an approved EIA document and has implemented measures identified in it.</p> <p>Indicator 3.1.1: Permit holder has EIA documents approved by the competent authorities which cover the entire work area.</p> <p>Indicator 3.1.2: Permit holder has environmental management plan and environmental monitoring plan implementation reports indicating the actions to take to mitigate environmental impacts and provide social benefits.</p> <p><i>Legality standard 3 (privately owned forests)</i></p> <p>Principle P1: Timber ownership can be verified.</p> <p>Criterion K1.1: Legality of ownership or land title in relation to the timber harvesting area.</p> <p>Indicator 1.1.1: Private land or forest owner can prove ownership or use rights of the land.</p> <p>Indicator 1.1.2: Management units (owned either individually or by a group) demonstrate valid timber transportation documents.</p> <p>Indicator 1.1.3: Management units show proof of payment of applicable charges related to trees present prior to the transfer of rights or tenure of the area.</p> <p>Principle P2: Compliance with environmental and social aspects related to timber harvesting in the case of areas subject to Land Cultivation Rights.</p>		

Definition of legally produced timber	Legality annex	TLAS / Verification system	Supporting measures and/or implementation schedule
	<p>Criterion K2.1: Permit holder has an approved EIA document and has implemented measures in it.</p> <p>Indicator 2.1.1: Permit holder has EIA documents approved by the competent authorities which cover the entire work area.</p> <p><i>Legality Standard 4 (timber utilisation rights within a non-forest zone)</i></p> <p>Principle P1: Legal status of area and right to utilise.</p> <p>Criteria K1.1: Timber harvesting permit within non-forest zone without altering the legal status of the forest.</p> <p>Indicator 1.1.1: Harvesting operation authorised under Other Legal Permit (ILS) / conversion permits (IPK) in a lease area.</p> <p>Criteria K1.2: Timber harvesting permit within non-forest zone which leads to a change in the legal status of the forest.</p> <p>Indicator 1.2.1: Timber harvesting authorised under a land conversion permit (IPK).</p>		

Appendix II

Table of VPA legality extracts – REPUBLIC OF CONGO

Definition of legally produced timber	Legality annex	TLAS / Verification system	Supporting measures and/or implementation schedule
<p>Article 2(i):</p> <p>“Legally produced timber” is deemed to be any timber from acquisition, production and marketing processes that meets all of the statutory and regulatory provisions in force in Congo applicable to forest management and logging as set out in Annex II.</p> <p>Article 7</p> <p>For the purposes of this Agreement, documentation including criteria and indicators that shall serve as proof of compliance with such regulations, called legality matrices, is given in Annex II.</p>	<p>Annex II</p> <p>Besides the logging, processing and trade of timber, the legality matrices take the following into account in accordance with the definition of legality:</p> <p>— the involvement of local and indigenous populations and respect for their rights.</p> <p>Principle 2: The company owns legal rights of access to forestry resources in its operation area.</p> <p>Criterion 2.1: The certificate of exploitation of forestry resources in the operation area was properly granted by the competent authorities.</p> <p>Indicator 2.1.1: All steps leading up to the granting of the certificate of exploitation were properly followed by the company including compliance with deadlines stipulated under national laws and regulations.</p> <p>Indicator 2.1.2: The company has a valid certificate of exploitation.</p> <p>Principle 3: The company involves civil society and local and indigenous populations in the management of its concession and respects the rights of these populations and workers.</p> <p>Criterion 3.1: The company involves civil society and local and indigenous populations in the management of its forestry concession.</p> <p>Indicator 3.1.1: The company has a mechanism for functional dialogue between the stakeholders with respect to the sustainable management of its concession.</p>	<p>Article 8</p> <p>1. Congo shall implement a system for verifying that timber and derived products for shipment have been legally produced and that only shipments verified as such are exported to the Union. The verification system should include checks of compliance in order to provide assurance that the timber and derived products destined for export to the Union have been legally produced and that FLEGT licences are not issued in respect of shipments of timber and derived products that have not been legally produced or are of unknown origin. The system shall also include procedures to ensure that timber of illegal or unknown origin does not enter the supply chain.</p> <p>2. The system for verification that shipments of timber and derived products have been legally produced is set out in Annex III.</p> <p>Annex III</p> <p>3.1. Legality matrices</p> <p>The Congo LVS includes two legality matrices: (i) Matrix for Assessing the Legality of Timber Produced in Natural Forests in Congo and (ii) Matrix for Assessing the Legality of Timber Produced in Forest Plantations in Congo (cf. Annex II). The matrices contain indicators and verifiers concerning the following aspects:</p> <p>— the legal rights of access to forest resources and the granting of periodic licences,</p> <p>— respect for the rights of local and indigenous populations and workers.</p>	<p>Article 13(2)</p> <p>The Parties, through the Joint Implementation Committee of the Agreement, shall commission an independent assessment of the FLEGT licensing scheme using the criteria set out in Annex VII. The assessment will determine whether the legality assurance system underpinning the FLEGT licensing scheme as described in Annex III adequately fulfils its functions and whether the procedures for receiving, verifying and accepting FLEGT licences, as set out in Article 5 and Annex IV, are in place in the Union.</p> <p>Annex VII</p> <p>Section 1: Definition of legality</p> <p>Legally produced timber needs to be defined on the basis of the laws applicable in Congo. The definition used must be unambiguous, objectively verifiable and operationally workable and, as a minimum, include those laws which cover:</p> <p>parties’ legal tenure or rights of use of land and resources that may be affected by timber harvesting rights, where such other rights exist.</p> <p>Annex IX (other relevant measures)</p> <p>3. Legislation and regulations to be supplemented</p> <p>Drawing up timber legality matrices has brought to light the omission under forestry law and the lack of regulation of certain aspects directly and indirectly associated with the sustainable management of forest resources, such as, for example, the involvement of local and indigenous populations and of civil</p>

Definition of legally produced timber	Legality annex	TLAS / Verification system	Supporting measures and/or implementation schedule
	<p>Indicator 3.1.2: Local and indigenous populations are sufficiently well informed of their rights and of the management of the forestry concession.</p> <p>Criterion 3.2: The company respects the rights, customs and practices of local and indigenous populations in accordance with national legislation and regulations and international conventions.</p> <p>Indicator 3.2.1: The company respects the customs, practices and rights of local and indigenous populations.</p> <p>Indicator 3.2.2: The company meets its commitments with respect to local and indigenous populations.</p> <p>Indicator 3.2.3: If property belonging to local and indigenous populations is destroyed by the company, compensation meets the requirements of applicable legislation and regulations.</p> <p>Criterion 3.3: The company, civil society and local populations have put mechanisms in place for monitoring and settling disputes.</p> <p>Indicator 3.3.1: A procedure for recording and handling requests and complaints established within the company.</p> <p>Indicator 3.3.2: Civil society and local and indigenous populations are informed of procedures for managing disputes and are involved in the mechanisms for settling them.</p>	<p>3.2 Verification procedures</p> <p>The verification strategy can be summarised as follows:</p> <p>3.2(a) First level: checks carried out by authorised departments.</p> <p>— Before it is approved, information about the management plan is disseminated to the local populations.</p> <p>— It should be pointed out that the management plan is approved at the end of a meeting of the Forestry Authority, local authorities (prefecture, subprefecture, departmental council, village committees), the departmental services, NGOs and representatives of indigenous peoples.</p> <p>— Providing information to and involving local and indigenous populations and the respecting of their rights are checked through minutes of meetings between the forestry company and the latter. During worksite inspections, the Forestry Authority can also speak to the people concerned.</p> <p>Table 1: Checking and verification of verifiers not linked to the traceability chain for timber produced in natural forests.</p> <p>Aspect of legality: Provision of information to and the involvement of civil society and local and indigenous populations in the management of the forestry concession.</p> <p>Indicator / verifier</p> <p>— Involvement of civil society and local populations (3.1):</p>	<p>society in forest management, the management of State forestry plantations and the defining of standards for forestry work. In the context of implementing the Voluntary Partnership Agreement, the forestry code needs to be updated and supplementary regulations need to be drawn up in other areas.</p> <p>Ministry for the Forest Economy</p> <ol style="list-style-type: none"> 1. Regulations laying down conditions for the assignment of State plantations to third parties. 2. Order defining principles for the traceability of timber. 3. Order defining forestry standards for plantations. 4. Framework decree laying down conditions for joint and participative forest management as set out in Article 1(2) of the forestry code and covering in particular: <ul style="list-style-type: none"> — the terms of involvement of local, indigenous populations and civil society in the process of classifying and declassifying forests, — the involvement of resident populations and civil society in the management of forest concessions. 5. Decree laying down the terms of involvement of local communities, indigenous populations and civil society in making decisions relating to the drafting of terms and conditions. 6. Implementing regulations specifying three different aspects of community forests: the concept of community forests, the

Appendix II

Table of VPA legality extracts – REPUBLIC OF CONGO *continued*

Definition of legally produced timber	Legality annex	TLAS / Verification system	Supporting measures and/or implementation schedule
		<ul style="list-style-type: none"> — Minutes of meeting of the committee monitoring and reviewing the management plan (3.1.1.1) — Minutes of information meetings (3.1.2.1) — monitoring and resolving disputes (3.3): — Minutes of consultative meetings between the company and local populations (3.3.1.1/3.3.2.1) <p>Aspect of legality: Respect for the rights of local and indigenous populations and workers.</p> <ul style="list-style-type: none"> — The company respects the customs, practices and rights of local and indigenous populations (3.2.1): — Report of the committee monitoring and reviewing the management plan (3.2.1.1) — On-site inspection report of the Departmental Forest Economy Office (3.2.1.2) — The company meets its commitments with respect to local and indigenous populations (3.2.2): — Report of the committee monitoring and reviewing the management plan (3.2.2.3) — Terms and conditions/ Memorandum of understanding (3.2.2.1) — Inspection report of the Departmental Forest Economy Office (3.2.2.2) — If property belonging to local and indigenous populations is destroyed by the company, compensation meets the requirements of applicable legislation and regulations (3.2.3): — Compensation register and minutes (3.2.3.1) — Compensation receipt (3.2.3.2) 	<p>processes of parcelling and procedures for the management of these forests guaranteeing the involvement of all parties concerned.</p> <p>7. Implementing regulations laying down terms for the involvement of local communities and indigenous populations in the management plan (parcelling of community blocks etc.).</p> <p>8. Implementing regulations laying down terms for the involvement of civil society and/or the appointment of civil society representatives to various committees (granting of forest concessions, granting of consent for the timber forest profession, etc.). These regulations will also lay down criteria for the selection of th [sic] civil society representatives.</p>

Appendix II

Table of VPA legality extracts – GUYANA (Draft March 2015)

Draft legality matrix	Draft verifiers
<p>Customary Rights Customary rights are defined as rights which result from a long series of habitual or customary actions, constantly repeated, which have, by such repetition and by uninterrupted acquiescence, acquired the force of a law within a geographical or sociological unit. Interpretation in Guyana's context should also be in keeping with the Constitution and other relevant laws of Guyana. They are local usages belonging to all the inhabitants of a particular place. In Guyana only the indigenous people have these rights.</p> <p>Legally Harvested Raw material harvested:</p> <ul style="list-style-type: none"> • Pursuant to a legal right to harvest timber in the forest management unit in which the wood was grown; and, • In compliance with national and sub-national laws governing the management and harvesting of forest resources. <p>Legal Right to Harvest Authorization to harvest in the forest management unit has been granted:</p> <ul style="list-style-type: none"> • From the resource owner(s); • Under a valid permit, license or similar instrument issued pursuant to the laws and regulations governing the management and harvesting of forest resources. <p>Resource owner: The holder(s) of property and user rights over the land and/or trees within a forest management unit, including legally recognized rights held according to customary law.</p> <p>Traditional rights Any Subsistence right or privilege, in existence at the date of the commencement of the Amerindian Act 2006, which is owned legally or by custom by an Amerindian Village or Amerindian Community and which is exercised sustainably in accordance with the spiritual relationship which the Amerindian Village or Amerindian Community has with the land, but it does not include a traditional mining privilege.</p>	
<p>Timber Sales Agreements and Wood Cutting Leases</p> <p>Principle 1: The FMO has legal rights to harvest and other parties' legal tenure rights are respected</p> <p>Criterion 1.1: The FMO holds legal logging rights to the forest.</p>	
<p>Indicator 1.1.1: The FMO is in possession of a legally valid concession agreement/approval for the area from which all timber is sourced.</p> <p>Criterion 1.2: There is compliance by both the FMO and any contractors with national laws relevant to other parties' tenure and use rights.</p>	<p>Valid Concession Agreement/approval between GFC and concessionaires.</p>
<p>Indicator 1.2.1: There are no legally titled Amerindian lands on GFC and approved forest concessions.</p>	<p>Land Title documents, boundary descriptions maps/plan at Guyana Lands and Surveys Commission (GL&SC), Ministry of Amerindian Affairs (MOAA) and GFC for Maps of forest concession area and Neighbouring titled Amerindian Communities.</p>
<p>Indicator 1.2.2: Traditional uses and customary rights of Amerindian peoples are not prevented by the FMO.</p>	<p>Review of evidence based reports from; the Ministry of Amerindian Affairs, Village Councils, Indigenous Peoples Commission, Amerindian NGOs and the Guyana Forestry commission (GFC).</p>

Appendix II

Table of VPA legality extracts – GUYANA (Draft March 2015 continued)

Draft legality matrix	Draft verifiers
<p><i>State Forest Authorizations</i></p> <p>Principle 1: The FMO has legal rights to harvest and other parties' legal tenure rights are respected</p> <p>Criterion 1.1: The FMO holds legal logging rights to the forest.</p>	
<p>Indicator 1.1.1: The FMO is in possession of a legally valid concession agreement/approval for the area from which all timber is sourced.</p> <p>Criterion 1.2: There is compliance by both the FMO and any contractors with national laws relevant to other parties' tenure and use rights.</p>	Valid Concession Agreement/approval between GFC and concessionaires
<p>Indicator 1.2.1: There are no legally titled Amerindian lands on GFC approved forest concessions.</p>	Land Title documents, boundary descriptions and maps/plan at Guyana Lands and Survey Commission (GL&SC), Ministry of Amerindian Affairs (MOAA) and GFC for Maps of forest concession area and Neighbouring titled Amerindian Communities.
<p>Indicator 1.2.2: Traditional uses and customary rights of Amerindian peoples are not prevented by the FMO.</p>	Review of evidence based reports from; the Ministry of Amerindian Affairs, Village Councils, Indigenous Peoples Commission, Amerindian NGOs and the Guyana Forestry Commission (GFC).
<p><i>Legality matrix for Amerindian villages</i></p> <p>Principle 1: The Amerindian village has legal rights to harvest and other parties' legal tenure rights are respected</p> <p>Criterion 1.1: The Amerindian Village Holds Legal Logging Rights To The Forest.</p>	
<p>Indicator 1.1.1: The Amerindian village that is undertaking commercial forestry operation has legal title (as approved by the Government of Guyana or the courts of Guyana) for the forest land of which such commercial activities are taking place.</p>	Amerindian Village Title Document and approved village plan (records held by the Village Council, Ministry of Amerindian Affairs, Guyana Lands and Survey Commission and the Guyana Forestry Commission).
<p>Indicator 1.1.2: In relation to harvesting timber for commercial purposes on non-land (salvaging timber in rivers, creeks and lakes) the Amerindian village must first obtain written permission from the Guyana Forestry Commission and a Mechanism for the Tracking of Timber acquired must be agreed between the Guyana Forestry Commission and the interested Amerindian Village so as to satisfy the requirements of the Guyana Wood Tracking System.</p>	GFC Records and the Village Council records showing the written agreement between both parties.
<p>Indicator 1.1.3: If the Amerindian Village has contracted a third party to carry out commercial timber harvesting operation on titled village land (activities related to harvesting and extraction of forest produce), such arrangement must be formally done (written contract outlining terms and conditions, signed by the Village Council on behalf of the Amerindian Village and the Contracting Party).</p>	Signed Contract document held by the Village Council and the third party
<p>Indicator 1.1.4: If the forest land is untitled and is recognised to be customary land by the Amerindian Village, the village cannot contract a third party to engage in timber harvesting and extraction.</p>	Field Inspection report by the Village Council and the GFC.

Draft legality matrix	Draft verifiers
Criterion 1.2: There Is Compliance By Both The Amerindian Village And Any Contractors With National Laws.	
Indicator 1.2.1: The titled Amerindian Village does not harvest more than the amount allowed for external trade under traditional use (as approved by the Village Council from time to time).	Village Council/CDC annual assessment confirming compliance.
Indicator 1.2.2: Commercial Harvesting within the log source area is done in accordance with the National Wood Tracking System.	User Rights Permission from the Village Council. Field Visit and Monitoring Reports (Village Council and GFC).
Principle 2: The Amerindian Village complies with relevant national legislation as it pertains to forestry operations Criterion 2.1: There is compliance by the Amerindian Village with applicable national laws, regulations and guidelines relevant to forest management and the environment.	
Indicator 2.1.1: The Annual Allowable Cut (AAC) is determined by the Village Council.	Village Council document that outlines AAC quota.
Indicator 2.1.2: There is a mechanism to monitor the issuance and usage of GFC Log Tracking Tags.	Log tag management database and Production Record database at the GFC and Village Council Level.
Indicator 2.1.3: There is a mechanism to monitor that Logs and stumps are tagged according to the national log-tracking system.	GFC Approved Removal Declaration, Production Register from the Amerindian Village and field visit or Stump Inspection reports by the GFC.
Criterion 2.2: There is compliance by the Amerindian Village with applicable national laws, regulations, guidelines and the national wood tracking system relevant to the transportation of timber and timber products.	
Indicator 2.2.1: Transportation of logs outside of the legally titled areas and is accompanied by relevant GFC approved documents.	GFC Approved removal documents; Private Property Declaration, Transshipment, Bill of Sale, Custody Form and Clearance Pass or approved Export document.
Indicator 2.2.2: Transportation of lumber outside of the legally titled areas and is accompanied by relevant GFC approved documents.	GFC Approved removal documents; Private Property Declaration, Transshipment, Bill of Sale, Custody Form and Clearance Pass or approved Export document.
Principle 3: The Amerindian Village has paid required fees Criterion 3.1: The payment of fees and penalties applicable to the Amerindian Village is done to the satisfaction of the relevant authorities.	
Indicator 3.1.1: There is a mechanism to monitor the payments of fees and penalties and any outstanding fees and penalties are accounted for in accordance with the GFC's accounting system.	GFC Payment Schedules and Receipts to determine financial standing.

Appendix II

Table of VPA legality extracts – GUYANA (Draft March 2015 continued)

Draft legality matrix	Draft verifiers
<p>Principle 4: The Amerindian Village complies with relevant national legislation as it pertains to labour and welfare</p> <p>Criterion 4.1: There is compliance by the Amerindian Village with national, laws regulations and guidelines relevant to labour and labour welfare.</p>	
Indicator 4.1.1: No works are engaged in forced labour.	Joint interview with Village Council and employees.
Indicator 4.1.2: The Amerindian Village does not employ persons below the employees.	Joint interview with Village Council and age of 16 to work in commercial timber operations.
Indicator 4.1.3: Adequate first aid facilities are provided.	Village Council records.
Indicator 4.1.4: Records of workplace accidents and injuries are kept.	Village Council records.
Indicator 4.1.5: Workers are provided with adequate personal protective equipment (PPE) as required by the Village Council.	Village Council records.
<i>Legality matrix for private properties</i>	
<p>Principle 1: The private property holder has legal rights to harvest and other parties' legal tenure rights are respected</p> <p>Criterion 1.1: The private property owner holds legal logging rights to the forest.</p>	
Indicator 1.1.1: The Private property owner that is undertaking commercial forestry operation has legal title (as approved by the Government of Guyana or the courts) for the forest land of which such commercial activities are taking place.	Private Property title, transport, or court order documents.
<i>Legality matrix for agricultural and mining leases</i>	
<p>Principle 1: The FMO has legal rights to harvest and other parties' legal tenure rights are respected.</p> <p>Criterion 1.1: The FMO holds legal logging rights to the forest.</p>	
Indicator 1.1.1: The FMO is in possession of a legally valid mining permit, Agriculture lease and/or an active State Forest Agreement (from the GFC) for the area from which all timber is sourced.	Valid mining permit, Agriculture leases or State Forest Authorization agreement, in effect

Appendix II

Table of VPA legality extracts – VIETNAM (Draft)

Draft legality matrix	Draft indicators
<p>Definitions:</p> <p>2. Forest title holders: Organizations, households assigned, leased by the Government with forest, forest land for forestry-related production, business in accordance with the Forest Protection and Development Law.</p> <p>2.2. Household forest title holders: include local households, individuals, village communities; foreign individuals conducting harvesting, transporting, processing, trading and storing timber products in Vietnam.</p> <p>18. Legal forest use right: Organizations, households are entitled to legally forest land in the following cases</p> <p>18.1. Allocated, leased and contracted with natural forests, State-invested plantation forests for utility via administrative documents.</p> <p>18.2. Allocated with ownership right for plantation production forests via administrative documents.</p> <p>18.3. Plantation forests of organizations, households planted by their own capital in the legal land specified in point 4 [sic] this item.</p> <p>18.4. Dispersed trees in farms, gardens of households, individuals.</p>	
<p>Organisations</p> <p>PRINCIPLE I: COMPLIANCE WITH HARVESTING REGULATIONS FOR DOMESTIC TIMBER</p> <p>1. Main harvesting of timber in natural forest</p> <p>1.1. Complied with regulations on legal basis for forest use right.</p>	<p>One of the following documents is required:</p> <p>1.1.1. Decision on forest lease of Provincial People's Committee</p> <p>1.1.2. Decision on forest allocation of Provincial People's Committee</p> <p>1.1.3. Land use right certificate (Red book)</p> <p>1.1.4. Decision on land allocation of Provincial People's Committee</p>
<p>2. Harvesting plantation forests invested by State budget, grant</p> <p>2.1. Complied with regulations on legal forest use right.</p>	<p>One of the following types of documents is required:</p> <p>2.1.1. Decision on forest, forest land lease of Provincial People's Committee</p> <p>2.1.2. Decision on forest, forest land allocation of Provincial People's Committee</p> <p>2.1.3. Land use right certificate (Red book) of Provincial People's Committee</p>
<p>3. Harvesting plantation forests invested by own capital or supported by the State</p> <p>3.1. Complied with regulations on legal forest use right.</p>	<p>One of the following documents is required:</p> <p>3.1.1. Decision on forest, forest land lease of Provincial People's Committee</p> <p>3.1.2. Decision on forest, forest land allocation of Provincial People's Committee</p> <p>3.1.3. Land use right certificate of Provincial People's Committee (Red book)</p>
<p>4. Salvaging harvesting in the cleared site to construct facilities or use for other purpose</p> <p>4.1. Ensured legal basis prior to being permitted for salvage harvesting.</p>	<p>The following documents are required:</p> <p>4.1.1. Document of PPC on allowing forest conversion for changing forest using purposes</p> <p>4.1.2. Document of PPC on assigning the harvesting operation</p>

Appendix II

Table of VPA legality extracts – VIETNAM *(Draft continued)*

Draft legality matrix	Draft indicators
<p>5. Salvaging harvesting while implementing silviculture measures or silviculture activities for scientific researches and job training</p> <p>5.1. Complied with regulations on legal basis prior to being permitted for salvage harvesting.</p>	<p>One of the following documents is required:</p> <p>5.1.1. Silviculture project made by harvesting entities</p> <p>5.1.2. Training plan made by harvesting entities</p> <p>5.1.3. Scientific research proposal made by harvesting entities</p>
<p>6. Salvaging harvesting of dry dead, fallen trees and stump, roots, branches in natural forests or plantation forests by State budget, grant</p> <p>6.1. Complied with regulations on legal harvesting dossier.</p>	<p>The following documents are required:</p> <p>6.1.1. Decision on approving harvesting design dossier issued by Provincial Department of Agriculture and Rural development</p> <p>6.1.2. Harvesting design statement issued by designing entities</p> <p>6.1.3. Map of harvesting, salvage harvesting area made by designing entities</p> <p>6.1.4. Harvesting permit issued by Provincial Department of Agriculture and Rural development</p>
<p>7. Salvaging harvesting of dry dead, fallen trees and stump, roots, branches in natural forests or plantation forests by State budget, grant in plantation forests invested by own capital or supported by the State</p> <p>7.1. Complied with regulations on legal harvesting dossier.</p>	<p>The following documents are required:</p> <p>7.1.1. Harvesting registration form which is made by harvesting entities</p> <p>7.1.2. Table of products to be harvested which is made by harvesting entities</p>
<p>8. Harvesting timber from plantations in home gardens, farms and dispersed trees</p> <p>8.1. Complied with regulations on legal harvesting dossier.</p>	<p>The following documents are required:</p> <p>8.1.1. Harvesting registration form which is made by harvesting entities</p> <p>8.1.2. Table of products to be harvested which is made by harvesting entities</p>
<p>Households</p> <p>1. Main harvesting of timber in natural forest</p> <p>1.1. Ensure their legal basis for forest use right.</p>	<p>One of the following documents is required:</p> <p>1.1.1. Decision on forest lease of District People's Committee</p> <p>1.1.2. Decision on forest allocation of District People's Committee</p> <p>1.1.3. Land use right certificate issued by District People's Committee (Red book)</p>
<p>2. Harvesting plantation forests invested by State budget, grant</p> <p>2.1. Complied with regulations on legal forest use right.</p>	<p>One of the following documents is required:</p> <p>2.1.1. Decision on forest, forest land lease of District People's Committee</p> <p>2.1.2. Decision on forest, forest land allocation of District People's Committee</p> <p>2.1.3. Land use right certificate (Red book) issued by District People's Committee (Red book)</p> <p>2.1.4. Contract on planting forests with other forest title holders</p>

Draft legality matrix	Draft indicators
<p>3. Harvesting plantation forests invested by own capital or supported by the State</p> <p>3.1. Complied with regulations on legal forest use right.</p>	<p>One of the following documents is required:</p> <p>3.1.1. Decision on forest, forest land lease of District People's Committee</p> <p>3.1.2. Decision on forest, forest land allocation of District People's Committee</p> <p>3.1.3. Land use right certificate (Red book)</p> <p>3.1.4. Contract on planting forests with other forest title holders</p>
<p>4. Salvaging harvesting in the cleared site to construct facilities or use for other purpose</p> <p>4.1 Completed legal basis prior to being permitted for salvage harvesting.</p>	<p>The following documents are required:</p> <p>4.1.1. Document of competent authorities on allowing forest conversion for construction or changing for other forest using purposes</p>
<p>5. Salvaging harvesting while implementing silviculture measures</p> <p>5.1. Complied with regulations on legal basis prior to being permitted for salvage harvesting.</p>	<p>The following documents are required:</p> <p>Silviculture design dossier made by harvesting entities</p>
<p>6. Salvaging harvesting of dry dead, fallen trees and stumps, roots, branches in natural forests or plantation forests by State budget, grant</p>	
<p>6.1. Complied with regulations.</p>	<p>The following documents are required:</p> <p>6.1.1. Harvesting registration form made by households</p> <p>6.1.2. Table of products to be harvested made by forest title holders or consultants</p> <p>6.1.3. Map of harvesting area made by households or consultants</p> <p>6.2.1. For timber harvested in natural forests and rare, precious, endangered timber harvested in plantation forests, round timber with the large end's diameter $\geq 25\text{cm}$ and the length $\geq 1\text{m}$ and sawn timber, box shaped timber in forest with the length of $\geq 1\text{m}$, width of $\geq 20\text{ cm}$, forest hammer marks.</p>
<p>6.2. Complied with the requirement on placing forest hammer marks</p>	<p>The following documents are required:</p> <p>6.2.1.1. Minutes of placing forest hammer marks made by residential forest rangers</p> <p>6.2.1.2. Packing list made by harvesting entities, validated by residential forest rangers</p> <p>6.2.2. For timber not eligible for placing forest hammer marks, one of the two following types of packing list is required:</p> <p>6.2.2.1. For natural forest timber: packing list validated by residential forest rangers</p> <p>6.2.2.2. For plantation forest: packing list made by harvesting entities</p>
<p>7. Salvaging harvesting of dry dead, fallen trees and stump, roots, branches in natural forests or plantation forests by State budget, grant in plantation forests invested by own capital or supported by the State</p> <p>7.1. Complied with regulations</p>	<p>The following documents are required:</p> <p>7.1.1. Harvesting registration form made by households</p> <p>7.1.2. Table of products to be harvested made by households</p>

Appendix II

Table of VPA legality extracts – VIETNAM *(Draft continued)*

Draft legality matrix	Draft indicators
<p>7.2. Complied with the requirement on placing forest hammer marks</p> <p>7.2.1. For timber harvested in natural forests and rare, precious, endangered timber harvested in plantation forests, round timber with the large end's diameter $\geq 25\text{cm}$ and the length $\geq 1\text{m}$ and sawn timber, box shaped timber in forest with the length of $\geq 1\text{m}$, width of $\geq 20\text{ cm}$, forest hammer marks.</p>	<p>The following documents are required:</p> <p>7.2.1.1. Minutes of placing forest hammer marks made by residential forest rangers</p> <p>7.2.1.2. Packing list made by harvesting entities, validated by residential forest rangers.</p>
<p>7.2.2. For timber not eligible for placing forest hammer marks.</p>	<p>One of the two following types of packing list is required:</p> <p>7.2.2.1. For natural forest timber: packing list validated by residential forest rangers</p> <p>7.2.2.2. For plantation forest: packing list made by timber owners</p>
<p>8. Harvesting timber from plantations in home gardens, farms and dispersed trees</p> <p>8.1. Complied with regulations on,</p>	<p>The following documents are required:</p> <p>8.1.1. Harvesting registration form made by timber owners</p> <p>8.1.2. Table of products to be harvested made by timber owners</p>

Appendix II

Table of VPA legality extracts – REPUBLIC OF CONGO (Draft)

Draft legality matrix

Principle 2: The entity has the legal right to the forestry resources.

Criteria 2.1: The entity has the necessary legal title to the forestry resource, acquired in accordance with the applicable procedures.

Principle 3: The entity respects the rights of workers and local communities and/or indigenous peoples.

Criteria 3.3: The entity respects the rights of local communities and/or indigenous peoples.

Indicator 3.3.1: The entity enters into formal commitments in favour of local communities and/or indigenous peoples.

Indicator 3.3.2: The entity respects its commitments in favour of local communities and/or indigenous peoples, as set out in the project conditions / specifications.

Indicator 3.3.3: The entity complies with the rule for preferential hiring of individuals from local communities and/or indigenous populations.

Indicator 3.3.4: The entity provides reparations to local communities and/or indigenous populations for any damage caused by its activities.

Indicator 3.3.5: The entity complies with all rules and procedures related to traditional and customary usage rights.

Appendix II

Table of VPA legality extracts – CÔTE D'IVOIRE (Draft 25 February 2015)

Draft legality matrix	Draft verifiers
Principle 2: The operator holds a legal right of access to the forest resources. Criterion 2.1: The operator has a title issued by the competent authorities.	
Indicator 2.1.2: The operator has an exploitation licence covering the zone of its activities.	Provisional exploitation authorisation; Partnership agreement or cutting contract.
Principle 3: The operator exploits the timber resource in compliance with the regulatory framework in force (international law and the principles of sustainable forest management). Criteria 3.1: Exploited forests are governed by a land management plan or a simple management plan. Criteria 3.2: The operator carries out its activities in conformity with the requirements of the land management plan and/or the agreed conditions ("cahier de charges") validated by all stakeholders.	
Indicator 3.2.5: The operator, in undertaking its activities in rural zones, respects the limits of national parks, natural reserves, classified forests, sacred forests, cemeteries, and cultural sites of communities.	Annual authorisation decision to recommence the provisional exploitation authorisation and agreed conditions ("cahier de charges").
Criteria 3.3: Sustainable management measures are put in place in compliance with the regulations in force, and mitigation measures are implemented.	
Indicator 3.3.1: The operator fulfils its obligations to complete an environmental and social impact statement.*	
Indicator 3.3.2: The operator carries out a socio-economic study in collaboration with the affected local populations.*	

Appendix II

Table of VPA legality extracts – CÔTE D'IVOIRE (Draft 25 February 2015 continued)

Draft legality matrix	Draft verifiers
Indicator 3.3.9: The operator informs the holders of customary rights and existing users of the environmental conservation measures to be adopted.	
Principle 7: The operator respects social obligations. Criterion 7.2: The operator respects the commitments agreed with local communities. Indicator 7.2.1: The operator respects the rights of usage recognised in the Forestry Code and the usage and custom of local populations in a village agreement. Indicator 7.2.2: A village agreement is signed between the operator and representatives of the local communities concerned. Indicator 7.2.3: The operator indemnifies the communities and individuals who suffer damage as a result of its activities, in conformity with the rate of compensation specified by the Minister.	
Criterion 7.3: The operator provides stakeholders with information concerning the exploitation	
Indicator 7.3.1: The operator supplies stakeholders with copies of its exploitation licence, its annual activity authorisation, its annual programme of activities and its agreed conditions of work (cahier de charges), the village agreement, and the land management plan.	Physical documents.
Indicator 7.3.2: The operator ensures that stakeholders are informed of the operator's rights and obligations.	

Appendix II

Table of VPA legality extracts – HONDURAS (Draft , January 2015, unofficial translation)

Draft legality matrix

Definitions:

Forestry legality: In the VPA process, means to conform simultaneously with: the definition of "legal timber" under national laws and regulations, taking into account the important implications of the Forest Law ..., the situation of land rights in many rural areas of the country, and questions of the consultation and free, prior and informed consent process.

Indigenous territory: The totality of the habitat of the regions occupied or used by the indigenous people in question (Article 13(2), ILO Convention No. 169).

Principle 3: The State guarantees and respects the rights of indigenous and Afro-Hondurans and communities located in public forest lands.

Criteria 3.1: Compliance with ILO Convention No. 169 in respect of the mechanism of consultation and free, prior and informed consent.

Criteria 3.2: Implementation of ILO Convention No. 169 and other national and other related national and international agreements.

Criteria 3.3: Recognition of the rights of indigenous peoples and Afro-Hondurans who are located on lands which they traditionally possess, in conformity with national laws and ILO Convention No. 169.

Criteria 3.4: Respect the rights of indigenous peoples and Afro-Hondurans, to guarantee sustainable forest management and governance.

Criteria 3.5: Compliance with the right of first refusal for communities in relation to forest management.



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