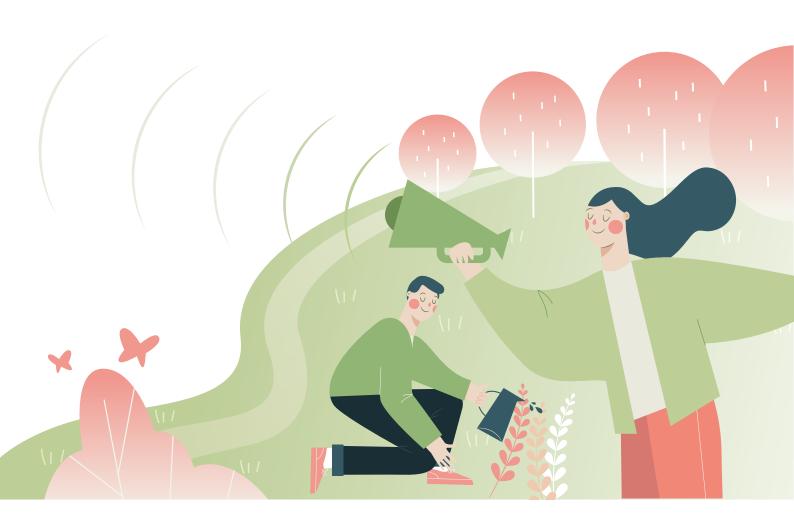




FLEGT and the Mekong A handbook for civil society





















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Introduction

Illegal logging and associated trade harms many forests, particularly those in the global South. Timber and timber products are illegal if they have been harvested, processed, transported, bought (including imported) or sold (including for export) in violation of laws and regulations in timber-producing or importing countries.

Illegal logging has harmful economic, environmental and social impacts that can be felt far beyond the forests where the timber is harvested. The victims include local communities whose livelihoods are undermined and governments that struggle to function due to the loss of faith in the rule of law, weakening of social cohesion and loss of tax revenue.

Companies that are trying to adhere to legal and sustainable practices also suffer as they are at a significant disadvantage when competing for markets with traders of cheaper illegal timber. Other notable impacts of illegal logging include the loss of biodiversity and emissions of greenhouse gases that contribute to climate change.

Recognising that trade drives illegal logging and that poor governance enables it, the European Union (EU) developed the Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan. Effective participation of all actors — especially staff from governments, the private sector and civil society — is a must to strengthen forest governance. The EU therefore places participation at the heart of the FLEGT Voluntary Partnership Agreements (VPAs) it develops with timber-exporting countries to address illegal logging and associated trade.

Effective participation in a VPA process cannot be taken for granted. National governments from VPA negotiating countries need to allow non-state actors, such as civil society groups, business associations and news media, to participate. Also, all stakeholders must have the required capacities to participate effectively. The EU-funded Voices for Mekong Forests (V4MF) project recognises the importance of this. It is working to empower non-state actors, particularly from civil society, to assess, monitor and respond appropriately to initiatives aiming to strengthen forest governance — including VPAs and REDD+ (Reducing Emissions from Deforestation and forest Degradation) — and to effectively engage in these processes. As part of this work, the project has developed this handbook to help non-state actors participate effectively in VPA processes.

This handbook was developed by participants in a 'writeshop' in Bangkok, Thailand in November 2018. Drawing experience from organisations working at the landscape, national and regional levels in the Greater Mekong Subregion, the meeting set out to answer six key questions about VPAs. The handbook answers these questions and includes links to online information that provides more detail on VPA processes and on progress in each of the Greater Mekong countries.

1. What are the EU FLEGT Action Plan, the EU Timber Regulation and Voluntary Partnership Agreements?

In 2003, in response to the increasing problem of illegal logging, the EU adopted the Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan. The Action Plan addresses both the supply of and demand for illegal timber. It aims to improve legal forest management, strengthen governance and encourage trade in legal timber.

The EU FLEGT Action Plan has seven action areas:

- 1. Use of legislation such as with the EU Timber Regulation (see below) and with existing legal frameworks of timber-exporting countries
- 2. Promoting trade in legal timber through trade agreements called VPAs (see below) and by engaging with markets outside the EU to support their efforts to reduce imports of illegal timber
- 3. Support to timber-exporting countries financial and technical support from the EU and its Member States
- 4. Financing and investment safeguards encouraging investors to use effective due-diligence procedures to limit adverse impacts of their investments
- 5. Support to private-sector initiatives financial and technical support from the European Commission to help the private sector ensure supply chains are free of illegal timber
- 6. Public procurement policies ensuring that public infrastructure projects use only legal timber
- 7. Action on conflict timber recognising and addressing the role of timber in armed conflicts

The main initiatives to achieve this are the EU Timber Regulation and the FLEGT Voluntary Partnership Agreements.

EU Timber Regulation (EUTR)

The EUTR was adopted in October 2010 and entered into force in March 2013. It aims to prevent trade in illegal timber within the EU. The EUTR distinguishes between 'operators' (importers) who place timber products on the EU market for the first time and 'traders' who buy or sell products already on the internal EU market. The EUTR requires operators to implement a due-diligence system to ensure that the timber they sell is legal. The due-diligence system should include information, risk assessment and risk mitigation. The EUTR requires traders to keep records of their suppliers and customers. Each EU Member State has designated a competent authority responsible for the application of the EUTR.

Other markets with initiatives to stop the import of illegal timber include:

- Australia Illegal Logging Prohibition Act (2012)
- Japan Clean Wood Act (2017)
- South Korea Act on the Sustainable Use of Timbers (as revised in 2017)
- United States Lacey Act (as amended in 2008)

Other countries, including China, are developing their own mechanisms. The significance of the numerous initiatives is that the market, in other words, the demand, for illegal timber is getting smaller.

Voluntary Partnership Agreements (VPAs)

A VPA is a bilateral trade agreement between a timber-exporting country and the EU. The voluntary aspect is that a country may freely enter and withdraw from negotiations leading to the agreement. Once ratified, however, a VPA is binding.

A VPA uses the market to support efforts to strengthen forest governance, specifically to reduce the trade in illegal timber. A key component of each VPA is a timber legality assurance system, which the partner country develops and implements. The main components of a VPA timber legality assurance system are the legality definition, supply chain controls, verification of compliance, FLEGT licensing and independent auditing.

Under the VPA, all timber exports from the VPA country to the EU must comply with the requirements of the timber legality assurance system. When that system is operating as described in the VPA, and the EU and VPA country have confirmed this through a joint assessment, the VPA country will begin issuing FLEGT

licences to accompany EU-bound exports of verified legal timber products. Each EU Member State will then be responsible for preventing the entry of unlicensed timber from the VPA country. FLEGT-licensed products are considered to automatically comply with the EU Timber Regulation. This means that importers of FLEGT-licensed products do not need to do due diligence on them.

A VPA can also address issues beyond illegal logging, under the broad umbrella of strengthening governance. This includes issues like increasing transparency, reducing corruption and supporting effective participation of all stakeholders. It also includes clarifying and strengthening land tenure and access rights for forest communities.

Figure 1 presents an overview of the phases of a VPA process. It is not necessarily the case that the activities take place sequentially. For example, work to develop the timber legality assurance system often begins before the EU and its partner country have ratified the agreement. Also, some activities such as 'independent monitoring' and 'information gathering and dissemination' can take place in each phase of the process.

Figure 1. Overview of the FLEGT VPA process²

Pre-negotiation	Negotiation	Implementation
Information gathering and dissemination	Bilateral negotiations between the EU and timber-exporting country on the VPA text and annexes	Joint implementation committee set up
Analysis of forest sector and forest stakeholders	Negotiations between stakeholders in the timber-exporting country	Development of timber legality assurance system
Organisation of stakeholders and creation of structure(s) for discussions	Negotiations within stakeholder groups in the timber-exporting country	Selection of independent auditor
Deliberation within and among stakeholder groups on priority issues a VPA could help address	Bilateral negotiations end with the initialling, signing and ratification of the VPA.	Publication of forest-sector information in line with VPA transparency commitments
Assessment of potential benefits and consequences of engaging in a VPA		Joint assessment of readiness for FLEGT licensing
Search for a national consensus		Issuance of FLEGT licences
Decision whether or not to enter negotiations		EU Member States ensure that only FLEGT-licensed products enter from the VPA country
Preparation for negotiations		Independent audits
		Independent monitoring of VPA implementation
		Ongoing reforms
		Continuous improvement of timber legality assurance system
		Entry of timber controlled at EU border

- Overview of the EU FLEGT Action Plan (here)
- European Commission platform for updates on the EU Timber Regulation (here)
- Introduction to FLEGT (here)
- VPA Unpacked: Phases of a VPA (here)
- Comparison of illegal logging laws in the EU, the United States, Australia and Japan (here)

2. Why are FLEGT VPAs important for Mekong countries?

VPAs are important for countries in the Greater Mekong as these countries are all suffering from the loss of their natural forests, in part because of governance challenges that contribute to illegal logging. Table 1 provides, for each country, an overview of forest resources, forest tenure reform progress and governance indices.

Table 1. Overview of forest statistics and governance indices for Greater Mekong countries 3456

	Forest resources (000 hectares)				Forest tenure reform (community forestry development – hectares)			Governance		
	1990		2015		2010	2016	Target area	Corrup- tion per-	Democracy index**	
	Primary forest	Total forest	Primary forest	Total forest			(year)	ceptions index (2018)*	2006	2018
Cambodia	766	12,944	322	9457	113,544	296,240	2,000,000 (2029)	20	4.77	3.63
Lao PDR	1593	17,645	1194	18,761	data not available		29	2.10	2.37	
Myanmar	3192	39,218	3192	29,041	41,000	113,765	919,000 (2030)	29	1.77	3.83
Thailand	6726	14,005	6726	16,399	196,667	750,457	1,600,000 (2025)	36	5.67	4.63
Viet Nam	384	9363	83	14,773	3,300,000	4,256,375	4,000,000 (2020)	33	2.75	3.08

^{*}Transparency International's Corruption Perceptions Index ranks countries on a scale from 100 (very clean) to 0 (highly corrupt)

In Cambodia, an estimated 90% of timber harvesting is illegal. The figures for other Mekong countries are lower but still significant: Lao PDR (45-80%); Myanmar (50%); Thailand (40%) and Viet Nam (20-40%). Thailand and Viet Nam have the added challenge of importing large amounts of illegal timber from the other countries. A VPA can play a key role in helping to address illegal logging specifically and forest governance in general.

A timber exporting country can enter VPA negotiations for various reasons, including the desire to have improved access to the EU market, to address issues related to illegal logging and to promote social and environmental sustainability. VPAs can help countries to manage forest resources sustainably, prevent illegally-harvested wood from entering supply chains, ensure taxes are paid, attract investment, develop the timber products sector and improve the reputation of the forest sector.

- FAO video (here) and infographic (here) on why legal timber matters
- NEPCon's periodic timber-risk assessments, including for Greater Mekong countries (here)
- FAO Forest Resources Assessment, which is updated every 5 years (here)
- Global Forest Watch, which offers regularly updated information on forest cover change (here)

^{**}The Economist's Democracy Index give countries a score from 0 to 10 and categorises them as either an authoritarian regime (lowest scores); hybrid regime; flawed democracy or full democracy (highest scores)

3. What is the status of VPAs in the Greater Mekong countries?

Not all of the Greater Mekong countries are formally engaged in a VPA process and those that are have reached different stages. The EU encourages countries to enter negotiations only when they have all the fundamentals—such as capacity, consensus and commitment—in place to expedite the process.

As of August 2019, Cambodia had not entered a VPA process. Myanmar is in the pre-negotiation phase. It is exploring the potential of a VPA and is engaged in in-country consensus building. Lao PDR and Thailand are both in the negotiation phase, each having started negotiations in 2017. Viet Nam is now implementing its VPA, having signed it in 2018 and ratified it in 2019, following negotiations that began in 2010.

Myanmar, Lao PDR and Thailand are already working to develop systems to control and verify the legality of timber and timber products.

There is widespread recognition of the challenges facing all countries that develop and implement VPAs. This includes reconciling the optimistic expectations that countries had when they entered negotiations with the longer-than-expected time it has taken to achieve tangible progress. However, the EU team, country governments and civil society are learning from successful FLEGT and VPA processes in places like Indonesia and Viet Nam. These lessons are making FLEGT and VPA processes more efficient now than when first launched.

- Interactive map of FLEGT projects (here)
- Information on FLEGT and VPA processes in Lao PDR (here), Thailand (here), Viet Nam (here)
- FERN biannual Forest Watch Special FLEGT VPA updates (here)
- EU FLEGT Facility updates on FLEGT and VPA processes in Asia (here)

4. What are the main opportunities and challenges in VPA processes?

VPA processes can not only address proximate problems and structural issues that allow illegal logging, but also provide other opportunities such as:

- Attracting investment by facilitating risk management, including through improved forest governance
- Improving cross-sectoral coordination on issues relating to sustainable forest landscape management
- Improving country-to-country collaboration to address illegal trade (including among Greater Mekong countries)
- Increasing public awareness of the importance of tropical forests, leading informed consumers to seek products from sustainable sources
- Promoting the use of multi-stakeholder processes to address issues other than illegal timber, although this would depend on the national government allowing effective participation and the capacity of those participating
- Helping to address land tenure issues, with emphasis on clarifying tenure of forest communities

There are challenges and opportunities for all stakeholders in each phase of a VPA process, as outlined below. Addressing the challenges systematically provides opportunities not only for successful impacts of the VPA, but also going beyond the VPA.

Pre-negotiation phase — in-country consensus building

This phase places a great deal of emphasis on getting agreement from key forest stakeholders to move forward to negotiating a VPA with the EU. There is therefore a strong focus on information — access, availability, creation and management—including understanding the information needs of stakeholders. This emphasis, in theory, will help state and non-state actors to be more efficient and effective in their work.

One persistent challenge is the limited understanding key stakeholders from civil society, government and the private sector have about a potential VPA, its process and required inputs. This is important as early in the process there is an emphasis on organising stakeholders and creating a structure for discussions, with the assumption that the stakeholders will the capacity required to contribute to the next stages.

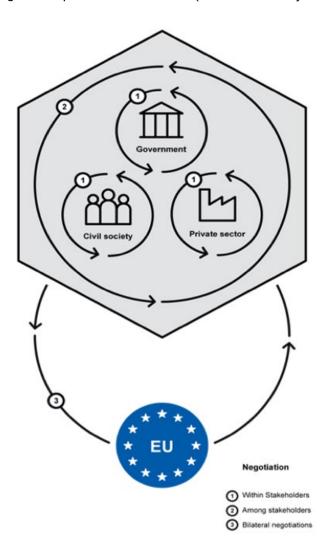
Recognising the limited awareness and access to information, organisations such as the FAO-EU FLEGT Programme and the EU FLEGT Facility have developed materials to increase awareness of opportunities and challenges in a VPA process, and the potential benefits of a VPA. This can helps all actors decide whether or not the country should request bilateral negotiations with the EU.

In Myanmar, the establishment of a multi-stakeholder group provides opportunities to develop consensus on the main issues revolving around illegal logging and on ways forward. However, there is concern that the multi-stakeholder group does not cover all the key states and that groups involved in the various civil conflicts are not included.

Negotiation phase — bilateral and in-country deliberations

The formal bilateral negotiations are intended to lead to agreement on the content of the VPA, covering the design of a timber legality assurance system and commitments to good forest governance. In this phase, emphasis is again placed on multi-stakeholder processes, including in the development of the VPA's content. The EU advocates that negotiation needs to occur within and between stakeholders in the negotiating country, as well as between the country and the EU (Figure 2).

Figure 2. Overview of the negotiation processes within VPA (EU FLEGT Facility 2016)



However, the VPA negotiation phase can take a long time. Viet Nam and the EU began negotiating their VPA in 2010 and concluded negotiations in 2017 before ratifying the agreement in 2019. Such a long process can frustrate some stakeholders. This is something that must be recognised in advance and effectively managed. This management includes understanding the financial costs and work time involved in negotiation meetings, helping to ensure that processes are efficient (by sharing appropriate information in a timely manner, for example) and ensuring that those participating in the processes have the appropriate mandate, knowledge and skills to effectively contribute to the process, including the formal meetings.

Once the negotiating parties reach agreement, they initial the document, which they later sign ahead of its ratification by the legislative assembly of the timber-exporting country and the legislative arm of the EU. Arguably, this part of the process generates the highest level of interest in the VPA and its related issues, in both the domestic and international arenas. This is an opportunity to gain positive public awareness of the VPA and the partner country's progress in addressing illegal logging and governance challenges in the forest sector. However, it can also be an opportunity for nongovernmental organisations to publish critical information.

VPA implementation — timber legality assurance system development

A VPA emphasises having an appropriate national legal framework, including a timber legality assurance system, in place to address the direct and indirect drivers of illegal logging and having the appropriate capacities to ensure the framework is followed. This will have implications beyond illegal logging, to include, for example, strengthened coordination between government departments working on land use management as well as mandated multi-stakeholder participation in the legal reforms.

Governments retain much control over the process of developing and implementing the timber legality assurance system. This underlines the importance of governments understanding the value of participation in the process and the need for all stakeholders to have the capacity to participate effectively.

The system, once in place, must work. One pillar of monitoring is the independent auditor, who is responsible for verifying that the timber legality assurance system is functioning appropriately. This requires resources and capacities being in place to monitor the effectiveness of, for example, the supply chain controls.

Read more on this topic

• The EU FLEGT Facility provides an overview of general and specific examples of challenges encountered in the VPA process (here)

5. What are the roles of civil society in a VPA process? What challenges and opportunities do they face?

Civil society organisations can play a variety of roles in VPA processes, such as: 9

- Observing the process for example, to apply learning in other processes
- **Participating in the process** either not affecting decisions or affecting them as a member of a working group or expert group (see Figure 3)
- Accessing and analysing information to strengthen the process, including monitoring forest management
- Raising awareness and building capacities of other civil society groups, the private sector or government staff
- Facilitating communication for example, between communities and local or national authorities
- Implementing projects such as livelihood-development programmes linked to VPA processes
- **Independent monitoring** some VPAs have created or acknowledged a role for independent observers from civil society to monitor forest law enforcement and governance

Challenges

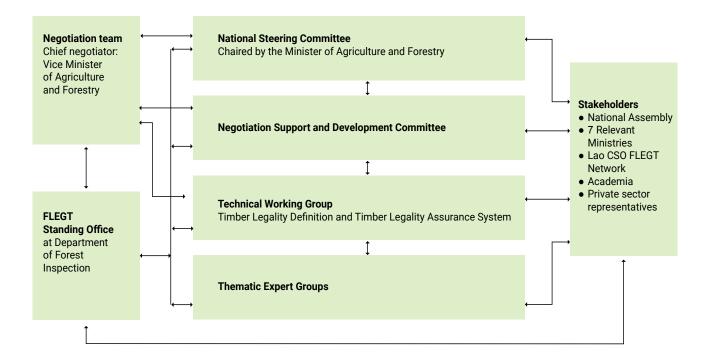
The above roles require resources like time and money as well as capacities, including:

- Facilitation skills for example, to ensure effective participation of marginalised groups. This is important in the Greater Mekong countries as governments have a tradition of top-down decision-making, particularly regarding forest management. This is reflected in the attitudes of government staff, as well in their skills regarding participatory processes
- **Negotiation skills** these are important, for instance, in the process of revising relevant legislation
- **Effective communication** for example, the ability to share information effectively with various stakeholders while addressing their communication needs
- Risk management to ensure that the organisation's activities do not expose it or its constituents to harm
- **Technical capacities** for example, having legal knowledge required to effectively contribute to the development of a timber legality definition

Different organisations are better placed to focus on different areas of the process, reflecting their capacities and mandates. This underlines the importance of coordination. In many countries engaging in VPA processes, new networks of civil society organisations are proving to be effective coordination mechanisms. These networks also provide a stronger collective voice, which governments and the private sector increasingly recognise. The networks are designed to be inclusive, recognising the diversity of stakeholders that their member organisations represent, as well as their different priorities and methods of work. Networks can also develop the capacity of their members to ensure they can effectively contribute to the process.

⁹⁻ Mustalahti, I., et al. (2017). Resources and Rules of the Game: Participation of Civil Society in REDD+ and FLEGT-VPA Processes in Lao PDR. Forests, 8 (2), 50.

Figure 3. Overview of organisational structures for VPA negotiations in Lao PDR 10



Opportunities

VPA processes enable civil society groups to engage with their national governments and with the private sector on their core issues. They can use the process to ensure, for example, that the VPA definition of legal timber includes compliance with laws relating to issues such as workers' rights, biodiversity conservation, benefit-sharing with communities and land rights. They can also use the process to highlight areas where laws — or their enforcement — are inadequate. This creates opportunities to push for legal reforms. International processes such as VPAs also provide opportunities to raise the profile of forest landscape governance issues outside of the country. This is particularly relevant if the operating environment for civil society organisations is restricted due to operational risks or limited capacities. In this case alliance-building with international organisations may provide numerous opportunities, for example, on access to data (including remote sensing information). VPAs can also address some of the gaps civil society organisations face by enabling them to access funding for capacity building.

- A practical guide for civil society organisations taking part in FLEGT VPA negotiations (here)
- Participation of civil society in REDD+ and FLEGT-VPA processes, example from Lao PDR (here)
- Increased access to information through such platforms as Open Development Mekong (here)

6. What are the synergies between FLEGT VPAs and REDD+ and other forest governance initiatives?

REDD+ is an international framework that encourages developing countries to support climate change mitigation by reducing deforestation and forest degradation (which are important sources of greenhouse gas emissions) and by increasing removal of carbon dioxide from the atmosphere by conserving and expanding forests and improving forest management. REDD+ therefore has potential synergies with FLEGT VPAs and their emphasis on illegal logging.

There are also concerns, however, that REDD+ and VPAs may create challenges for each other. The issues can include:

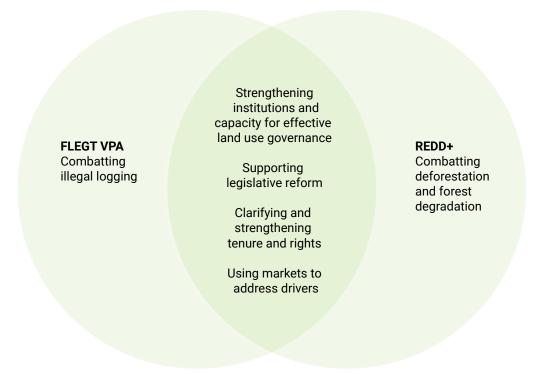
- A limited pool of experts among the stakeholders in each country
- Government offices and civil society groups being territorial regarding their mandate
- A lack of systematic communication among actors (including individuals) involved in both processes¹².

However, as with many issues related to REDD+ and VPAs, these challenges can be addressed through, for example, a systematic capacity development programme.

According to the EU REDD Facility: "Increased cooperation between REDD+ and FLEGT at the national level could advance forest and land-use governance reforms, clarify land tenure, strengthen stakeholder engagement, increase transparency and balance competing interests." The Facility highlights lessons that can be shared between the two initiatives with respect to: effective multi-stakeholder processes; work to improve legal frameworks; safeguards against potential adverse social and environmental effects; and work focused on measuring, monitoring, reporting and verification.

Other overlaps, and possible synergies between VPAs and REDD+ fall into three broad categories (Figure 4).

Figure 4. Overview of the commonalities between FLEGT VPAs and REDD+ regarding potential synergies.



^{11–}REDD+ stands for 'reducing emissions from deforestation and forest degradation, conservation of existing forest carbon stocks, sustainable forest management and enhancement of forest carbon stocks'

¹²⁻Mustalahti, I., et al. (2017). Resources and Rules of the Game: Participation of Civil Society in REDD+ and FLEGT-VPA Processes in Lao PDR. Forests, 8 (2), 50.

¹³⁻⁻EU REDD Facility. REDD+ and FLEGT: building synergies. http://www.euredd.efi.int/redd-flegt-building-synergies

Strengthening institutions and capacity for effective land use governance

The emphasis of REDD+ on stronger institutions and capacity development to address the multi-sectoral drivers of deforestation and degradation is also reflected in VPAs. Both include a focus on developing the capacity of civil society groups to ensure that they can, for example, effectively take part in each initiative and monitor and communicate its progress and impacts.

REDD+ and VPAs also both recognise the importance of international collaboration. In the case of REDD+, this is to address the issue of leakage, in which deforestation is prevented in one place but shifts to somewhere else. For VPAs, it is to address cross-border trade of illegal timber. This requires collaboration at the regional level, such as under the Association of Southeast Asian Nations (ASEAN).

Clarifying and strengthening tenure and rights

Unclear and weak tenure and rights contribute to deforestation and degradation, including illegal logging. There has been a great deal of investment by governments in the Greater Mekong to address this issue, including through supporting the development of community forestry (Table 1). Successful REDD+ implementation relies on clear tenure and land-use rights, and VPAs provide an opportunity to clarify and strengthen tenure and rights through the stakeholder deliberations towards a legality definition.

Using markets to address drivers of illegal logging, deforestation and forest degradation

Markets for timber and commodities such as palm oil, rubber and maize play significant roles in driving deforestation and forest degradation, including illegal logging. Both REDD+ and the EU FLEGT Action Plan, including VPAs, use the market to address the demand and supply issues that can drive forest loss.

Civil society organisations and news media play a fundamental role in both REDD+ and VPAs, helping businesses and consumers make informed decisions on the source of products they buy, but also sharing information with governments and other relevant stakeholders on the benefits of buying products from sustainable sources.

Other initiatives

Other international initiatives that are relevant to the development and success of VPAs include:

- Forest certification schemes, such as those of the Forest Stewardship Council (FSC) and the Programme for the Endorsement of Forest Certification (PEFC)
- The Extractive Industries Transparency Initiative (EITI), of which Myanmar is a member
- Zero-deforestation (deforestation-free) commitments by companies around the world

Like REDD+ and VPAs, these rely on transparency and access to information, and use the market to address drivers of deforestation and forest degradation.

- EU REDD Facility pages on REDD and FLEGT interactions (here)
- Synergies between FLEGT VPA and PEFC (here) and FSC (here)

Engaging people in forest governance in the Mekong



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