

## I. Introduction

From 1990 – 2015, forest governance has been improving globally (Sloan 2015). To varying degrees, sustainable forest management and climate change initiatives have supported timber-producing governments to strengthen forest administrations, reducing the proportion of logging that is done illegally. These initiatives have “democratized” forest governance, increasing transparency and strengthening civil society. In the 1990s, 16 million hectares of forest were lost per year, while only around 13 million hectares of forests were lost each year in the 2000s (FAO, 2016).

Building on these successes, as international efforts to combat climate change have grown, governments, companies, indigenous groups, and non-governmental organizations have begun to make commitments to reduce carbon emissions by better managing and protecting forests. At climate change negotiations in 2014, stakeholders endorsed a target to cut natural forest loss in half by 2020 and to end it by 2030. The New York Declaration also calls for restoring 150 million ha of degraded forest and croplands by 2020 and at least an additional 200 million ha by 2030. The following year, governments of several EU Member States reiterated those commitments in the Amsterdam Declaration, calling on the European Commission to ensure that EU trade and investment agreements do not lead to deforestation. Similar commitments have been made through the Consumer Goods Forum and numerous individual corporate announcements. Along with these formal declarations, voluntary action agendas have been proposed with steps each group can take to meet these goals. For countries and companies, these measures include changing the way they source primary materials so that their practices no longer contribute to deforestation.

The acknowledgement by companies and countries of the need to change their own procurement practices is an important step, but these commitments are slow to show results.<sup>1</sup> Changing the demand is only one side of the equation. They can only source deforestation-free commodities if there is a supply available to meet that standard. A sea change in patterns of agricultural development due to global commodity markets has made that very difficult.

Global demand for products like palm oil, soy, beef, cocoa, and rubber, especially in Europe, North America, and East Asia is increasing rapidly (Brack, 2014). And as agricultural commodity prices have risen, the demand for land—any arable land—has skyrocketed. During the 2007-2008 world food price crisis, headlines about land grabs started garnering international attention (Cotula, 2009). Global commodity companies were snapping up vast swaths of land in vulnerable countries for agricultural plantations (Lawson, 2014). Economic conditions made agricultural products so valuable that in some places, agricultural interests could practically dictate the terms for acquiring the land for their plantations. Much of the land acquired in this way is forest land. The process of converting forest land to use for agricultural production has not gone away with the stabilization of world food prices and global demand for commodities continues to push this trend.

Agricultural expansion is the main cause of deforestation worldwide (UNEP, 2014; Brack, 2014; Guardian, 2016). One study found that 71% of all tropical deforestation from 2000 – 2012 was caused by commercial agriculture

---

<sup>1</sup> For example, deforestation continues in an area of Bolivia where Cargill sources its soy (Tabuchi, 2017).

(Lawson, 2014). Changing the use of forest land to another land use such as a mine, timber plantation, agriculture, or pasture, is known as conversion. This includes two elements. One is the physical change in the use of the land by removing the forest. The concept also includes a decision that a given forest area should be allocated, either through land use planning or through issuing the rights to the land, to someone who intends to use it for agricultural or another non-forest use. Forest conversion is a major driver not just of deforestation and all of its resulting consequences, but also of conflict—often deadly—over land. Conversion not only results in enormous missed opportunity for sustainable development but very often directly violates communities and indigenous people's rights, to the benefit of powerful interests. Conversion is easiest when land rights are undefined and land governance is weak, and as a result it often adversely impacts local people and is frequently illegal (EIA, 2014).

Conversion is not bad by definition. Infrastructure, mining and agricultural development are legitimate government objectives that happen to require land. When a government is faced with a choice of what to do with a given forest area, it could be that potential revenue streams from these activities would be greater than maintaining and managing forests. However, viewed globally, the total economic value of maintaining forests may be greater than another option. And governance challenges in the processes that result in conversion so often result in harmful impacts that may counteract the benefits for many stakeholders.

So deforestation-free commodity commitments are welcome, but voluntary initiatives like these have not been able to turn the tide of deforestation (Gulbrandsen, 2015). To improve land governance and address conversion, we must look beyond supply chains (Van Orshoven, in press). Without rule of law in the producing countries, there is no way to define what constitutes “deforestation-free” and to demonstrate that commodities being produced and traded meet deforestation-free commitments. Not only does the concept of zero-deforestation need to be defined at the national or jurisdictional level, but legal and institutional frameworks need to be clarified and enforced, to enable stakeholders to understand rights and responsibilities.

Changing the institutions, laws, and practice that govern resources can be a great challenge. Experience from the European Union’s Forest Law Enforcement Governance and Trade (FLEGT) initiative provides insights that can inform efforts to improve land governance. FLEGT is the European Union’s framework for addressing illegal logging. The FLEGT Action Plan sets out measures to 1) prevent the import of illegal timber into the EU; 2) improve the supply of legal timber; and 3) increase demand for timber from responsibly managed forests (EU, 2003). The action plan has seven areas of focus. Lessons from its stakeholder-driven legality approach seem particularly applicable to land governance.

Several elements of FLEGT aim to address illegal logging and promote legal timber trade. This legality approach is a stakeholder driven national process that has been enshrined in a series of bilateral trade agreements called Voluntary Partnership Agreements (VPAs). These country level processes bring stakeholders together to agree on a definition of legal timber and to identify how to ensure that only timber meeting that definition is traded. The processes are designed to clarify rights, laws and regulations; strengthen enforcement of forest, environment, social and trade regulations; and improve transparency, monitoring and accountability. Through FLEGT, pressure on the international timber trade has meaningfully reduced illegality and supported improved enforcement and reforms in timber producing countries (Hoare, 2015). FLEGT contributes to reducing illegal logging by opening up forest sector

decision-making to national stakeholders while creating market pressure for legal timber, shifting incentives, reshaping preferences in favor of good outcomes, and taking into account the interests of previously excluded participants. This paper discusses how the legality and trade approach underlying FLEGT could be brought to bear on efforts to reduce deforestation due to conversion and keep zero-deforestation commitments.

## II. The Challenge of Conversion

Conversion is driven by global trade in timber, paper, soy, palm oil, beef, minerals, and other commodities. Beef, pulp and paper, palm oil, and soy cause half of global deforestation (Whelan, 2015). The demand for these commodities includes domestic and regional consumption, but a substantial portion is for the export markets (Lawson, 2014; Guldbrandsen, 2015). In South America, soybean cultivation and the cattle industry are leading factors driving deforestation, while timber, paper, and palm oil production is more prevalent in Southeast Asia. Conversion is an emerging challenge in Africa, where palm oil companies are quickly moving in to Central Africa. As forests are removed for agricultural production, a growing proportion of tropical timber is coming from conversion of forest rather than sustainable selective harvesting, even as regulation of the forest sectors of tropical forest countries is improving.

In 2014, a landmark study demonstrated that not only does conversion result in vast amounts of forest being lost, but it is also frequently illegal (Lawson, 2014). Gathering primary data from tropical forest countries around the world, the researchers found a pattern of failure to follow licensing requirements as well as corruption in the licencing process, clearance of land without all of the required permits and authorizations, without community consultation, without payment of taxes, and a host of other violations in the clearance process (Lawson, 2014). Land was found to be allocated in violation of human rights, particularly the equal rights of women; not based on Free, Prior and Informed Consent (FPIC) of the affected land users; not based on a thorough assessment, or in disregard of, social, economic, and environmental impacts; not based on transparent contracts that specify clear and binding commitments about activities, employment, and benefit sharing, and; not based on effective democratic planning, independent oversight, and meaningful participation (Lawson, 2014). Researchers found that 49% of that tropical deforestation was in contravention of national legislation.<sup>2</sup> Substantial portions of the trade of certain commodities, such as 65% of Brazilian beef, were found to be illegal. The researchers estimated \$61 billion in global trade of products resulting from illegal deforestation, including \$10 billion of timber and timber products from the deforestation itself. These findings were limited to violations of national laws regulating the forest sector itself. If international obligations and national laws beyond the forest sector had been considered, the figure would likely have been much larger (Lawson, 2014).

Conversion is also closely associated with broader governance problems. It commonly results when there are contradictory sectoral policies and legal frameworks. For example, conversion may result from mining activities that are completely legal within the mining legal framework, but inconsistent with requirements for administration of the

---

<sup>2</sup> There is a variation in the gravity and consequences in legal violations that relate to how the resulting "illegal" timber is addressed.

forest sector. These overlapping and inconsistent policies make it difficult to ascertain the legality of such processes and ensure that rights are being respected.

The fact that a substantial proportion of conversion is illegal may be a hook for designing activities that can help improve the governance context and potentially slow rates of forest conversion. In the forest sector, focusing on illegality has contributed to clarifying and better enforcing legal frameworks. The legality approach may prove effective as a way to begin to shift the whole dynamic that leads to conversion. But if FLEGT has been successful in reducing trade in illegal forest products, why hasn't it addressed the illegal deforestation that takes place in the forest conversion process? First, FLEGT does seek to ensure that timber and timber products resulting from illegal conversion are not included in the legal timber supply chain. But second, while conversion results in timber being produced, the administrative decisions that often lead to conversion take place outside of the forest sector and at a stage earlier than the focus of most VPAs. FLEGT, in particular through VPAs, was designed to address illegal logging, through a focus on regulation of forest sectors and production and export. While the decisions that lead to conversion are made outside of the forest sector, the results FLEGT has shown in improving forest sector governance—and not only legality—present an opportunity for addressing the land governance challenges that lead to conversion (Evaluation, 2016).

### III. FLEGT offers lessons for addressing land governance

The FLEGT legality approach uses the economic leverage of market access to strengthen forest governance by bringing forestry activities within the rule of law. It enables national government, private sector and civil society representatives to collaborate in a deliberative process to address their priorities for legality in forestry activities that support economic, social and environmental goals. FLEGT has been recognized as a pioneer in effectively addressing the drivers of illegal and unsustainable logging (Fern, 2015). The potential for greater access to markets provides a strong incentive to commodity producers to comply with demand-side requirements. Deforestation-free commodity chains may provide similar incentives, but in any case, the producer-side response to provide commodities to meet that demand can be inspired by lessons from FLEGT.

The FLEGT approach stands out from other governance and rule of law initiatives by harnessing trade pressure to establish a deliberative process for systematically designing and putting in place a system of checks and balances that act on the underlying problems that give rise to illegal logging and trade. The FLEGT approach closely tracks the World Bank's recent conclusion about the elements necessary for a successful governance reform project: FLEGT brings results exactly because it is *not* a blueprint for action. (World Bank, 2017). By providing a platform for all voices to be heard in decision-making, the process contributes to overcoming power asymmetries. This approach also builds in political will because the stakeholders drive the process according to their priorities and context and not an external agenda.

In contrast to private sector certification schemes or other voluntary sustainability approaches, the FLEGT approach to legality applies to the entire forest production process. This allows it to zero in on the core of many of the governance challenges in sector institutions.

FLEGT is also distinct in the kind of stakeholders who drive the process. Governance reform efforts generally try to incorporate government, civil society, and the private sector. The economic leverage of FLEGT brings different combination of these interests to the table. By operating through trade and thus influencing private business, FLEGT has seen unusual participation, commitment, and even motivation for the process from the private sector.

The legality approach also brings tax recovery potential, international recognition, and perhaps most importantly, political legitimacy. When it works as designed, policy and corresponding legal reforms are made by the stakeholders with differing interests through deliberative process, very much influenced by the realities of the political, social and economic setting. FLEGT is a national process, not a project, so it has national consequences, which many projects may miss. It pushes change by shifting incentives, promoting change that is determined by national stakeholders based on their objectives and context.

a. Applying the legality approach for land governance reforms

While the focus of this paper is lessons from the forest legality approach that can contribute to improving land governance and reducing illegal conversion, it is worth noting that FLEGT stakeholders have already demonstrated some potential by considering land issues through the forest lens (Evaluation, 2016).

While conversion was not a high profile issue when most VPAs were negotiated, land issues were. Concern about land issues brought stakeholders to the table in many countries. The importance of addressing land issues was recognized by the architects of FLEGT from the beginning.<sup>3</sup> As they decided where to aim the powerful tool of the legality assurance system in the VPA, stakeholders faced a tension between the objective of wanting to reform and clarify land rights and allocation before proceeding to identify some timber and timber products as legal, and wanting to proceed with the market mechanism to promote their timber as legal. This dynamic tension has been able to bring results on both fronts.<sup>4</sup>

In some cases, stakeholders have consciously chosen to set major land issues aside. This is easier when there is a robust parallel process taking place like the land and community rights legal reform processes that have been taking place in Liberia since the end of the civil war in 2003. In other cases, land governance has taken a central role. Honduras is well known as the most dangerous place to defend the environment and indigenous people's rights (Greenpeace, 2017). Historical exclusion, capture and clientelism in land tenure and land use, and a weak legal framework and related institutions, have led to frequent disputes over rights to land. Cases of illegal use and sale of lands or exploitation of resources are common, as are a lack of recognition of ownership or conflicting claims to land. Representatives from the government, civil society organisations, the private sector, and indigenous people's groups decided to negotiate a VPA with the EU and agreed that regularisation of land tenure is one of the fundamental criteria

---

<sup>3</sup> European Council conclusions of 2003 on FLEGT “urged the Community and Member States to enter into political dialogue with key target countries to instigate forest sector governance reforms, more specifically to:

-strengthen land tenure and access rights especially for marginalised, rural communities and indigenous peoples - ...”; FLEGT Briefing Note 2 makes reference to tenure as a key element of the standard for legality in a VPA.

<sup>4</sup> It is however important to highlight that the legality definition and scope of the VPA are framed by the priorities established through national deliberations between different interests in the country; a FLEGT VPA process cannot therefore steer or replace the legislative process and decision making at country level.

for ensuring the legality of timber. Stakeholders have addressed land in a number of ways including within the operable parts of the agreement, in broader commitments, and through the implementation process.<sup>5</sup>

Overall, the FLEGT legality approach provides the opportunity to address land governance in three ways:

- 1) Transforming legal frameworks
- 2) Continued improvement to accountability
- 3) Opening political dialogue and equalizing stakeholder voices

### *Transforming Legal Frameworks*

FLEGT's compliance process applies to the whole lifecycle of sustainable forest management. This means that all of the technical elements governed by law are examined in the process, from licensing, to processing, to transport, including whether the government is doing their job or not. The scope and the terms of legality for each of these matters, for FLEGT purposes, are defined by the stakeholders through a deliberative process. Representative bodies must think through existing laws, identifying which are relevant for the topic of discussion.

This process has the potential to be transformative. While stakeholder participation is a standard good practice in legal reform efforts, a number of factors set this approach up to be particularly successful. When it works as intended, the process starts with stakeholders who have already thought through their priorities for the sector. To engage on FLEGT with the EU, stakeholders first conduct consultations and analyses and formulate their goals for forest sector reform. Stakeholders can then work on those priorities as they work through the technical elements of forest management through the VPA process. The focus on the technical issues frames the discussion and gives something concrete for each stakeholder group to apply its priorities. Stakeholders must collect and go through all of the legal texts that cover the topics they have included. And because they are designing a system to ultimately verify legality, they must think carefully through how each provision is applied and whether it is serving its intended purpose. A given issue, such as land allocation, can be included in the legality definition itself or it can be included among the underlying factors that must be evaluated to meet that standard.

As the process proceeds, a cadre of stakeholders become thoroughly informed about the contents of the laws governing the forest sector. They talk through issues and if they do not always reach shared perspectives, at least they understand how other groups view a given issue. Together they begin to truly understand the contents of the applicable legal texts and how—and why—those texts are or are not applied.

More specifically, such a legality assurance system could directly address conversion:

- Legality assurance systems can include the legal requirements for allocating forest land to other land uses and/or harvesting in conversion areas ; or

---

<sup>5</sup> In this way, legality assurance systems have addressed land governance in a number of ways:

- Requiring documentation of ownership or use rights
- Requiring proof that consent was obtained from neighboring land owners or users
- Requiring proof that the land was allocated for the particular use in a spatial mapping process
- Requirements related to benefit sharing for those with rights to the land.

- Legality assurance systems can provide a means to identify and verify legal compliance for operations in forest conversion areas.

While the above elements can be included in legality verification systems when they exist in national law, once stakeholders begin to dig into the details of topics as they develop the legality definition and the legality assurance system, they very often find that legal frameworks are unclear or contain gaps. As a result, it is very common for technical problems discovered in this way to result in the issuance or amendment of regulatory documents to clarify or fill gaps, or to trigger legislative reform. These reforms build on the technical analysis done to incorporate the matter in the legality definition or the legality assurance system.

Of course, such legal reforms take time and are sometimes out of the hands of FLEGT actors. It does not always make sense to set the VPA process aside in order to wait for these reforms to be in place. However, in order to ensure that reforms considered necessary for the system development by the parties are actually carried out, they are incorporated in the process or as requirements of the VPA in various ways:

- Reform requirements can be incorporated into legality definitions or legality assurance systems. For example, the Central African Republic VPA includes environmental and indigenous rights elements to verify that were not supported by national law at the time of the negotiation. The language specifies that the law is to be updated to reflect these requirements and that as necessary the legality assurance system would be updated. Following this commitment in the VPA, environmental and indigenous rights laws were updated. It remains for the VPA to be updated to reflect the new indigenous rights protections.
- VPAs also include commitments for reform on essential issues that are not directly reflected in the legality elements. For example, Liberia's VPA lists legislation/regulations that need to be developed and explicitly states that once they have been completed, amendments will be made to the legality assurance system to reflect any additions. The agreement further specifies that the reforms should be done in consultation of all stakeholders and provides a deadline for the process.
- These issues can be addressed through implementation. As Ghana is implementing its VPA, the allocation of special permits, raised by civil society during negotiations, re emerged as a main theme and the process found solutions clarifying how such permits were to be allocated. Identifying and even committing to reforms identified through this process is not always sufficient to ensure that they are carried out. Actors must feel accountable for the commitments or they may not be carried through. In addition, when the requirements for the reforms are not appropriately reflected in the stakeholder agreements, they can fail to be ultimately reflected in the legality assurance systems even when they are enacted legally.

Such a stakeholder process for developing a concept of legality is not a guarantee that legal reform will integrate with the process and embody the consultative approach. There are also many examples where legal reform processes take place in parallel to VPA processes. While the VPA process brings together the actors in the forest sector and provides substantive and institutional roots for reform processes, the two are not always successfully integrated. Similarly, in some countries, the consensus building spirit of the VPA has been lost as legislative reform processes have advanced. In Gabon, for example, the forest law reform process began even before the VPA process but in spite of urging and prodding from the European Commission to integrate the two, the legal reform process has remained obscure, non-participatory, and very much government run. And, partly as a result, VPA negotiations there have been on hold for several years.

### *Continued Improvement and Accountability*

The FLEGT legality approach incorporates both transparency and ongoing accountability mechanisms in VPAs. When developed as intended, the accountability mechanism serves to improve the system, and the governance of the sector, on an ongoing basis. First, VPAs foresee the public disclosure of various kinds of information relevant to forest governance. These requirements are not necessarily directly incorporated into the legality assurance system. They have included requirements to publish information on legality requirements for conversion timber, such as agriculture or mining concession contracts (including maps), fees paid, environmental impact assessment results, other transparency requirements.

Second, FLEGT incorporates monitoring and oversight functions to assure effectiveness, credibility and support from external observers. These could include a focus on whether the VPA is effectively addressing matters such as conversion or related land allocation decisions:

- Regular independent audits (obligatory requirement). Of the national systems that are put in place or strengthened in order to implement the VPA, the audit verifies the robustness of the legality assurance system and provides information to the FLEGT partner country and the EU on whether everything is working in the intended way.
- Independent observation by civil society (depending on the outcomes of the negotiation process and the willingness from the partner country). Independent observers can provide evidence of forest illegalities and non-compliance with the law, which can be used to improve the VPA. This function is well documented in the Indonesia VPA, where independent observers access to information and logging areas allows them to either file complaints under the TLAS, or if an identified issue is not covered by the TLAS, bring the case to court.

Third, VPAs establish complaint mechanisms that allow stakeholders to raise concerns about the functioning of the VPA systems or related issues. These mechanisms extend the opportunity to engage on these issues beyond those representing their stakeholder groups in the VPA institutions. Just like all of the VPA elements, they are structured differently in different places according to local context and priorities.

### *Opening and Equalizing Political Dialogue*

As described above, VPAs are a multi-stakeholder tool for implementing the legality approach. While questions have been raised about the efficacy of some aspects of VPAs, participants and observers agree that they have been extremely effective at creating space for political and technical dialogue where stakeholders with very different levels of political power work by consensus (Evaluation, 2016). EFI research has shown that one of the biggest problems that results in illegal conversion is the lack of communication/coordination across sectors. While VPAs are trade agreements, their legality objective requires them to address numerous aspects of forest and broader governance relating to the legal framework and its implementation. This requires bringing together the various institutions and actors with authority and interest over the suite of forest sector issues addressed by the agreement, overcoming historical communication barriers between sectors.

In addition to bringing stakeholders together to decide how to address forest governance challenges, VPAs also create institutions that ensure a continued process of addressing technical and political issues during implementation. VPA implementation is governed by Joint Implementation Committees (JICs) with representatives from both the partner

country and the European Union. During negotiation, a national-level precursor of this decision-making body usually leads the development of the VPA elements with the support of technical groups. JICs can provide the forum to debate on the issue and raise questions on how conversion is regulated and how conversion timber is incorporated into the TLAS.

In addition to reforms that were identified at the beginning of a VPA process and were committed to be addressed through the agreement, very often a need for reform arises either through the VPA implementation or in the broader context. Indonesia provides a very strong example of this ongoing multi-stakeholder governance that has succeeded in keeping their legality assurance system in step with the fast-paced evolution of their legal framework. To support their VPA governing body, they have established a technical expert body that monitors legislative changes. The technical body reviews legal developments to identify when an amendment to the VPA is needed. Once there is a critical mass of amendments required, they present a plan to the governing body to address them. In this way, Indonesia has succeeded in keeping its VPA completely harmonized with national law. Cameroon set up a similar technical working group in particular to explore the new issue of forest conversion. The JIC in Liberia has been the forum for resolving a number of high-profile forest governance challenges. In particular, civil society actors have recognized the importance of the space opened through the multi-stakeholder governance of the VPA. In 2012, when a series of illegal logging permits covering a substantial portion of Liberia's land area were issued, civil society used VPA structures as the vehicle to challenge these illegal permits. When the VPA came into force, one of the first actions of the government was to cancel all of these permits in early 2014. Several forestry officials – for the first time ever in Liberia's history – are now standing trial for their roles in the affair (SAMFU, 2015).

#### b. Beyond Legality

There are a number of FLEGT approaches beyond VPAs that also have the potential to be effective in other commodity chains.<sup>6</sup> One such approach is the development of public procurement policies that promote the sourcing of sustainable and legal commodities (European Union, 2003). In the EU, 19 countries have now adopted some form of timber procurement policies and 11 of them include provisions that specifically encourage trade in verified legal timber. The EC, in the framework of the EU Green Procurement Policy, has included the requirement of legality as one of the common criteria for procurement of timber products which might be adopted by EU Member States in developing their own procurement policies. FLEGT also has pillars on regulation and finance that could be brought to bear to address conversion.

Another, is through due diligence. The EU Timber Regulation (EUTR) prohibits the placing of illegally harvested timber and timber products on the EU market and requires operators to minimize this risk by exercising due diligence system. Due diligence requires an operator to gather information about timber and timber products and their suppliers in order to conduct assess risk and undertake mitigation measures where appropriate. The EUTR applies to timber products (with some exceptions) whether imported or grown and produced in the EU and defines legality in relation to

---

<sup>6</sup> Another avenue to explore would be financing and investment options include stricter safeguard policies for public agencies and, for private institutions, encouraging or requiring commitments to lending policies that require adherence to sustainability standards. Compared to VPAs, these would be faster to enact and implement, but would not directly contribute to changing conditions on the ground in producer countries.

the national legislation of the producing country. It takes a flexible approach by listing a number of criteria without specifying particular laws, which differ from country to country.

Timber harvested from forest land converted to other uses and exported to the EU should be considered in the due diligence systems of the operators as any other timber products. If elements of risks of illegality are identified, operators should take the appropriate mitigating measures such as requesting additional documentation, implementing control measures such as 2nd or 3rd party supplier audits/verification, or changing supplier.

#### c. Other Factors to Consider

Certain factors about the trade of a given commodity make them more or less conducive to the FLEGT approach.

- It must be possible to develop a "protected market" where legal and sustainable products can command a fair price and not be undercut by cheaper illegal products (Brack, 2014).
- The chains must be relatively simple so that it is feasible to trace the products from producer to consumer markets, such as for soy.

Tools for identifying and publicizing these trade relationships are making this all the easier. One innovative such tool is "Trase." Trase is an online platform designed to provide transparency and accountability in supply chains. Starting with soy in Brazil, it draws on customs, trade, logistics and production data, to dynamically map supply chains from municipalities of production to consumer countries, identifying traders, importers and other supply chain actors along the way. These maps then show the kinds of environmental impacts—including deforestation, biodiversity loss and water scarcity—associated with the production landscapes that companies and other downstream buyers and investors are linked to, as well as key data on social and governance conditions. This is a first step for companies to profile the risks, whether operational, legal or reputational, that they may be exposed to in the regions that they are sourcing from. This information about risk can be applied to due diligence requirements, and can be used to plan how to improve the situation on the ground..

Other factors that would make a trade-based legality-approach effective would be that the product is sensitive to market pressure. That is if one market contracted and only would accept verified legal products, would this result in a reduced market for the unverified products.

The FLEGT approach depends on genuine stakeholder desire to improve. The most important ingredient in governance change efforts is ownership by the national stakeholders. VPAs like those in Indonesia and Ghana have made the greatest progress because the processes have been led from within and are thus very carefully designed to address stakeholder's objectives.

#### d. Limitations of FLEGT

While FLEGT offers a number of elements that can effectively be applied to land governance, the approach also has constraints. First, under FLEGT, legality is drawn from existing law and policy. While stakeholders may have identified and proposed useful reforms, they do not have the power to make those changes. If government has an aggressive policy of agricultural development, FLEGT can only offer the space for stakeholders to contribute to discussions of that policy, but does not have the authority to make changes to it.

The legality approach is designed to address the legal status of a process or an object. While it can bring broader governance improvements as described above, if the government has a policy to promote forest conversion, FLEGT stakeholders can raise the visibility and push for dialogue, but they cannot necessarily change a firm government policy decision.

#### IV. Conclusion

Lessons from FLEGT show the potential of deliberative transformation of legal frameworks, systems for continued assurance of accountability, and platforms for meaningful dialogue on equal footing for improving land governance. These elements can provide tools for creating the conditions for meeting zero-deforestation commitments and reducing forest conversion. The approach of an in-country deliberative process, using demand and supply levers, should be considered to address land governance and conversion, harnessing national stakeholder commitment to improve governance of land, while reducing the market for illegal commodities and creating the pressure necessary to make meaningful improvements.

VPA experience has demonstrated:

- by focusing on legality, it has allowed forest sector issues to be nationally deliberated
- the supply and demand focus brings different interests to the table that you would not normally see
- the visibility and pressure from the EU create a dynamic that raises the profile, as well as encouraging certain things take place in the process that create the necessary space for all stakeholders to have a say – which has changed the way things are done in country.

The legality approach provides tools for working in places with serious systematic governance challenges; these are slow to change even with economic pressure and international oversight. Improving land governance may prove even more intractable than improving forest governance has, but the mixture of economic pressure and institutions that dig into the interstices of technical and legal issues and change them by consensus of interested stakeholders is worth exploring.

## **Resources**

- Brack, D., Wit, M., Goransson, Emilie, Ragna, J., Van Orshoven, C. & Simpson, R. (2014, March). FLEGT, REDD+ and Agricultural Commodities, in Guido Broekhoven & Marieke Wit (Eds.) *Linking FLEGT and REDD+ to Improve Forest Governance*, 55, 167-184. Wageningen, Netherlands: European Tropical Forest Research Network.
- Broekhoven, G. (2014, March). FLEGT, REDD+ and Agricultural Commodities, in Guido Broekhoven & Marieke Wit (Eds.) *Linking FLEGT and REDD+ to Improve Forest Governance*, 55, vi-xx. Wageningen, Netherlands: European Tropical Forest Research Network.
- Cotula, L., Vermuelen, S., Leonard, R., & Keeley, J. (2009). Land grab or investment opportunity? FAO report. Retrieved at: <ftp://ftp.fao.org/docrep/fao/011/ak241e/ak241e.pdf>.
- European Commission. (2013). The impact of EU consumption on deforestation: Comprehensive analysis of the impact of EU consumption on deforestation, Final Report, *Technical Report 2013-63*. Retrieved at: <http://ec.europa.eu/environment/forests/pdf/1.%20Report%20analysis%20of%20impact.pdf>.
- European Union. (2007, March). What is Legal Timber? *FLEGT Briefing note No. 2*. Retrieved at: <http://ec.europa.eu/environment/forests/pdf/1.%20Report%20analysis%20of%20impact.pdf>.
- Evaluation of the EU FLEGT Action Plan (Forest Law Enforcement Governance and Trade) 2004-2014 (Evaluation). (2016, April 27). European Union. Retrieved at: <https://ec.europa.eu/europeaid/sites/devco/files/report-flegt-evaluation.pdf>.
- European Union. (2003). FLEGT Action Plan. Retrieved at: <ftp://ftp.fao.org/docrep/fao/011/ak241e/ak241e.pdf>.
- Fern. (2016). Do FLEGT VPAs Improve Governance? (Briefing note). Retrieved at: [http://www.fern.org/sites/fern.org/files/impactreport\\_lowres.pdf](http://www.fern.org/sites/fern.org/files/impactreport_lowres.pdf).
- Fern. (2015, December). Review, review, review... then act? *Logging off, Forest Watch Special: FLEGT VPA update*. Retrieved at: [http://www.fern.org/sites/fern.org/files/VPAupdate\\_Dec2015\\_FINAL.pdf](http://www.fern.org/sites/fern.org/files/VPAupdate_Dec2015_FINAL.pdf)
- Food and Agriculture Organization of the United Nations (FAO). (2016). Global forest resources assessment 2015: how are the worlds forests changing? (2<sup>nd</sup> ed.). Retrieved at: <http://www.fao.org/3/a-i4793e.pdf>.
- Global Witness. (2017, January 31). Honduras: the deadliest country in the world for environmental activism. Retrieved at: <https://www.globalwitness.org/en-gb/campaigns/environmental-activists/honduras-deadliest-country-world-environmental-activism/>.
- Gulbrandsen, L. H. & Ole K. F. (2015, May 8). Assessing the New York Declaration on Forests from a trade perspective. *Biores*, Vol. 9(4). Retrieved at: <http://www.ictsd.org/bridges-news/biores/news/assessing-the-new-york-declaration-on-forests-from-a-trade-perspective>.
- Lawson, S. (2014, September). Consumer Goods and Deforestation: An Analysis of the Extent and Nature of Illegality in Forest Conversion for Agriculture and Timber Plantations, *Forest Trends Report Series Forest Trade and Finance*. Retrieved at: [http://www.forest-trends.org/documents/files/doc\\_4718.pdf](http://www.forest-trends.org/documents/files/doc_4718.pdf).
- Hoare, A. (2015, June). Tackling Illegal Timber: What next (Chatham House). Retrieved at: [file:///C:/Users/sandra.thiam@efi.int/Downloads/tackling\\_illegal\\_logging\\_and\\_related\\_trade.pdf](file:///C:/Users/sandra.thiam@efi.int/Downloads/tackling_illegal_logging_and_related_trade.pdf).
- Save my Future et al. (SAMFU). (2015, July 27). The benefits of the Voluntary Partnership Agreement, a Liberian Civil Society Perspective. *Logging off*. Retrieved at: <http://loggingoff.info/wp-content/uploads/2015/11/884.pdf>.
- Sloan, S. & Sayer, J. (2015, September 7). Changes in Global Forest Resources from 1990-2015. *Forest ecology and management*, 352, 134-145.

Tabuchi, H. & Rigby, C. (2017, February 24). Amazon deforestation, once tamed, comes roaring back. *The New York Times*. Retrieved at: <https://www.nytimes.com/2017/02/24/business/energy-environment/deforestation-brazil-bolivia-south-america.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=second-column-region&region=top-news&WT.nav=top-news>.

The Economist (2009, July 2). Whatever happened to the global food crisis? It crept back. Retrieved from <http://www.economist.com/node/13944900>.

UNEP International Resources Panel. (2014) Assessing Global Land Use: Balancing Consumption with Sustainable Supply (Report). Retrieved at: [http://www.unep.org/resourcepanel-old/Portals/24102/PDFs//Full\\_Report-Assessing\\_Global\\_Land\\_UseEnglish\\_\(PDF\).pdf](http://www.unep.org/resourcepanel-old/Portals/24102/PDFs//Full_Report-Assessing_Global_Land_UseEnglish_(PDF).pdf)

Van Orshoven, C., Thiam, S., Kreiger, N. & Bock, J. (forthcoming). Learning from FLEGT Voluntary Partnership Agreements to make zero-deforestation commitments work. *ETFRN News 58: Zero deforestation: a commitment to change*. (European Tropical Forest Research Network).

Whelan, T. (2015, February 13). Going deforestation-free: can it protect our forests? *The Guardian*. Retrieved at: <https://www.theguardian.com/sustainable-business/2015/feb/13/deforestation-free-forest-companies-palm-oil-soy>.

World Bank. (2017) World Development Report 2017, Governance and the Law. Retrieved at <https://www.worldbank.org/en/publication/wdr2017>.