

Assessment of reforms related to the FLEGT-VPA in Lao PDR

In October 2016, the European Union (EU) and the Lao People's Democratic Republic (PDR) proposed a joint assessment of the current situation in Laos to provide a baseline to jointly monitor and review progress through to the end of the Voluntary Partnership Agreement (VPA) process. The assessment work is to support a shared understanding of the context, challenges and potential ways forward for the VPA. Based on a scoping exercise that identified a number of focal areas, several priority assessments were agreed. This report focuses on one of these priorities, namely the assessment of reforms and national initiatives related to forest law enforcement, governance and trade (FLEGT).

As part of its FLEGT Action Plan, the EU can enter into VPAs with timber producing countries. VPAs are legally-binding bilateral trade agreements that aim to address illegal logging by improving forest governance and promoting legal trade in timber. A VPA is a negotiated agreement underpinned by a timber legality assurance system (TLAS), a country-specific system based on the existing regulatory control mechanisms and legislative framework of the partner country. The TLAS aims to identify, monitor and license legally-produced timber to ensure that only legal timber is exported. The EU and Lao PDR have agreed to negotiate a VPA. Lao PDR has decided that its VPA will cover all sources of timber, including imports, exports and the domestic market.

The FLEGT VPA negotiating process is actively contributing to a dynamic policy environment for forests and forest products. Numerous reforms are occurring in several relevant sectors. Some of these have been ongoing for some time, while others are emerging in response to regional drivers, economic trends and international pressure, including through partner-funded programmes. Others are occurring in direct response to the FLEGT-VPA process.

About this executive summary

Report on assessment of reforms related to the FLEGT-VPA in Lao PDR

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The extensive scope of the negotiations of the EU-Lao PDR VPA will lead it to intersect with reforms across many sectors. This provides synergistic opportunities for collaboration and mutual support, but also the possibility for conflicts where sectoral or programmatic objectives do not align. The VPA process has therefore the opportunity of informing these activities. However, the very dynamic nature of the overall environment means that some aspects of the VPA may be difficult to finalise within the draft timeframe proposed by Lao PDR. These can be accommodated in the VPA as agreed future reforms.

The following sections identify key reforms and initiatives with implication for the VPA process where opportunities for synergies already exist or may appear in the future.

Key law reform processes with implication for the VPA process:

- The revision of the Land Law will be accompanied by nine specific regulations that will serve to clarify the legal arrangements through which land may be allocated, used, granted (for example as concession) or leased. This may assist in the clarification of verifiers under the legality definition being developed in the VPA negotiation process.
- The VPA process, particularly the development of the legality definition, can continue to support the ongoing revision of the Forestry Law by identifying regulations that should be amended, and any gaps in regulations that may need to be filled as the new Forestry Law broadens its scope.

Recent and ongoing reforms with implication for the VPA process:

- Lao Prime Minister's Order 15 on Enhancing Strictness on the Management and Inspection of Timber Exploitation, Timber Movement and Timber Business No. 15/PM dated 13 May 2016 (PMO 15) is triggering new departmental instructions that may result in the introduction of new processes, which are relevant to the identification of legality definition requirements. Also, the TLAS could become the monitoring tool for PMO 15 requirements.
- PMO 31 of 2013 on a temporary ban on logging in national Production Forest Areas will remain in place until necessary measures have been taken to give the Government confidence that harvesting through sustainable forest management can be achieved.
- PMO 13 of 2012 on the suspension of some land concessions has served to reduce the flow of conversion timber from some areas while an assessment of development projects is underway with support from the land concession inventory. The resulting Land Concession Information System will allow almost real-time monitoring of investment projects and could be used as information source in the TLAS for conversion areas.
- The revision of Decree No. 96/PM on plantation promotion and investment aims to promote investment in commercial timber plantations. However, the cost of meeting the full suite of plantation regulations is typically prohibitive for smallholders. As a result, smallholders gravitate to informal markets and their wood may not meet future VPA requirements. The VPA process could inform a regulatory reform process that enhances the ability of smallholders to comply with regulations.
- Beyond the above, the development of the legality definition and TLAS includes an examination of the regulatory process and the identification of gaps and complexities. It has the potential to inform amendments in many existing regulations, in particular related to: village forests and trees outside forest; wood processing and sales within the formal and informal sector; import, export, re-export and transshipment of timber; benefit distribution; transparency/information disclosure; and complainants/grievance and consent mechanisms.

Key strategies and plans that intersect with the VPA process:

- The 8th National Socio-Economic Development Plan 2016–2020 includes clear references to the enhancement and enforcement of the policy and legislative environment for forest and forest products. Through the VPA, a systematic presentation and analysis of the legislative environment could be used as the basis for identifying areas where policy and legislation could be reformed to strengthen performance.

- The Forest Strategy 2020 will soon be revised. The VPA participation structure could be used as a format for broad consultation in the development of the next Forestry Strategy. The VPA will also point to priority areas for reform. Once developed, and if properly implemented and maintained, the TLAS will provide the structure for achieving sustainable forest management in line with Lao's strategy for the forest sector.
- During 2015-2016, a key area of implementation of the Agriculture and Forestry Development Plan 2016-2020 was to develop and improve regulations, rules and forest strategy, and disseminate them to related sectors and the public. The VPA process has already assisted in building awareness of forest regulations through participation in the Thematic Expert Groups and pilot projects. The future planning cycle could utilise this approach and structure to expand the consultation to key strategic issues.
- The National Export Strategy 2011-2015 targets nine sectors including the wood products sector. The VPA will cover all sectors of the Lao timber industry and all wood exports. As such, together with the TLAS, the VPA will become a key feature of the Export Strategy and trade facilitation programme for wood and timber exports from Lao PDR, when that programme commences.
- The Green Growth Strategy focuses on several areas that directly interact with the VPA. The two processes can be mutually supportive, in particular the development of the 'Instruction on the development of a TLAS' that is progressing in consultation and collaboration with the FLEGT Office. Other areas of interest include mutual recognition of compliance under the TLAS and third-party certification schemes.

International and bilateral initiatives related to the VPA process:

- Climate change, REDD+ and FLEGT initiatives present synergies and some opportunities for collaboration, including in addressing illegal logging as a driver of deforestation and degradation, and enhancing governance of forests. In particular, the Ministries responsible for these initiatives, namely the Ministry of Agriculture and Forestry, the Ministry of Natural Resources and Environment, and the Ministry of Industry and Commerce, have significant responsibilities in developing and streamlining three core laws (the Land Law, the Forestry Law and the Climate Change Law) to ensure they are consistent and mutually supportive.
- The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) – The process of developing the legality definition is helping to identify gaps in legal documents and procedures for timber including with respect to listing species. This may assist the CITES focal point in establishing procedures that meet CITES requirements.
- The Lao-Vietnam Memorandum of Understanding on Strengthening Forest Protection Cooperation could provide opportunities to share experiences in the making and implementation of the VPA and TLAS and enhance regional trade relationships with respect to legal timber.

Ongoing governance reforms with implication for the VPA process:

- Reforms within the Government sectors, such as the restructuring of the Department of Forest Resource Management / the Department of Forestry and the new mandate for the Department of Forest Inspection, will influence the achievement of good governance and the operation of the TLAS. The consultation process to develop the legality definition has served to clarify some aspects where roles and responsibilities remain unclear, particularly with respect to duplicated efforts. The VPA process could lead to the streamlining and simplification of some procedures and approval processes, and assist in clarifying and identifying gaps in departmental mandates.

Broad stakeholder participation in the development process of the legality definition, including from different levels of line ministries and non-government sectors, has already increased awareness of forest and timber trade-related processes and legislation. It has also revealed the complex interactions among regulations in different sectors. The enhanced capacity of the Lao Government and increased awareness of this complexity may improve overall forest governance. However, further reforms will be needed to simplify and strengthen some regulatory elements and clarify the roles and responsibilities of the different Government authorities involved. While the regulatory framework remains overly complex, it will be difficult to consistently administer its enforcement.

Lao PDR is supported by many partners and projects that are building the information base and the capacity of the Government and stakeholders in forests and forest trade. While these projects are often complementary, they sometimes operate in isolation, focusing on specific objectives. The VPA could provide a framework for integrating and consolidating key relevant results.

The very dynamic nature of timber markets and the importance of forests to the livelihoods of the Lao people will present ongoing challenges. Going forward, continued consultation and participation of stakeholders will be essential if the VPA is to remain relevant and the TLAS effective.

This report describes the reforms and national initiatives related to FLEGT until 2020. However, some opportunities for immediate action have been identified:

1. During the revision of the Forestry Law, include a specific article that commits to the development, operation and monitoring of a TLAS.
2. Ensure the revised Forestry and Land Laws are consistent and complementary and provide clear rules for access to land and forest for projects that result in natural forest conversion, and to land for company, collective and household plantations projects.
3. During the revision of the Forestry Law, consider the need to revise existing and develop new regulations for specific forest management and forest business activities. This could be done in the consultation phase in early 2018, however some immediate opportunities are:
 - Improving consistency and addressing gaps in regulations for harvesting in Production Forests and Conversion Areas
 - Simplifying and clarifying the procedures for plantation grown wood, for farmer-owned plantations
 - Finalising the legal procedures for timber auction, to increase the flow of stockpiled and confiscated wood to domestic processing
 - Through the process to develop the legality definition, carrying out a gap analysis of the legal framework for forest products from village forests, including clarification of the rights to forest products use by villagers in all forest categories. A simple system for supply chain control should be developed.
4. Introduce mechanisms for monitoring the implementation of PMO 15 that provides the mandate and opportunity for broad policy reform processes.
5. Assess the policy drivers and undertake a gap analysis of the legal framework for small, household and grower group wood processing enterprises.
6. Consider reforms appropriate to the regulation of timber finders and traders in timber supply chains from different sources.
7. Finalise the legal framework and procedures for timber auctions for timber from production forest areas and conversion areas.

These will support the development of the VPA in the near future and contribute to other national policy goals.

Appendix 1: Timeline for reforms

Year/Quarter	2017 Q1	2017 Q2	2017 Q3	2017 Q4	2018 Q1	2018 Q2	2018 Q3	2018 Q4	2019 Q1	2019 Q2	2019 Q3	2020 Q1	2020 Q2	2020 Q3	2020 Q4
FLEGT-VPA Process (to date)		Negotiation 1		Final Draft TLDs:	DRAFT TLAS Elements	Negotiation 2									
Governance				New DOF mandate											
8th NSEDP															Ends
Land Law				Submit to MOJ				Submit to NA							Ends
Land Titling Programme															
Forestry Law			Technical draft	Draft approved by MAF	Consultation;	Submit to MOJ		Submit to NA							
Forestry Strategy 2020															Ends
Forestry Strategy 2025					Review and drafting Commences										New Strategy
Five-year Agriculture and Forestry and Forestry Development Plan 2016-2020															Ends
REDD+					ERP submitted to FCPF										
Green growth					Draft report on COC, SFM, TLAS, PPPP		TLAS Legal Instrument	Roadmap for SFM, COC, TLAS, PPPP							

	Year/Quarter	2017 Q1	2017 Q2	2017 Q3	2017 Q4	2018 Q1	2018 Q2	2018 Q3	2018 Q4	2019 Q1	2019 Q2	2019 Q3	2020 Q1	2020 Q2	2020 Q3	2020 Q4
	FLEGT-VPA Process (to date)		Negotiation 1		Final Draft TLDs:	DRAFT TLAS Elements	Negotiation 2									
International	CITES NDFs															
	Law on Treaties				Promulgated											
	Lao-Vietnam MOU				Revised MOU											
	Lao-China MOU								MOU ends							
All timber sources	PMO 15															
	Penal Code				Expected to be Promulgated		Enters into force									
	Order No 003/PO			Submit	Promulgated											
	Decision 116/MAF 2007				Under review											
PFAs	PMO 31															
	PMO 13					Possible new Order										
Conversion	Regulation 112/MAF				Under review											
	Land concession inventory				Land concession inventory and Quality of Investment data analysis	Specification of Forest Impacts from Concessions	Reporting; Lao Decide									
Plantations	Decree 96				Expected to be Promulgated											
	PMO 13					Possible new Order										
Village Forestry																

	Year/Quarter	2017 Q1	2017 Q2	2017 Q3	2017 Q4	2018 Q1	2018 Q2	2018 Q3	2018 Q4	2019 Q1	2019 Q2	2019 Q3	2020 Q4	2020 Q1	2020 Q2	2020 Q3	2020 Q4
	FLEGT-VPA Process (to date)		Negotiation 1		Final Draft TLDs:	DRAFT TLAS Elements	Negotiation 2										
Wood processing	Regulation No 1726/MOIC 2012				Under development												
	Guidelines				Under development	Expected to be complete											
	COC Pilot				Ongoing												
	COC Decision																
	HH + SMEs				Need for review identified												
	2005/2015																
Confiscated timber	1345/PMO																
	Confiscated timber				Revised Instruction No 0336/MOIC made in March 2017												
Traders	Traders				Need to develop regulations for traders identified												
	Benefit Distribution	Decree No 38/PM			Under review												

About the EU FLEGT Facility

The EU FLEGT Facility supports the European Union, its Member States and partner countries in implementing the EU FLEGT Action Plan. The European Forest Institute has hosted the Facility since 2007. The Facility has its headquarters in Barcelona, Spain, with additional offices in Brussels, Belgium; Joensuu, Finland; and Kuala Lumpur, Malaysia.

Disclaimer

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