

Strengthening forest governance or business as usual?

Indigenous peoples and the EU Forest Law Enforcement, Governance and Trade (EU FLEGT) process in Guyana

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Key Issues and concerns

- Formal commitments made by the Government of Guyana to enable an open and participatory national FLEGT Voluntary Partnership Agreement (VPA) process are highly positive, but existing participation mechanisms have not yet facilitated the effective involvement of indigenous peoples and forest-dependent communities
- Notwithstanding an important workshop held with indigenous peoples in March 2013, the VPA development process has so far been mainly dominated by governmental interests
- FLEGT meetings and workshops with indigenous stakeholders have been characterised by a one way flow of information that can be described as ‘awareness raising’, rather than consultation
- There has so far been little scope in current FLEGT-VPA discussions to enable a multi-stakeholder review of the need for forest sector governance and tenure reform
- The operation of the VPA National Technical Working Group (NTWG) currently lacks transparency
- Development of key documents to guide the FLEGT-VPA process, including a Communications and Consultation Strategy and Social Impact study, have so far been mainly in the hands of consultants and the GFC, without timely disclosure to the public
- Problems with insecure land tenure and related resource conflicts in Guyana, and in particular the inadequacies of the 2006 Amerindian Act, are being side-stepped in the VPA process
- The second draft of the Legality Definition (June 2013) does not take adequate account of customary law and Guyana’s obligations to uphold international legal norms on the rights of indigenous peoples
- While the VPA negotiations proceed, the GFC continues to hand out logging concessions to national and foreign companies in violation of indigenous peoples’ land rights and without respect for FPIC.

Lessons from the early stages of the FLEGT-VPA process in Guyana

- As in other VPA processes, strong participation of indigenous peoples and civil society in negotiation and implementation of the VPA must be a pre-condition for meaningful forest sector reforms and FLEGT-VPA credibility. An effective, credible and participatory FLEGT-VPA multi-stakeholder process must ensure transparency, create trust, foster consensus and encourage real dialogue between all parties
- VPA dialogue and community consultations must enable sharing of different views, ensure participatory assessment of legal gaps and inconsistencies in relevant laws and regulations, help build consensus on required forest sector reforms, and foster frank discussions on the need to tackle corruption and weak governance
- Guyana's legality definition and legality assurance system for the VPA must address customary law, international legal norms and related obligations, including FPIC, in order to ensure that legal timber production and trade include effective protection for the land and territorial rights of indigenous peoples.

This article examines the EU FLEGT-VPA process in Guyana and reviews the experience of indigenous peoples with this bilateral forest governance and trade initiative during 2012-13. The article provides some general background to the EU FLEGT and its requirements for effective participation and discusses the treatment of indigenous peoples' concerns and issues in the case of Guyana. Gaps and shortcomings in the process are identified. Key conclusions are presented alongside some core recommendations for improving the process in order to ensure effective participation by indigenous peoples and inclusion of measures to promote positive forest sector reforms.



Most of Guyana's forests are located on the lands of indigenous peoples, yet many of these lands still lack effective legal recognition under national laws.

Photo: Tom Griffiths]

EU FLEGT: Background and introduction

Guyana is one of nine tropical countries currently negotiating a Voluntary Partnership Agreement (VPA) with the European Union (EU) to tackle illegal harvesting and trade in timber and improve forest governance (see Map 9).¹ Once ratified, VPAs are legally binding bilateral trade agreements between the EU and timber producing countries setting out agreed measures and controls to address illegal logging and promote sustainability and good governance in the forest sector. The VPA is a central element of the EU's 2003 Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan, which is the EU's response to the threat that illegal logging represents to the world's forests.

The VPA process places particular emphasis on governance reforms and capacity building in timber-producing countries.² The commitment to a VPA by countries like Guyana is thus meant to enable good forest governance and ensure legality so that only legally harvested timber is exported to the EU. All VPAs ratified to date address all timber exports and most cover supply in the domestic market, something that should also be the aim of the Guyana VPA.

Negotiating a VPA involves defining legality – a crucial step to identifying gaps and contradictions in the national legal framework and between the constitution, national and international and customary law, which require legal and regulatory reforms to tackle illegal resource use, uphold community rights and strengthen forest governance. The legality definition must be developed through in-country negotiations and discussions with all rights holders and relevant stakeholders.³

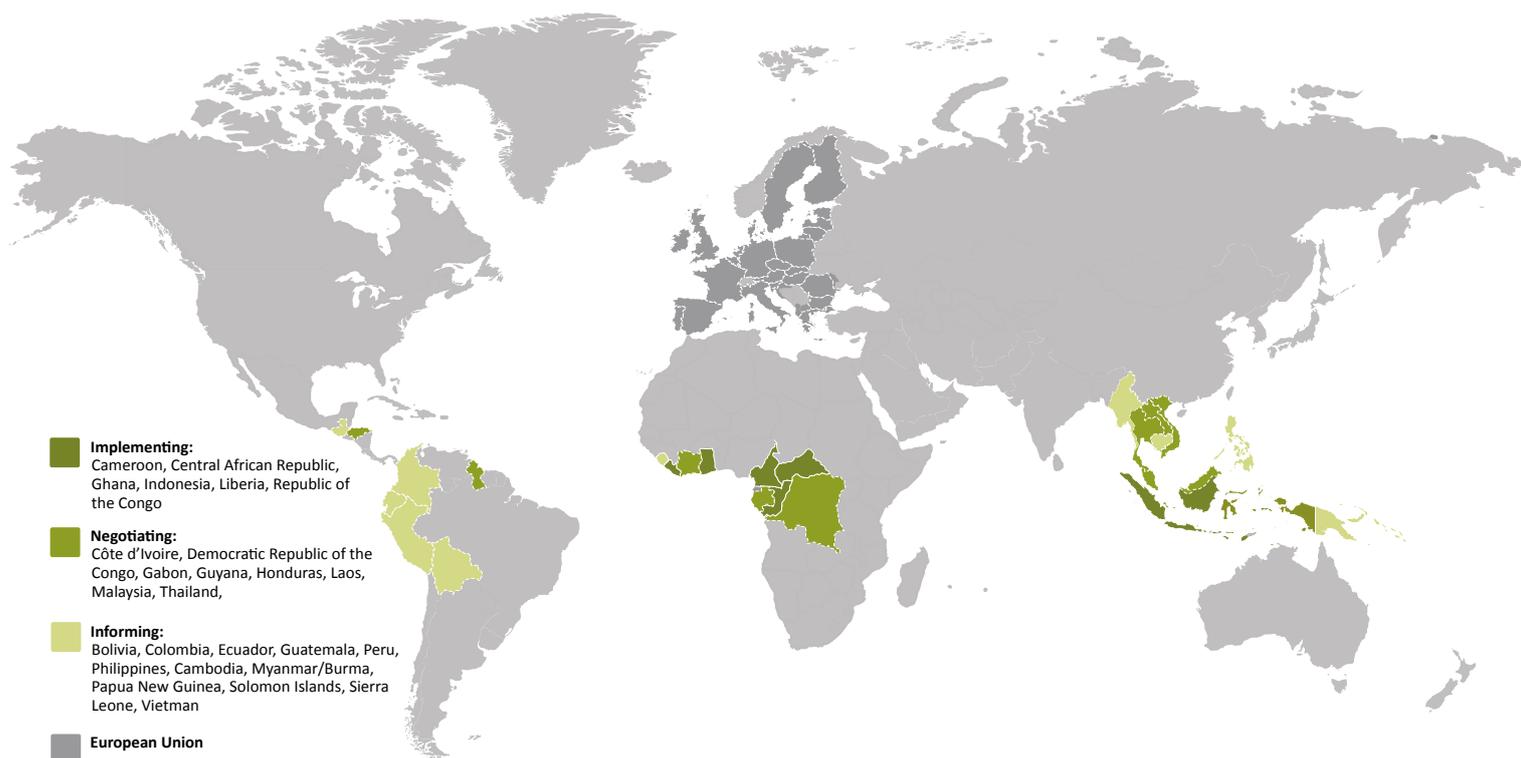
The Legality Assurance System (LAS) is therefore a central part of the VPA as it includes agreements and measures to establish a national system to identify, monitor, verify and license legally produced timber in order to guarantee that the supply chain fully complies with legal standards.

Origins of the FLEGT process in Guyana

Guyana's engagement in the FLEGT process stems from a bilateral agreement with the government of Norway on forest and climate protection and low carbon development made in 2009 (Section 3). Under this agreement, Guyana committed to commence formal negotiations on FLEGT with the EU by the end of 2012, with the aim of agreeing to a VPA with the EU by March 2015.

According to Guyana's existing VPA roadmap, ratification and development of a plan for the implementation of the VPA are to be completed by the end of 2015 (see section B, below).⁴

- 1 Eleven countries have expressed interest in VPAs, but are not yet engaged in negotiations. Six countries have already signed a VPA and are at the implementation stage (developing the systems needed to control, verify and license timber exported to the EU). See <http://www.euflegt.efi.int/vpa-countries>
- 2 *European Commission (2007) FLEGT Briefing Notes 2007: a timber legality assurance system* <http://www.euflegt.efi.int/documents/10180/28299/FLEGT+Briefing+Notes+3++A+timber+legality+assurance+system/e9ce3bcd-6243-4bb6-b702-d48e8843079c>
- 3 EU FLEGT Facility, European Forest Institute (2012) *Guidance for developing legality definitions in FLEGT Voluntary Partnership Agreements* http://www.forest.go.th/check_wood/images/stories/file/EU_FLEGT_information/EFI_FLEGT-in-action_LD_Legality_Definition_A4_ENG_web%20%282%29.pdf
- 4 *Memorandum of Understanding between the Government of the Cooperative Republic of Guyana and the Government of the Kingdom of Norway regarding Cooperation on Issues related to the Fight against Climate Change, the Protection of Biodiversity and the Enhancement of Sustainable Development*, signed 9 November 2009. <http://www.lcds.gov.gy/images/stories/Documents/MOU.pdf>; and *Joint Concept Note 2013*, at page 5. <http://www.lcds.gov.gy/images/stories/Documents/Joint%20Concept%20Note%20%28JCN%29%202012.pdf>



MAP 10: Countries engaged in the FLEGT initiative.

Source: EU FLEGT Facility, European Forest Institute. www.euflegt.efi.int

Relevance to indigenous peoples

Forest policy negotiation processes are of major concern to indigenous peoples in Guyana as the vast majority of forests are located on their titled and untitled customary lands. These lands remain the subject of unresolved land claims that have been pending since independence from Britain in 1966. If indigenous peoples' rights and good governance can be enshrined in the VPA, then this bilateral agreement has the potential to promote a sustainable timber trade and deliver benefits to Amerindian villages.

Promoting good forest governance

As noted above, improving forest governance has been a core aim of the VPAs under the EU FLEGT Action Plan. Put forward by the European Commission in 2003, the action plan is "the start of a process which places particular emphasis on governance reforms and capacity building."⁵ The action plan identifies that illegal exploitation of natural resources, including forests, is closely associated with corruption and organised crime.⁶

The VPAs aim to guarantee that any wood exported from a timber-producing country to the EU comes from legal sources, while helping the partner country stop illegal logging by improving forest governance. In this regard, it is important to recall that when the Council of

⁵ Ibid at page 3

⁶ European Commission (2003) *Communication from the Commission to the Council and the European Parliament on Forest Law Enforcement, Governance and Trade (FLEGT): Proposal for an EU Action Plan*, at page 4. COM (2003) 251 final. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2003:0251:FIN:EN:PDF>.

the European Union adopted the Action Plan in October of 2003, it urged the EU to use FLEGT to enable forest sector reforms, including through strengthening land tenure and access rights; strengthening effective participation of all stakeholders in policy-making and implementation; and reducing corruption in the forest sector.⁷

Requirements for meaningful participation

The FLEGT-VPA process requires a fully participatory approach that is supposed to ensure the involvement of communities, civil society, private sector and government stakeholders in discussions and consensus on the contents of the VPA before it is finalised and adopted (Box 12). This requirement includes the development of the LAS, which is meant to result from "... an inclusive multi-stakeholder process". The EU states that in order to:

...achieve in-country consensus on a number of VPA requirements, partner countries develop and organise a process that allows stakeholders to provide input and their perspectives and help formulate country positions (stakeholder consultation process).⁸

In addition to EU requirements, the Joint Concept Note between Norway and Guyana in relation to REDD and low carbon development also establishes the requirement to ensure participation. The agreement commits both government parties to an inclusive policy making process in all activities relating to forest and climate protection and implementation of Guyana's Low Carbon Development Strategy (LCDS):

The Constitution of Guyana guarantees the rights of indigenous peoples and other Guyanese to participation, engagement and decision-making in all matters affecting their well being. These rights will be respected and protected throughout Guyana's REDD-plus and LCDS efforts.⁹

Lessons and experience in other VPA countries

So far six VPAs have been ratified, all of which include recognition of rights and social provisions, legal reform, transparency requirements and independent monitoring.¹⁰ Key to achieving lasting legal and policy reforms, and combating corruption, is the 'unprecedented' nature of the multi-stakeholder negotiation process, which has been central to all successful VPA agreements to date. Where these processes are effective, VPA processes have ensured that stakeholders have real power in developing the agreement: the first time that "legally binding trade agreements have been negotiated and agreed in such an inclusive, consensus-based process."¹¹ It is this process that has been perceived as empowering local civil society actors, representing a potential groundbreaking tool for forest governance reform.

7 Council of the European Union (2003/C 268/01) *Council Conclusions. Forest law enforcement, Governance and Trade (FLEGT)* <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2003:268:0001:0002:EN:PDF>

8 <http://www.euflegt.efi.int/the-process/>

9 *Joint Concept Note 2013*, at page 5. <http://www.lcds.gov.gy/images/stories/Documents/Joint%20Concept%20Note%20%28JCN%29%202012.pdf> On the challenges encountered in complying with this participation commitment under the LCDS, see also Section 3.

10 FERN (2013) *Improving Forest Governance: a comparison of FLEGT VPAs and their impact*. FERN, Moreton in Marsh and Brussels. Available: <http://www.fern.org/improvingforestgovernance>

11 *Ibid* at page 5

Box 12: Requirements for a consultation process under FLEGT?¹²

I Planning Stage

- Accept the need for sufficient time and resources
- Recognise ‘governance’ issues: take into account representation and accountability questions on the part of all actors
- Adopt a learning approach to the process on the part of all actors
- Define the objectives of the consultation process and terms of engagement at the outset
- Are funds available to allow for an equitable consultation process?
- How are cultural and local considerations taken into account in organising the meeting and its preparations?

II Management stage

- Ensure a proper and equally balanced cross selection of participants
- Ensure all participants will have at least a 2 months notice period for meetings to allow them to prepare and organise their constituencies
- Provide sufficient information to all participants: background material should be made available at least two weeks prior to consultation, including an explanation of the process and proposed substantive issues to be discussed etc. Ensure any necessary translations are made available
- Ensure independent or shared facilitation by different stakeholder groups, approved by all participants
- Ensure meetings have rapporteurs and minutes are approved by all participants
- Consider the formation of a multi-stakeholder drafting committee to draft the final agreement with self-selected members from each constituency

III Final stage

- Provide feedback to participants including how their input influenced decisions
- Present the draft VPA text and ask for feedback, ensure participants have ample time and opportunity to review any final draft before it goes for approval
- Present final VPA text
- Evaluate the consultation process

Practical conditions that need to be met:

- Facilitators should clearly state the purpose of the meeting, the role of the participants and ensure everyone agrees to common ground rules, which should be circulated for feedback prior to any face-to-face meeting. Facilitators must not interject personal views and opinions, but be active listeners, accepting ideas and suggestions without evaluating them and encouraging all members to participate and respect differences in views and opinions. The facilitator will focus the group’s energy on the task at hand
- Rapporteurs will accurately record the proceedings and ensure that the group’s findings are presented for approval
- NGOs, CBOs and other stakeholders will be asked to represent their constituencies or their partners and therefore need to have sufficient time before and between meetings to consult, prepare positions and organise travel
- Financial means need to be made available to those participants who are financially disadvantaged but whose views would not otherwise be heard

12 http://www.fern.org/sites/fern.org/files/2008.06_Consultation%20Requirements%20under%20FLEGT_EN.pdf

The experience in other countries thus demonstrates that where robust multi-stakeholder arrangements have been put in place and civil society organisations are able to engage in VPA consultations in a meaningful way, the EU FLEGT-VPA negotiation process has the potential to achieve significant success in promoting forest sector reforms and strengthening civil society participation in national forest policy making.¹³ In Ghana, for example, civil society has secured important legal and governance reform commitments and principles under the VPA. Liberia is another noteworthy example, where communities have been empowered by directly participating in the negotiation and implementation process for the VPA, instead of being 'represented' by national NGOs.¹⁴



A meeting between NGOs from eleven VPA countries held in October 2012 found that effective FLEGT multi-stakeholder processes can empower forest communities and civil society organizations.

Photo: Ann Bollen

Status of the Guyana FLEGT VPA process (2012-13)

Following preliminary discussions with the EU and key stakeholder groups, in March 2012 Guyana formally expressed its intention to commence VPA negotiations with the EU.¹⁵ Official negotiations between the EU and Guyana began in December 2012. A roadmap for the EU FLEGT negotiations has been developed as the main document to guide the negotiations process in Guyana. The roadmap was developed jointly with the EU in December 2012, and a date was set for conclusion of the process in 2015.

13 FERN (2012) *Forest Watch Special – VPA Update, November 2012*. FERN, Moreton in Marsh and Brussels http://www.fern.org/sites/fern.org/files/VPA%20Update%20Nov%202012_0.pdf

14 See also, FERN (2013) *Improving Forest Governance: a comparison of FLEGT VPAs and their impact*. FERN, Moreton in Marsh and Brussels

15 <http://www.illegal-logging.info/sites/default/files/Tasreef%20Khan.pdf>

The roadmap was revised slightly in July 2013 following concerns raised by APA and international NGOs about problems with the multi-stakeholder process and lack of community consultations (see below). Adjustments in the roadmap can be seen in the figure below (see blue font).

In December 2013 APA again called for a slowing down of the process to enable more meaningful and effective community consultations on the VPA, including on the legality definition and related LAS. At this stage, however, the process is still tied to the basic original timeline that intends to conclude the VPA by 2015. It remains to be seen if this is a viable timeline given the large amount of consultation and consensus-building that will be required to develop a credible and sustainable VPA outcome.¹⁶

Table 1: Adjustment to Guyana-EU VPA Roadmap made in 2013

Time-line		Original timeline	Revised timeline (July 2013)	Details (<i>revised details in brown</i>)
2012	March	Guyana formally expresses intention to commence VPA negotiations with the EU		
	September	NTWG formed		– First meeting held same month – TOR for sub-committees presented
	November	First meeting of Indigenous Peoples' Constituency Group		
	December	Formal negotiations start		– Road map for negotiations presented
2013	January	Road map defined		
	March	Draft Legality Definition presented		
	July	Second formal negotiation		– Draft Legality Definition discussed – Wood Tracking System discussed – Road map revised
	September	Joint Technical Meeting 4 and 5	Joint Technical Meeting 4 and 5	– Communications and Consultation Strategy presented – Revised draft of Legality Definition
	November			
December	Third formal negotiation			
2014	January		Consultants to draft Communications and Consultation Strategy and Scoping of Impacts announced	– Stakeholders to be consulted
	February		Joint Technical Meeting 6	– Main social, economic and environmental impacts on stakeholders assessed (e.g. indigenous peoples)
	March		Third formal negotiation	– LAS reviewed and developed – Main social, economic and environmental impacts on stakeholders assessed (e.g. indigenous peoples)
	May	Forth formal negotiation		
	July		Forth formal negotiation	
	December	Fifth formal negotiation		
	2015	January		
	February	VPA signing and ratification		
	August			

¹⁶ As of April 2014 the third negotiation (originally planned for March 2014) had still not taken place.

Preparatory workshop and national technical body

A National Preparatory Workshop was held in Georgetown in September 2012,¹⁷ which resulted in the formation of a National Technical Working Group (NTWG) made up of government, private sector and indigenous peoples' representatives and national bodies dealing with indigenous peoples' issues. This national technical group has a governmental mandate to lead the process of negotiations from the Guyana side, and has identified the GFC to speak on behalf of the group.¹⁸ Terms of Reference (TOR) for the NTWG were developed and four NTWG sub-committees were established during the preparatory workshop. The NTWG held its first meeting during the same month. Concerns remain in early 2014 over the lack of transparency in the workings of the NTWG (Box 13).

Meetings of constituency groups

In November 2012, the GFC and the NTWG started to convene short meetings with 'constituency groups' to discuss FLEGT issues outside of the closed meetings of the NTWG, including with a small indigenous peoples' group involving Amerindian organisations and NGOs based in Georgetown.¹⁹ The agenda for these meetings is developed by the GFC.

At the start of 2014, there is still uncertainty among some members as to how the group links to the work of the NTWG and official bilateral negotiations on the VPA (see section C, below).

Development of a legality Definition

A first draft of the Guyana VPA Legality Definition was released in March 2013, with a deadline for public comment of May 31, 2013. A second draft was developed in June 2013,²⁰ and the comment period was extended to December 31, 2013 following concerns raised by APA and international civil society organisations, including FPP, about the limited time for public comments. Although this extension to the public comment period has been welcome, the lack of broader GFC outreach and effective consultation with indigenous peoples on relevant legal issues and concerns of fundamental importance to Amerindian villages remains a problem that must be addressed before any legality definition is finalised (see section C, below).

Communication and Consultation Strategy

The Stakeholder Engagement and Coordination sub-committee of the NTWG has been tasked with developing a Communications and Consultation Strategy for the VPA process in Guyana. It is also tasked with overseeing the development of an impact assessment that is supposed to evaluate possible impacts of the VPA on indigenous peoples and local communities. Draft TOR were developed for these two pieces of work in early 2013. During a GFC FLEGT-VPA workshop with community representatives held in March 2013 (see section C, below), initial inputs from indigenous peoples were sought on the Communications Strategy TOR, and some preliminary discussions were held on likely impacts from the VPA.²¹

17 GFC (2013) *Indigenous Workshop: Guyana's Engagement with the European Union Forest Law Enforcement Governance and Trade Initiative*, GFC's Multiplex, Georgetown 20-21st March, 2013, at Section 3.3.2 http://www.forestry.gov.gy/Downloads/Guyana%27s_National_Preparatory_Workshop_for_EU_FLEGT_Negotiations.pdf

18 *Aide Memoir of the first negotiation session between Guyana and the European Union on a FLEGT VPA*. http://www.forestry.gov.gy/Downloads/FLEGT_EU_Guyana_Aide_Memoire_Nego1_Dec_5th_2012_Revised_April_10_13.pdf

19 Participants include the National Tshao Council (NTC), the Indigenous People's Commission (IPC), the Amerindian Peoples Association (APA), The Amerindian Action Movement of Guyana (TAAMOG), the Guyanese Organisation for Indigenous Peoples (GOIP), and the National Amerindian Development Foundation (NADF).

20 *Draft Legality Definition for EU – Guyana Voluntary Partnership Agreement*, Version 2, 5 June 2013. http://www.forestry.gov.gy/Downloads/Draft_Legality_Definition_Version_2.pdf

21 GFC (2013) *EU FLEGT VPA process in Guyana moves apace with development of first drafts of Scope of Agreement and the Definition of Forest Legality*, March 2013. http://www.forestry.gov.gy/Downloads/EU_Piece%202.pdf

Box 13: National Technical Working Group (NTWG)²²

Members:

1. Guyana Forestry Commission
2. Ministry of Natural Resources and the Environment
3. Representative of Guyana's Forest Products Exporter to the EU
4. Chairperson, National Toshias' Council
5. Ministry of Legal Affairs
6. Small Loggers Association
7. Forest Products Association
8. Forest Products Development and Marketing Council Inc.
9. Guyana Manufacturers and Services Association
10. Ministry of Foreign Affairs
11. Ministry of Amerindian Affairs
12. Guyana Revenue Authority (GRA)
13. Indigenous Peoples Commission

NTWG sub-committees:

- Stakeholder Engagement and Coordination
- Legality Assurance System (LAS)
- Voluntary Partnership Agreement Implementation
- Independent Audit under the EU FLEGT VPA²³

Concerns over transparency and independence:

The membership and modalities of the NTWG led by the GFC has generated accusations of FLEGT in Guyana being a government dominated process. Concerns about NTWG transparency have also been raised. Meetings of the NTWG and its sub-committees are closed to observers. The minutes of the meetings are not public and the process for selection of members to the groups is unclear. ²⁴ Meanwhile, unease has been growing in early 2014 that concerns raised by non-governmental NTWG members on tenure and governance issues are not being duly documented in internal NTWG meeting notes, thus raising more worries about the credibility of this group and its multistakeholder sub-committees.

The Communication and Consultation Strategy has since been developed by a consultant who conducted meetings with various stakeholders in the start of 2014. A first draft of the Strategy was shared with APA at the end of March 2014 with only a one week period for comments. In its written response, APA raised concerns about the Strategy's focus on information sharing and awareness raising instead of consultation seeking to obtain community concerns, views and recommendations. APA has recommended that the strategy should contain a section clearly defining good consultation principles and commitments. APA has also called for the Strategy to emphasise that all outreach material and consultations on FLEGT should be providing balanced information and cover vital topics for forest governance, including discussion on gaps in the existing legal framework governing forest and land tenure in Guyana.

22 GFC (2012) *National Preparatory Workshop: Guyana's Engagement with the European Union Forest Law Enforcement Governance and Trade Initiative*. GFC's Multiplex, 1 Water Street, Kingston, Georgetown 27 – 28th September, 2012 http://www.forestry.gov.gy/Downloads/Guyana%27s_National_Preparatory_Workshop_for_EU_FLEGT_Negotiations.pdf

23 TORs for these sub-committees can be found in an Annex to the report on the National Preparatory Workshop: http://www.forestry.gov.gy/Downloads/Guyana%27s_National_Preparatory_Workshop_for_EU_FLEGT_Negotiations.pdf

24 The report of the National Preparatory Workshop, which lists in its Annex the members of the NTWG, does not provide any information as to how members of the NTWG were selected.

Formal VPA negotiations

Two official negotiating sessions between the EU and Guyana occurred in December 2012 (in Georgetown), and July 2013 (in Brussels).²⁵ The first negotiation session agreed timelines and expectations for the process, while the second reviewed technical details of the VPA, including Guyana's existing timber-tracking system. Both parties noted a need for more work to determine the appropriate scope of the VPA, and some slight revisions were made to the roadmap to give Guyana time to conduct further consultations with stakeholders in addition to those originally planned.²⁶ As noted above, the revised roadmap developed in July 2013 consequently contains some adjustments, but the main schedule remains intact.²⁷ Changes to the roadmap included an extra Joint Technical Meeting and the postponement of the third formal negotiation from late 2013 to the first quarter of 2014 (Table 1).

Experience with the FLEGT-VPA process in Guyana

Notwithstanding a joint EU/Government of Guyana (GoG) statement highlighting the importance of stakeholder involvement,²⁸ APA and international NGOs have noted the lack of an effective and meaningful consultation process comparable to other VPA countries. In particular, APA and civil society organisations are concerned that the VPA process in Guyana is driven by a VPA Secretariat, which is located within the Guyana Forestry Commission (GFC), while the operations of the NTWG are not very open to public scrutiny (Box 13).²⁹ As a result, much of the development of FLEGT policy and technical documents has so far been led by the GFC and consultancy firms, while key civil society organisations like the Guyana Human Rights Association have not been involved in initial stages of VPA development. Others have been invited late to the process.

The Transparency Institute Guyana, for example, did not receive any invitation to participate in national FLEGT VPA meetings until August 2013. In a statement from February 2014, the Transparency Institute Guyana (TIGI) observed that EU-FLEGT has the potential to contribute to increasing transparency and reducing corruption in the forestry sector, and commended the authorities in Guyana for their attempts to establish a multi-stakeholder process. TIGI noted however, that the existing process is significantly flawed, citing the lack of an accurate stakeholder analysis at the beginning of the process, which resulted in the exclusion of some stakeholders from the NTWG; power imbalances in the facilitation of workshops; and lack of monitoring and evaluation systems as key areas of concern.³⁰

25 Aide Memoirs from these meetings can be found on the news section of the GFC website: <http://www.forestry.gov.gy/news.html>; and the Guyana page of the EU FLEGT Facility: <http://www.euflegt.efi.int/guyana>

26 *Guyana to conduct additional stakeholder negotiations on the VPA*. 22 July 2013. http://www.euflegt.efi.int/news/-/asset_publisher/VoA92AEZlro/content/guyana-to-conduct-additional-stakeholder-consultations-on-the-vpa?redirect=http%3A%2F%2Fwww.euflegt.efi.int

27 The revised Roadmap can be found as an Annex to the Aide Memoir from the second Guyana - EU negotiation session: <http://www.euflegt.efi.int/documents/10180/23380/Aide+Memoire+on+the+occasion+of+the+second+Guyana-European+Union+negotiation+session+on+a+FLEGT+VPA/fd880061-ce85-4046-9164-abb9d7cf1b94>

28 EU FLEGT: EU / GoG *Joint Statement Final*. <http://www.forestry.gov.gy/news.html>

29 There is currently no mention of the VPA Secretariat on the GFC website. The GFC news page, however, does contain links to all the relevant documents available so far on the VPA process, including news releases issued by the VPA Secretariat: <http://www.forestry.gov.gy/news.html>

30 Transparency International, Guyana, February 2014, *Statement on the EU-FLEGT process in Guyana*. C. R. Bernard, Director, TIGI

Lack of consultation in Amerindian villages

Although formal VPA negotiations started in 2012, a core problem with the process is that there has so far been no meaningful involvement of indigenous peoples' communities other than the national workshop held in March 2013 (see below).³¹ In short, while the GFC has done some outreach sessions in Amerindian villages (in the latter part of 2013 and early 2014), no structured community-level consultations on the FLEGT-VPA initiative have so far taken place. The NTWG claims to have embarked on a programme of national stakeholder consultation in August 2013 with the first three sessions being held in Berbice, Essequibo and Georgetown that month.³² However, there are no publically available reports or minutes to confirm that these sessions have taken place.

Reports from communities indicate that some further outreach was conducted by the GFC in Region 9 at the start of 2014. It is not apparent whether these GFC-led meetings were confined to more information sessions, or if they were run as properly organised consultations. Feedback from the meetings held in Region 9 in January 2014 suggests that the GFC outreach is primarily about sharing information. Villagers report that the GFC focus is on the potential market and income opportunities for Amerindian Villages, with little discussion of legality and governance matters. In Aishalton Village, for example, questions raised by villagers about the Amerindian Act and land rights were not addressed by GFC in any detail.

Overall, at the start of 2014 communities and Village Councils still poorly understand FLEGT and critical elements of the VPA process and few people have any information on its implications for their rights to lands, livelihood and self-determination. Community members and indigenous representatives therefore consider that what the GFC calls *consultations* can at the best be defined as *awareness raising*.

Despite APA written recommendations in June 2010 calling for the government to ensure a meaningful and good faith dialogue before a VPA can be agreed,³³ the VPA negotiation process in Guyana so far appears to be rushing through the preparatory phase, with little in the way of stakeholder consultations and legal review, and is embarking on formal negotiations with the EU while key stakeholders in the country remain uninformed and are not engaged in the process.

In general, the FLEGT-VPA meetings in Guyana have been mainly characterized by a one way flow of information carried out in a highly technical language with limited time for response to questions (see Table 2). It remains to be seen if the current outreach efforts in 2014 and the final adoption and application of the national communication strategy will break this trend.

March 2013 Indigenous workshop

It is fair to point out that despite the wider aforementioned (and on-going) problems in the participation process, a FLEGT-VPA workshop with indigenous peoples organised by the GFC in March 2013 was welcomed. At this workshop, a limited number of representatives were able to attend on the recommendation of the APA, who insisted that community participants should be involved. The GFC used the workshop to consult on a wide range of technical issues,

31 GFC (2013) *Indigenous Workshop: Guyana's Engagement with the European Union Forest Law Enforcement Governance and Trade Initiative* Draft report. GFC's Multiplex, Georgetown 20-21st March, 2013. http://www.forestry.gov.gy/Downloads/EU_FLEGT_Workshop_with_Amerindian_Villages_and_Communities.pdf

32 NTWG reply to the letter sent by international NGOs to the European Commission (Re: Guyana – EU VPA negotiation) in September 2013. The reply has no heading or date and was sent electronically to the European Commission in October 2013. It was not forwarded to the relevant NGOs until January 2014

33 APA (2013) *Re: Concerns about EU-FLEGT negotiations – APA Letter to the Guyana Forestry Commission*, March 2013

including the draft Legality Definition, the proposed Impact Study and the Communication Strategy (see above). Although the GFC reports that the workshop had been a great success where people were invited to 'voice concerns' and 'give views',³⁴ some participants felt the agenda was crammed with topics entirely new to them and that terminology used was very technical.

A number of participants found the content of the Legality Definition technical and difficult to comprehend, while others felt uncomfortable that they were asked to support the draft legality definition without any time to prepare or consult with their communities.³⁵ Other participants reported that the moderation of the proceedings did not always make it clear when they could intervene on issues of direct concern to their villages.³⁶ All participants identified the need to learn more about the process of FLEGT-VPA in a simple but effective manner in ways that involve their communities and could reach a wider set of people. The workshop report which remains in draft, did record some community interventions on minimum requirements for an effective communications strategy for the FLEGT-VPA process in Guyana,³⁷ but it remains unclear if these have been taken on board in the official plans for consultation.

Defective consultation on legality definition

A major concern is that vital issues linked to the rights of indigenous peoples have not been the subject of widespread consultation in relation to the VPA legality definition. In this context, the APA communicated to the GFC in December 2013 that:

The APA maintains that although there has been some GFC outreach to 'cluster communities', this draft legality definition has not been initially developed with the effective participation and inputs of indigenous peoples' communities located in the interior and hinterland areas of Guyana...In order to ensure that the legality standard properly upholds indigenous peoples' rights in line with Guyana's international legal obligations, the APA recommends that the legality definition should be subject to much more widespread review and consultation.³⁸

Lack of transparency in the NTWG

APA is concerned that NTWG meetings are closed and minutes of the meetings are not made public (Box 13). In the FLEGT updates published on its website, the GFC reports that several meetings between the NTWG and stakeholder constituency groups have already been held (including indigenous peoples, NGOs and the private sector),³⁹ but there is no information available to the public describing the time, duration, location and nature of any such consultations (aside from the Workshop for Amerindian Communities held in March 2013), nor any of the internal meetings of the NTWG.

34 GFC presentation to 22nd Illegal Logging Stakeholder Consultation and Update Meeting, July 2013 (source: FPP notes)

35 Government efforts seeking indigenous peoples 'support' for official policies before they have properly discussed the pros and cons of proposed national policies is common in Guyana. This accelerated and top-down approach to 'consultation' has been common in government efforts to influence the NTC in relation to the LCDS

36 APA (2013) supra note 33.

37 GFC (2013) *Indigenous Workshop: Guyana's Engagement with the European Union Forest Law Enforcement Governance and Trade Initiative*. GFC's Multiplex, Georgetown 20-21st March, 2013, at Section 3.3.2. http://www.forestry.gov.gy/Downloads/EU_FLEGT_Workshop_with_Amerindian_Villages_and_Communities.pdf

38 APA comments on Draft Legality Definition, 31st December, 2013

39 Update on Guyana's engagement on EU FLEGT, February 11, 2013. <http://www.forestry.gov.gy/news.html>

Question marks remain over the transparency of the formation of the NTWG, which is meant to facilitate representation of indigenous peoples at the highest levels of VPA consultation and negotiation.⁴⁰

Although the NTWG has representatives of the NTC and IPC as members, it is unclear if they have sought the space for detailed consideration on forest tenure, natural resource conflicts, indigenous peoples' rights and measures needed to increase transparency and tackle corruption in the forest sector in Guyana, as reports from the working group are not available.

Although the NTC is made up of Toshaos (elected villager leaders), the degree of independence of this body is uncertain as much of the NTC agenda and public statements are steered closely by the MoAA thereby compromising independent representation.⁴¹ There are worries that the GFC is likewise steering the NTC approach to FLEGT without space for independent NTC consideration of the implications of the VPA for indigenous peoples in Guyana.



Forests provide communities with bush foods as well as essential materials for building dwellings, fabricating crafts and making traditional remedies.

Photo: Tom Griffiths

40 APA (2013) *Re: Concerns about EU-FLEGT negotiations – APA Letter to the Guyana Forestry Commission*, March 2013 <http://www.forestpeoples.org/sites/fpp/files/publication/2013/07/letter-gfc-vpa1.pdf>

41 The APA is of the understanding that the NTC Executive is currently seeking to reduce ties to government agencies and offices and increase its autonomy, including efforts to hold internal meetings and conferences independent from the government

Table 2: Stakeholder and other meetings of the Guyana EU FLEGT process (to 01/2014)

Date	Meeting / workshop	Comments by indigenous peoples and other non-State Actors
March 2010	Stakeholders preliminary discussion, Georgetown	APA engaged in preliminary discussions, and recommended that land rights of indigenous peoples be dealt with in the process of identifying what is legal timber.
September 2010	Exploratory workshop with stakeholders, Georgetown	
September 27-28, 2012	National Preparatory Workshop, Georgetown	NTWG established and members selected (apparently by the government)
November 14, 2012	Meeting between GFC and a previously unknown Indigenous Constituency Group, for GFC update from the National Preparatory Workshop.	APA concerns included: – Composition and representation of the NWTG – questions over how the Roadmap was drafted APA recommendations: – land rights issues must be dealt with in the roadmap – representativeness of NTWG should be broadened to include independent organisations such as APA
November 28, 2012	Meeting between GFC and the Indigenous Constituency Group	– APA questioned how recommendations from “Constituency Group” meetings will be incorporated into NTWG meetings – APA requested a meeting with the EU negotiating team
5 Dec 2012	First EU – Guyana formal negotiation, Georgetown	Development of a communication strategy through an inclusive multi-stakeholder process is announced, APA is not invited
January 2013	Meeting between GFC and the Indigenous Constituency Group for GFC update on first negotiations.	APA recommended: – a workshop to hear stakeholder views on the draft legality definition – the importance of a participatory process and the need to address land rights
20/21 March 2013	Workshop with indigenous village representatives, Georgetown	– The GFC stated that land issues cannot be addressed under this process – TOR for the communication and consultation strategy introduced – TOR for scoping of impacts introduced and discussed – Discussion on draft legality definition was rushed – Overall workshop was rushed and overly technical
28 May 2013	Meeting between GFC representatives and the APA on FLEGT VPA process	Meeting requested by the GFC as follow up to APA letter of 23 April 2013 regarding concerns about the EU FLEGT VPA process. APA raised some of the concerns in its original letter. One response from the GFC was that the FLEGT process should not be asked to deal with legislative reform.
18 July 2013	Second EU – Guyana formal negotiation, Brussels	NTC presentation continues to ignore land issues in the VPA negotiations
August 2013	NTC outreach with Amerindian communities in Region 1	APA was unaware of this until after the event
August 2013	Three NTWG stakeholder consultation sessions held in Berbice, Essequibo and Georgetown	APA was unaware of these sessions despite NTWG claims to have extended invitations to all stakeholders
August 2013	GFC update meeting after Brussels negotiation with indigenous communities, Georgetown	APA officially invited for the first day, even though there was a second day meeting with selected IP representatives. No publically available information on this meeting.
9 January 2014	Meeting between GFC and the Indigenous Constituency Group	GFC informs group of: – consultants appointed to develop the Communications and Consultation strategy and Impacts study – ongoing consultations by GFC, the next to be held in Region 9 – third draft of Legality Definition under preparation for the end of February (to discuss at the next technical meeting with the EU in March) APA recommends that in the absence of a communication and consultation strategy, any outreach to the communities must not be considered as ‘Consultations; in addition: – the consultant should consult with individual groups before meeting groups in an open constituency meeting – discussions from the outreach sessions must not be incorporated into a ‘third draft’ Legality Definition for the February 2014 negotiations as is intended by the GFC.

Conflicting accounts of the VPA process

A July 2013 illegal logging update at Chatham House in London⁴² included a session on the Guyana FLEGT process, with panel members consisting of GFC, IPC, NTC and private sector representatives, all members of the NTWG. The session conveyed some confusion to participants, with a contrast between the rosy picture of the FLEGT process in Guyana presented by the panel, and sharp criticism from informed members of the audience.

Issues of concern included a recent GFC sale of timber rights to over 6.5% of Guyana's forest area to a Chinese logging conglomerate without FPIC and without transparency (See Box 14, below). Civil society participants from Guyana and Europe also highlighted the need for land tenure issues to be resolved as a 'pre-condition' for conclusion of the VPA. On the panel, the GFC expressed the view that the VPA will only relate to existing legal systems, while the IPC representative acknowledged 'conflicting legislation' in Guyana on IP rights and identified the need for legal reform based on a review of IP rights and national laws.⁴³

More shocking in the July 2013 London meeting was a comment from a government lawyer on the panel who responded to questions on land issues by affirming that indigenous peoples' rights in Guyana had been extinguished on the conquest by European powers. This offensive comment drew grumbles and gasps of astonishment from the audience as the view exposed a deep lack of governmental understanding of indigenous peoples' rights in international law and apparent ignorance of legal jurisprudence on indigenous land rights in commonwealth countries.⁴⁴

The Chatham House meeting was followed a few days later by a meeting in Brussels between European NGOs, European Commission (EC) officials and representatives of the Guyanese government, including members of the NTWG. During discussions, NGOs emphasized the importance of genuine multi-stakeholder consultations and the need for stakeholders to be able to self-select, rather than those involved in the VPA negotiations being selected by government. The EC noted that it heard the concerns of NGOs, and that it takes its human rights commitments very seriously, including freedom of speech, and that the necessary time would be taken for a proper consultation process to ensure all voices are heard.

Call for slow down and more effective multi-stakeholder arrangements

Despite public claims and strong written assertions made by the government that a fully participatory and inclusive framework has been established for the negotiation and adoption of a VPA in Guyana,⁴⁵ there is little doubt that there are shortcomings in transparency and the problems with the current VPA participatory arrangements. For this reason, the APA has made repeated calls for a slow-down of the Guyana FLEGT process in comments and recommendations made to GFC in meetings and written communications.⁴⁶

42 Chatham House (2013) *22nd Illegal Logging Stakeholder Consultation and Update Meeting 8–9 July 2013 Energy, Environment and Resources Summary*, Chatham House, London http://www.illegal-logging.info/sites/default/files/22nd%20IL%20meeting%20report_EN.pdf

43 GFC and IPC presentations to 22nd Illegal Logging Stakeholder Consultation and Update Meeting, July 2013 (source: FPP notes)

44 Ibid.

45 GFC (2013) *Letter from GFC to APA*, 14 May 2013, in response to APA letter expressing concern about EU FLEGT VPA negotiations; Undated NTWG letter to international NGOs, including FPP, received January 2014 via the European Commission.

46 See, for example, APA (2013) *Letter to GFC re "Concerns about FLEGT VPA Process"* 23 April, 2013 <http://www.forestpeoples.org/sites/fpp/files/publication/2013/07/letter-gfc-vpa1.pdf>

In May⁴⁷ and September⁴⁸ 2013, European NGOs wrote letters to the EC supporting APA and asking for the process to be halted until a meaningful, transparent and inclusive consultation is ensured and that all VPA-related documents are made publically available. In response, the EC highlighted the importance of stakeholder participation and committed to providing financial support for capacity building of local NGOs to take part in the VPA process. In a formal reply sent to NGOs in October 2013, the EC affirmed:

The EU places a strong emphasis on the importance of a transparent and participatory consultation process. This is valuable not only for the democratic values of transparency and accountability per se, but also because an agreement based on the accumulated knowledge and experience of all actors in the forest sector is normally of higher quality and more relevant. The VPA agreement will also be easier to implement if it is based on far reaching consensus...In this spirit...the EU is...supporting, within the FAO FLEGT Programme, the development of a communications and consultation strategy for the Guyana VPA process, with emphasis on consultation with VPA stakeholders.⁴⁹

The EC commitment to participation is welcome and indigenous peoples and international NGOs will continue to engage with the government of Guyana and the EC on ways to improve the participatory arrangements for the VPA process.

The GFC maintains that current shortcomings in the consultation process will be addressed under the aforementioned Communications and Consultation Strategy (see section B, above) that will spell out how Amerindian Villages and indigenous peoples' organisations will be involved in the process. As mentioned above, a first draft of this strategy was circulated for comments with an extremely tight deadline. How and when Amerindian Villages will be consulted on the Strategy is unclear.

Critical Issues

As well as measures to strengthen the participation process, it is vital that the FLEGT-VPA process in Guyana enables inclusive multi-stakeholder analysis of forest sector issues, including legality verification matters. Multi-stakeholder discussions must also generate proposals for forest tenure and governance reforms required to achieve sustainable and fully legal timber production. At this stage, the government has not put forward any solid proposals for forest sector reforms and maintains that FLEGT is primarily a "market access tool". In the same way, government officials have insisted that the FLEGT process and final VPA must work within existing legal and regulatory frameworks. This position completely misses a key rationale underpinning the FLEGT initiative through which multi-stakeholder consultations are meant to identify gaps and inconsistencies in the legal framework as well as pinpoint legal obligations that must be met beyond the strict confines of forestry and environmental law.⁵⁰

47 FPP, FERN and Global Witness letter to EU Commission and Guyanese government re. absence of an inclusive and effective multi-stakeholder consultation process in EU FLEGT VPA negotiations, 9 May 2013. <http://www.forestpeoples.org/sites/fpp/files/publication/2013/07/letter-ec-re-guyanamay2013.pdf>

48 FPP, FERN, Global Witness, Rainforest Foundation UK and Forest Management Trust letter to EU Commission. Re: Guyana-EU VPA negotiation, 14 September 2013 <http://www.forestpeoples.org/region/guyana/publication/2014/fern-fpp-global-witness-rainforest-foundation-and-forest-management-t>

49 Pasca-Palmer, C (2013) *Re Your Letter of 14 September on Guyana-EU FLEGT VPA DEVCO C2 Unit*, European Commission, 8 October 2013 <http://www.fern.org/sites/fern.org/files/Answer%20letter%20Guyana-EU%20VPA%20negociation.pdf>

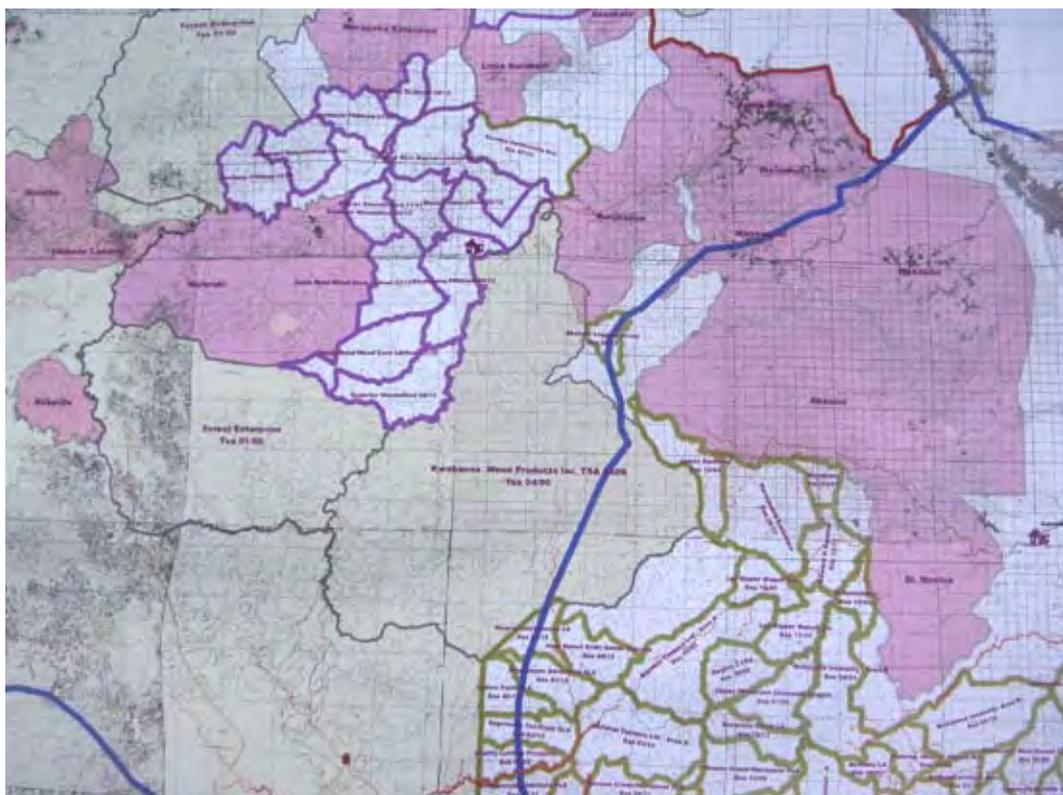
50 See especially, "Step 4" and "Step 6" in EU (2012) *Guidance for developing legality definitions in FLEGT Voluntary Partnership Agreements* EU FLEGT Facility and European Forestry Institute, Brussels

In relation to indigenous peoples' rights and livelihoods, there is a pressing need for the FLEGT-VPA process in Guyana to address unresolved land tenure and legality issues linked to compliance with the principle of FPIC, and Guyana's related legal obligations under various international human rights and environmental treaties.

Unresolved land rights issues

Many Amerindian communities in Guyana do not enjoy full legal security over their lands and territories, which have been the subject of land claims since colonial times. The same customary lands have been the subject of numerous petitions to the government for legal recognition as detailed in the Amerindian Lands Commission Report of 1969. While some titles were issued in 1976 and 1991, and again in the new millennium, these titles were not as a result of consultation and typically only cover a fraction of the lands under traditional occupation and use, meaning that a significant amount of customary and ancestral land remains without legal recognition up to today (see Section 1).

These untitled Amerindian lands are classified as State lands under existing national land and forestry laws and a great deal of forested lands have already been granted to non-Amerindian third parties for timber extraction under Timber Sales Agreements (TSAs) or State Forest Permits (SFPs) without the knowledge or consent of affected communities (Section 1).



The land titles of many Amerindian communities in Guyana are surrounded by large-scale logging concessions and state forest permit holders, as pictured here in Region 1 and 2. Village residents complain that their efforts to extend their land titles are being blocked by powerful logging interests, while logging companies and SFP holders often restrict Amerindian forest access and harass communities carrying out traditional land and resource use (hunting, fishing gathering, farming).

Source: GFC map for Region 1 and Region 2, 2012

Allocation of concessions in violation of Amerindian land rights appears to be in breach of the GFCs own 1999 Manual of Procedures that requires that any granting of exploratory timber rights should not interfere with Amerindian lands, including untitled lands under claim. The overlapping of forest concessions with Amerindian lands likewise do not square with legal requirements under existing forestry legislation that requires Environmental and Social Impact Assessment (ESIA) prior to the issuance of TSAs, large exploratory permits and timber cutting licenses.⁵¹ A credible ESIA would necessarily need to examine land tenure issues, including past and present Amerindian claims seeking legal land titles, as well as documentation of traditional occupation and use of the land by Amerindians in the areas under consideration for the allocation of commercial and/or exploratory timber rights.

In sum, the practice by the GFC in issuing concessions on the customary lands of Amerindian communities thus appears to be linked to systemic non-compliance with legal and institutional rules and an apparent lack of due diligence. This latter conclusion is partly based upon reports that since the 1990s the GFC and other government agencies have been in possession of digitised maps of Amerindian land claims (including those submitted to the Amerindian Lands Commission (ALC) in the 1960s).⁵² GFC officials are also aware of outstanding land claims and extensions made public by indigenous peoples in various fora and in face-to-face meetings in the capital and in villages in the interior (e.g. extension applications and land use plans of Southern Rupununi Villages).



Amerindian Villages protest that commercial loggers in Guyana often do more harm than good due to their harmful practices that damage construction and craft materials (house-building lumber, nibbi, kufa etc), compact and erode soils, pollute water sources, destroy medicinal plants, desecrate burial grounds, violate sacred sites and mash up bush fruits and planted orchards. Negative impacts also include sexual harrassment of Amerindian women and girls, exploitation of Amerindian workers and encroachment on titled and untitled customary lands leading to land conflicts.⁵³

Photo: Marcus Colchester

51 See, for example, *Procedure for the Issuance of a Timber Sales Agreement (TSA) and Wood Cutting Lease (WCL)* http://www.forestry.gov.gy/Downloads/Procedure_for_issuing_TSA_or_WCL.PDF

52 Palmer, J (2012) *Insecure Tenure of Amerindians in Guyana* Unpublished Email memo

53 Wilson, D and Atkinson, S (2014) "Deforestation and Indigenous Peoples' Rights in Guyana" Presentation to *International Workshop on Deforestation and the Rights of Forest Peoples*, Palangaka Raya, Central Kalimantan, Indonesia, 9-14 March 2014.

Forest conflicts

Insecure tenure rights and the imposition of forest concessions and sales agreements on Amerindian lands are causing numerous conflicts and community grievances in the hinterland, many of which are exacerbated by unresolved problems in Guyana's system of land titling, demarcation and administration which has generated boundary disputes across the country (see Section 1).

Villages in Region 2, for example, accuse GFC officials of confusing community boundary maps and even moving physical demarcation boundary markers to enlarge logging concession areas:

Our village boundary was reduced when forestry official moved the signboards from Tapakuma creek and Hurihe creek downriver to Mapuri creek in order to allow Insanali concession to claim the area. The 'unnamed creek' has caused a lot of problems and been mistakenly located on three separate occasions. Initially it was considered to be the Mapuri creek then the Mohoroni creek, now the White Water creek, but we know it was the Hurihe creek where the signboard was located. It has taken many years for us to try and correct this problem and still the GFC maps are confusing our boundaries! A 2009 GFC map places our line at White Creek, whilst another 2011 GFC map places it at Mapuri creek! Both maps also show a different boundary for the Insanali forestry concession. Another more recent GFC map (2012) doesn't even show Kabakaburi at all! *[Village resident, Kabakaburi, Region 2, 2012]*

In the neighbouring village of St Monica, the residents complain that much of the traditional hunting and fishing grounds are occupied by loggers who impede access for traditional livelihood activities:

Most of our lands outside our title are now occupied by non-Amerindian State Forest Permit holders who tend to block access by Amerindians for cutting nibbi, kufa and lumber. Some SFP holders and GFC also restrict access in some areas for hunting and fishing. The SFP holders fight us down and stop us accessing the forest to cut materials we need to make a living. When we asked for extension of our title the Minister told us we cannot apply as the area is needed for loggers. *[Village Resident, St Monica Village, Region 2, 2012]*

There are permit holders all over our lands. All of those guys have occupied our forests and there is no space for our Amerindian Village to use the forest not even to get an SFP for ourselves! These men say that we Amerindians not got any rights no longer in their SFP areas. They say we cannot work there as it goes against forestry rules and they say it is their land. They are claiming that the land is their own! I just be sorry that we cannot get access any longer. All of our extension area is occupied! *[Resident, St Monica Village, 2012]*

Villagers feel that they are being squeezed inside their limited title boundaries where many resources are already exhausted. Villagers protest that they are often threatened by loggers who inform villagers that they cannot enter their forest concession and permit areas:

After Saleem got the concession he came over and informed the community that the land is his and not to go there anymore. Another time, the same logger seized 10 chainsaws from community loggers working in lands outside his permit area! ...Only last week, Saleem seized ten square posts off a villager and he said he don't want to see anyone on the land even walking or even cut a wattle. Our villagers feel restricted by their boundaries and unable to hunt, fish and log on our traditional lands e.g. left bank of the Ituribisi. [Village resident, Mashabo, Region 2, 2013]

Problems also occur with loggers invading the titled lands of Amerindian Villages in order to extract lumber:

The Village is very concerned that the SFP holder (Mr Sanchara) had cut a boundary line inside St Monica's title boundary. The logger had no permission to enter Village lands. Complaints had been sent in writing to the Minister of Amerindian Affairs in October 2012, but so far no solution has been secured for the Village. [Village resident, St Monica, Region 2, 2012]

Amerindian villages complain that loggers also take advantage of demarcation errors and conflicting official maps to extract lumber on titled community lands:

Loggers exploited the error in demarcation at Massari Creek accusing villagers of working outside their title and claiming it was their land shortly after the demarcation. This caused a conflict and was resolved by clarification from GFC who used GPS to show that the area was within Mashabo title and was simply an error by surveyors conducting demarcation. The mistake was corrected, but our lumber has been taken. [Village resident, Mashabo, 2013]

Non-compliance with FPIC

Much of the aforementioned land conflicts and rights violations stem from the fact that in many parts of Guyana TSAs and SFPs have been issued by GFC to outside interests without the knowledge or consent of affected villages. Despite requirements in GFC's 1999 Rules of Procedure that prohibit the granting of forest exploration rights that might affect Amerindian lands, timber rights are often sold by GFC over Amerindian lands that indigenous communities have traditionally used and occupied for generations, including lands claimed under land title extension applications or long earmarked by the community for future extension areas. Examples include the allocation without FPIC of concessions to Sherwood Forests Inc and to Kwebana Woods Inc, under the Bai Shan Lin consortium (Box 14).

Disregard for customary land rights

Indigenous peoples in Guyana have been dismayed to learn that the latest 2013 national land use maps have almost entirely disregarded their longstanding territorial claims as well as existing and pending applications for land title extensions under Section 59 of the Amerindian Act (see also Section 1).⁵⁴ Existing Guyana Lands and Surveys Commission (GLSC) maps in the national land use plan show large scale timber sales agreements, SFPs and the “unallocated” State Forest Estate, yet make no reference whatsoever to indigenous peoples’ untitled customary lands over which villages are seeking legal title and to which they possess legitimate rights under customary and international laws (See, for example, Map 10).

While the UNDP Amerindian Land Titling Project (See Sections 1 and 3) jointly planned with the Ministry of Amerindian Affairs documents at least 29 villages seeking land title extensions – itself an underestimate (see Section 1), the Guyana Lands and Surveys Commission claims it has only registered 12 such applications.⁵⁵

Even where formal land title extension applications have not yet been submitted by some Villages, the GFC already reportedly has access to maps of indigenous land claims, and due diligence in line with Forestry Rules should ensure consultation and avoid overlaps with indigenous lands (see also footnote 54). Crucially, an effective community-level consultation would undoubtedly identify forest areas claimed by affected villages and thereby avoid future conflicts and grievances. The problem is that due diligence is not completed (or is disregarded) and community consultations prior to allocation of lumber rights are almost never undertaken by GFC (nor any other government agencies).

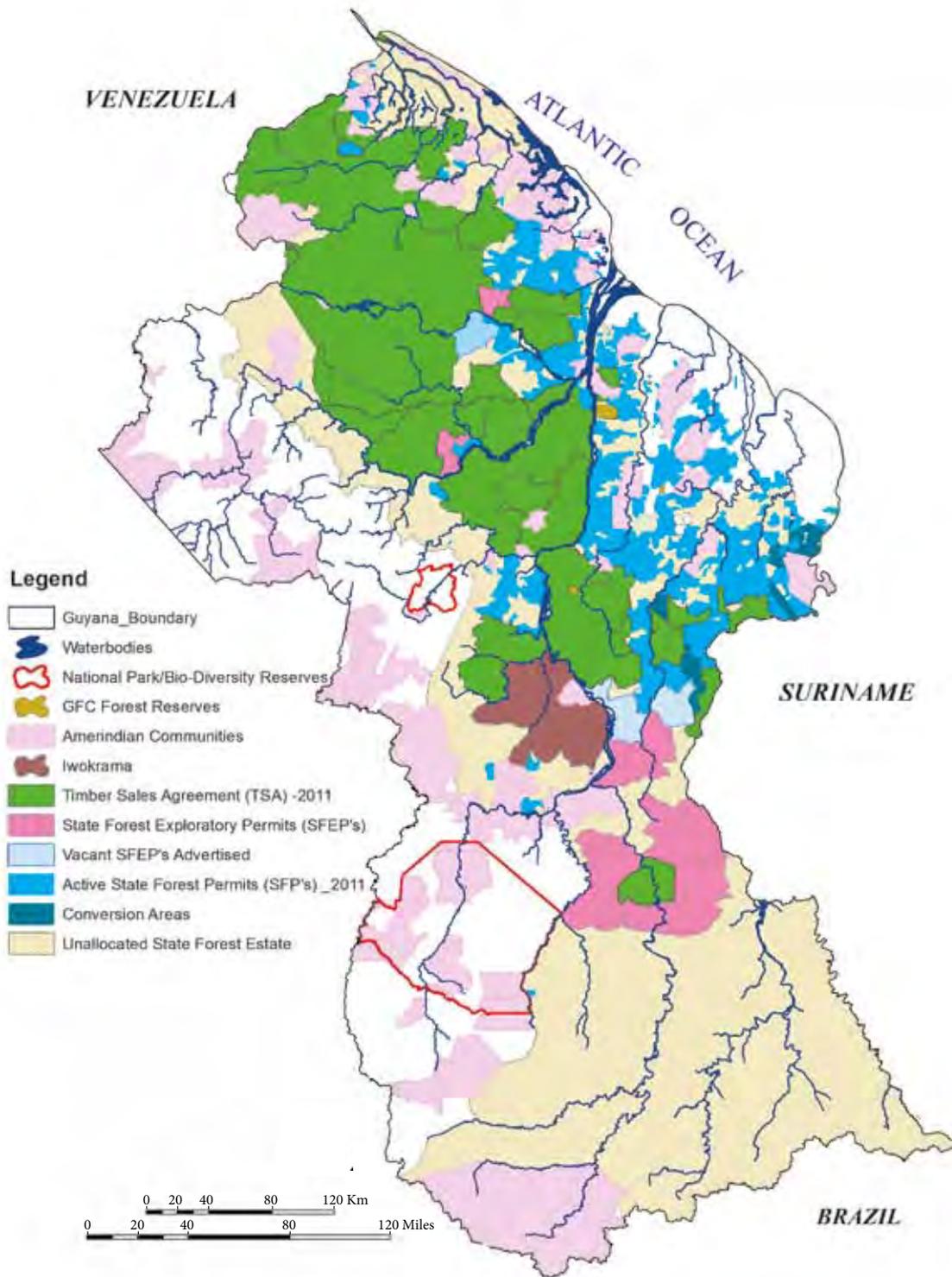
Villages report that often the first they learn of a concession affecting their lands is GFC interference in their livelihood practices and penalties for cutting timber and forest resources:

Villagers only learned of the A Mazaharally concession through maps provided by the GFC in 2009 in connection with fines on villagers for alleged ‘illegal logging’ inside their own traditional (untitled) lands. Now the land is occupied by an Asian logging company and we know nothing of these deals. We do not understand how the government says it wants to save the forests, while it allows massive forest destruction by big Chinese and Malaysian companies yet punishes small people like us under the LCDS. Why do the authorities pick on us Amerindian people?

[Village Resident, Kwebana, Region 1, 2012]

54 See, for example Development of Land Use Planning Project (DLUPP) “Forestry Leases” Map ID No. T005 V1.0, September 2012 included as Figure 2.19 in *Guyana Lands and Surveys Commission (2013) Guyana National Land Use Plan, June 2013* GLSC, Georgetown. See also Figures 2.32 (Titled Amerindian Villages) and Figures 4.2 (Available Land). The National Plan does make passing mention of land title extensions (at Section 3.4.7), but claims that these are “unmappable” until they have been formally demarcated (something which appears make little sense as these could be shown as indicative areas. In any event, this position does not stand up to scrutiny as concessions, unallocated lands and State Forest Estate have often not been demarcated on the ground, yet are shown on the national land use maps). <http://www.lands.gov.gy/National%20Land%20Use%20Plan%20GoG%20June%202013%20with%20cover%20pages.pdf>

55 Section 3.4.7 of Guyana National Land Use Plan, June 2013



Map 11: Forest Resources Allocation Map of Guyana*
**Adapted from: Figure 2-18 in National Land Use Plan, June 2013, Guyana Lands and Surveys Commission, Government of Guyana, Ministry of Natural Resources and Environment*

Government of Guyana forest resources allocation map indicating forestry concessions and land “available” for lease for timber extraction – much of which overlaps Amerindian customary lands.

Box 14: Controversial allocation of logging rights to Chinese logging company Bai Shan Lin

Bai Shan Lin, a Chinese logging company, has outlined large-scale investment plans for Guyana, which include forest concessions covering 960,000 hectares; a 20-kilometre river gold mining concession; and extensive commercial developments to facilitate trade in wood products. This was outlined in a presentation given by Chu Wenzhe, the chairman of Bai Shan Lin, in November 2012 at the 2nd World Congress on Timber and Wood Products Trade. Chu Wenzhe outlined the geographical advantage of Guyana, with its easy access to Brazil and Venezuela (the two biggest economies in Latin America), and its access to the “over \$130 billion dollar US export market”.⁵⁶

Bai Shan Lin is part of a group of 11 companies operating as part of the China Forest Industry Group in Guyana. These companies have seven logging concessions in Guyana, covering a total area of 960,000 hectares (about 4.5% of the country). These concessions were taken over from other concession holders, a process known as “land lording” which is illegal in Guyana (unless officially authorised by the President).⁵⁷ Under Guyanese law, forest concessions cannot be traded, but must be re-advertised by the Forestry Commission in an open auction. In addition, Bai Shan Lin’s target of 300,000 m³ of timber per year will exceed the threshold set for log production in the Norway-Guyana MoU.

Members of Bai Shan Lin’s Project Promotion Team include Guyana’s President, Donald Ramotar, Prime Minister, Sam Hinds, and former President, Bharrat Jagdeo. Despite the scale of the planned operations, and the involvement of senior political figures in Guyana, Bai Shan Lin’s agreements with the government of Guyana are not public and there has been no discussion in the National Assembly about the company’s plans.

Responding to questions in the national press,⁵⁸ James Singh, Commissioner of Forests in Guyana,⁵⁹ claims that Bai Shan Lin has Joint Ventures with WAICO and Haimorakabra for forest concessions, and with Sherwood Forrest Inc. for a State Forest Exploratory Permit, approved in early 2000 prior to the requirement for Presidential approval of such takeovers. Independent researcher, Jannette Bulkan, contests that *Condition 2 of the Timber Sales Agreement concession licence (in law since 1982) and Section 12 of the Forest Regulations 1954 have required presidential approval for transfers of any kind of interest in a concession, making it reasonable to conclude that Bai Shan Lin has not acquired control of logging concessions by fully legal processes.*⁶⁰

Commissioner Singh also noted that the MoU between Guyana and Norway refers to an interim group of indicators, which will be phased out by 2014. Hence, the GFC argues, timber volumes harvested by Bai Shan Lin will not exceed the current agreements until they have expired, suggesting a lack of commitment to the continued reduction of deforestation in Guyana once the MoU terminates.

56 *Chinese Enterprises to Guyana*, Chu Wenzhe, Board Chairman of Heilongjiang Baishanlin Timber Industry Co., Ltd. Link: <http://www.redd-monitor.org/wordpress/wp-content/uploads/2013/04/cwz-en.pdf>

57 Stabroek News, 28 August 2007, *Transfer of assets between forest companies must meet approvals – Jagdeo*.

58 See: Stabroek News, May 5 2013, *Bai Shan Lin holds 960,000 hectares of forest*. <http://www.stabroeknews.com/2013/news/stories/05/05/bai-shan-lin-holds-960000-hectares-of-forest/>; and Kaieteur News, 7 May 2013, *Questions about Bai Shan Lin (BSL) interventions in the forest sector* (by Janette Bulkan).

59 Guyana Times, 7 May 2013, *Commissioner James Singh GFC responds to Janette Bulkan*. <http://www.guyanatimesgy.com/?p=13325>,

60 Stabroek News, 11 May 2013, Janette Bulkan: *It is time the Natural Resources Sectoral Committee of Parliament asked serious questions of the Ministry of Natural Resources, the GFC and Bai Shan Lin*. <http://www.stabroeknews.com/2013/opinion/letters/05/11/it-is-time-the-natural-resources-sectoral-committee-of-parliament-asked-serious-questions-of-the-ministry-of-natural-resources-the-gfc-and-bai-shan-lin/>

There are logging concessions covering much of the community's untitled lands west of the Waini River. GFC has also advertised forests for concession in the SE portion of Kaniballi's untitled lands south of Troolie Creek. The Village Council and villagers were not consulted on any of the forest concessions affecting our land. We only discovered the GFC advertisement affecting the SE portion of our area by chance in the newspapers (seen by Kwebana people). We don't like it that the government gives out these lands to outsiders without us knowing about it. Much of that land is our extension area! Our people fear that when these areas are occupied the concessions holders may restrict access to the forest. *[Village resident, Little Kaniballi, Region 1, 2012]*

Amerindian leaders and community members maintain that prior consultation and FPIC procedures in Guyana must be overhauled in order to ensure fair and sustainable logging practices in the country:

The government and loggers should stop destroying the forest. The government must stop giving out concessions on our lands: logging and mining permits are causing health problems as well as social problems. We find that these permit holders are pressuring our people and cleaning out our lumber and other resources. That is not right and we are not even consulted. All concessions must be properly consulted and our agreement obtained. The government should allow Amerindians to have title and to work our own resources for the benefit of our people. *[Village resident, St Monica Village, Region 2, 2012]*

Our villagers are upset that logging and mining concessions have been given out with no prior consultation nor FPIC. They are very worried that these companies are eating out the land and that there will be no resources left for their children and grandchildren. *[Village Resident, Kwebana, Region 1, 2012]*

All those people using our untitled lands are miners and loggers that have permits given by the government, including the Barama company, James Smith, Barakat and Imam Persaud, Nandram Sanichara, Insanally and James Ramroop as well as Parmanan. These are just a few of the companies: there are many other companies with SFPs on our lands, which we do not even know about. *[Village Resident, St Monica, Region 2, 2012]*

Violation of international legal norms

The imposition of timber harvesting rights over indigenous peoples' lands without their free, prior and informed consent is in violation of Guyana's international obligations. As with the incomplete and flawed application of the FPIC standard to the LCDS (Section 3), the underlying legal problem in Guyana appears to be a restrictive definition of "Amerindian lands" limited to areas granted (sic) title by the State. Current minimum legal standards on the rights of indigenous peoples in international law are unequivocal that the FPIC standard applies to all lands held under traditional occupation and according to customary law, and are not confined to lands with legal titles (Box 15).⁶¹

61 On the legal FPIC norm established in international law, see, for example, UNREDD (2013) *Legal Companion to the UN-REDD Programme Guidelines on Free, Prior and Informed Consent (FPIC): International Law and Jurisprudence Affirming the Requirement of FPIC* UNREDD Programme, UNREDD, New York

Box 15: Saramaka Judgement of the Inter-American Court of Human Rights⁶²

In November 2007, the Inter-American Court on Human Rights ('the Court') adopted a landmark judgment for indigenous peoples' rights in the case of the Saramaka People v. Suriname.⁶³ The case was brought by the Saramaka people against Surinam over violations of indigenous and tribal peoples' rights to their traditional lands, territories and resources. The Saramaka people asserted that Surinam had actively violated these rights in the granting of logging and mining concessions in traditionally owned territories. The Court found in favour of the Saramaka people, determining that the state has obligations to recognise, secure and protect indigenous and tribal peoples' property rights, including through demarcation, delimitation and titling, conducted in accordance with the norms, values and customs of the indigenous peoples concerned.⁶⁴

The judgment maintains that indigenous and tribal peoples' property rights do not depend on domestic law for their existence, but are grounded in and arise from customary laws and tenure.⁶⁵ This means that the property rights of indigenous peoples exist even if they do not hold legal titles to land held under customary or traditional use.⁶⁶ The Court has also held that indigenous peoples have a right to restitution of traditionally owned lands which have been taken or lost without their consent, including where title is given to third parties.⁶⁷

The rules set forth in the Saramaka judgment apply to any proposed development or investment project that could affect the integrity of indigenous and tribal peoples' territories, particularly any proposal to grant logging or mining concessions.¹⁵ The Court noted that where projects could affect the integrity of the Saramaka people's lands and natural resources, the state has a duty not only to consult with the Saramaka, "but also to obtain their *free, prior, and informed consent*, according to their customs and tradition"(emphasis added).⁶⁸ The findings of this case illustrate the rights of indigenous peoples that are affirmed and protected in universal human rights instruments. This finding is consistent with the definition of FPIC in the UN Declaration on the Rights of Indigenous Peoples, and in related human rights instruments.⁶⁹

Restrictions on local livelihoods

As well as loggers imposing unjust restrictions on Amerindian access and freedom of movement, villagers complain that in recent years the GFC has become increasingly punitive and restrictive with regards to Amerindian use of the forest outside their title areas.

62 For more detailed information on this case please see: Forest Peoples Programme, March 2009, *Indigenous Peoples' Rights and Reduced Emissions from Reduced Deforestation and Forest Degradation: The Case of the Saramaka People v. Suriname*. FPP, Moreton in Marsh.

63 Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs. Judgment of 28 November 2007. Series C No. 172, at para. 194-96. http://www.corteidh.or.cr/docs/casos/articulos/seriec_172_ing.pdf

64 Ibid at para. 115

65 Ibid at para. 122, which notes that: "the demand for collective land ownership by members of indigenous and tribal peoples derives from the need to ensure the security and permanence of their control and use of the natural resources, which in turn maintains their very way of life"

66 Ibid at para. 121.

67 See Yakye Axa Indigenous Community Case, Inter-American Court of Human Rights, 17 June 2005, Series C No 125; and Sawhoyamaya Indigenous Community Case, Inter-American Court of Human Rights, 29 March 2006, Series C No. 146.

68 *Saramaka People v. Suriname*, at para. 134.

69 UNDRIP, Article 32(2)

Our freedoms to extract lumber, manicole cabbage and other bush resources have been restricted by GFC since demarcation was completed in 2006. GFC already placed a 600,000 GY fine on one villager for cutting two Washiba trees. People have been warned by GFC that if they are found on “State land” cutting lumber of NTFPs, they will be fined and if they cannot pay they will go to jail. People do not feel free anymore. They live in fear that they might be caught walking and using resources on their traditional land. Government officials have told us that they do not want villagers using state land. One even tell us that this is why the village receives the Presidential grant, so that we stay on the demarcated title! [Village Resident, Little Kanubali Village, Region 1, 2012]

We are getting more and more concerned about the GFC presence in the (untitled) backlands of area. Villagers feel that their freedom to roam and use their own lands is being reduced. The GFC is especially strict outside the title area. [Village resident, Wakapau, Region 2, 2012]

Villagers also complain about growing GFC interference in their use of forest lands inside their titled areas:

We are most upset that the GFC is now telling us that all logs must be tagged on Village Lands, including those used for domestic use. Villagers feel this is not justified and they are completely unsure of how or why the GFC is asking for this. The tagging of trees for domestic use is rejected by our village. [Village Councilor, St Monica, Region 2, 2012]

Unjust benefit sharing agreements

A further serious problem in Guyana relates to the lack of equitable and sustainable benefit sharing agreements with Amerindian Villages who are sometimes pressured by companies and even the GFC to enter into agreements that have unfair terms. As villagers from Baramita in Region 1 reported in 2013:

Two lumber companies did approach the Village Council for permission to log our land title area, including Jialing Company and Grand Bright Company. The papers were all wrong. The Grand Bright Agreement, for example, would have given fully exclusive rights to the company to all commercial timber across the entire reservation, meaning that villagers would be restricted in their use of the forest and freedom of access. Even the Commissioner of Forests himself advised that it was a good offer, but a review of the agreements by our independent lawyers and advisors led to the previous Council to reject the applications. The companies have come back several times to try to pressure us, but the current Village Council does not wish to negotiate. We are determined to protect lumber reserves outside the mining areas. [Resident, Baramita Village, October 2013]

Even where potentially useful benefit-sharing agreements are made, Villages complain that they are not implemented. A well known case is that of Akawini Village in Region 2 that was forced to throw the Barama Timber Company off its land after repeated broken promises in the delivery of benefits and the failure of the company to address damage by loggers to community resources.⁷⁰

⁷⁰ Akawini Village: Logging & Indigenous Rights – Akawini, Barama & IWPI 2006



Amerindians who work in logging camps complain that they are often underpaid, receive late payments for their work and have basic equipment (like safety clothing) deducted from their wages.

Photo: Tom Griffiths

Problems with implementation in community agreements have also been found in the case of Iwokrama, which has been presented as a model of sustainable logging in Guyana. In 2008, FSC certifiers noted that the community benefit-sharing arrangements with Iwokrama Timber Inc (ITI) and firm Tigerwood Inc (TGI) are complex and open to confusion, as ordinary community members often do not grasp the basis of the agreements.⁷¹

While community resources, including nibbi and kufa vines and sacred sites, are meant to be protected under the agreement, the management plan maps used by loggers do not take account of non-timber forest products, fruits, medicines, sacred sites and watersheds. Non-Amerindian forest managers advise that there is only an “unspoken agreement” that trees with plentiful nibbi and other vines will not be felled, while villagers report that these valuable livelihood resources are often damaged by company logging activities.⁷² As a result, in 2009, the Fairview Village Council requested that the buffer areas in the management plan be increased to protect community water and forest resources. The authors have not been able to verify the current status of the community benefit sharing in Iwokrama.

Lack of transparency and corruption in the forestry sector

Corruption and lack of transparency in the forest sector in Guyana has been reported for decades. The APA and FPP are not aware of any indicators available to verify that any improvement in forest governance has taken place in recent years. Indeed, the Guyanese forest sector is sometimes likened to a feudal system based on patronage and clientelism through

71 Soil Association (2008) *WoodMark Forest Certification report for Iwokrama Timber Incorporated - Public Summary certification report*, Soil Association, Bristol [http://www.soilassociation.org/web/sa/saweb.nsf/librarytitles/25162.HTML/\\$file/RT-FM-001-04%20IWOKRAMA%20MA%20Report%20FINAL.xls](http://www.soilassociation.org/web/sa/saweb.nsf/librarytitles/25162.HTML/$file/RT-FM-001-04%20IWOKRAMA%20MA%20Report%20FINAL.xls)

72 FPP and APA field visit to Fairview Village and Logging Operation, 2009

which concession rights are allocated to family, friends, business partners and powerful foreign companies known to the GFC.⁷³

Despite claims from the GFC in 2011 that the forestry sector in Guyana is more than 90% legal,⁷⁴ there is a large amount of evidence suggesting that this is not the case. Serious distortions in the rule of law and corruption in the forest sector have been documented in Guyana, including:

- Loopholes in the 2009 Forest Act allowing large concession holders to export great quantities of logs by sourcing these from other concessions (holders of hinterland agricultural leases and small and short-term logging concessions).⁷⁵
- The private trading of concessions which lack approval of the President that is required under the law (Forest Act of 1953).⁷⁶
- The exemption of large companies from regulation, while reaping high returns from Guyana's resources, with a widespread lack of required forest management plans, and large foreign logging companies receiving significant tax concessions.⁷⁷
- Links between large-scale logging and serious crimes related to the trafficking in humans, drugs and guns.⁷⁸
- Encroachment of logging activities and extraction of lumber on Amerindian titled areas without prior agreement.
- Manipulation of concessions and community boundaries by loggers in order to gain access to lumber (exacerbated by contradictory maps held by GFC, GGMC, concession holders, and Lands and Surveys).
- Illegality in small-scale logging frequently connected with misuse of timber tags and extraction from non-designated areas.⁷⁹

Information coming from communities and other indicators suggest that, in a way not supported by laws and procedures, the GFC is focusing excessively on the illegalities committed by the small-scale loggers as opposed to those of the large-scale operators,⁸⁰ with penalties for small-scale offenders often exceeding the limits allowed by law.⁸¹ It is suggested that

73 On the weak governance in the forest sector in the 1990s and poor GFC supervision of large logging concessions, see especially Colchester, M (1997) *Guyana: fragile frontier: loggers, miners and forest peoples* Latin American Bureau-WRM and Ian Randle Publishing, London at pages 101-114.

74 <http://www.agriculture.gov.gy/Bulletins/January%202011/Emphasis%20placed%20on%20sustaining%20legality%20of%20forestry%20activities.html>

75 Large scale traders are using these rural communities as a front for illegal practices, with timber log exports worth as much as US\$36 million when landed in China reported to have been exported from just one region of Guyana in 2010-11. See: Bulkan, J (2012) *The rule of law? – not in the forest sector of Guyana*. Stabroek News, 16 January 2012. <http://www.stabroeknews.com/2012/features/in-the-diaspora/01/16/%E2%80%98the-rule-of-law-%E2%80%93-not-in-the-forest-sector-of-guyana%E2%80%99/>

76 Out of the 33 Timber Sales Agreements (TSA) and Wood Cutting License (WCL) that were issued during 1985 and 2005, only 5 were still operating by the original licensees in 2005 and 19 were rented illegally to Asian-owned logging companies. See: Bulkan and Palmer, 2008. 'Breaking the rings of forest corruption: steps towards better forest governance'. In *Forests, Trees and Livelihoods*, Vol 18. See also for example: <http://www.stabroeknews.com/2013/news/stories/04/30/businessman-remanded-over-800lb-cocaine-in-timber-shipment/>

77 Bulkan and Palmer, 2008. Breaking the rings of forest corruption: steps towards better forest governance. In *Forests, Trees and Livelihoods*, Vol 18

78 *Ibid* at page 117-118

79 Reports often suggest that some loggers are able to obtain identification tags from the GFC and use them on timber that is cut outside their concessions. See: Bulkan and Palmer, 2006. *Timber tag: the currency of illegal logging and forest corruption in Guiana Shield countries*. <http://www.illegal-logging.info/content/timber-tags-currency-illegal-logging-and-forest-corruption-guiana-shield-countries>

80 Bulkan and Palmer (2008) 'Breaking the rings of forest corruption: steps towards better forest governance' *Forests, Trees and Livelihoods*, 18: 103-131

81 See the Forests Act 1953/1999. See also: <http://www.redd-monitor.org/2012/04/26/news-from-guyana-two-articles-about-guyana-by-janette-bulkan-in-the-commonwealth-forestry-association-newsletter/>

this is due to the vested interests of the members of the GFC Board, which is composed to a large extent of representatives of government departments and agencies, some of whom are themselves connected to the logging industry.⁸² These close connections between regulators and the industry might explain the undisclosed nature of the selection criteria for new concession areas;⁸³ the award of harvesting concessions without open competition; the renewal of concession contracts without audits;⁸⁴ and the renegotiation of large contracts (e.g. the Barama-contract) without public oversight.⁸⁵

The ability of the public to monitor the operation of the GFC in general has been made difficult by the lack of annual reports, which are to be tabled for the National Assembly every year. Not until November 2013 were the reports from the period 2005-2012 brought forward, disclosing questionable conduct by the GFC during this period.⁸⁶

Need for legal and policy reforms

Unjust laws and unjust application of law open the door to corrupt and illegal practices. Guyana scores poorly in most international indices on quality of governance, with weak rule of law, corruption in all areas of government, inefficient bureaucratic and regulatory frameworks all noted as problematic factors.⁸⁷ The negotiation of an LAS under the VPA thus offers an unprecedented opportunity to overview the operating systems of the GFC. An urgent starting point under the VPA would be the existing Guyana Legality Assurance System (GLAS), which currently does not have a definition for legality.⁸⁸

Effective multi-stakeholder discussions on the FLEGT-VPA must include serious deliberations and consensus on specific areas for legal and policy reforms necessary to address the above legality and sustainability problems in the forest sector in Guyana. The APA, for example, has long maintained that the 2006 Amerindian Act requires remedial reforms to bring it into line with Guyana's international obligations to uphold indigenous peoples' rights, including their rights to lands, territories and resources. This position is backed by UN human rights bodies (see Section 1, land rights). The need for reform of the Amerindian Act is also now identified by the IPC as a necessary pre-condition for sustainable forest policies, yet this vital matter is not yet a topic of discussion in Guyana's FLEGT-VPA negotiations with the EU. Nor is it recorded in Guyana's FLEGT meeting and workshop reports, despite the fact that it has been raised by participants and presenters on a number of occasions.⁸⁹

Other legislative issues that require serious discussion relate to the 2009 Forest Act, the legality of which is questioned by independent review.⁹⁰ This Act is complex and restrictive on question

82 Ibid

83 Bulkan and Palmer, 2006. *Timber tag: the currency of illegal and forest corruption in Guiana Shield countries*. <http://www.illegal-logging.info/content/timber-tags-currency-illegal-logging-and-forest-corruption-guiana-shield-countries>

84 Bulkan and Palmer (2008) 'Breaking the rings of forest corruption: steps towards better forest governance'. In *Forests, Trees and Livelihoods, Vol 18*

85 Bulkan 2012. See REDD-monitor April 2012: <http://www.redd-monitor.org/2012/04/26/news-from-guyana-two-articles-about-guyana-by-janette-bulkan-in-the-commonwealth-forestry-association-newsletter/>

86 Ram, 11th January 2014: <http://www.chrisram.net/>

87 In: *The Heritage Foundation's 2010 Index of Economic Freedom and The Global Competitiveness Report 2009-2010* by the World Economic Forum

88 Numerous defects in the draft GLAS have been raised by consultancy firm, Efeca, in its May 2011 report, (as reported in Stabroek News, 12 October 2011, *US report could help enhance Guyana's forestry*; and GFA Consulting Group's scoping report on independent forest monitoring, released on 16 December 2011 (source: Stabroek News item, 24 December 2011, *Assessment finds several weaknesses in forestry commission practice*).

89 For example, the IPC public acknowledgement that there are flaws in the Amerindian Act that need to be looked at as part of the FLEGT process made at the 22nd Chatham House meeting on Illegal Logging in July 2013, does not appear in the final summary record of the meeting: http://www.chathamhouse.org/sites/default/files/public/Research/Energy,%20Environment%20and%20Development/0713il_summary.pdf

90 Consultancy firm Efeca noted in its May 2011 report, that the GFC's pretence that the Forests Act 2009 was valid law was misleading. In legal terms, the Forests Act (cap. 67:01) continues to be the 1953 Act as amended to 1997.

of Amerindian use and access rights in state forests and areas sold as leases and concessions to third parties. Unlike an earlier 2004 Draft Forest Act that was widely consulted in Guyana, the latter much revised (and weakened) version approved by the National Assembly in 2009 was not the subject of community consultations. Most Amerindian Villages are largely unaware of the status of this law or how it affects their rights and interests.

Need for serious treatment of substantive issues and concerns

Despite much evidence of forest tenure problems and conflicts, non-compliance with legal standards and legal and governance obstacles to sustainable forestry, the GFC appears to be reluctant to enable frank and open discussion on these issues. When APA asks about how these problems would be addressed under the FLEGT process in Guyana, these queries are usually brushed off and no real answers have yet been provided by the GFC (similar marginalisation of rights and tenure matters is reported in GFC meetings on FLEGT held in Region 9 in January 2014). Very worrying is the failure of the NTWG to record APA's interventions on land rights and governance problems in the minutes of the indigenous peoples' constituency group.

Unfortunately, local and international organisations that have put forward views and queries about Guyana's FLEGT process have been challenged and attacked in the government-run press, creating an atmosphere of intimidation that is not conducive to transparent and open multi-stakeholder discussions.⁹¹

Conclusions and recommendations

In order to secure progress, there is a need for a change in the multi-stakeholder arrangements to ensure reception of questioning and dissenting views and serious treatment of community concerns. Progress will not be secured as long as vital issues of land tenure, governance and illegality in the conduct of business are swept under the carpet. If the FLEGT process in Guyana can grasp and seek solutions to complex issues affecting the timber trade, and if it can also recognize that legislative changes are essential to protecting indigenous rights then it offers real potential to do lasting good in the forest sector.

Crucially, to enable a successful outcome in the Guyana FLEGT-VPA, APA recommends the following steps in order to strengthen the VPA process:

1. The process needs to meet all requirements of a good consultation process (see minimum requirements of good faith and inclusive FLEGT consultation in Box 12, above).
2. Amerindian and other participants in the VPA consultations must be given the space to elaborate on their concerns and to provide feedback to their constituency within a reasonable time. Additionally, the process must be free of undue GFC and government influence to ensure transparency and representation. It is recommended, for example, that the Chair of the NTWG has to be independent.

⁹¹ For evidence of unreasoned and overzealous attacks on APA and rebuttals of FERN and FPP and comments on the VPA process in the Guyana Chronicle newspaper, see , for example, Persaud, P (2013) *International experts on Guyana's EU FLEGT process should apply caution*, Guyana Chronicle, 17 May 2013 <http://guyanachronicle.com/international-experts-on-guyanas-eu-flegt-process-should-apply-caution/>

3. The government and EU must include international and customary law provisions in the legality definition, including effective protections of land rights and FPIC.
4. Consultations must take into account legality gaps and inconsistencies as part of the development of the final legality definition and for the effective design, implementation and monitoring of a credible legality assurance system.