

The Vietnamese Non-Governmental Organisations Network for
Forest Law Enforcement, Governance and Trade (VNGO&FLEGT)

**Comments on the 5th Draft of
Legality Definitions on Timber and Timber Products
for the Voluntary Partnership Agreement (VPA/FLEGT)
negotiation between the Vietnamese Government and the
European Union**

Respectfully addressed to: **The FLEGT and Lacey Standing Office,**
Vietnam Forest Administration (VNFOREST) of
Ministry of Agriculture and Rural Development

The VNGO&FLEGT Network would like to extend many thanks to the FLEGT and Lacey Standing Office (the Standing Office) for providing the opportunity to contribute to the 5th Draft of Legality Definitions on Timber and Timber Products of Vietnam (the 5th Draft), which aims at implementing the negotiation roadmap of the Voluntary Partnership Agreement (VPA/FLEGT) with the European Union (EU).

The VNGO&FLEGT Network was formed in January 2012 and currently consists of 20 non-governmental organizations, research institutes and development centers from several universities nationwide. These organizations operate in the various fields of forestry, rural community development, natural conservation and climate change, etc. They share common interests and concerns, as well as wishing to further contribute to the policy making process, ensure good governance of forest resources, and effectively implement the forest protection and development plan in Vietnam in the period from 2011 to 2020. Representation for the network is provided by a Core Group consisting of four organizations: the Centre of Research and Development in Upland Areas (CERDA), the Centre for Sustainable Development in Mountainous Areas (CSDM), People and Nature Reconciliation (PanNature) and the Centre for Sustainable Rural Development (SRD).

In the spirit of the meeting hosted by the Standing Office on March 20, 2012 addressing the on-going VPA/FLEGT negotiation process and the role of civil society organizations in Vietnam, upon receiving the 5th Draft of Legality Definitions on Timber and Timber Products and the Letter of Invitation from the Standing Office, the Core Group announced and forwarded all of these documents to the other member organisations and individuals in the Network to collect their comments. The Core Group also nominated two representatives from PanNature and SRD to participate in the Week of FLEGT held by the EU in Brussels (Belgium) from April 24 to 27, 2012. This provided the representatives with an opportunity to learn about FLEGT/VPA updates

from the EU and their partner countries, especially in Mekong and Asia-Pacific regions, and to learn from the international experiences of CSOs' (particularly those from Indonesia, Ghana, Liberia and Cameroon) participation and activities in VPA/FLEGT processes.

The following is a synthesized collection of comments on the 5th Draft of Legality Definitions on Timber and Timber Products from the Network's members, which we would like to send to the Standing Office for consideration. In addition, we hope that we will be receiving support, from the Standing Office and other stakeholders in the negotiation process, to fulfill the community consultation plan for VPA/FLEGT to be undertaken by the Network in Vietnam in the near future.

1. Collection of synthesized comments on the 5th Draft of Legality Definitions on Timber and Timber Products

General assessment:

- It is recognized that in the process of developing the legality definitions, the Drafting Team has not carried out consultations to collect local communities' opinions, particularly from households whose livelihoods are dependent on forests and forestry land and those who might be directly or indirectly, positively or negatively, impacted when the VPA/FLEGT agreement between Vietnam and the EU is signed and enters into force.

This is clear from page 1 of the 5th Draft of Legality Definitions on Timber and Timber Products, and from Correspondence No.407/TCLN-KH&HTQT dated April 4, 2012 issued by the Vietnam Forest Administration. According to these documents, the Drafting Team has only consulted and received comments from different ministries, state agencies, local authorities, the Vietnamese Timber and Forest Products Association, the Forest Products Association of Binh Dinh, the Handicraft and Timber Industry Association of Ho Chi Minh City, the Vietnamese General Confederation of Labour, the Vietnam Farmers' Union and the European Union. This scope of consultation is not consistent with the information provided by the Standing Office at the meeting with Vietnamese NGO representatives on March 20, 2012 with regard to the multi-stakeholder consultation process for the FLEGT/VPA negotiation in Vietnam. Specifically, a document provided by the Standing Office states that "it is advised to attract the participation of different organizations which are interested in these issues, and especially the participation of local communities in the process of making policies on forestry" (page 1).

International experience, on the other hand, presented at the recent FLEGT Week, showed that during the process of developing legality definitions on timber and timber products in VPA/FLEGT negotiations, countries who have signed and/or are soon-to-sign agreements, all had undertaken community consultation and incorporated the opinions of local/indigenous communities.

That is, the opinions of forest owners and forest dependant people. These consultation activities were mainly undertaken by local non-governmental organizations, who provided the information collected from the local communities to the Drafting Teams and other stakeholders through various channels. This included information and assessment of the potential impacts of FLEGT/VPA on society and local communities.

- In terms of the formulation of legality definitions, as shown in Part II of the 5th Draft, the definitions are being developed “following timber flows/custody, specified from harvesting, import to export...”. The VNGO&FLEGT Network considers that defining timber legality in such a way is not adequate or appropriate. Timber (legality) should be considered from the very first stage, when organizations and/or individuals as forest owners are/ or were, allocated the rights to manage, protect, undertake silviculture and harvest natural forests, or were contracted and/or allocated the rights to plant, undertake silviculture and harvest production forests.

The legality of timber should cover the legality of forest land and resources, where timber is extracted, especially those forest areas being managed, protected and harvested by local communities in compliance with the existing state and customary laws.

- Regarding the Laws for reference, the Network would like to recommend the Drafting Team state the specific related regulations and articles accordingly. This recommendation should also be applied to decrees, decisions and circulars, in order to provide guidelines for easy reference and monitoring of the principles developed in the Draft. The Standing Office should also consider conflicts/overlaps which might exist between the existing regulations issued by different ministries.

Specific suggestions

- In part I, entry 1, the phrase “sustainable forest management” is mentioned, however, it was not clearly defined. It is highly recommended that a definition for this phrase be added in part I.
- Regarding “forest owners” (part I, entry 2) we would like to recommend the Drafting Team consider the situation in which one specific forest area may be managed by two or more entities, also called co-management, for example, cooperation between state owners and local community in managing the forest.
- In part II, the phrase “utilisable timber” of natural forests is mentioned repeatedly, however, this phrase was not defined in part I and there is a risk that if its definition is not carefully considered it may create an incentive to harm healthy trees to enable ‘legal’ collection of timber.

- Regarding Criteria 1.1 (part II, entry 1) on the approved timber harvesting design document or table of products to be harvested, we would like to recommend the Drafting Team add Decree 29/2011/NĐ-CP dated 18 September 2011, issued by the Government, regulating strategic environmental assessments, environmental impact assessments and environmental protection commitments into the 5th Draft. Appendix II of this Decree regulates that those projects which lead to a change in the use of forest land (number 45) or related to forest planting and harvesting (number 46) are required to undertake an environmental impact assessment.
- Regarding timber harvesting permission (criteria 1.2, entry 1, part II) and timber harvesting (criteria 1.3, entry 1, part II), for the verification principles, we would like to recommend an additional request allowing local communities to participate in the process of allocating and monitoring harvesting rights. This recommendation is not only appropriate for grassroots democracy law, but also important when harvesting activities occur in natural forests where local communities and ethnic minorities live, because forests play such an important role for their livelihoods, as well as for their mental and spiritual life.
- Before providing permission for harvesting, it is recommended that the influence of timber harvesting on the society is evaluated; and that regulations are in place to ensure transparent timber harvesting plans are developed in order to ensure community agreement and to enable the community and the local authorities to supervise the harvesting activities.
- Regarding regulations on wood harvesting and transportation, the 5th Draft does not mention:
 - i. Sharing benefits for the communities and local authorities. Although they may not be the direct owners, they still play an important role in protecting forests and their benefits from forest environmental services will be lost or reduced if the forest resources are harvested (for example, water resources or non-timber forest products);
 - ii. Compensation for local communities or households during the process of timber harvesting and transportation, such as for damage of farmlands, ponds, roads and irrigational systems, etc.

2. VNGO&FLEGT VPA/FLEGT community consultation plan

To enable further participation and better contribution to the negotiations and implementation of the VPA/FLEGT process in Vietnam, the VNGO&FLEGT Network would like to request technical support from the Standing Office to help the Network carry out community consultation on the VPA/FLEGT process through the following activities:

- Improve Vietnamese civil society organizations' capacity on FLEGT/VPA and other related contents (from May to June 2012);
- Develop and launch a community consultation plan and produce local community consultation reports on the legality definitions of timber and timber products and other FLEGT/VPA related information for local communities (from June to August 2012);

- Evaluate the potential impact of VPA/FLEGT on local communities in Vietnam (from June to September 2012);
- Organize meetings and workshops for the VNGO&FLEGT network, with the participation of ministries, agencies, the EU and related partners, on the findings from the community consultations on VPA/FLEGT and forestry management in Vietnam (from August to October 2012).

As can be seen from the discussion above, the VNGO&FLEGT Network has a number of recommendations for the 5th Draft Resolution on Vietnam's legal definitions of timber and timber products. We welcome feedback, concerns and support from the Standing Office to help the Network to better participate and contribute to the VPA/FLEGT negotiations and implementation process in Vietnam, as well as to future forest management, protection and development in Vietnam.

Many thanks for your collaboration.

Best regards,

Representatives of the Core Group of VNGO&FLEGT network:

Ms. Vu Thi Bich Hop, Director of SRD

Ms. Vu Thi Hien, Director of CERDA

Ms. Luong Thi Truong, Director of CSDM

Mr. Nguyen Viet Dung, Vice Director of PanNature

Ms. Pham Thi Bich Ngoc, Coordinator of the VNGO&FLEGT network