

“A Level Playing Field”? - What an environmental justice lens can tell us about who gets levelled in the Forest Law Enforcement, Governance and Trade Action Plan

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<https://www.tandfonline.com/doi/full/10.1080/08941920.2020.1725201?needAccess=true>

Ahmad Maryudi, Emmanuel Acheampong, Rebecca L. Rutt, Rodd Myers & Constance L. McDermott (2020) “A Level Playing Field”? – What an Environmental Justice Lens Can Tell us about Who Gets Levelled in the Forest Law Enforcement, Governance and Trade Action Plan, *Society & Natural Resources*, DOI: 10.1080/08941920.2020.1725201

Abstract

The European Union introduced Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan, with Voluntary Partnership Agreements (VPA) and the EU Timber Regulation (EUTR) as the key components. The VPA and EUTR have been conceived as complementary tools to establish a ‘level playing field’. This paper analyses how a level playing field has been conceptualized, approached, and experienced in practice. It focuses on the adoption and implementation of EUTR and VPA in Europe, Indonesia, and Ghana. Our research highlights inequities in the practice of ‘leveling’ and outcomes from a presumed level field. Stakeholder engagement excluded some factions of the private sector, notably SME operators, favouring select NGOs in general. New systems also favor larger operators who possess more capacity to deal with legality requirements. This leads small operators to perceive of a so-called level playing field as one in which they are disadvantaged, indicating multiple injustices against already vulnerable groups.

Keywords: FLEGT, EUTR, VPA, illegal logging, notions of justice, timber trade, Ghana, Indonesia

Introduction

Illegal logging has been regarded as a chronic problem throughout the world, particularly in key producer tropical countries (Interpol 2016). This has spurred major international efforts to control its associated trade. In 2003, the European Union (EU) introduced the Action Plan of Forest Law Enforcement, Governance and Trade (FLEGT) that aims to combat illegal logging in the world’s forests (EC 2003a). It invites exporting countries to sign bilateral Voluntary Partnership Agreements (VPAs) to achieve a goal to eliminate illegally-produced timber from their trade of timber products (Setyowati and McDermott 2016; Maryudi 2016). Once agreed, the VPAs include the implementation of a license scheme (timber legality assurance system [TLAS]) in the partner country and a system for issuing FLEGT licenses for timber exported to the EU. By November 2019, seven countries have signed a VPA and are currently developing a license scheme, and nine more countries are in negotiations with the EU. The goals of FLEGT, as articulated in the 2003 Action Plan, are to improve domestic governance, law enforcement, and transparency in the forestry sector (EU Commission and MoF 2011). The Action Plan also sets the stage for the EU Timber Regulation (EUTR) which prohibits the placing on the EU market of illegal timber products.

The VPA and EUTR have been conceived as complementary tools that together establish a ‘level playing field’ for law-abiding timber suppliers to the EU (S. Carodenuto and Ramcilovic-Suominen 2014; 2018). The EC described, “VPAs and the EU Timber Regulation aim to make sure only legal timber and timber products are traded. They provide a level playing field for all market participants” (EC 2013). At a FLEGT thematic meeting on the private sector in Brussels, “levelling the playing field” was identified as “the main issue for the private sector” (EC 2015). Illegal logging is said to create unfair competition for legally operating businesses, as illegal operators sidestep duties and taxes and have no obligation to invest in proper management of forests. The meeting concluded that “responsible businesses will always want a level playing field” (EC 2015).

However, a growing body of research has highlighted a number of environmental justice concerns, suggesting that FLEGT-VPAs and the EUTR place disproportionate burdens on specific

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actors along production networks. For example in Indonesia, some smallholders and small industries struggle to engage in legality verification due to technical, organisational, and financial barriers (Setyowati and McDermott 2016; Maryudi et al. 2015) while large industries and exporters accumulate more benefits due to their scale and pre-existing capacity (Maryudi and Myers 2018; Setyowati and McDermott 2016; Maryudi et al. 2015). Within the EU, differing opinions exist among different types of timber operators on the potential impacts of EUTR (Giurca and Jonsson 2015). This all highlights challenges facing certain timber operators under the implementation of FLEGT-VPAs and the EUTR. From a broader critical perspective, some scholars argue that policy measures promoting timber legality serve the interests of powerful business factions (Mol 2014). For example, Leipold and Winkel (2016) argue that the United States Lacey Act's prohibition on illegal timber exports to the country, which served as a precursor to the EUTR, may foremost support the interests of large timber industries.

This paper analyses whether FLEGT-VPA and EUTR level the playing field in timber trade, and what '*levelling the playing field*' really means for different actors. It focuses on the adoption, i.e. policy making processes, as well as the implementation of the EUTR (in the EU) and the FLEGT-VPA in two key partner countries: Indonesia and Ghana. Using an environmental justice lens, we aim to better grasp how a level playing field has been conceptualized, approached, and experienced in practice. The following section explains the concept of a level playing field including in relation to an environmental justice perspective, particularly the elements of distribution, representation, and recognition. Sections 3 and 4 present the methods and results respectively, followed by discussion and conclusions.

The level playing field: justice considerations in environmental policy

The concept of a 'level playing field' has become a buzzword in policy development of natural resource management over the past three decades. It is used to imply deliberative democracy, equality, and fairness. Yet sometimes it helps obscure underlying strategies to tilt the field to the advantage of powerful actors. In some tropical countries, for instance, certain types of actors in

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timber production networks may lack access to legal markets due to excessive and prohibitive regulations that all in turn contributed to forcing them into illegal activities (Blaser 2010).

For the disadvantaged actors, however, simply enforcing existing rules will not necessarily yield fair outcomes, but rather the playing field needs to be actively levelled in terms of power sharing in decision making (Ladner 2009). Larson and Ribot (2007) further broaden this phrase to also include not only well-crafted fair laws but also fair policy implementation. Despite its professed association with fairness, the phrase has frequently been used by large firms as a means to force other companies irrespective of size to take on the same level of environmental and social protections (Vogel 2010; Levin et al. 2012; Gibbon and Ponte 2008). This leads large firms to benefit from championing increased standards (Levin et al. 2012) but often also places, intentional or not, disproportionately heavy costs on smaller competitors. This paper therefore examines FLEGT's aims of leveling the playing field (S. Carodenuto and Ramcilovic-Suominen 2014; 2018), in terms of who is pushing those aims and what implications for different private actors along timber production networks.

Specifically, we focus on the concept of fairness as central to a level playing field, drawing on theories of environmental justice. The concept of environmental justice denotes "*the fair treatment and meaningful involvement of all people.... with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies*" (Bullard 1999, 7). Research on environmental justice calls attention to the politics of justice, i.e. varying and occasionally contradictory notions of justice asserted by actors with varying degrees of power, that affect others' actions and potentials (Sikor 2013, Walker 2012, Martin et al. 2014). Echoing this discourse of 'environmental justice', notions of fairness and equity are firmly embedded in the conceptualization of FLEGT and its associated tools/measures. The FLEGT Action Plan attempts to ensure those trying to do the 'right thing' are not in competition with those they would describe as unscrupulous actors who are ill concerned with issues of legality, let alone environmental and social sustainability. For example, illegal loggers enjoy "super profits" in comparison with legal operators since they neither pay the timber royalties/ provisions to the

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state nor implement proper but more costly harvesting techniques (Amacher, Ollikainen, and Koskela 2012).

In order to interrogate this discourse, we draw on several important distinctions in the environmental justice literature. These include justice as the equitable *distribution* of benefits, opportunities and risks (Wen et al. 2013). Distributional justice focuses on the patterns of (economic) outcomes, i.e. who gets what, and how people perceive the distribution patterns. Sikor et al. (2014) consider equitable assignment of rights and responsibilities among actors as part of distributional justice. Recent scholarship has also emphasized the importance of the elements of *representation* and *recognition*, which are equally as influential as distribution (Sikor 2013; Fraser 2009). The logic is to sustain distributive environmental justice by making citizens aware of environmental benefits and hazards and genuinely involve them in decision making. The dimension of representation goes beyond parity of participation (Fraser 2009). Luttrell (2008) points out a number of risks in channelling participation such as false homogenisation (where all actors are treated as having equal power to assert their rights), nominal participation, and token processes. Representation more relates to who influences decisions in the design and implementation of policies (Okereke and Dooley 2010; Schroeder 2010). Furthermore, the notion of recognition, as Fraser (2009) theorizes, acknowledges people's distinct identities, and ensures that social and cultural differences such as different visions of environmental management are equally respected. Recognition justice is about avoiding discrimination against a particular group of people due to their distinct social and cultural norms. Considering justice as recognition highlights the underlying causes of maldistribution and representational injustices in a social context (Schlosberg 2007).

There are several ways in which FLEGT-VPA's purport to address issues related to distribution, representation, and recognition. These include a core tenet of stakeholder-inclusiveness in designing and implementing the VPAs (EU-FLEGT Facility 2014; Wiersum and Elands 2013). The issue of representation is also relevant to the development of EUTR, which is meant to reinforce VPAs from the demand side. Likewise, EU-VPA policy specifically requires

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measures to safeguard the livelihoods of local communities (Lesniewska and McDermott 2014). It furthermore recognizes there may be conflicts between state laws and 'traditional land ownership rights' (EC 2003a, 18). These conflicts have since been documented in recent scholarship on FLEGT-VPA implementation (Lesniewska and McDermott 2014; Assembe-Mvondo 2013; Myers et al. 2017). Likewise, Hajjar (2015) has noted that informal sectors are often overlooked in the national policies of many countries. This paper therefore draws on the growing body of literature on FLEGT, together with data from recent original field research, to summarize findings on the distributive, representative, and recognition dimensions of FLEGT to date, to unpack who is making claims that FLEGT 'levels the playing field' and for whom.

Methods

This paper is part of the research project of *Supranational Forest Governance in an Era of Globalising Wood Production and Justice Politics*, which analyses the effect of FLEGT in global timber production networks. It tries to understand the justice claims made by different actors involved in timber production, industries and trade, and how their claims were shaped. This paper was based on research conducted in Indonesia, Ghana, and the EU. Both Ghana and Indonesia had signed the VPA with the EU but were at different implementation stages, with Indonesia having become the first country to be awarded EU recognition for their FLEGT Licenses (Maryudi, Kurniawan, et al. 2017a).

We conducted semi-structured interviews with nearly 400 actors across Indonesia (170), Ghana (160), and the EU (140), covering different sizes of wood producers and timber manufacturers, exporters, domestic timber traders and intermediaries, and village forest users. We also interviewed representatives from forest/ timber associations, national and sub-national policy makers, national and local non-government organisations (NGOs), and key informants. Key informants were policymakers, NGO practitioners, lobbyists, industry associations or others in a position to help to identify the key issues, locations for the research, and potential actors whom we could interview. Interviewees from the EU include importers and retailers, furniture

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manufacturers, national government actors, associations and civil society groups. Details of the interview focuses, procedures, protocols and instruments are made available at <http://prodjus.eu>. Annex 1 shows the overall numbers of interviews conducted across all countries/ region and Annex 2 describes the actors whose responses were appropriate for this paper. We cite interviews in our findings section using the '#' symbol to indicate the interview number, which can be cross-referenced with Annex 2.

Data was then coded according to our strategic coding framework (see <http://prodjus.eu> for details on codes and coding process), using Dedoose software package. We employed a single coder to code all records, and an inter-coder to spot check. Differences were discussed amongst the research team. Data relating to claims of (in)-justice across the three notions of justice (representation, recognition and distribution) were then analysed based on co-occurrence nodes; and were validated in a review workshop. We complemented the interview results with analysis of literature, documents and media reports (for their relevance see: Rahayu et al. 2019) relevant to FLEGT, the VPAs, and TLAS.

Results

The adoption and implementation of the EUTR

As envisaged in the FLEGT Action Plan, the EU adopted the binding legislation of the EUTR No 995/2010 in 2013. The EUTR is expected to complement VPAs by regulating the demand side, placing the burden of proving legality - including stringent due diligence measures - onto EU timber product importers. Countries operating under a VPA (and having achieved 'FLEGT licensing') are considered to have 'green lane' access to EU timber markets, which implies significantly fewer bureaucratic transaction costs compared with other methods of meeting EUTR due diligence conditions (Proforest 2010).

The development of the EUTR echoed the Plan's core principles, for instance the importance of engaging relevant stakeholders to instigate reforms. In addition to substantial

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support for public and civil society institutions, the Plan states the intention of the Commission to "encourage active private sector participation" (EC 2003a, 18). The European Council also advised the EU and its member states to "*strengthen effective participation of all stakeholders...in policy-making and implementation*" (EC 2003b). Stakeholder consultations in Europe on "future EU policy options against illegal logging" were initiated by the mid-2000s (Sotirov, Stelter, and Winkel 2017).

Despite the claimed importance of including the private sector, our research indicates that the private sector, particularly small and medium firms, was often excluded during the policy development of the EUTR. Private sector involvement in the development of EUTR was overshadowed by a group of well-resourced, influential, and highly visible NGOs (see also Sotirov, Stelter, and Winkel 2017). Many of our respondents (#01/02/ 03) stated that they were unaware of the EUTR until after it was done. Even federations of timber products only became apprised of decisions after the law was made (#04).

The contents and procedures of the EUTR seem to be designed with primarily larger firms in mind. One European FLEGT implementing institution representative (#05) described the requirements as explicitly targeting large scale industries. The main logic for this, as explained by a European EUTR Competent Authority official (#06), is the bulk of the imports (in terms of value and quantity) is done by the 'big players', meaning that when they are complying, the large portion of the market is accounted for. Yet such an approach has substantial ramifications for smaller firms that also must comply with new rules.

The EUTR demands due diligence for non FLEGT-licensed products, involving both risk evaluation and risk mitigation. Our research found that the requirements are experienced very differently by different operators. Larger timber traders now celebrate the EUTR as "*leveling the playing field*". One respondent, the CEO of a large and well-established timber distributor, said that the company has worked for many years on the sustainability and legality of their timber products, and that the "*EUTR is about 10 years behind where we are*" (#07). The sentiment that

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legality may even be passé, suggests that such companies handle the EUTR with relative ease. The respondent further explained that the EUTR removed some of the competition from illegal logging based on an unfair advantage. While this may be true, it also ignores the very real challenges of compliance faced by smaller firms. In fact, some of our respondents (#08/09) explained that they are simply giving up the business as a result of the new EUTR due diligence requirements. One European EUTR agent claimed that European operators, despite their token representation in the EUTR processes, would greatly benefit from the regulation as they will find it much easier to reduce imports from dubious sources (#10).

According to a European Member State officer responsible for EUTR implementation, one of the effects of purportedly levelling the playing field is that special interest groups, feeling a sense of empowerment by the EUTR, are more bold than ever to seek out and expose businesses engaged with illegal timber. However, timber agents are often small companies with only a few staff, and hence are hardly in a position to contend with the publicity prowess of major international environmental NGOs. An agent (#10) told of the finger-pointing of a potential EUTR infraction by a large environmental NGO, which notified the relevant authorities and exposed the actors involved (by name), including on a full page spread in a national newspaper. The EUTR competent authority completed their investigation and cleared all actors of any wrongdoing, citing that the demonstration of legality was in compliance with the EUTR. The result was a small article in the newspaper buried on a page, but according to the officer, the reputational damage had already been done. The timber actor had been named personally as engaging in illegal activity, and was later unceremoniously found innocent as were all of their trading partners. This example shows how smaller actors can struggle for legitimacy when their interests conflict with larger actors empowered by FLEGT.

The development and implementation of Indonesia-EU's VPA timber legality verification

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Indonesia is a major tropical furniture producer and exporter. There are more than one hundred thousand furniture industries; mostly are small and medium-sized enterprises (SMEs), supplying a small number of large firms who trade with global buyers (Purnomo et al. 2014). Currently, the country supplies around one third of the EU's imports of tropical timber products by value (EU-Commission 2016). In the late 1990s/ early 2000s, its exports of furniture peaked (Salim and Munadi 2017), ranked 5th globally, although that has significantly declined in recent years. The peak of furniture exports in the early 2000s was particularly driven by the massive illegal logging. At the time, the scale of illegal timber far exceeded sustainable timber production (Tacconi, Rodrigues, and Maryudi 2019).

Against this background, the government of Indonesia implemented several domestic policy measures to combat illegal logging, such as the timber export licencing scheme under the Timber Industry Revitalisation Body (*Badan Revitalisasi Industri Kehutanan/ BRIK*). It was also active in illegal logging-related policy dialogues, such as the 2001 Bali Ministerial Meeting (Nielsen 2004), from which the EU's FLEGT Action Plan was later adopted. In 2002, the government signed a bilateral agreement with the government of the United Kingdom to improve forest law enforcement and to combat illegal logging, with multi-stakeholder process for preparing the eventual timber legality system as one of the main activities (Brown et al. 2008). Around the same time, the government of Indonesia prepared processes for Indonesia-EU's VPA. The VPA negotiations were intensified following the launch of the national TLAS (*Sistem Verifikasi Legalitas Kayu/ SVLK*). The Indonesia-EU's VPA was finally signed in 2013 and ratified by both parties in the following year (Maryudi 2016). In 2016, Indonesia became the first VPA partner country to issue a FLEGT License (EU-Commission 2016).

The early processes for developing the national timber legality system, under the DFID-funded Multi-stakeholder Forestry Programme (MFP) and orchestrated by Kehati (a national NGO), saw broader involvement of relevant stakeholders. This manifests the country's democratic political system following the downfall of the authoritarian New Order regime. It has later become apparent that some NGOs have increasingly been influential along with the already

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powerful business actors. For instance, the drafting of the eventual national legality system was tasked to NGOs, i.e. the Nature Conservancy and the Indonesian Ecolabelling Institute. Several NGOs have also become members of the Indonesian delegates in several VPA negotiations, along with government officials. A key informant even claimed that *“it is becoming hard to distinguish NGOs from government officials. They organise things and are increasingly acting as “policy drafters” (#12).*

The issue of equity and fairness swiftly emerged following the formal launch of SVLK in 2009 as the standards for legality were widely thought to be designed for large forest management and industries. It was argued that large operators can carry their interest forward well and are able to influence the policy making processes (#13). One source from an Indonesian large manufacturer (#14) did not deny that legality policy manifests their interests. To address this issue, MFP conducted several studies (tasked to NGOs and academics) and intensive public consultations involving related stakeholders. This eventually led to several amendments on SVLK regulations with simpler legality standards for smallholders and SMEs (Maryudi 2016).

Such however did not alleviate concerns about mechanistic and token participation and claims that the process failed to ensure fair representation and recognition. A prominent NGO source (#15) in Indonesia also suggested that

it is true that all types of stakeholders were involved in the process, but I doubt that they represent the diverse actors in Indonesian forest policy. They were pre-selected. I conclude that the process was exclusively inclusive in a way all types of stakeholders are there, but they do not necessarily represent the whole aspiration of the group they were selected to represent.

Some human rights NGOs have appeared to lose interest since the issue of customary forests were insufficiently addressed. In fact, even the most recent legality standards are intentionally designed to exclude customary forests as the forests are not yet recognised as a new strand of tenurial claims.

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The capacity of small forestry actors to participate in legality verification continues to be a heated topic in Indonesia. In a recent national policy dialogue held by the Center for International Forestry Research in 2017, one small operator from Jepara (one of the main furniture centers in Indonesia) fiercely expressed (#16):

We want to convey that the life of small craftsmen today, in my opinion, is in real danger...In implementing legality verification, the government takes our concerns lightly. The training to achieve the required level of skills doesn't take one or two days, one or two months, or even one or two years. It can take several years. On top of this, the costs associated with the licensing were too onerous for small-scale woodcraft workshops.

However, an official from the Ministry of Cooperative and Small and Medium Enterprises (#17) during the same policy dialogue replied: *“We shouldn't coddle small businesses; we should prepare them to fight in a global market...SMEs must not be sheltered behind excuses like: 'I'm only small. I'm weak. I don't have anything.’...We must push them to change their view, to see their weaknesses as challenges”.*

Several illegal loggers from Indonesia (#18/19/20) wondered if the state even bothers about them despite resigning that their operations are illegal according to the laws. The potential adverse impacts of VPA on smallholder tree growers have also become an intense debate in Indonesia. The representation of smallholders in VPA process in Indonesia was minimal; few were invited to the table, and those that were lacked negotiation capacities to advocate their interests. Interviews with small-sized manufacturers and artisans provided a more blunt picture on the challenges of legality verification. Anger and despair and generally feelings of being 'left out' were common sentiments in our interviews on the implementation of SVLK. Some lacked resources to keep up with the long processes; many had not even heard of FLEGT, the VPA and the national timber legality verification, despite its immediate relevance to their livelihoods (#14/18/19/20). There is a growing feeling that legality verification favours large companies and is unfair to small operators and smallholder tree growers. The big firms gain from legality

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verification because they have the necessary financial capital and working environment to fulfil all legal standards. Consistent with these perceptions, several large furniture manufacturers and (state-owned) forest management units in Java (Indonesia) that were interviewed for this study reported that they have the necessary system already set up so that they are now legally verified and have also been certified by two voluntary certification schemes.

The Indonesian case very clearly shows that the large companies were all quickly certified within a couple of years, while there are tens of thousands of small operators who are not. Maryudi and Myers (2018) show that as per January 2018, large firms (processing capacity over 6000m³ per year) represent about two-thirds of the SVLK-verified manufacturing/ trading companies. Hence, and not surprisingly, interviews with state and larger timber and furniture companies have demonstrated these actors' support for the new systems as a way to gain better access to European markets and perhaps even to eliminate some of their competition from smaller companies. Several large operators in Indonesia we interviewed reported an increase in their sales although they are unsure whether it is because they are better positioned in FLEGT compared to their smaller competitors (#14/21/22/23).

Smaller firms remain the most disadvantaged operators in the FLEGT era as they lack funds to follow all the legality protocols and related regulations. High overhead costs and legal permit and verification requirements, limited knowledge, cumbersome processes, as well as more expensive legal raw materials are commonly cited by small operators as the major constraints for engaging in legality verification. According to a source from a European policy think tank, the main critique of FLEGT has been about whether there is too much focus on the larger players, the risk of excluding small scale producers, and the over emphasis on setting up technical systems for traceability without adequate assessment of capabilities to do that. The small scale Indonesian timber and furniture processes have demonstrated their discontent with the proposed processes for verifying legality to no avail (Koran-Sindo 2017; Afriyadi 2016).

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The development and implementation of Ghana-EU's VPA and timber legality verification

Ghanaian forestry and logging accounts for approximately 3% of the nation's gross domestic product and contributes more than 7% to total export values. Together with the wildlife sector, it creates formal employment of about 120,000 people and provides livelihood for about 2 million people (Country Environmental Analysis 2007 cited in Ministry of Lands and Natural Resources of the Republic of Ghana 2012). In the informal sector, a wide mix rural households depend on forest resources for their livelihoods, ranging from small-scale woodworking, hunting, illegal chainsaw operations, and fuelwood collection to the utilisation of non-timber products (Boakye and Baffoe 2006; Marfo 2010; Edusah 2011; Adjei 1994; Anokye and Adu 2014). Sawmills operations include a range of small to large milling timbers. These operations can be located in remote areas near the forest or in towns or cities. The operations supply the bulk of domestic markets (Odoom 2004; C. P. Hansen and Treue 2008; Marfo 2010). Marfo et al. (2010) found that chainsaw millers in Ghana were instrumental in the trade of illegally harvested logs.

At an African FLEG Ministerial meeting held in Yaoundé (Cameroon), the government of Ghana verbally agreed to enter into VPA negotiations with the EU. Supported by the UK DFID, Ghana began preparations for VPA negotiations in 2005 by tasking consultants to conduct a baseline study; and to collect feedback on stakeholders' opinions on a VPA with the EU. In the same year, buyers from several European countries met Ghanaian exporters and industry associations to underline their commitment to trade legal timber products. In December 2006, the government of Ghana and the European Commission formalised a mutual commitment to combat illegal logging and its associated trade, and opened a negotiation process. The negotiations were concluded in 2008; Ghana became the first country to sign a FLEGT VPA with the EU in the following year.

The VPA process espoused by the EU strongly emphasizes inclusiveness. A Programme Coordinator of Friends of the Earth in Ghana (#24) reported that before the introduction of the VPA, the forestry commission was doing everything without consultation but now they have seen

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the need to include all stakeholders in the management of the forest. In Ghana (as elsewhere), NGOs certainly have an important role, as watchdogs of industry (as well as the public sector) (#25). This stands in sharp contrast to their historical exclusion in public policymaking processes, and is celebrated as a success for the VPA process in the country (Olden 2018). Yet similar to the European and Indonesian contexts, civil society appears to be favoured over the private sector in terms of receiving support and being invited to sit at the table with government officials. There was a general feeling amongst the industry respondents that the timber industry has been excluded from the FLEGT processes. The executive of a medium size timber firm in Kumasi reported thus, *“The VPA has been hijacked by the Forestry Commission. They only attend meetings and workshops. They are not doing anything to ensure the successful implementation of the VPA... The timber industry has been sidelined in the implementation of the VPA. The FC does not engage the timber industry. The VPA will backfire if the timber industry is not involved...”* (see also Christian P. Hansen, Rutt, and Acheampong 2018). Concerns have also been uncovered about mechanistic and token participation and claims that the process failed to ensure fair representation. One NGO representative from the EU criticized the processes:

In the (VPA) action plans, there are still quite naïve perspectives about multi-stakeholder participation on a level playing field.... Even when people can speak up physically, they don't dare to because of possible consequences. And that's still a tremendous naivety about these kinds of multi-stakeholder processes (#11).

Favouritism toward certain timber companies is also widespread in Ghana (#26). More crucially, the ‘playing field’ of negotiation between actors remains a big question. According to some respondents (#26/27), large firms appear to be better-resourced to influence the decision-making processes than others who notably lack access. For instance, as explained by one source from the European Forest Institute, big companies are driving demand to governments of several African countries to get their VPA on board. In contrast, important Ghanaian informal actors such as chainsaw operators were completely bypassed in the FLEGT processes. They complained of being left out in the VPA processes and often their views are not solicited even when they are

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invited to meetings. Chainsaw operators particularly feel criminalised during the processes. While some groups from the private sector such as informal wood processors and sellers on the domestic market attended some meetings and workshops, they felt their contributions were insignificant, and that the VPA processes were heavily driven and imposed by “the Whites” (#28/29). Discussions occurred at the national level and timber industries from rural areas have not been well included (#30). One Europe-based NGO also reflected that small and medium enterprises need a lot of help as they can struggle to organize and represent themselves effectively. Our research found a case where the Ghana Timber Association (GTA) raised concerns about unequal playing field between small and large timber companies in bidding for Timber Utilization Contracts (TUC), essentially requesting for special dispensation for small firms, but this concern was never addressed in the new FLEGT/VPA law (the Timber Resource Management and Legality Licensing Regulation, 2017 - L.I 2254).

In terms of distributional justice, the Ghanaian case resembles the Indonesian context. There is also a growing feeling, even suggested by policymakers (e.g. #31) that FLEGT favours large companies and is unfair to small operators. The big firms gain from FLEGT because they have the necessary financial capital and working environment to fulfil all legal standards pertaining to FLEGT (#32). Smaller firms remain the most disadvantaged operators in FLEGT as they lack funds to follow all FLEGT protocols and related regulations (#32). Our respondents from Ghana suggested FLEGT will adversely impact chainsaw operators, which are considered as illegal, and the informal processing industries relying on their supplies. The domestic markets will have difficulty accessing lumber from sawmills (#33). Even certain groups of communities will be cut off from accessing timber (#31). In contrast, an EFI officer mentioned that several big companies in some African countries are European companies that were already more or less FSC [Forest Stewardship Council]-certified, so that they thought it was fine to have their legality recognized and stabilized through the VPA as well FLEGT.

Discussion and Conclusions

FLEGT's EUTR and VPAs were introduced as tools for governance reform that would create a 'level playing field' of legal timber production and trade, through the imposition of a uniform set of rules and practices. In this paper, we explore the different understandings of this level playing field and what (and who) gets leveled in FLEGT processes and implementation. Using environmental justice perspectives, we analyse the representation of actors in FLEGT processes and the distribution of the benefits, opportunities, and risks in the implementation of legality assurance.

The EU's FLEGT Action Plan envisages inclusive and multi-stakeholder processes, involving coordination and representation of relevant stakeholders. The decision-makers driving the adoption of the EUTR did not emphasize or claim inclusivity to the same extent as VPAs, likely due to the fact that it affects EU Member States rather than sovereign foreign states. Still, the incongruity between the stated intentions of inclusivity of the Action Plan and the detrimental effects of the Plan on some smaller EU firms suggests some procedural injustice within the EU.

Meanwhile, stakeholder representation continues to be promoted as a vital precondition for the credibility of FLEGT VPAs (see EU-FLEGT Facility 2014). Early processes in several countries drew some praise. FLEGT VPA was credited to "have altered the negotiating and policymaking landscape" (Bollen and Saskia 2013, 15), and "the traditional forest sector has been opened up.... power relations have changed in favour of so-called fringe actors" (Beeko and Arts 2010, 221). Dooley and Ozinga (2011) also claim that genuine and inclusive representation of different actors has been a key feature of VPA negotiations in several countries. Our research, in contrast, highlights some challenges with regard to the engagement and representation of diverse national stakeholders. Even the EU, which pushed its agenda of reforming forest governance through 'fair and legitimate' participation and representation of actors, has failed to deliver on this promise. Evidence reveals that FLEGT processes have been heavily dominated by NGOs and civil society groups, consistent with the finding by Sotirov et al. (2017). Certain actors also featured more prominently in FLEGT and VPA processes in Ghana and Indonesia. We found that

while FLEGT processes have succeeded in opening up government decision-making to select NGOs and civil society groups, certain types of production network actors, i.e. small firms and artisans, were underrepresented or even completely left out.

Our research further found that FLEGT has reinforced existing inequities and thus, injustices. In the EU, much of the private sector was not directly involved in EUTR negotiations, though some large corporate actors effectively engaged to at least partly incorporate standards and procedures already at their level. As Sotirov et al. (2017, 75) describe, some large industry actors acted in a coalition with NGOs and each other to 'pragmatically' "make the best out of it", including, for example, incorporating third-party forest certification as contributing to EUTR due diligence requirements, something "big retailers such as IKEA, Kingfisher, Carrefour and Marks & Spencer... have long practiced" (ibid).

In Indonesia and Ghana, we also found that FLEGT VPAs served to favour already advantaged actors. Our cases suggest that many larger operators already possessed capacities and expertise to manage new legality requirements that many of their smaller competitors severely lack. This *de facto* favouring of larger operators happens not only in formal VPA procedures, but also during the design and implementation of the VPA TLAS and even EUTR itself (see Putzel et al. 2015 for discussion on the multiple risks of formalization introduced by FLEGT and VPAs). In Indonesia, Setyowati and McDermott (2016) also found that small scale producers were resistant or unable to participate in SVLK. Obidzinski et al. (2014) expressed concern for the exclusion of small operators even before Indonesia's VPA was operationalised. Acheampong and Marfo (2014) also showed how chainsaw millers were systematically excluded from forest governance processes in Ghana. Clearly, and unsurprisingly, the exclusion of local actors and SMEs is reflective of and embedded in broader political factors such as the nature of forest laws in some VPA countries alongside political systems and governance structures that have long prohibited open and inclusive participation of all actors (Mustalahti et al. 2017). Further, information of FLEGT VPA and new legality requirements were not adequately disseminated; many small firms and artisans in Ghana and Indonesia are left uninformed, making it difficult for

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them to assess the likely impacts of the policy on their business (S. Carodenuto and Ramcilovic-Suominen 2014; Maryudi, Nawir, et al. 2017). Our concern of the inability of certain timber actors to engage in legality verification also strongly resonates with research in other EU VPA partners (Wiersum and Elands 2013; Ramcilovic-Suominen, Gritten, and Saastamoinen 2010; Sophia Carodenuto and Cerutti 2014).

These inequalities in procedure and recognition, in turn, impact distributional justice, i.e. the benefits, opportunities and risks. The effects of FLEGT felt by the operators vary greatly. Some larger companies are flourishing thanks to their competences of knowledge and resources to comply with burdensome legality verification requirements for exports under the FLEGT regime. This is evidenced across studied cases, i.e. EU, Ghana and Indonesia. In contrast, small-scale operators are severely challenged to meet requirements to trade timber and wood products; many are simply closing down (Acheampong and Maryudi 2020). Others are risking severe penalty by illegally engaging in FLEGT license borrowing from larger firms (Maryudi and Myers 2018); the likelihood of penalty if caught is more severe given their minimal social network and power as compared to actors in large firms, and the burden of penalty is exponentially greater. The effort to stamp out illegal timber from the EU market has effectively stamped out small scale operators at the same time. Our finding is echoed by a recent evaluation of the EUTR and FLEGT Action Plan including in our studied countries (Jonsson et al. 2015).

With the widespread notions of injustice felt by a number of production networks' actors, we argue that the notion of 'leveling the playing field' emphasising fairness and equality in the trades of timber products remain more myth than reality. The VPA policy processes and implementation of timber legality assurance schemes have explicitly focused on the design of systems appropriate to large scale timber producers and traders, overlooking the disaggregated forest sector, which includes thousands of small firms and home industries. Indeed, such processes arguably can never represent all actors potentially affected by legality verification under FLEGT. But perhaps most importantly, these injustices have occurred due to the very nature of the legal frameworks and economic and social contexts in each country which favour

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some actors over others. We found that, as a result, the FLEGT regime tilts the field to the advantage of large corporate actors over smaller ones in both exporting countries and the EU. It does not result in fair outcomes as envisaged, rather entrenching the pre-existing power relations.

Since FLEGT VPAs and TLAS envisage social safeguards, it is essential that steps be taken to mitigate adverse impacts of FLEGT policies on small actors. For them, A wider range of institutional innovations is needed to create incentives to improve legal compliance, such as - first and foremost, legal reform, as well as improving access to favourable credit, improving flows of information, and training and technical assistance on new legality requirements.

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