



The EU's Responsibility to Act on Conflict Timber – a New Framework for Action

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INTRODUCTION

Just like the trade in conflict diamonds, the trade in conflict timber can create havoc. Illegal logging has generated vast revenue that has fuelled conflict across the continents of Africa, Asia and Latin America.¹

A recent Interpol-United Nations Environment Programme (UNEP) report on the scale of global environmental crime ranked illegal logging as the largest environmental crime by value - forestry crimes including corporate crimes and illegal logging account for an estimated US\$51–152 billion annually.² It also points to the role of natural resource exploitation in the financing of conflict and terrorism. UNEP has estimated that at least 40% of all intra-state conflicts have a funding link to natural sources.³ In addition to the impact on security and human rights, such conflicts can carry grave human, environmental and social consequences and bring emerging nations to the brink of ruin.

The European Union (EU) is a significant export market for tropical timber.⁴ Its flagship scheme to improve forest governance, the Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan, aims to regulate and reduce the global trade in illegal timber, and provides the potential to combat conflict

timber. In 2004, the plan saw the creation of Voluntary Partnership Agreements (VPAs) which are bilateral agreements between the EU and timber-producing countries outside the EU. FLEGT and the VPAs give the EU an influential role in some conflict-prone producer countries where weak governance makes their timber sector vulnerable to profiteering by state-backed and non-state armed groups.

Alongside FLEGT sits the EU Timber Regulation (EUTR), which bans the placing of illegally harvested timber and derived products on the EU market. It requires companies to conduct due diligence to minimise the risk that their products are illegal. Member states have all now appointed Competent Authorities who are responsible for the application and enforcement of the regulation.

But two evaluations published in 2016 on FLEGT and EUTR highlight respectively a lack of EU action in countering conflict timber and weaknesses with the enforcement of the EU Timber Regulation.⁵ The FLEGT evaluation recommends maintaining an “action area” on conflict timber stating “conflict timber remains a relevant issue to deal with opportunely, proactively and once there is a conflict situation,” but the document stops short of recommending how the EU should implement this.⁶

Other EU policies also have their limitations including the imposition of sanctions. International sanctions on timber imports from conflict areas, like those imposed by the UN on Liberia,⁷ can play a critical role in stemming conflict and human rights abuses. But a sanctions regime can be inconsistent in its implementation and monitoring.⁸ Once one resource is targeted through sanctions, combatants’ war-chests can be replenished from other equally valuable resources.

Sanctions take considerable time to put in place as multiple nations need to debate, agree and sign up. Many conflict casualties could be averted with a swifter response.

A more flexible approach is needed and one that goes beyond sanctions. The EU can draw on other initiatives like the Kimberley Process that seeks to stop the flow of conflict diamonds, and the Extractive Industries Transparency Initiative aimed at improving governance of the oil, gas and minerals sectors. Whilst each has their own limitations, their provisions for the suspension of a member/participating country where conflict breaks out, underline the need for the EU to consider such moves under similar conditions of the bilateral agreements, VPAs, signed with timber producing countries.

The trade policy of the European Commission sets out a vision of its trade policy based on the respect of human rights and the social and environmental aspects in supply chains.⁹ But if it is to deliver on this, it can’t afford to ignore the risk of its timber trade funding bloodshed and instability in timber producing countries.

As EU policy makers consider the conclusions of the latest FLEGT review, this Global Witness briefing argues that the EU has to develop a comprehensive framework under the FLEGT Action Plan to deal with the problem of conflict timber. It should begin by drawing up a definition of “conflict timber” and incorporate the best policy practices of other organisations. It should tackle both the supply of, and the demand for timber at risk of association with conflict. It needs to be flexible and swift in its response and implementation, and should not only react to conflict situations but also help to prevent entrenched armed violence fuelled by the ill-gotten gains of the world’s illegal timber

trade. This work should form a central part of ongoing and future FLEGT implementation.

Key Recommendations:

- All FLEGT programmes should be conflict sensitive and address the risk of conflict timber, address conflict over land tenure, integrate conflict prevention and appropriate post-conflict measures.
- Conflict timber should be addressed in all VPAs, including those under negotiation or in the implementation phase.
- Strategies countering conflict timber should not be dependent on United Nations or EU sanctions and should allow for action to be taken in an early stage of a conflict.
- The EU should move swiftly in suspending VPAs where necessary due to outbreaks of conflict.
- The EU Timber Regulation should be better enforced in relation to timber coming from countries with risk of conflict.

COUNTRIES WHERE THE TRADE IN TIMBER HAS BEEN LINKED TO CONFLICT

Much of the world's tropical rainforest is located in countries with weak national and local governance – where the risk of conflict and human rights abuses is common. The trade in conflict timber can play a role in financing and perpetuating conflicts in these countries, in part because forests are a comparatively attractive conflict commodity

due, among other reasons, to the easy accessibility of timber compared with oil and some minerals, and the relatively high returns on investment.¹⁰ Furthermore forest communities are especially vulnerable during conflict – due to their remoteness, disputed land rights, poverty and lack of public services.

Conflict timber attracted international attention in Cambodia in the 1990s when Global Witness's investigations uncovered Cambodia's notorious Khmer Rouge rebel group earned between US\$10-20 million per month from trading timber with Thailand.¹¹ International pressure helped close the Thai-Cambodia border, effectively ending a major funding source to both the Cambodian Government and Khmer Rouge rebels.

Another high-profile case of conflict timber emerged in West Africa where former Liberian President Charles Taylor was dependent on the logging industry to prop up his regime and fund his war efforts at home in Sierra Leone through the Revolutionary United Front. The role of the trade in Liberian timber in fuelling the armed conflicts in both states was publicly reported by Global Witness with the result that this timber trade was finally halted by the imposition of UN Security Council sanctions. UNSC S/RES/1478 sanctioned Liberian timber in May 2003, and by August of that year Taylor had fled the country, was then arrested, and a comprehensive peace agreement was signed ending the 14-year civil war. Global Witness lobbied for three years before the sanctions were imposed and timber buyers, who were well aware of the conflict, continued to buy Liberian timber right up until the sanctions came into effect.¹²

More recently Global Witness investigations have uncovered evidence in the Central African Republic (CAR) of logging companies

paying money to armed groups and their leaders during the country's civil war.¹³ The EU's latest FLEGT evaluation also points to the risk of conflict timber from the Ukraine during the ongoing conflict.¹⁴

HOW TO DEFINE CONFLICT TIMBER – USING HIGH-RISK AREAS AND CONSIDERING A RANGE OF SCENARIOS

Despite references to “conflict timber” in various UN reports, sanction lists and donor government policy, there is no internationally agreed definition. To ensure a consistent approach, the EU should develop a working definition based on conflict-affected and high-risk areas. Both the examples below should inform the EU as it drafts its own definition of conflict timber. The EU should also take into account a range of different conflict scenarios when drafting the definition to ensure these are covered.

Global Witness has developed a definition of “conflict resources” based on our work at the forefront of uncovering the links between natural resources and armed conflict since the 1990s. We understand “conflict resources” as natural resources whose systematic exploitation and trade in the context of conflict-affected and high-risk areas, contribute to, benefit from or result in the commission of serious violations of human rights, violations of international humanitarian law or violations amounting to crimes under international law.¹⁵

“Conflict-affected and high-risk areas” are defined in the EU's draft *Conflict Minerals Regulation*,¹⁶ as “areas in a state of armed conflict, fragile post-conflict as well as areas

witnessing weak or non-existent governance and security, such as failed states, and widespread and systematic violations of international law, including human rights abuse”.¹⁷ This definition draws on the Organisation for Economic Co-operation and Development (OECD) guidance for responsible supply chains of minerals.¹⁸

In conflict-affected and high-risk areas there are several different scenarios where the systematic exploitation and trade in timber can contribute to, benefit from, or result in the commission of serious violations of human rights, and international and humanitarian law. Some key scenarios, which should be considered by those drafting a definition of “conflict timber” are listed below:

- Where timber is harvested and/or traded at any point in the supply chain by state-backed or non-state armed groups involved in ongoing armed conflict;
- Where harvesting and trade involves illicit payments in cash or in kind to state-backed or non-state armed groups. This extortion/corruption may include obtaining concessions and/or authorising of trade in return for money, weapons and/or equipment.
- Where the trade leads to violent conflict arising from disputed rights over land and/or its timber or other forest resources. For example conflict between forest-dependent communities, or the use of force by government/private security forces linked to logging companies.

Conflict-sensitive policy responses should be designed to address these scenarios as they may involve repression of communities and human rights violations and could lead to violent/armed and ongoing conflict.

TACKLING CONFLICT TIMBER THROUGH UN AND EU SANCTIONS

To date, the trade in conflict timber has mainly been regulated through the imposition of limited sanctions by the UN Security Council and/or the EU. However there are limitations to the reliance on sanctions. Institutions like the EU need to develop a strategy and ensure its policy approach to tackle conflict timber goes beyond sanctions.

The main example of the UN imposing sanctions on the timber trade where it was found to be funding conflict and human rights abuses relates to Liberia. In May 2003, sanctions were extended to cover a ban on timber imports from Liberia because the Government had not shown that revenue from the timber industry was being "used for legitimate social, humanitarian and development purposes."¹⁹

The resolution banned the import of all round logs and timber products originating in Liberia for 10 months. These sanctions were extended until Liberia had implemented sufficient reforms to address the risk that the forest sector could fuel the resumption of conflict and instability. The imposition of sanctions was welcome, but they were only introduced after three years of lobbying by Global Witness. The time it took for them to be introduced and take effect saw many casualties which could have been averted through faster action.

In the DRC, the UN stopped short of a ban on trading timber with the country, but in 2011 the UN Security Council "recommended that all States, particularly those in the region, regularly publish full import and export statistics for natural resources, including [...]

timber and charcoal, and enhance information sharing and joint action at the regional level to investigate and combat regional criminal networks and armed groups involved in the illegal exploitation of natural resources".²⁰

The EU can impose sanctions on an autonomous basis or by implementing binding resolutions of the UN Security Council.²¹ The EU has imposed sanctions banning the bloc from trading in timber with certain countries. Myanmar was subject to sanctions from 2007-2013 over concerns about human rights abuses and absence of progress towards democracy.²² The EU acted in the absence of UN sanctions, whereas in other cases like Liberia the EU required member states to implement UN sanctions in relation to the timber trade.²³ On the DRC, EU sanctions didn't cover the timber trade but have covered "individuals or entities supporting illegal armed groups in the eastern part of the DRC through the illicit trade of natural resources".²⁴

Sanctions can play a crucial role in tackling natural resource-related conflict but the process of agreeing and implementing sanctions can take some time, with uneven implementation and inadequate monitoring.²⁵ Sanctions aren't comprehensive - they are more likely to be applied in higher-profile conflicts or where it is easier to find consensus amongst members of the UN Security Council or the EU.

Even when sanctions are applied they are usually reserved for one particular natural resource, which can then see trade move to another resource with the sanctions regime struggling to keep up with the quickly evolving events on the ground.²⁶ This can lead to a further entrenchment of conflict and human rights abuses. When tackling conflict timber, the EU's approach must therefore go beyond

sanctions, making use of other policy tools and recognising the particular responsibility the EU has through its bilateral agreements (VPAs) and trading relationships.

EU ACTION TO TACKLE ILLEGAL LOGGING AND CONFLICT TIMBER

The FLEGT Action Plan acknowledges that the illegal exploitation of forests can be used to fund and prolong violent conflict.²⁷ It is featured as one of FLEGT's seven action areas where it is referred to as "timber traded by armed groups, the proceeds of which are used to fund armed conflicts. It is usually unauthorised by the relevant government agencies and therefore illegal, but can sometimes be 'legal' if authorised by the government and taking place in an area under its control." The plan sets out a range of actions it will take on conflict timber under this action area, including:

- "support work to define conflict timber – a necessary starting point for any further action to be taken at the international level.
- follow up in relevant international fora any recommendations in this regard which the UN Security Council may make.
- work to recognise and address in its development co-operation programmes the role forests play in the context of conflicts, and address relevant issues including local and indigenous peoples' rights to the forests they depend on for a living, and good governance in remote, sparsely populated forest areas; and
- initiate discussion with Member States, other donors and forested countries on the role of forests during conflicts and in pre- and post-conflict situations, and how this can best be taken into account in work related to

forest law enforcement and governance."²⁸

However, in reality, not much work has been undertaken on conflict timber since the adoption of the plan. The first FLEGT Action Plan Progress Report 2003 - 2010 observed limited work in this area and gave the objective for the conflict timber action area to set up "a framework for addressing the issue of conflict timber".²⁹

The most recent evaluation of FLEGT concludes that "there has been no clear leadership for taking action, monitoring or following up on this Action Area".³⁰ Only three member states Croatia, Slovenia and the UK – reported undertaking any work on conflict timber.³¹ Only three out of ten VPA countries – Indonesia, Liberia and Republic of Congo – had developed activities in the field of conflict timber, though these were not specified.³²

The ultimate goals of VPAs are for countries to export FLEGT licensed timber which is verified as legal by FLEGT processes in-country and can be imported into the EU without further EUTR required due diligence. Six countries (Cameroon, Central African Republic, Ghana, Indonesia, Liberia and Republic of the Congo) have signed a VPA with the EU and are at different stages of implementation with varying degrees of success. Nine more countries (Cote D'Ivoire, Democratic Republic of the Congo, Gabon, Guyana, Honduras, Laos, Malaysia, Thailand and Vietnam) are in negotiations with the EU.³³ Only one country, Indonesia, is now issuing FLEGT licensed timber to the EU.

As shown in the following table, many of the VPA countries are characterised by weak governance and some are prone to outbreaks of conflict. It is vitally important that the VPA processes address conflict timber.

Table 1 – EU relations with timber producing countries, including fragile states and incidents of conflict

| Country | VPA status | A. 2015 Tropical Wood Imports to EU from chapter 44 of the Harmonised System (EUR Million) | B. Fragile States Index (0 = very stable, 120 = very fragile) | C. Number of deaths linked to conflict since 2003 | D. EU overseas operations undertaken as part of its “Common Security and Defence Policy” |
|----------------------------------|--------------|--|---|---|--|
| Cameroon | Implementing | 261.12 | 95.6 | 2,773 | |
| Central African Republic | Implementing | 11.4 | 112.6 | 7,640 | 2008–2009; Since 2014 |
| Congo | Implementing | 70.66 | 93.4 | 105 | |
| Cote D’Ivoire | Negotiating | 93.15 | 96.5 | 1,442 | |
| Democratic Republic of the Congo | Negotiating | 42.5 | 110 | 21,416 | 2005–2016 |
| Gabon | Negotiating | 160.67 | 73.8 | Not available | |
| Ghana | Implementing | 30.36 | 69.7 | 64 | |
| Guyana | Negotiating | 4.84 | 71.3 | 29 | |
| Honduras | Negotiating | 2.67 | 79.1 | 220 | |
| Indonesia | Implementing | 456.78 | 72.9 | 2,420 | 2005–2006 |
| Laos | Negotiating | 1.65* | 82.4 | 82 | |
| Liberia | Implementing | 3.53 | 93.8 | 3,281 | |
| Malaysia | Negotiating | 339.23 | 65.4 | 70 | |
| Thailand | Negotiating | 39.86 | 76.2 | 3,708 | |
| Vietnam | Negotiating | 46.73 | 70.2 | Not available | |

A - Eurostat 2017, ‘Tropical wood imports to the EU from chapter 44 of the Harmonised System (for_trop)’ Available at:

http://ec.europa.eu/eurostat/web/products-datasets/-/for_trop

B - The Fund for Peace 2017. *Fragile States Index 2017* Available at: <http://fundforpeace.org/fsi/2017/05/14/fsi-2017-factionalization-and-group-grievance-fuel-rise-in-instability>

C - Uppsala University 2016. *Uppsala Conflict Data Program*. Available at: <http://ucdp.uu.se>

D - Details of all the EU overseas operations undertaken as part of as part of its Common Security and Defence Policy can be found here:

https://eeas.europa.eu/topics/military-and-civilian-missions-and-operations/430/military-and-civilian-missions-and-operations_en

* FAOSTAT, Forest Production and Trade. Available at: <http://www.fao.org/faostat/en/#data/FO> (original figure is in USD and it has been converted into EUR using the exchange rate of the 10th Dec 2015)

One example of work underway in this area funded through the UK's FLEGT aligned work is that of the non-governmental organisation *International Alert* in Myanmar on conflict-sensitive, forest governance. The programme intends to build the capacity of government departments to understand the potential conflict implications of FLEGT and VPA work.³⁴ Myanmar isn't at the stage of formal negotiations for a VPA, but preparations are underway to start negotiations.

The FLEGT evaluation does point out that multi-stakeholder dialogue undertaken as part of FLEGT work in producer countries has enabled communities to better deal with conflicts, without citing any specific examples.³⁵ European Commission officials point to work clarifying and regularising land tenure in the VPA process of agreeing legality definitions as examples of FLEGT's contribution to tackling sources of conflict where land tenure is a source of tension, including work in Guyana and Honduras.³⁶ However, there has been criticism of the failure of the VPA process in Guyana to address problems with the concession-allocation process in relation to indigenous people's rights.³⁷

Work on conflict-sensitive forest governance and contentious land tenure can play an important role in addressing the causes of some conflicts, but it doesn't match the scale of ambition contained in the original Action Plan. Nor does it cover the range of conflict timber scenarios for example, where conflicts aren't related to land tenure, nor does it equip programmes or VPAs to respond to outbreaks of conflict.

HOW THE EU SHOULD STEP UP ITS WORK IN TIMBER PRODUCING COUNTRIES TO TACKLE CONFLICT TIMBER

Conflict resilience and conflict sensitivity in FLEGT programmes

The EU's approach to the role of the timber trade in conflict should be addressed as part of the EU's broader strategic response to peace and security. In particular through FLEGT, the EU can play an important role in strengthening the governance of the timber sector, making it more resilient to capture by state-backed or non-state armed groups. This should also address other causes of conflict by putting greater emphasis on tackling corruption, strengthening the rule of law, supporting law enforcement with adequate judicial checks and balances, and supporting the rights of forest communities.

The EU must ensure that its FLEGT programmes are conflict sensitive and explicitly address the risk of trading in conflict timber. As a starting point, all FLEGT programmes should consider the key questions USAID sets out in their forests and conflict toolkit to help evaluate the risk of conflict linked to the exploitation of timber (see Annex 1 for more detail).³⁸ This should then inform the integration of conflict prevention tools.

Addressing conflict timber through VPA negotiation

The EU should ensure that conflict prevention and the role of the timber sector in conflict scenarios is addressed in all VPA negotiations and implementation, citing the priority placed on conflict timber within the FLEGT Action Plan. A VPA also provides opportunities for

the EU, producer country governments and other stakeholders to discuss issues relating to timber legality through a Joint Implementation Committee (JIC).

The JIC should be used as an opportunity to address the risk of conflict timber from the outset of a VPA. The legality definition should include criteria that explicitly prohibit links to illicit armed conflict and/or the widespread and systematic violations of international law, including human rights abuses.

VPA negotiations should include an assessment of the conflict risk and vulnerability of the timber sector to conflict timber, guidance on identifying conflict timber and the establishment of measures to respond to outbreaks of conflict as well as incidents of conflict timber. Where the text of VPAs has already been agreed, the European Commission should request that the JIC amend the VPA to incorporate the issue.

Responding to outbreaks of conflict

To improve its ability to respond to outbreaks of conflict in producer countries and the risk of timber exploitation fuelling conflict, the EU should establish a formal process that is triggered when conflict breaks out in a VPA partner country.

When an outbreak of conflict is identified, an independent panel should be appointed by the EU's High Representative to carry out an assessment of the role of the timber sector in the conflict, and the risks that the production and trade in conflict timber will occur. This panel should be comprised of experts from outside the EU institutions and governments of the member states, who are independent from the VPA process, and who don't have links to logging companies or other stakeholders in the country under assessment.

This assessment should examine the following elements:

- The location and nature of the conflict – whether it is in a forested area and/or a transit route for the timber trade, or outside of the control of a legitimate government.
- Whether the risk of conflict timber is confined to a specific area or is countrywide.
- Whether illicit funding from the timber trade, in an area outside the conflict, is being channelled to actors in the conflict.
- The role of the government, state and non-state backed armed groups.
- Existence of a legitimate government counterpart for the EU to engage with – including its control over regions where timber is being produced and/or transported through, and role in any conflict.
- Role of the timber trade in financing of any armed groups, including government forces.
- Ability of civil society to participate safely in stakeholder dialogue on conflict timber.
- Violations of human rights, international humanitarian law or international criminal law.

This assessment should be informed by information gathered from the EU's delegation and other diplomatic representations in producer country, as well as experts, the media and civil society organisations. The assessment should consider the evidence against an agreed definition of conflict timber and criteria which should cover the elements set out in the definition developed earlier in this briefing.

The assessment should also consider the role of the VPA in this context, whether it is able

to continue operating effectively, and whether stakeholders are compromised by association with those parties involved in the conflict. If the assessment finds the risk of conflict timber to be medium-high and deems the continuation of the VPA inappropriate, then the VPA should be suspended.

For countries in VPA negotiations, that aren't yet able to issue FLEGT licensed timber, a suspension of their VPA engagement would involve the halt of funding or programmes. In the case of a country that is issuing FLEGT licensed timber, it would mean that its licenses are no longer a valid assurance of the legality of their timber. For the period of the suspension, the EUTR would apply and their exports would be subject to due diligence by importers.

Where conflict timber is identified but confined to a specific area of the country, the assessment should consider appropriate measures to address the risk with the producer country government, as well as through the VPA framework. It should also consider whether funding from the timber in a specific area outside the conflict could still end up being channelled to parties in the conflict.

Regular assessments should take place to reassess the risk of conflict timber. If the risk is found to be low or non-existent then the suspension should be lifted and talks should start on the reinstatement of the VPA. If the risk of conflict timber is deemed to be low, but concerns are identified during the assessment process, these should be followed up through bilateral talks between the EU and the producer country. These talks should be within the framework of the VPA and, where appropriate and safe, the JIC. Updates should be provided to the assessment panel on steps undertaken to address the concerns raised.

To ensure transparency and accountability, the assessment and subsequent decision about VPA suspensions should be made public. This is also important to send a clear message to the international community, timber traders, regulatory bodies and consumers.

As the European Parliament and Council are both involved in the ratification of FLEGT VPAs they should be updated on steps the European Commission is taking following the outbreak of conflict to assess the risk of conflict timber, as well as any decisions regarding suspension of the VPA. The Commission should also share their assessments with the FLEGT experts' group which brings together officials from the member states.

CASE STUDY: Conflict in the Central African Republic: What the EU can learn from other international initiatives in responding to conflict.

Global Witness investigations into the conflict in the Central African Republic showed how European importers were dealing with CAR logging companies that paid an estimated €3.4 million to armed rebels in 2013 alone. They did so to carry on logging throughout the country's war. Consequently CAR timber continued to enter the European market, helping bankroll a conflict that displaced 650,000 people and cost thousands of lives.³⁹

Throughout this period the EU's VPA with CAR remained in place, and the EU made no public statement on its status. Companies facing allegations of financing armed groups continued to participate as stakeholders in the VPA process.⁴⁰ This contrasts with the approach taken by two international initiatives relating to natural resources which both have measures in place to respond to outbreaks of conflict – the Kimberley Process and EITI.

The FLEGT Action Plan states it will “gather lessons” from other international efforts such as the Kimberley Process, which is an initiative to stem the flow of conflict diamonds.⁴¹ The initiative has come under criticism for failing to tackle fundamental flaws and loopholes which undermine its effectiveness – the reason that Global Witness left in 2011.⁴² However, it does have mechanisms which are triggered when conflict breaks out which could inform FLEGT VPAs. In CAR, the Kimberley Process issued a vigilance note in April 2013 and suspended CAR in May 2013, effectively stopping the legal international trade in diamonds from CAR.⁴³ It should be noted that this was several months after the coup d'état and it had limited effectiveness as illegal trading and export continued.

The Extractive Industries Transparency Initiative (EITI) is a global standard by which payments made to governments by the oil, gas and mining industry are published and independently verified. In April 2013, the EITI board decided to temporarily suspend CAR's status as EITI compliant, due to political instability.⁴⁴ The board held that EITI CAR didn't “currently have a recognised government necessary for effective EITI implementation.”

In contrast to the actions taken by the Kimberley Process and EITI, the EU's carried out a “business as usual” approach in maintaining its VPA and stakeholder engagement model with CAR. In doing so, the EU missed a critical opportunity to apply external pressure to stop a source of conflict finance in the central African country.

In effect, the EU's silence encouraged EU-based importers to turn a blind eye to their role in the conflict timber trade. One of the companies that Global Witness contacted in the course of our investigations even cited the fact that the VPA remained in place as evidence that it was legitimate to continue trading timber from CAR.⁴⁵

The failure of the Commission to take rapid and public action against traders of timber in response to the outbreak of conflict in CAR demonstrates the need for a comprehensive FLEGT conflict timber strategy – which includes the adoption of criteria and process for VPA suspension. Failure to address conflict as it emerges has significant implications on the scale and scope of a conflict. Inaction has the potential to increase death toll, displacement and damage to infrastructure – all with generational implications.

STRENGTHENING THE EU TIMBER REGULATION TO TACKLE CONFLICT TIMBER

“The link between natural resources and conflict depends critically on the ability of the exploiters to access external markets. Take away the ability to earn returns from resource extraction and its value to the promoters of conflict falls away, sometimes dramatically.”⁴⁶
Global Witness, ‘The sinews of war: Eliminating the trade in conflict resources’

The EUTR could prove to be a valuable tool to ensure that European consumers are not funding conflicts through the timber supply chain, and to cut off the funding for armed groups in producer countries. Operators who import timber from high risk areas should take special care that their due diligence is robust enough to identify the risk of conflict timber in their supply chain.

In the recent evaluation of the EUTR, implementation was found to be slow in most member states. This was attributed in part to insufficient resources allocated by member states, insufficient and uneven sanctions across countries and varied understanding and interpretation of the Regulation across the EU.⁴⁷ Implementation and compliance by the private sector was also found to be uneven.⁴⁸ As highlighted by the case of the conflict in CAR, the EUTR has not prevented conflict timber from entering the EU supply chain. As recommended by the review of the EUTR, EU states should step up their enforcement and allocate more resources to this end.

The EUTR itself refers to the links between illegal logging and armed conflict.⁴⁹ It outlines the need for operators to have robust due diligence systems in place, which contain risk

assessment procedures including the consideration of the prevalence of armed conflict.⁵⁰ The regulation contains some limited guidance on this – Article 6 of the EUTR specifies that operators’ risk assessment procedures should include consideration of the prevalence of armed conflict, as well as sanctions imposed by the UN Security Council or EU. However, the guidance notes which currently provide further guidance on due diligence among other areas, do not provide further advice on identifying or mitigating the risks of conflict timber.⁵¹ Further detail on questions that operators importing timber, at risk of being linked to conflict, into the EU should consider are included in Annex 2.

Where conflict breaks out in a producer country that is exporting timber or timber products to the EU, Competent Authorities who are responsible for the application and enforcement of the regulation should then take key steps:

- Issue a public notice of the outbreak of conflict in a producer country and increased risks of illegality and support of conflict parties by sourcing from that country.
- Prioritise checks of companies sourcing from that producer country, as part of their risk-based enforcement strategy.
- Request that those importing from these countries demonstrate how their due diligence systems are effectively mitigating risks posed by conflict timber.
- Impose penalties on companies found to be sourcing in violation of the EUTR.

THE ROLE OF FORESTS IN POST-CONFLICT

The post-conflict period can be a particularly delicate time, when countries can be prone to lapse back into conflict. Indeed, the greatest damage to forests often occurs after a conflict.⁵² The EU should ensure it addresses the post-conflict environment as part of future work under the conflict timber action area. This should include specific programmes for countries, learning from experiences in other natural resource sectors and working closely with other elements of the EU's post-conflict work.

Fewer than 15% of peace agreements address issues around natural resources, despite them being a major factor in armed conflicts.⁵³ Where they are addressed, they are often ineffective at mitigating the risk that the resources will fuel a resumption of conflict as, among other things, they fail to address the underlying grievances of local populations as well as impunity or poor governance.

Where the EU is involved in negotiating peace agreements it should ensure that management of natural resources, including forests is addressed, taking into account the concerns of local populations and to prevent transitional authorities looting valuable natural resources. Equally any peacekeeping operation should take into account securing resource-rich areas when stabilising post-conflict environments, in order to prevent such areas becoming factors in the destabilisation of a fragile peace.

Corruption is often rife in the logging sector and the allocation of concessions before, during and after conflict can entrench political dynamics associated with the conflict. In post-conflict environments where the previous allocation of forest concessions is contested, a

moratorium on the allocation of new concessions, and even on logging in existing concessions, should be considered.⁵⁴

This should allow for a review of concession allocations, with reforms adopted to address any outstanding concerns before the lifting of the moratorium, including accountability for the misallocation of forest concessions. Where a VPA process or negotiations are underway, the EU should ensure that the process supports the moratorium and review process.

A persistent climate of corruption and illegality in the timber sector perpetuates the fragility of the state, poverty and under-development – making conflict and complicity with armed groups more likely in future.⁵⁵ This also underlines the need for the EU to step up its action under FLEGT to tackle corruption by supporting law enforcement with adequate judicial checks and balances in producer countries, and strengthening anti-corruption measures relating to transparency, participation and accountability.⁵⁶

RECOMMENDATIONS

As the EU develops a work plan responding to the findings of the FLEGT evaluation, it must reiterate its commitment to tackling conflict timber by ensuring that FLEGT components, such as VPAs and EUTR all contain appropriate measures to tackle conflict timber. Strategies countering conflict timber should not rely on UN or EU sanctions and should allow for action to be taken at an early stage of a conflict. These measures should include:

- Developing a definition of conflict timber based on a robust definition of conflict resources and conflict-

affected and high-risk areas incorporating the range of conflict timber scenarios.

- Where the EU is involved in negotiating peace agreements it should ensure that management of natural resources, including forests is addressed.
- Staff working in EU delegations should all receive training in the role of natural resources in conflict.

FLEGT

- Setting out a new framework under the conflict timber action area of the FLEGT Action Plan with greater emphasis on governance reforms that can strengthen the forest sector's resilience to capture by state-backed/non-state armed groups.
- All FLEGT programmes should be conflict-sensitive and address the risk of conflict timber, address conflict over land tenure, integrate conflict prevention tools and appropriate post-conflict measures.
- Planning, budgeting, monitoring and reporting obligations should be devised to ensure that commitments made under the FLEGT Action Plan are delivered.

VPAs

- Addressing conflict timber in all VPAs, including those under negotiation or in the implementation phase.
- Developing a process that is triggered when conflict breaks out in a VPA partner country, including appointment of an independent panel to conduct an assessment of the risk of conflict timber and need for VPA suspension.

EU Timber Regulation

- Updating EU Timber Regulation guidance to outline the measures that importers should take to identify and mitigate against the risk of conflict timber.
- Providing detailed information of a conflict in a producer country to the timber industry and Competent Authorities.
- Where conflict in producer countries has been identified, competent authorities should prioritise checks of companies sourcing from that producer country as part of their risk-based enforcement strategy.
- Requesting enhanced due diligence from those operators importing from conflict-affected or high-risk areas, which demonstrates how they are effectively mitigating risks posed by conflict timber.

Annex 1

How to evaluate the risk of conflict linked to the exploitation of timber

All work undertaken in producer countries by the EU under the FLEGT Action Plan and VPAs should thoroughly assess the risk of conflict in the timber trade. These questions, designed to help assess the likelihood of violent conflict arising in forests or over forest resources, are based on USAID's "Forests & Conflict – A Toolkit for Intervention"⁵⁷ and could form the basis of assessments carried out as part of VPA processes or FLEGT programmes.

- Are valuable forests located in remote, politically and economically marginalised areas?
- Are these forests designated as logging concessions, and are they already operating?
- Are there secessionist tendencies in these areas, and could timber be used to finance a civil war?
- Are there other conflicts in the region that might be fought in, or over the forests?
- Has the entire context of the potential conflict been examined and a holistic response considered?

Do underlying governance failures or weaknesses contribute to the potential for violence?

- Is the country's economy diversified or is it highly dependent on timber?
- Do government and security institutions regulate timber harvesting and trading effectively and/or do they participate in it?
- Are there measures to control any significant off-budget income of local and national elites from timber exploitation and is such corruption being addressed?
- To what extent is the security sector involved in the exploitation of forests?
- Are forest laws effectively enforced and

does the judicial system prosecute forest criminals?

Do local governance failures contribute to conflict or inhibit resolution?

- Have all groups with legitimate interests in the contested resources been identified and recognized and has the negotiation capacity of weaker groups been strengthened? Has competition over forest resources been replaced by cooperative forest management, including benefit sharing?
- Have local governance structures been accommodated? Is the tenure situation easily understood and enforced or is it nebulous and open to abuse? Are the rights of forest-dwelling communities recognised and respected by forest exploitation entities?
- Have other forms of competition (economic, ethnic, or political) been addressed so that they do not reinforce competition for timber?

What is the status of subsistence logging and how it is influenced from the outside?

- Have livelihoods been diversified or is the economy dependent on logging?
- Is small-scale logging by local communities legal? Do they have legal rights to their land and/or its resources?
- Do third parties that use the forest as a refuge and battleground influence livelihood choices (e.g., does fighting impede agricultural and forest resources harvesting activities)?
- Is the country participating in any international initiatives to reduce conflict or illegal logging (e.g., FLEG, bilateral MOUs, etc.)?

Are the social and environmental impacts of logging and inequitable distribution of benefits fuelling grievances or contributing to violence?

- Do the logging companies apply sustainable

and low-impact logging practices and make efforts to sustain local livelihood opportunities?

- If land rights are ambiguous, do compensation or mitigation measures, or even shareholder schemes, provide income to the community? Have they been fairly negotiated? Are employment and/or social schemes planned and implemented?
- Are mitigation and grievances mechanisms in place in cases of conflicts between logging companies, migrant workers and local communities?
- Do timber-processing plants meet environmental standards? Is compliance enforced? Are human rights respected when these plants are secured?

Annex 2

Questions that operators importing timber, at risk of being linked to conflict, into the EU should consider

These additional questions would help in determining if there is a risk of the timber supply chain contributing to the existence of conflict, organised violence and/or gross violations of international humanitarian law, including human rights abuses. Where the rule of law is weak, enhanced due diligence is also critical to ensure that the supply chain is not causing, or even contributing to, armed conflict.

- Whether any aspect of the supply chain is located in areas with secessionist tendencies and/or ongoing armed conflict.
- Whether the trade in timber could be used to finance violence or other gross violations of international humanitarian law, including human rights abuses.

- To what extent the security sector is involved in the exploitation of forest products.
- Whether local governance failures contribute to conflict or inhibit conflict mitigation.
- Whether local governance structures, such as customary law, have been accommodated.
- Whether forest tenure is easily understood and enforced or ambiguous and open to abuse.
- Whether all groups with legitimate interests in contested forest resources have been identified and recognised, and the negotiation capacity of weaker groups is sufficiently strong
- Whether the livelihoods of communities and indigenous people living in logging areas are not negatively impacted by forest resources exploitation and they are able to share the benefits.

¹ Global Witness, 2003. *A Conflict Of Interest: The Uncertain Future Of Burma's Forests*. Available at: www.globalwitness.org/en-gb/archive/conflict-interest-english/; Global Witness, 2007. *Taylor Made*. Available at: www.globalwitness.org/en/archive/taylor-made/; Global Witness, 2010. *Lessons UNlearned*. Available at: www.globalwitness.org/en-gb/reports/lessons-unlearned/; Global Witness, 2014. *Peru's Deadly Environment*. Available at: <https://www.globalwitness.org/en/campaigns/environmental-activists/perus-deadly-environment/>; Global Witness, 2015. *Blood Timber*. Available at: www.globalwitness.org/en-gb/campaigns/forests/bloodtimber/; USAID Thomson & Kanaan, 2004. : *Conflict Timber: Dimensions of the Problem in Asia and Africa*. Available at: http://pdf.usaid.gov/pdf_docs/Pnact462.pdf

² Interpol & UNEP, 2016. *The Rise Of Environmental Crime*, p7.
³ United Nations Environment Programme, 2009. *From Conflict to Peacebuilding The Role of Natural Resources and the Environment*, p30. Available at: http://postconflict.unep.ch/publications/pcdmb_policy_01.pdf

⁴ See table on page 7 for value of tropical timber imports to the EU.

⁵ Terea, S-for-S & Topperspective, 2016. *Evaluation of the EU FLEGT Action Plan: (Forest Law Enforcement Governance and Trade) 2004-2014*, p155. Available at: <https://ec.europa.eu/europeaid/sites/devco/files/report-flegt-evaluation.pdf> and European Commission Staff Working Document Evaluation of Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and

timber products on the market (the EU Timber Regulation) Accompanying the document {COM(2016) 74 final} {SWD(2016) 33 final}, p4. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016SC0034&from=EN>

⁶ Terea, S-for-S & Topperspective, 2016. *Evaluation of the EU FLEGT Action Plan: (Forest Law Enforcement Governance and Trade) 2004-2014*, p155. Available at: <https://ec.europa.eu/europeaid/sites/devco/files/report-flegt-evaluation.pdf>

⁷ United Nations Security Council, 2003. *Security Council Extends Sanctions Against Liberia Until 7 May 2004, Unanimously Adopting Resolution 1478*. Available at: <http://www.un.org/press/en/2003/sc7752.doc.htm>

⁸ Global Witness, 2010. *Lessons UNlearned*. Available at: www.globalwitness.org/en-gb/reports/lessons-unlearned/

⁹ European Commission, 2015. *Trade for all: Towards a more responsible trade and investment policy*, p22. Available at: http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf

¹⁰ USAID, 2005. *Forests & Conflict: A Toolkit for Intervention*. Available at: http://pdf.usaid.gov/pdf_docs/Pnade290.pdf

¹¹ Global Witness, 1995. *Thai - Khmer Rouge links and the illegal trade in Cambodia's timber: evidence collected January - May 1995*. Available at:

www.globalwitness.org/sites/default/files/pdfs/thai_khmer_rouge_links_and_the_illegal_trade_in_cambodian_timber.htm

¹² Global Witness, 2002. *Logging Off: How Liberian timber industry fuels Liberia's Humanitarian Disaster and threatens Sierra Leone*. Available at: www.globalwitness.org/en-gb/archive/logging/

¹³ Global Witness, 2015. *Blood Timber*. Available at: www.globalwitness.org/en-gb/campaigns/forests/bloodtimber/

¹⁴ Terea, S-for-S & Topperspective, 2016. *Evaluation of the EU FLEGT Action Plan: (Forest Law Enforcement Governance and Trade) 2004-2014*, p87. Available at: <https://ec.europa.eu/europeaid/sites/devco/files/report-flegt-evaluation.pdf>

¹⁵ Based on: Global Witness, 2006. *The sinews of war: Eliminating the trade in conflict resources*, p 1. Available at: https://www.globalwitness.org/sites/default/files/import/the_sinews_of_war.pdf

¹⁶ The regulation aims to help stem the trade in four minerals tin, tantalum, tungsten and gold. More information on the regulation can be found here <http://ec.europa.eu/trade/policy/in-focus/conflict-minerals-regulation/regulation-explained/>

¹⁷ European Commission, 2014. *Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL - setting up a Union system for supply chain due diligence self-certification of responsible importers of tin, tantalum and tungsten, their ores, and gold originating in conflict affected and high-risk areas, (COM(2014)0111 – C7-0092/2014 – 2014/0059 (COD))*, Art. 2(e). Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52014PC0111>

¹⁸ OECD, 2013. *Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas Second Edition*, pp12 Available at: <https://www.oecd.org/corporate/mne/GuidanceEdition2.pdf>

¹⁹ United Nations Security Council, 2003. *Security Council Extends Sanctions Against Liberia Until 7 May 2004, Unanimously Adopting Resolution 1478*. Available at: <http://www.un.org/press/en/2003/sc7752.doc.htm>

²⁰ United Nations Security Council, 2003. *Security Council Renews Arms Embargo, Related Sanctions against Democratic Republic of Congo amid Illicit Weapons Flows Within, Into Country*. Available at: <http://www.un.org/press/en/2011/sc10464.doc.htm>

²¹ European Commission, 2003. *Sanctions or restrictive measures*. Available at: http://eeas.europa.eu/archives/docs/cfsp/sanctions/docs/index_en.pdf

²² European Council, 2010. *Council Decision 2010/232/CFSP of 26 April 2010 renewing restrictive measures against Burma/Myanmar*. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2010D0232:20120426:EN:PDF>

²³ Council Regulation 234/2004 available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004R0234&from=EN>

²⁴ European Council, 2010. *Council Decision 2010/788/CFSP of 20 December 2010 concerning restrictive measures against the Democratic Republic of the Congo and repealing Common Position 2008/369/CFSP*. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:336:0030:0042:EN:PDF>

²⁵ Global Witness, 2010. *Lessons Unlearned* p9. Available at: www.globalwitness.org/en-gb/reports/lessons-unlearned/

²⁶ For example in Liberia where the trade in timber replaced the trade in diamonds after the impositions of sanctions on diamonds. Ibid pp10

²⁷ European Commission, 2003. *Communication from the Commission to the Council and the European Parliament - Forest Law Enforcement, Governance and Trade (FLEGT) - Proposal for an EU Action Plan*. "In some cases the illegal exploitation of forests is also associated with violent conflict. Profits from the illegal exploitation of forests (and of other natural resources) are often used to fund and prolong these conflicts." p 4. Available at:

<http://www.euflegt.efi.int/documents/10180/23398/FLEGT+Action+Plan/3c0cfca1-1503-458a-9d05-1717bf226e23>

²⁸ Ibid, p 21

²⁹ Hudson & Paul, 2011. *FLEGT Action Plan Progress Report 2003 – 2010*, p 21. Available at: http://ec.europa.eu/europeaid/sites/devco/files/report-progress-2003-2010-flegt-20110126_en.pdf

³⁰ Terea, S-for-S & Topperspective, 2016. *Evaluation of the EU FLEGT Action Plan: (Forest Law Enforcement Governance and Trade) 2004-2014*, p155. Available at: <https://ec.europa.eu/europeaid/sites/devco/files/report-flegt-evaluation.pdf>

³¹ Ibid, p 83

³² Ibid, p 84.

³³ EU FLEGT Facility, 'VPA countries in the world'. Available at: <http://www.flegtlicence.org/vpa-countries>

³⁴ International Alert, 2016. *Conflict-sensitive forest governance in Myanmar*. Available at: <http://www.international-alert.org/what-we-do/where-we-work/south-and-southeast-asia/myanmar/projects/13664>

³⁵ Terea, S-for-S & Topperspective, 2016. *Evaluation of the EU FLEGT Action Plan: (Forest Law Enforcement Governance and Trade) 2004-2014*, p9. Available at: <https://ec.europa.eu/europeaid/sites/devco/files/report-flegt-evaluation.pdf>

³⁶ Private discussions with officials from DG DEVCO in the European Commission.

³⁷ Forest Peoples Programme, 2016. *Pinpointing Problems – Seeking Solutions: A rapid assessment of the underlying causes of forest conflicts in Guyana*. Available at: <http://www.forestpeoples.org/sites/fpp/files/publication/2016/09/guyana-briefing-web.pdf>

³⁸ USAID, 2005. *Forests & Conflict – A Toolkit for Intervention*. Available at: http://pdf.usaid.gov/pdf_docs/Pnade290.pdf

³⁹ Global Witness, 2015. *Blood Timber* p19. Available at: www.globalwitness.org/en-gb/campaigns/forests/bloodtimber/

⁴⁰ The EU organised a VPA meeting in December 2014 which included representatives of logging companies that had financed armed groups. The logging companies involved were also invited to the Commission's FLEGT conference in Brussels in March 2015.

⁴¹ European Commission, 2003. *Forest Law Enforcement, Governance And Trade (Flegt) Proposal For An EU Action Plan, p11*. Available at: <http://www.euflegt.efi.int/documents/10180/23398/FLEGT+Action+Plan/3c0cfca1-1503-458a-9d05-1717bf226e23>

⁴² Global Witness, 2011. *Global Witness Leaves Kimberley Process, calls for diamond trade to be held accountable*. Available at: <https://www.globalwitness.org/en/gb/archive/global-witness-leaves-kimberley-process-calls-diamond-trade-be-held-accountable/>

⁴³ The Kimberly Process, 2017. *Participants: Central African Republic*. Available at: www.kimberleyprocess.com/en/central-african-republic

⁴⁴ EITI, 2013. *Central African Republic 'suspended' following coup d'état*. Available at: <https://eiti.org/node/4226>

⁴⁵ Letter from J.D.Voss to Global Witness, February 2015.

⁴⁶ Global Witness, 2006. *The sinews of war: Eliminating the trade in conflict resources, p 4*. Available at: https://www.globalwitness.org/sites/default/files/import/the_sinews_of_war.pdf

⁴⁷ European Commission, 2016. *Staff Working Document: Evaluation of Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market (the EU Timber Regulation) Accompanying the document, {COM(2016) 74 final} {SWD(2016) 33 final} p 3*. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016SC0034&from=EN>

⁴⁸ Ibid.

⁴⁹ European Union, 2010. *REGULATION (EU) No 995/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market. Paragraph 3*. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010R0995&from=EN>

⁵⁰ Ibid. Article 6.1 (b)

of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market
<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010R0995&from=EN>

⁵¹ European Commission, 2016. *Guidance Document For The EU Timber Regulation*. Available at: http://ec.europa.eu/environment/forests/pdf/eutr_guidance.zip

⁵² USAID, 2005. *Forests & Conflict – A Toolkit for Intervention, p 8*. Available at: http://pdf.usaid.gov/pdf_docs/Pnade290.pdf

⁵³ Forest Trends, 2016. *How Do Peace Agreements Treat Natural Resources? p 3*. Available at: www.forest-trends.org/documents/files/doc_5068.pdf

⁵⁴ For example: Actions taken by the DRC Government after 2002, upon intervention by the World Bank, on concessions allocated during the civil wars and the immediate post-conflict period. See Bank Information Center, *The Need to Extend Safeguard Coverage to Development Policy Lending*, August 2013, pp 4ff. http://www.bankinformationcenter.org/wp-content/uploads/2013/08/BIC_DRC_case_study_UPDATED_June4.pdf

⁵⁵ Global Witness, 2015. *Blood Timber*. Available at: www.globalwitness.org/en/gb/campaigns/forests/bloodtimber/

⁵⁶ See Transparency International & Global Witness, 2017. *Tackling Corruption to Save the World's Forests: How the EU can rise to the challenge, p 14*. Available at:

https://www.globalwitness.org/documents/18736/TI_GW_Anti-corruption_briefing_January_2017.pdf

⁵⁷ USAID, 2005. *Forests & Conflict – A Toolkit for Intervention*. Available at: http://pdf.usaid.gov/pdf_docs/Pnade290.pdf