

# The political logics of EU-FLEGT in Thailand's multistakeholder negotiations: hegemony and resistance

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## Abstract

The reduction of illegal logging and related trade has been on the international policy agenda since the 1990s. The EU's Forest Law Enforcement, Governance and Trade initiative (EU-FLEGT) seeks to address illegal logging through a scheme that rests on multistakeholder negotiations. However, past initiatives seeking to reform forest governance in the global South have reproduced the uneven outcomes of colonial forest governance by further empowering national government authorities. In the case of Thailand, FLEGT negotiations between November 2013 and April 2021 succeeded in opening a political space for civil society to engage with government actors. However, FLEGT negotiations during this period failed to address the uneven outcomes of forest governance, benefiting elites at the expense of the rural poor due to an 'anti-politics effect'. The FLEGT multistakeholder negotiations did not consider the uneven historical relations to land and resource rights nor the intrinsic power dynamics of different actor groups. As such, dominant actors from the government and private sector succeeded in structuring the terrain of the FLEGT negotiations to determine which civil society demands for reforms to tenure and resource rights they would concede, and which they would not.

**Key Words:** Illegal logging, EU-FLEGT, Thailand, logic of equivalence, logic of difference, anti-politics

## Résumé

La réduction de l'exploitation illégale des forêts et du commerce qui y est associé est à l'ordre du jour des politiques internationales depuis les années 1990. Le plan d'action de l'UE sur l'application des réglementations forestières, la gouvernance et les échanges commerciaux (EU-FLEGT) vise à lutter contre l'exploitation illégale des forêts par le biais d'un système reposant sur des négociations multipartites. Toutefois, les initiatives passées visant à réformer la gouvernance forestière dans les pays du Sud ont reproduit les résultats inégaux de la gouvernance forestière coloniale, en renforçant le pouvoir des autorités gouvernementales nationales. Dans le cas de la Thaïlande, les négociations FLEGT entre novembre 2013 et avril 2021 ont réussi à ouvrir un espace politique permettant à la société civile de s'engager auprès des acteurs gouvernementaux. Cependant, les négociations menées durant cette période n'ont pas permis de résoudre les problèmes de gouvernance forestière, profitant aux élites au détriment des populations rurales pauvres en raison d'un "effet anti-politique." Les négociations multipartites FLEGT n'ont pas pris en compte les relations historiques inégales des droits fonciers et de l'accès aux ressources, ni les dynamiques de pouvoir intrinsèques des différents groupes d'acteurs. En tant que tels, les acteurs dominants du gouvernement et du secteur privé ont réussi à structurer le terrain des négociations FLEGT afin de déterminer quelles demandes de la société civile en matière de réformes des droits fonciers et des droits aux ressources ils allaient concéder, et quelles demandes ils allaient refuser.

**Mots clés:** Exploitation forestière illégale, UE-FLEGT, Thaïlande, logique d'équivalence, logique de différence, anti-politique

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## Resumen

La reducción de la tala ilegal y el comercio asociado con ella ha estado en la agenda política internacional desde la década de 1990. La iniciativa de la UE para el Acuerdo para la Aplicación de las Leyes, Gobernanza y Comercio Forestales (EU-FLEGT, por sus cifras en inglés) busca hacer frente a la tala ilegal a través de un esquema que se basa en negociaciones entre múltiples partes interesadas. Sin embargo, las iniciativas anteriores que buscaban reformar la gobernanza forestal en el sur global han reproducido resultados desiguales de la gobernanza forestal colonial al empoderar aún más a las autoridades gubernamentales nacionales. En el caso de Tailandia, las negociaciones del FLEGT entre noviembre de 2013 y abril de 2021 lograron abrir un espacio político para que la sociedad civil interactúe con actores gubernamentales. Sin embargo, las negociaciones del FLEGT durante este período no lograron solucionar los resultados desiguales de la gobernanza forestal, beneficiando a las élites a expensas de la gente pobre de las zonas rurales debido a un 'efecto antipolítico'. Las negociaciones entre múltiples partes interesadas como parte del FLEGT no consideraron las relaciones históricas desiguales sobre los derechos a la tierra y acceso a los recursos naturales, ni la dinámica de poder intrínseca entre distintos grupos de actores. Como tal, los actores dominantes del gobierno y el sector privado lograron estructurar el terreno de las negociaciones del FLEGT para determinar qué demandas de la sociedad civil sobre reformas a la tenencia de la tierra y los derechos al acceso a los recursos naturales se concederían y cuáles no.

**Palabras Claves:** Tala ilegal, EU-FLEGT, Tailandia, lógica de la equivalencia, lógica de la diferencia, antipolítica

## 1. Introduction

In 2003 the European Union Forest Law Enforcement, Governance and Trade (EU-FLEGT) initiative joined other intergovernmental and bilateral initiatives aimed to reduce deforestation and forest degradation (Rayner *et al.*, 2010). EU-FLEGT aims to do so by supporting timber-producing countries in combating illegal logging and related trade, through strengthening forest governance and supporting related forest sector reforms (European Commission, 2003; European Council, 2003). Voluntary Partnership Agreements (VPA) are a central instrument in delivering EU-FLEGT aims. The VPA is a binding bilateral trade agreement between timber-exporting countries and the EU, stating that all agreed upon timber and timber products from the exporter can be legally verified throughout the supply chain. VPAs generally contain a legal text accompanied by several annexes, including a *legality definition* (LD) consolidating a partner country's laws, legal documents, and authorization processes and, where necessary, the implementation of legal reform; details of timber *supply chain controls* (SCC); details of a *timber legality assurance system* (TLAS) tracing timber and timber products from import/harvest to export; and details of a *FLEGT licensing scheme* (EU FLEGT Facility, 2009).

Despite recent reforms, forest governance structures, which were designed primarily during the colonial era, continue to benefit government bureaucracies and dominant private sector actors while the rural poor are disadvantaged by "an uneven playing field" of economic and social impediments (Larson and Ribot 2007, p. 189; Gritten *et al.* 2015). There are clear statements within key EU-FLEGT documentation declaring support for strengthening resource-dependent peoples' rights through the VPA. The European Council's conclusions on the FLEGT Action Plan (2003/C 268/01) urge EU Member States to work with partner countries to "instigate forest sector governance reforms, more specifically to: — strengthen land tenure and access rights especially for marginalized, rural communities and indigenous peoples" (Article 9). That intention is repeated in the *VPA Unpacked* document (EFI, 2019) produced by the EU-FLEGT Facility, which states that a key principle of the VPA is to "promote good governance through improving transparency, accountability and law enforcement and to strengthen the rights of people who depend on forests" (p. 6).

The EU advocates for broad stakeholder participation within partner countries' VPA processes to safeguard and strengthen resource-dependent peoples' rights and ensure accountability and transparency (van Heeswijk & Turnhout, 2013). Stakeholder groups may include government actors, private sector actors, smallholders, civil society organizations, and Indigenous communities. Some scholars have argued that multistakeholder participation is EU-FLEGT's strength, leading to improved forest governance and increased accountability within partner countries (Beeko & Arts, 2010; Dooley & Ozinga, 2011; Overdevest & Zeitlin,

2014, 2018). Cerutti *et al.* (2021) found that VPA processes in Cameroon, Ghana, and Indonesia helped improve participation and transparency in forest policymaking. Beeko & Arts (2010) show that Ghana's VPA negotiation process reshaped national forest discourse and power relations, favoring civil society and local communities.

However, other scholars have argued that despite broad stakeholder participation, EU-FLEGT remains a technically-driven, top-down process shaped by logics that reinforce state control over, and the elite capture of, resources at the cost of the land and resource rights of resource-dependent people, including Indigenous Peoples (Maryudi *et al.*, 2020; Myers *et al.*, 2018; Setyowati & McDermott, 2017; van Heeswijk & Turnhout, 2013; Wodschow *et al.*, 2016). Critically, through an analysis of the VPA in Indonesia, Setyowati & McDermott (2017) determined that the VPA further narrowed the scope of who and what counted as legal, potentially impacting local people's access to timber. Further, by investigating the power constellations of wood furniture actors in Indonesia, Maryudi & Myers (2018) concluded that the timber legality assurance system implemented under the VPA perversely reinforced existing inequitable power relations, favoring dominant actors and produced "new modes of elite capture" (p. 46).

Contributing to the literature on the political ecology of resource access and EU-FLEGT, this article provides a critical examination of i) the ways in which Thailand's national forest governance structures pertaining to (in)equity in access to land and timber rights are further confirmed or challenged through VPA negotiation processes; and ii) the political logics through which VPA negotiations may render political struggles pertaining to land and timber rights 'technical or 'nonpolitical'; these theoretical concepts are discussed in the following section. This article responds to a call by Derous and Verhaeghe (2019) to further examine the dynamics of power within VPA processes.

#### *Methodology notes*

The Thai EU-FLEGT VPA negotiation process began in late 2013. This article covers Thai VPA negotiation processes from November 2013 to April 2021. Thai VPA negotiations are scheduled to be completed in 2022/2023 (but the date could be extended). In Thailand, the Thai-EU FLEGT Secretariat Office (TEFSO) established several sub-working groups to develop drafts of each VPA annex. The European Forest Institute (EFI) EU-FLEGT Facility and the Food and Agriculture Organization (FAO) further supported VPA processes. Actor groups directly involved in the VPA negotiations include:

1. Government departments, including the Ministry of Natural Resources and Environment (MoNRE), the Royal Forestry Department, the Ministries of Commerce, Industry, Finance, and Foreign Affairs, and the Natural Resources and Environmental Crime Suppression Division;
2. The private sector – prominent organizations include the Thai Timber Association, Thai Sawmill Association and the Forest Industry Organization;
3. The Thai Civil Society Organizations FLEGT Network (CSO-FN), coordinated by the non-governmental organization RECOFTC. The CSO-FN comprises of 65 members, including environmental, civil rights, community, and smallholder organizations. Six core members of the CSO-FN attend EU-FLEGT national- and working group meetings.

This article is based on ethnographic data collection, including interviews conducted between January 2019 and March 2019 and a review of EU and Thai EU-FLEGT documents issued from November 2013 to April 2021. The lead author conducted 18 semi-structured interviews. Interviewees were selected using purposive and convenience sampling (Marshall & Rossman, 2014) amongst government, private sector, and CSO-FN actors involved in the EU-FLEGT VPA's ad-hoc working group and sub-working groups on the SCC and LD Annexes. Five private sector representatives, six CSO-FN representatives, and two government representatives were interviewed. The lead author also interviewed a key individual from the EU-FLEGT coordinating body, TEFSO, one from the EFI EU-FLEGT facility, two from the FAO, and a FLEGT consultant working on timber supply chain controls. The lead author worked with a Thai research assistant to conduct the interviews in Thai with four CSO-FN, two private sector, two government officers, and one TEFSO representative. The remainder of the interviews were conducted in English.

Following the Introduction, Section 2 presents the theoretical approach. Section 3 presents the historical context, outlining the inequitable construction of land and timber rights in Thailand, including a summary of timber rights held by different actor groups at the start of VPA negotiations. In Section 4, through Poststructuralist Discourse Theory (PDT), we critically analyze the political logics through which Thailand's dominant structures pertaining to land and timber rights are rendered technical, institutionalized, or resisted during the VPA negotiations. Section 5 reflects on political logics and their interactions with the anti-political.

## 2. Theoretical approach: political logics and hegemony in coalition building

Hegemony can be defined as "a form of rule or governance that speaks to the maintenance of the policies, practices and regimes that are formed by such forces" (Howarth, 2009, p. 310). Such notions of hegemony are closely associated with Foucault's work on governmentality, whereby government actors, through the covert threat of disciplinary means, attempt to shape governed subjects into regulating their own 'conduct' which in turn reproduces and results in a subject's internalization of dominant norms and practices (Foucault 1988). Such hegemonic governance is not sustained by processes "in which rule extends itself unproblematically across a territory, but a matter of fragile relays, contested locales and fissiparous affiliations" (Rose, 1999, p. 51). Rather, messiness and fractures are inherent to governance, as various actors challenge the legitimacy and authority of governing agencies, dominant norms, and practices (Li, 2007a).

Li (2007a) recognized the importance of asking questions concerning 'how' government rule extends itself and is contested and how heterogeneous governance assemblages of people, objects, discourses, and ideologies are constituted, held together, and challenged. Li (2007a) identified six crucial practices in examining questions of natural resource governance assemblages. We examine three – *forging alignments*, *anti-politics*, and *rendering technical* – through the Poststructuralist Discourse Theory (PDT) concepts of *the political logics of equivalence and difference*, *rhetorical redescription*, and *structuring the terrain of argumentation* (Glynos & Howarth, 2007; Howarth, 2009). Integrating Li's concepts of forging alignments, anti-politics, and rendering technical with PDT enables us to further examine governance operations by asking how, and the contestations through which, dominant norms, structures, and practices of forest governance are challenged/alterd/further instituted through policy-making processes.

Forging alignments can be described as "the work of linking together the objectives of the various parties to an assemblage, both those who aspire to govern conduct and those whose conduct is to be conducted" (Li, 2007a, p. 265). We further examine the work of forging alignments during the Thai EU-FLEGT VPA multistakeholder negotiation process through the political logics of equivalence and difference, as derived from PDT. Poststructuralist discourse theorists (Glynos & Howarth, 2007; Laclau & Mouffe, 1985) have argued that political dynamics in building coalitions and regimes (i.e., forging alignments) are driven through two logics: the logic of equivalence and the logic of difference. The former seeks to find equivalence amongst diverse actor groups' demands to advance a regime's specific political-economic goals. For the latter, powerholders seek to differentially incorporate or co-opt actors' demands so as not to compromise dominant practices or regimes (Howarth, 2009). Our article engages with the logics of equivalence and difference to analyze how dominant forest governance structures are further institutionalized and challenged through VPA negotiation processes (Glynos & Howarth, 2007).

Poststructuralist discourse theorists Laclau & Mouffe (1985) assert that actor groups, or individuals with disparate demands may forge alignments around a figurehead or a common goal or threat. Thus, a *logic of equivalence* prevails over the differences amongst the actor groups. For instance, the common goal holding a coalition of actor groups together could be addressing climate change or illegal logging or a common threat such as a corrupt government or a dominant corporation. To use EU-FLEGT as an example, Myers *et al.* (2020) show that powerholders privileged the legality of EU-FLEGT over the 'moral threat' of illegal logging. Our article demonstrates that during the Thai VPA negotiations, actor groups united under the common goal of promoting legal timber exploitation and improving access to timber resources for economic growth.

Further, dominant actors may employ the *logic of difference* to maintain the chain of equivalence (the coalescence of actor groups' demands around a project/policy/regime). Through the logic of difference, dominant actors may employ various negotiation practices, including deflection, negation, co-optation, and

divide and rule tactics, so as not to compromise an underlying political-economic dominant practice or regime (Glynos & Howarth, 2008; Howarth, 2009). As Howarth (2009) summarizes,

The logic of difference involves the loosening-up or disarticulation of equivalential chains of demands and identities via various practices of challenge, institutionalization, deflection, or negation. This logic is marked either by the differential incorporation or even co-optation of claims and demands, where their cutting edge may be blunted, and/or it is accompanied by the pluralizing or opening-up of a regime or practice to new demands and claims, where those in a social field acknowledge and accommodate difference. (p. 321)

The more actors' demands are incorporated into policy, the more likely these actors can identify with the government/regime or practice (Howarth, 2009). However, if their demands are not met, the equivalence chain may collapse, and actors may form or maintain an opposing coalition (Glynos and Howarth 2007). As a tactic to disarm further "challenges to the *status quo*", dominant actors may choose to devise policies that seemingly submit to some (if not all) of the demands of the opposition actor groups while employing political rhetoric to conceal less useful or ineffective aspects of the policy or its adverse or unchanged "longer-term implications" (Howarth, 2009, p. 321). In short, ceding to demands can help maintain dominance, and break up or placate challenges to dominant structures while also creating space for opposing groups' demands to be incorporated into policy. Our article shows how government actors used deflection, negation, and divide and rule tactics to protect Thailand's dominant forest governance structure while partially ceding to some demands of the CSO-FN.

Examining the political logics of forging alignments can further aid in eliciting the operations through which political issues are reposed "as matters of technique; closing down debate about how and what to govern and the distributive effects of particular arrangements by reference to expertise", otherwise known as the work of 'anti-politics' (Li, 2007a, p. 265). We show how during the VPA negotiations, rhetorical redescription facilitated the work of the anti-political by circumscribing the debate around what the VPA would address. Howarth (2009) argues that the practice of "rhetorical redescription (e.g., Rorty 1989, Skinner 2002)" is important in "the construction of new discourses that can win over subjects to a particular project or coalition while disorganizing and marginalizing opposing coalitions" (p. 319). The practice of rhetorical redescription is defined as:

...replacing a given evaluative description with a rival term that serves to picture the action no less plausibly, but serves at the same time to place it in a contrasting moral light. You seek to persuade your audience to accept your new description and thereby to adopt a new attitude towards the action concerned. (Skinner, 2002, p. 183)

Through the act of rhetorical redescription, the "conceptual change is the outcome of debates over how to characterize or name something", which either forges or disrupts a coalition (Howarth, 2009, p. 319). Howarth (2009) uses the UK aviation industry as an example of rhetorical redescription, stating that they "sought to redescribe the continued expansion of the aviation industry not as a threat to the environment, but as a vehicle for *sustainable aviation* and the pursuit of *sustainable growth*." We illustrate how the EU-FLEGT goal to 'reduce illegal logging' was re-described as a goal to reform 'timber legality processes' to 'promote legal timber.'

Closely linked to practices of rhetorical redescription are practices that *structure the terrain of argumentation* where some "issues and arguments are organized into politics while others are organized out" (Howarth, 2009, p. 319). Continuing with the theme of aviation, Howarth (2009, p. 319) states that "if opponents of aviation expansion were to accept that the current struggles about airport expansion were about the achievement of 'sustainable aviation', they would immediately rule out more radical demands and claims."

Similarly, we illustrate that as Thai EU-FLEGT narrowed its focus to promoting legal timber, more 'radical' demands such as land reform were structured out of VPA negotiations. We link the concept *structuring the terrain of argumentation* to practices of 'rendering technical', which itself is associated with anti-politics. Practices of rendering technical describe how the intended domain of governance is constructed and its limits and boundaries defined (Li, 2007b).

### 3. Historical context: the construction of land and timber rights in Thailand, 1890-2013

This section sets the historical context in which international and national interventions have shaped forest governance pertaining to local peoples' land and timber rights in Thailand. Additionally, it presents a summary of land and timber harvesting rights at the beginning of the EU-FLEGT initiative in November 2013.

The erosion of local land and customary rights in Thailand began with the introduction of forest governance structures and laws by the British at the end of the nineteenth century. In 1895, the Siamese government hired a British forester, Herbert Slade, who developed forest policy in line with the British Indian and Burmese models (Usher, 2009). In India and Burma, forest reservations were initially directed at preserving valuable timber forests against destructive and wasteful felling by contractors. Slade established the Thai Royal Forest Department (RFD) in 1869. In 1899, the RFD claimed jurisdiction over 75% of allegedly unoccupied and unclaimed State land; in other words, a forest was a jurisdiction, not an ecosystem (Vandergeest, 1996a). This claim also ignored the pre-existing customary rights of the local communities to the renamed State Forests.

The government passed the Teak Trees Preservation Act and the Forest Preservation Act in 1897, prohibiting teak (*Tectona grandis*) logging without the appropriate permissions from the RFD (Mekvichai, 1988). Before the 1890s, local people could harvest trees for subsistence purposes or sale but were forbidden to harvest larger teak trees reserved for local lords to build temples, palaces, and to sell (Mekvichai, 1988). Local people were so used to harvesting teak that when in the early 1900s RFD officers went around to villagers explaining the new teak restrictions, officers were met with looks of astonishment from the villagers (Witt, 1904). However, given that RFD officers numbered only 24 nationally, it is unlikely that the new restrictions were widely enforced (Vandergeest & Peluso, 1995).

The next stage of forest governance interventions occurred after the 1938 coup, which turned Thailand from an absolute into a constitutional monarchy under a military-led government. In 1938, the government enacted the Forest Protection and Reservation Act, which created protected and reserved forests based on the British colonial Indian and Burmese forestry model (Vandergeest, 1996a). In Protected forests, forest conversion and crop cultivation were prohibited; however, local people could still legally extract timber and forest products, except for those named forest products restricted by law. The intention of Reserved forests was to conserve timber stocks, and the extraction of any forest products was only permitted upon obtaining a permit from the RFD. By 1964 approximately 13% of Thailand's national territory had been declared as protected (6.6%) and reserved forests (6.2%) (Vandergeest, 1996a). In 1941 the government enacted the Forest Act that defined forests as any land not under the Land Code, thereby encompassing land outside of protected and reserved forests (Vandergeest, 1996a). The Forest Act prohibited people from harvesting tree species declared as restricted – at the time teak and yang (*Dipterocarpus alatus*), and all other trees greater than four cubic meters in volume – without the correct permits from the RFD (RTG, 1941). Further, people were required to apply for a license from an RFD officer to log restricted timber and to collect forest products (RTG, 1941). However, these laws were mainly enforced in areas surrounding forest concessions (Mekvichai, 1988).

From the 1890s to the 1960s, British companies held most forest concessions. In 1952 the government announced an end to all expiring foreign-held leases, coincident with the nationalization of the forest sector. All forest concession leases expired by 1960, and most were transferred to the state-owned Forest Industry Organization (FIO) or state-owned Provincial Forestry Companies (Pye, 2005). After this, the government further impeded local people's rights to harvest timber. The Food and Agriculture Organization (FAO) played a significant role in supporting Thai forest governance development during this period (Vandergeest & Peluso, 2006). In 1961, following FAO's guidance, the government amended the Forest Act, prohibiting local people

from harvesting timber on forest land, particularly ending the legal right to harvest timber for domestic use (Vandergeest, 1996a). The government enacted the National Reserved Forest (NRF) Act in 1964 (replacing the 1938 Forest Protection and Reservation Act), enabling the RFD to declare any land as a reserved forest area with minimal consultations with local occupants (Vandergeest, 1996a). Within NRF areas, no person has the right to hold or possess land, log, or collect forest products without a license from the RFD (Vandergeest, 1996a).

Wholly or partially state-owned companies, including the state-owned FIO, held nearly 97% of forestry concessions by 1979, and these concessions covered 39% of Thailand's total land area (Pye, 2005). There was frequent abuse of the concession system; once logged, the concession areas were converted to timber plantations, agribusiness, or left as degraded forestland (Delang, 2005). Through logging, infrastructure development, conversion for agriculture, and military counter-insurgency and security strategies (Delang, 2005; Peluso & Vandergeest, 2011), forest cover was reduced from 53% in 1961 to 27% in 1989 (Lakanavichian, 2006). In January 1989, in response to citizen protests after a devastating landslide killed hundreds in the south of the country, the government introduced a logging ban, ending the forest concession system in Thailand (Usher, 2009).

For over a hundred years, local people have had minimal formal opportunities to benefit from or to participate in the forest sector (Mekvichai, 1988). Small-scale legal and illegal operations such as furniture making and wood-carving have brought in some revenue for local villagers (Mekvichai, 1988). Occasionally local people were hired as waged laborers for the logging companies, a few eventually making their way up to higher positions in the FIO. Further, Mekvichai (1988) argues that although government revenue from concessions was significant, there was little reinvestment into local communities. Local villagers situated in or around logging concession areas often faced worse conditions than before, due to resulting environmental degradation. The logging firms also damaged roads and bridges passing through villages (Mekvichai, 1988).

#### *Land rights within State Forest land at the beginning of EU-FLEGT negotiations, November 2013*

By the end of the concession era in 1989, the RFD had declared 42% of Thai territory as NRFs. An estimated 8 to 15 million people were enclosed within State forest land (NRFs and protected areas such as National Parks and Wildlife Sanctuaries) (Hirsch 1990; Lohmann 1993). To provide 'landless' farmers residing within NRF with usufruct rights, the RFD established the Sor Tor Kor (STK) initiative in 1981 (legitimized under Section 16<sup>2</sup> of the 1964 NRF Act). STK certificates gave farmers cultivation rights to a maximum of 2.4 hectares (ha) of NRF land per household on a five-year renewable basis, under the condition that land not be left uncultivated for two continuous years, and in some cases, sections of land were to be reforested (Vandergeest, 1996a). STK certificates were non-transferable except within a family. During STK's implementation, from 1982 to 1987, the RFD handed out STK certificates to 700,000 households covering "approximately 2% of Thailand's total land area" (Lakanavichian 2006, 13). In 1993 some STK land and certificates were transferred to the Agricultural Land Reform Office (ARLO) (13% of NRF had been transferred to ARLO by 1995). The ARLO reassigned STK certificates to Sor Por Kor (SPK) usufruct certificates. SPK certificates grant cultivation rights for 8 ha of land (16 ha if raising livestock) and are non-transferable except within a family. They are still active today.

Due to the restrictions on cultivation practices, communities practicing rotational agriculture (a traditional practice of some ethnic minority communities living in mountainous regions of Thailand) were ineligible for the STK/SPK scheme (Vandergeest, 1996a). The introduction of the Watershed classification system in 1985, which separated all major watershed catchments into five classes based on topography, elevation, and slope (Laungaramsri, 2000), placed further restrictions on these communities. Watershed classes

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<sup>2</sup> Section 16 of the 1964 NRF Act states that the RFD Director General may permit a person to utilize or live in a degraded areas of the NRF for not less than five but no more than thirty years. Land is to be limited to no more than 3.2 ha per family. The land is not to be utilized by a non-family member. This land can be revoked if not utilized for more than two consecutive years. The RFD DG grants permission for a forest plantation if requested, but not exceeding 5.6 ha per family.

One and Two in upland areas, under the most stringent restrictions of the five Watershed classes, coincided with the traditional territories of many communities (Laungaramsri, 2000).

The RFD now manages 10.35 million ha of National Reserved Forest Land, or 20% of the total land area (as of 2018) (Onpheng, 2018), most of which is thought to be degraded or under some form of permanent cultivation. In 2014, the RFD reported well over one million people residing in NRFs without individual or communal legal land and resource rights (RECOFTC, 2018a). This number is likely underestimated, as a 2009 FAO report estimated that between 20 to 25 million people lived in or near NRFs. Before November 2013, under Cabinet Resolution of 30th June B.E. 2541 (1998), villages within NRFs had to prove continued land use since the promulgation of the Forest Protection and Reservation 1938 Act. Satellite maps from 1952 were used as evidence for continuous land tenure. Discontinuous land use was not eligible for verification, and such land had to be returned to the state, and its exploitation was not permitted. Failure to comply could trigger prosecution for public land evasion. There were no active avenues for people within NRFs to gain usufruct certification, other than if obtained through the expired STK certification scheme. However, the state did provide some communities with varying degrees of support to implement reforestation or agricultural development projects through the local RFD, Department of Agriculture, and provincial and sub-district administrations (Durst, 2020).

*A summary of timber harvesting rights at the beginning of EU-FLEGT negotiations, November 2013*

Due to the complexities of the legality timber harvesting in Thailand, we have chosen to focus on the first stage in the timber supply chain, timber harvesting of natural and planted trees, and plantation establishment. For details of timber legality beyond timber harvesting (i.e., processing, transport, trade), please refer to *NEPCon's 2017 Thailand Timber Legality Risk Assessment*.

In 2013 local people within NRFs in lowland areas (Watershed classifications Three to Five), those who could provide evidence that their village had been established before 2014, could technically establish a timber plot under Section 16 of the 1964 NRF Act. Section 16 states that if requested, the RFD Director-General can grant permission for a forest plot, not exceeding 5.6 hectares per household, with a land ownership certificate (individual or communal). Only people who held STK/SPK certificates could legally establish a timber plot; however, due to complexities in timber harvesting rights and permitting procedures on NRF land, few, if any, harvested timber. Local people within NRFs in upland areas (Watershed classifications One and Two) were prohibited from harvesting naturally grown or plantation timber.

Government departments, state-owned enterprises (such as the FIO), and private logging enterprises were permitted to establish plantations and harvest naturally grown unrestricted and restricted timber species within NRFs (171 species are listed on the Royal Decree on Restricted Timber Species 1987) and on other government-held public lands with the relevant land certificates and permissions (NEPCon, 2017). Plantations can be established under the Forest Plantation Act 1992.

Local people on other forms of public land, such as agricultural land (SPK), must follow RFD's permit process to harvest naturally or planted restricted species but they could harvest unrestricted tree species without a permit. Local people with a land certificate such as SPK could also establish plantations. Private landholders could "harvest, transport, process, and trade timber grown on private land" without applying for permission from the RFD, except teak, yang, and rosewood (*Dalbergia spp.*), which were under nationwide restrictions (according to Article 7 of the Forest Act) and they could establish a forest plantation (NEPCon, 2017, p. 8). Table 1 shows a summary of timber rights before EU-FLEGT in 2014.

Many actors perceived the tenure system and associated legal processes as overly complicated, which has dissuaded greater local participation in the forest sector (RECOFTC, 2018a); approximately 0.3% of the population is employed within the forest sector (FAO, 2020). The main domestically grown species are rubber, primarily grown by smallholders in the south (rubber is deemed an agricultural crop), teak and other hardwood species, primarily grown by semi-state owned companies in the north, and eucalyptus, primarily grown by large



companies and local farmers in the northeast, east, and west (Barney, 2005). Timber processing companies mainly import timber from abroad.<sup>3</sup>

Land type	Timber harvesting, legal requirements for naturally grown or planted trees <sup>4</sup>	Commercial plantation establishment, legal requirements
<b>National Reserved Forests - Government departments and state-owned organizations</b>	RFD permits are required to harvest restricted and non-restricted species	Permits required Under the National Forest Reserves Act 1964, or the Forest Plantation Act 1992. Permits are required to harvest all species under the Forest Act 1941.
<b>National Reserved Forests - Local people in Watershed Classes 3-5</b>	RFD permits are required to harvest restricted and non-restricted species. However, a certificate of land ownership (individual or communal) is required, and there are no clear guidelines on harvesting regulations.	Technically, it is possible to establish a timber plot if registered (not a plantation under the Plantation Act) under Section 16 of the National Forest Reserves Act 1964 – with a certificate of land ownership (individual or communal). However, not widely practiced due to lack of land certificates and complex permit processes. Permits are required to harvest all species under the Forest Act 1941.
<b>National Reserved Forests - Local people in Watershed Classes 1 and 2</b>	Logging is not permitted under the Watershed classification system	Can not establish a timber plot or plantation for commercial use.
<b>Public land certificates (except NRFs and protected areas) (individuals or groups) SPK <sup>5</sup></b>	No legal requirements to harvest un-restricted species. RFD permits are required to harvest restricted species.	Permits are required under the National Forest Reserves Act 1964, the Forest Plantation Act 1992. Permits required to harvest restricted species under the Forest Act 1941.
<b>Private landholders</b>	No legal requirements for un-restricted species There are no legal requirements to harvest restricted species except for teak, yang, and rosewood, requiring RFD permits.	Optional under the National Forest Reserves Act 1964, the Forest Plantation Act 1992. Permits are required to harvest teak, yang, and rosewood under the Forest Act 1941.

Table 1: Timber rights before EU-FLEGT.

<sup>3</sup> From 2016-2018, Myanmar and Malaysia, countries with widespread risks of illegality in their forest sector (NEPCon, 2020), were amongst the top five exporters of lumber and sawn wood to Thailand (Lawson, 2014).

<sup>4</sup> Forest Act 1941, NRF Act 1964, Watershed classification system, The Royal Decree on Restricted Timber Species B.E. 2530 (1987) and the Royal Decree on Restricted Forest Products B.E. 2530 (1987), NCPO No. 64/2557 and 66/2557.

<sup>5</sup> There are other forms of public land certificates outside of NRFs. However, SPK is the primary type of certification. Durst (2020, 16) estimated that "no less than 17 different land ownership, use and possession instruments are potentially available to facilitate timber production, including on small-scale agricultural landholdings."

#### 4. Results: political logics of Thai EU-FLEGT VPA negotiations

In this section, we address the political logics – the logics of equivalence and difference – in Thailand's VPA negotiations from November 2013 until April 2021, to ascertain the ways in which the dominant governance structures pertaining to local peoples' land and timber rights are challenged or further institutionalized, and the ways in which government actors managed said challenges.

##### *The logic of equivalence through rhetorical redescription: From illegal logging to the promotion of legal timber production and trade*

The logic of equivalence focuses on how disparate actor groups unite under a common goal to advance political demands. This section illustrates how through rhetorical redescription, illegal logging was recast as a 'matter of technique' (i.e., rendered nonpolitical) to be addressed via forest sector reforms and promoting the trade in legal timber. We argue that this rhetorical turn facilitated the strategic alignment of disparate actor groups under the 'positive goal' of the growth of the domestic timber sector as opposed to the politically contentious term 'illegal logging'.

There are two main types of illegalities in Thailand's forest sector. First, the selective harvesting of high-value timber species in Thailand's remaining natural forests, commonly known as illegal timber smuggling (in Thai *Mhai Thuen* or *Tham Mhai Thuren*). Gangs colluding with government officers smuggle high-value timber out of Thailand, often through different supply chains to the legally logged timber, and to the Chinese and Vietnamese markets (Papata, 2018; EIA, 2014). News articles often report the involvement of police, forestry officers, and other government officials in illegal timber smuggling (Laohong, 2014; Online Reporters, 2016; Post Reporters, 2021; The Nation, 2017, 2019). The term 'illegal timber smuggling' is also employed by government officers when referring to resource-dependent people who utilize timber from natural forests 'illegally' for subsistence purposes. There is a history of the RFD and government scapegoating local people for illegal timber smuggling activities, or forest conversion, actually carried out on behalf of more powerful individuals or corporations (Delang, 2002; Laungaramsri & Malapetch, 1992; NEPCon, 2017).

The second type is logging in contravention of correct procedures and permitting processes established through laws and regulations (*Mhai Thee phid god mhai*). This is viewed as a softer type of illegality than illegal smuggling. This type of illegality is associated with private sector actors or smallholders operating outside of natural forest areas, unable to follow Thailand's complex forest laws and permitting processes. Due to those perceived complexities, including land tenure processes (before recent reforms under EU-FLEGT), actors assumed that much of the timber harvesting within plantations or smallholder plots could be considered illegal by default (NEPCon, 2017; RECOFTC, 2018a). Domestically, legal complexity favored private landholders, who are not subject to most forestry laws. This complexity also facilitated bribery, as wealthy individuals paid government officers under the table to issue land documents, register plantations, and approve harvesting, while the permits of those who could not afford to pay are held up (NEPCon, 2017; RECOFTC, 2018a).

At the beginning of the Thai EU-FLEGT VPA negotiations, the Permanent Secretary of the MoNRE stated that (TEFSO, 2013):

The FLEGT VPA with the EU will increase Thailand's image in preserving natural resources in accordance with the international level, especially through the cooperation with the EU in promoting the trade in legal timber and timber products, eliminating illegal logging, and enabling all stakeholders to participate in this important process. (September 2013)

However, during Thai EU-FLEGT processes, the VPA's technical arrangements and rhetoric stemming from the EU-FLEGT technical experts condensed and redescribed the Thai government's stated initial goals of "preserving natural resources" and "eliminating illegal logging" (*Mhai Thuen*) as matters of technique (Li, 2007) to be addressed primarily by promoting the growth of the domestic timber sector and addressing illegalities arising from complexities in law (*Mhai Thee phid god mhai*). A representative from the EU-FLEGT facility (February 2019) communicated to us that since Thailand banned the logging of natural forests in 1989 and

regulations and enforcement structures regarding the harvesting of naturally growing high-value timber species in Thailand were relatively robust, "from a legal viewpoint, there was not much else that needed to be legally defined" in terms of the illegal logging of high-value timber species in natural forests. They continued that as this was the case, the role of the Thai VPA was to focus on clarifying timber legality for smallholders and promoting timber production. Following such logic, as opposed to addressing illegal timber smuggling directly, Thai VPA negotiations primarily focused on determining and verifying timber legality through a TLAS and imposing supply chain controls to reduce the amount of illegal timber in the legal supply chain.

However, such an opinion runs counter to a NEPCon 2017 *Timber Legality Risk Assessment*, which stated that:

Despite a nationwide logging ban and protected area networks, Thailand's remaining forests are increasingly threatened by pervasive illegal logging, and the major driver of this crime is the rosewood trade (EIA)... Although the Thai authorities are determined to combat illegal logging and encroachment with increased funding from the government (EIA), the laws are not consistently enforced. Most of the arrests made have been of poor villagers, with a few low-level local public officials, while the rich or powerful are not prosecuted. It is no secret that influential individuals in Thailand own properties located in protected areas, or are in possession of protected flora and fauna (NationTV, VoiceTV).

The redescription of 'illegality' through the lens of 'legality' and 'the promotion of legal timber' pervaded VPA rhetoric, as highlighted in the quotations below from representatives of the EU-FLEGT Facility, FAO, government, and the private sector.

Compared to most neighboring countries, law enforcement (regarding illegal logging in Thailand) is strong. If you have a very strong enforcement agency, it is not so much your mandate (to address illegal logging of natural forests within the VPA). What is your mandate is the clarification and the production of a more conducive legal framework for smallholder participation (in the forest sector). This is a shift that Thailand now has taken. From a pure enforcement approach, they come to an approach to incentivize timber production, and through this, promote farmers to plant trees. (EFI FLEGT Facility representative, interview February 2019)

... it is not like we are the FAO, and therefore we are involved in cracking down on illegal gangs, that is Interpol, but we are two sides of the same coin. We support countries to develop their systems to demonstrate legality for improved access. So, we are promoting legal timber rather than stopping the illegal trade. (FAO representative, interview March 2019)

The Kingdom of Thailand is committed to realizing the SDGs (Sustainable Development Goals) as it pertains to achieving better conservation and restoration of forest resources, as well as encouraging individuals to grow economically viable trees and maximize the sustainable use of forest land...Our negotiations with the EU have enhanced forest law enforcement and forest governance, strengthened sustainable and legal forest management in Thailand. (Deputy Permanent Secretary of the MoNRE, speech for third VPA negotiation, September 2020).

It is good to understand the drivers of illegal logging. Firstly, people in rural areas do not have the resources or money to build houses, so it's easy to get timber from the forest. Second, some not-so-good people log illegally for money. On the other hand, there's a huge demand for timber, but the private sector mainly utilizes imported wood at a high financial cost. So, to prevent illegal logging, one must produce more legal timber domestically." (Private sector representative, February 2019).

We argue that all stakeholder groups may have readily accepted the depoliticization and rhetorical redescription of illegal logging because it served to open a narrative space for disparate actor groups to assert their political demands for reform under the common goal of "promoting the production and trade in legal timber" as opposed to the politically contentious term 'illegal logging'; i.e., the logic of equivalence. All interviewed private sector actors perceived the law to be overly stringent, creating illegalities by default as regulations were too complex and created impediments to business and profits. The private sector's demands focused on opening further economic opportunities in Thailand and internationally (Table 2). Their demands closely aligned with government demands, which included increased trade opportunities, increased forest cover, and improved forest sector standards (Table 2).

Government	Private Sector	CSO-FN
<ul style="list-style-type: none"> <li>• Introduce timber auditing standards</li> <li>• Increase forest cover in line with a 40% target under Thailand's National Forest Policy</li> <li>• Increase trade opportunities with the EU and the competitiveness of timber products in international markets</li> <li>• Improve Thai laws</li> <li>• Align Thailand to international principles</li> </ul>	<ul style="list-style-type: none"> <li>• Facilitate international timber trade.</li> <li>• Increase future commercial opportunities</li> <li>• Increase income from the same plot of land.</li> <li>• International legality recognition</li> <li>• Added value</li> <li>• More legally verified plantations</li> </ul>	<ul style="list-style-type: none"> <li>• Revert timber rights to smallholders and communities, create incentives and avenues for people to participate and generate income from forest resources.</li> <li>• Guarantee land tenure rights and rights for timber harvesting in all land categories equitably.</li> <li>• Develop a channel for communities and smallholders who have unclear and insecure tenure to harvest timber on their land legally.</li> <li>• Abolish or revise the laws and regulations that obstruct timber harvesting, inclusive of reforms that enabled the harvesting of planted (not naturally occurring) eaglewood (<i>Phialophora parasitica</i>) rosewood, teak, and yang (Article 7 of the 1941 Forest Act)</li> </ul>

Table 2: Summary of the actor groups' key demands for reform. Source: (RECOFTC, 2018b; TEFSO, 2015a)

Further, the rhetoric recasting illegal logging through the lens of promoting legal timber provided a discursive opening for the CSO-FN to reframe the unjust accusations of illegal timber smuggling leveled at local peoples by the RFD, and to declare the law (the 1941 Forest law and 1964 NRF Act) as an unjust obstruction to local peoples' rights to legal timber. Three members of the CSO-FN highlight this discursive opening provided:

In Thailand, before I participated in EU-FLEGT, I thought of illegal logging as the image of timber smuggling in the forest area by the government or local people. When I participated in FLEGT, the way I understand it has changed. It is about the process of getting timber lawfully. When we (CSO-FN) participate, this issue is very important in driving the VPA process. It is about reforming access to timber and rights and most importantly putting more value on Ethnic Minorities in society, giving them the chance to participate in natural resource management which belongs to everyone in the world. (Environmental and Civil Rights CSO, February 2019)

The main point is not that people are smuggling trees, but it is the injustice as the government has deprived them of their rights. That is the obstacle for timber trading because people have been deprived of their rights to timber by government officers. I discussed this issue with the EU from the very beginning...I think EU-FLEGT will bring justice to timber rights for people, not control deforestation. (Environmental and Civil Rights CSO, February 2019)

It seems like the declaration of the law arrived after people had been living there (in the state forest land) and labeled people as illegal, as if they illegally settled in the forest. In fact, they lived in the area before. That is the consequence that makes them part of the deforestation narrative, labeling them as timber smugglers... When local people can plant trees, they will be able to participate in FLEGT processes. It is something that local people have been asking for. In this, FLEGT will be useful for local people and groups of outsiders who are not rich and encourage them to participate in the timber management process. (Environmental and Civil Rights CSO, February 2019)

These quotes illustrate how CSOs, during multistakeholder negotiations, can strategically mobilize moments of rhetorical redescription and acts of depoliticization to challenge past narratives and, through doing so, assert their own political demands. Positing the law as an obstruction to timber rights enabled the CSO-FN to challenge past narratives of local peoples' involvement in timber smuggling, and demand reforms to tenure arrangements and timber rights for communities within NRFs (Table 2). The CSO-FN demands are closely related to Thailand's community forest movement (CFM), which has been advocating for rights for communities enclosed within state forest land since the 1980s. They have lobbied for land, resource, labor, citizenship, and human rights (Pye, 2005; Wittayapak & Baird, 2018). The CSO-FN found partial alignment with the private sector actors when challenging the government to reform 'outdated' forestry laws. In doing so, the coalition successfully drove reforms that abolished the nationwide restrictions on harvesting, teak, yang, and rosewood (Forest Law 1941; Article 7).

In summary, the aligned thread of rhetorical redescription amongst the actor groups, as presented in this section's quotes, suggests that differing actor groups may strategically adhere to depoliticized rhetoric and technical processes under a common 'positive' project goal (i.e., the logic of equivalence) if they perceive that doing so will advance their political demands. These findings are in alignment with previous studies (Cashore & Stone, 2012; Sotirov *et al.*, 2017) that highlighted how a strategic coalition of "bootleggers" (the private sector) and "Baptists" (NGOs) might develop in support of legality verification if it serves their self-interest.

#### *The logic of difference: tenure and timber rights*

Deconstructing the negation, adoption, or co-option of actors' demands during policy implementation can illuminate challenges or adherence to hegemonic norms and structures of forest governance taking place through VPA negotiations (i.e., the logic of difference). Here, we focus on the demands of the CSO-FN concerning land and timber harvesting rights. Although arguably central to timber legality processes, government, and private sector actors succeeded at an early stage of the VPA negotiations in 'structuring the terrain of argumentation' and constructing the boundaries of negotiations – practices of rendering technical – to exclude discussions regarding local people's tenure. According to a CSO-FN representative, government actors were "unable to see the bigger picture of land rights within the VPA process" (March 2019). More precisely, government and private sector actors were able to set the VPA agenda.

In 2014, a sub-working group began to work on the Legality Definition (LD) VPA Annex. The CSO-FN utilized the LD sub-working group as a platform to push for tenure rights on NRF land (TEFSO, 2014a, 2014b). However, in a 2015 LD meeting, a private sector actor dismissed discussions of land tenure reforms in the VPA sub-working group. They argued that a different platform should be established to reach an agreement between CSO-FN and the government on land tenure reforms (we discuss in the following paragraph how such

a policy had already been established) (TEFSO, 2015b). Shortly after, the FLEGT Ad-Hoc Working Group on LD put aside discussions on tenure reforms on public land within VPA negotiation processes. From the perspective of a private sector actor, as quoted below, although somewhat overstated, the CSO-FN's resoluteness to discuss land rights would have impeded the development of the LD annex and the VPA.

CSO-FN wants the government to give them free land, so they use this as a hostage during the beginning of negotiations. The CSO-FN said that we will always say no to the VPA if you do not give us free land. So how can this be a negotiation? It is a hostage. The CSO-FN does not listen, and they do not care, even about legality assurance. What they care about is if the government will give them the right to land ownership or not. (February 2019)

Such a narrowing of the terrain of negotiations is in line with Howarth's (2009) findings that if actor groups were to accept that the current project goal is to 'promote the growth in the domestic timber sector' as opposed to 'eliminating illegal logging', more 'radical demands' would immediately be ruled out.

The government had already begun to institute land reforms in parallel but separate from EU-FLEGT processes. The government established the *Kor Tor Chor* (KTC) communal land registration scheme in October 2014, which they ratified in 2019. Communities within National Reserved Forests Watershed Classifications Three to Five who had settled in the NRF before 2014 are eligible for a KTC certificate. Communities who settled after 2014 are not permitted to remain on state forest land. KTC leases are due to expire after 30 years, and the state retains the right to revoke KTC certificates if communities are found in breach of regulations. In interviews with communities who hold KTC certificates (in Watershed classes Three to Five), Wittayapak & Baird (2018) concluded that communities felt optimistic about the KTC scheme. However, the KTC application process is too complex for most, and communities remain temporary leaseholders of state land, vulnerable to potential changes to government policies (Giri, 2021). Further, there have been cases where households in the same village are not automatically included within KTC boundaries and thus were excluded from the communal title (Sapkota *et al.*, 2019; Wittayapak & Baird, 2018).

Communities wishing to apply for KTC in Watersheds One & Two (upland areas) face more severe restrictions. Monoculture farming is not permitted and is to be replaced with agroforestry systems. Communities are also expected to reforest and protect 20% of the communal land if they had settled on NRF land before 1998 and 100% if settled between 1998 to 2014, compared to 2 trees per 0.16 hectares (1 rai) (settled before 1998) and 50% (settled between 1998 to 2014) in classes Three to Five. Further, Ethnic Minority communities practicing rotational agriculture could be forced to alter their traditional livelihood practices under KTC (Thai PBS, 2019).

The CSO-FN continued to utilize EU-FLEGT platforms to advocate for further tenure reforms and express their concerns regarding the KTC scheme. However, since key government and private sector actors had succeeded in suppressing discussions on tenure reforms within VPA negotiations from an early stage, there remained few tangible pathways to address land tenure concerns in this forum. We posit that the government strategically ensured that land reform processes were only discussed within platforms it completely controlled. This enabled government actors to cede to the CFM's demands only to the extent that they did not undermine dominant forest governance structures and left administrative processes, management practices, and land, under government control.

Despite the lack of progress in pursuing tenure reforms, although the CSO-FN felt sidelined, they deemed it beneficial to continue involvement in VPA negotiations to campaign for timber harvesting rights for smallholders within public land, including agricultural land (i.e., SPK certificate holders) and NRFs (i.e., KTC certificate holders and those without). According to KTC policy, lowland communities (Watersheds Three to Five settled before 2014) who hold a KTC certificate can establish commercial timber plots (under Section 16 of the NRF Act). However, a pilot study in 2016 found that the current timber legality processes on KTC land

were complex and lacked clarity (RECOFTC, 2018b). For communities settled in the NRF before 1998, there are no clear guidelines on timber harvesting; however, logging is permitted through KTC regulations. For communities settled in the NRF after 1998 and before 2014, they are required to establish a timber plot as a community-based enterprise or an official group; again, exact legal procedures have yet to be established.

For communities in upland areas (Watersheds One and Two), timber harvesting remains illegal, even if community members plant timber trees on degraded or cultivated land. The National Legislative Assembly also passed the Community Forestry (CF) Act in 2019. The CF Act states that communities can only manage forested land for forest rehabilitation and subsistence purposes, including harvesting timber, but not for commercial use. The CSO-FN lobbied to reform timber legality processes on KTC and CF land. In a meeting with the EU delegates held prior to the Second VPA negotiation in July 2018, the CSO-FN brought up "major concerns" regarding the complexities of timber harvesting processes on KTC and CF land, pointing out that the pilot studies showed that it would be almost impossible to carry out harvesting operations.

The CSO-FN also lobbied for the inclusion of KTC certificates in the timber legality framework of the VPA. In January 2018, the LD sub-committee agreed to include KTC in the LD annex (TEFSO, 2018). However, neither the Draft LD Annex (August 2020) nor the Draft SCC Annex (March 2021) contained explicit references to the KTC certificate. In other words, the VPA coalition, thus far, has set aside the sub-committee's decision.

At the time of our research, the only concrete legal mechanism for communities with KTC certificates (Watersheds Three to Five before 2014) to plant trees and harvest timber was through obtaining a Por Sor 23 certificate (under Section 16 of the 1964 NRF Act). However, this process is labyrinthine and centrally administered. A Por Sor 23 certificate enables smallholders to lease NRF land for five years (extendable up to 30 years) for livelihood, agriculture, and livestock purposes. According to the Draft LD Annex (August 2020), Por Sor 23 certificates are issued by the RFD Director General (DG). RFD's approval is again required for establishing timber plots within Por Sor 23 (plantations under the Commercial Forest Plantation Act are not permitted) (Durst, 2020). Further, a harvesting permit must be issued by either a Provincial Governor (for unrestricted species), the RFD DG (for restricted species category A), or Minister of Natural Resources and Environment (MNRE) in Bangkok (for restricted species category B), followed by payment of royalties to an RFD office (for restricted species) (Draft SCC Annex March 2021; Draft LD Annex August 2020).

Essentially timber legality processes for local people within NRFs to date (April 2021) remain unaddressed through EU-FLEGT's interventions and processes. Moreover, the current complexity and centralization of timber legality processes on KTC land may make it extremely difficult for smallholders to establish and profit from timber growing on it. However, as these are ongoing processes, when finalized, the draft LD and SCC annexes may provide additional clarity for the marginalized smallholders and Ethnic Minority farmers wishing to negotiate rights to plant and eventually harvest trees on NRF land. Further, the CSO-FN will continue negotiating with the government through VPA negotiation and implementation processes and other domestic platforms for future reforms.

VPA negotiations advanced reforms for smallholders' timber access on other forms of public land (i.e., not NRFs), which hold the potential of opening the timber sector to new actors. Nevertheless, difficulties may remain for smallholders to comply with Thailand's timber legality framework. In contrast, private landholders have the least regulatory barriers to timber access of all the groups (Gritten *et al.*, 2015). Further, VPA negotiations led to new regulations, which may increase the interactions between the RFD with private landholders and smallholders, possibly creating new pathways for bribery, illegalities, and corruption in the forest sector (Fishman & Obidzinski, 2015; Sundström, 2016). Table 3 summarizes timber harvesting rights for different social actors.

Land type	Timber harvesting legal requirements for naturally grown or planted trees	Commercial plantation establishment legal requirements
<b>National Reserved Forests – Government departments and state-owned organizations</b>	<ul style="list-style-type: none"> <li>• Administrative agency or state organization – When rough logs must be logged and taken out of the permitted area, one must inform a provincial governor. A provincial governor checks that the area is consistent with the permitted area with a project or a land-use plan. An RFD officer further checks the area.</li> <li>• FIO – Notification on informing FIO to conduct logging with an inventory of selected trees to harvest with Provincial governor or RFD DG, payment to RFD.</li> </ul>	Applicable under the National Forest Reserves Act 1964, the Forest Plantation Act 1992, the Forest Plantation Act (No. 2) 2015 (permits plantations of 58 timber species) – registered at the Provincial level. RFD or Provincial Office of Natural Resources and Environment (PONRE) officer issues a letter acknowledging permissions for timber harvesting from registered plantations (Sor Por 13)
<b>National Reserved Forests – Local people in Watershed Classes 3-5 before 2014</b>	<ul style="list-style-type: none"> <li>• Por Sor 23 permit required. (Potentially need a KTC or STK certificate; however, this has not been specified)</li> <li>• Harvesting permits issued by Provincial Governor (for unrestricted species), the RFD DG (for restricted species category A), or MoNRE in Bangkok (for restricted species category B) – However, there is no clear guidance on harvesting.</li> </ul>	<ul style="list-style-type: none"> <li>• Settled in the NRF before 1998: Possible to establish a plantation. However, there are clear regulatory guidelines.</li> <li>• Settled in the NRF between 1998-2014 Technically, possible to establish a timber plot if registered as a community-based enterprise or official group (not a plantation under the Plantation Act) under Section 16 National Forest Reserves Act 1964 – However, there are clear regulatory guidelines.</li> </ul>
<b>National Reserved Forests – Local people in Watershed Classes 1 and 2</b>	<ul style="list-style-type: none"> <li>• Logging is not permitted under the Watershed classification system and Forest Act</li> </ul>	<ul style="list-style-type: none"> <li>• Can not establish a plantation</li> </ul>
<b>Public land certificates (except NRFs and protected areas) (individuals or groups)</b>	<ul style="list-style-type: none"> <li>• SPK certificate or alternative land rights certificates are required.</li> <li>• For restricted species: harvesting permits issued by the RFD DG (for restricted species category A) or MoNRE in Bangkok (for restricted species category B)</li> <li>• For unrestricted species, harvesting permits are voluntary; however, one must obtain a permit to comply with transportation regulations: <ul style="list-style-type: none"> <li>○ Option 1: Local RFD or Local Bureau of Forestry Resources Management (LBFRM) officer can check the land and timber, and upon verification, the provincial governor will issue a transportation permit.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Applicable under the National Forest Reserves Act 1964, the Forest Plantation Act 1992, the Forest Plantation Act (No. 2) 2015 – register with Provincial. RFD or PONRE officer issues a letter acknowledging permissions for timber harvesting from registered plantations (Sor Por 13)</li> </ul>



	<ul style="list-style-type: none"> <li>○ Option 2: Submit a request for timber certification to the LBFRM, local forestry center, or the local forest protection and development unit. RFD officer verifies the request then the RFD DG issues a timber certificate.</li> <li>○ Option 3: self-certify timber</li> </ul>	
<b>Private landholders</b>	<p>For unrestricted species, harvesting permits are voluntary; however, obtaining one will ensure compliance with transportation regulations, therefore, obtaining legal verification if required.</p> <ul style="list-style-type: none"> <li>○ Option 1: Submit a request for timber certification to the LBFRM, local forestry center, or the local forest protection and development unit. RFD officer verifies the request then the RFD DG issues a timber certificate.</li> <li>○ Option 2: Self-certify timber.</li> </ul>	<ul style="list-style-type: none"> <li>• Applicable under the National Forest Reserves Act 1964, the Forest Plantation Act 1992, the Forest Plantation Act (No. 2) 2015 – register with Provincial Governor. RFD or PONRE officer issues a letter acknowledging permissions for timber harvesting from registered plantations (Sor Por 13)</li> </ul>

Table 3: Timber harvesting rights and processes as outlined in the Thai VPA Legality Definition Annex (Draft August 2020) and Supply Chain Control Annex (Draft March 2021).

### 5. Discussion: political logics and anti-politics

The examination of the logic of equivalence in Thai EU-FLEGT VPA negotiations finds only partial alignment with scholars who have argued that EU-FLEGT's multistakeholder processes produced new coalitions and reshaped national forest discourse (Beeko & Arts, 2010; Leipold *et al.*, 2016; Overdevest & Zeitlin, 2014). We show how, through the act of rhetorical redescription, the VPA process depoliticized illegal timber smuggling, closing down the debate over what should be addressed through the Thai EU-FLEGT VPA. This aided in opening space for the disparate actor groups to find moments of equivalence away from a discursive narrative that scapegoated local people for illegal timber smuggling and implicated government bureaucracies. At the same time, the discursive turn away from 'illegal logging' towards 'promoting legal timber' provided the CSO-FN opportunity to engage with government actors and to advocate for local peoples' timber rights, which was unprecedented.

However, by examining the logics of equivalence and difference, our findings show less alignment with more favorable assessments of EU-FLEGT's multistakeholder processes that argued negotiations changed power relations "in favour of so-called fringe actors" (Beeko & Arts, 2010, p. 221), and "radically altered the negotiating and policy-making landscape" (Bollen & Saskia, 2013, p. 15). We found that through the narrowed rhetoric of 'promoting legal timber', government actors, and to some extent private sector actors, successfully utilized the VPA as a political tool to structure the terrain of negotiation, determining which demands of the CSO-FN to cede to and which to negate. This rendered technical and severely impeded the CSO-FN's demands for tenure reforms and timber rights. Consequently, the CSO-FN were disciplined in the Foucauldian sense within the VPA framework, constrained from challenging Thailand's dominant forest governance structures. Similarly Setyowati & McDermott (2017) illustrated how corruption and forest tenure were largely structured out of Indonesia's TLAS (SVLK).

Essentially, we argue that VPA processes played a role in rendering illegal logging and tenure rights a technical issue, while providing the façade of a level playing field for negotiations in which all actors' demands 'have the possibility of being attained.' Similarly, Maryudi *et al.* (2020) show the VPA's supposedly level playing field to be a façade, since stakeholder engagement in Indonesian and Ghanaian negotiations favored certain NGOs and larger operators over small and medium operators. Unless drastic reforms for timber rights occur in Thailand, local people enclosed within state forest land will continue to face barriers to participating

in the forest sector (Larson and Ribot, 2007; Gritten *et al.*, 2015). There are possibilities for the CSO-FN to lobby for further reform of tenure and timber rights and access, during the ongoing negotiations and implementation of the VPA and other policy platforms. At the same time, there is the risk that the government will not be open to discussing further reforms once the VPA negotiation process is finalized.

Fundamentally, our findings demonstrate that the Thai VPA negotiations largely simulated the uneven and inequitable historical construction of forest governance which favored government and private sector actors, and sustained regulatory impediments to redressing local peoples' land and timber rights (Laungaramsri, 2000; Peluso & Vandergeest, 2001; Vandergeest, 1996b). Thai VPA negotiations prioritized reform of timber legality verification systems, which may have limited impacts on illegal logging in natural forests (EU, 2020), above resource-dependent peoples' rights to land and resources. This confirms Myers *et al.* (2020) and Rutt *et al.*'s (2018) findings that the central logic of EU-FLEGT is market-driven. Finally, we confirm Rutt *et al.*'s conclusion that an alternative and novel approach to forest governance is required, and which has not yet been delivered by trade- and market-centered international or bilateral initiatives such as EU-FLEGT (2018, p. 271). Such approaches need to center on addressing the embedded inequalities inherited from the colonial era. A true leveling of the playing field is required, that would open up a space for communities to self-govern their customary territory, protected by robust land tenure arrangements. The European Union is well placed to use its platform and clout in the service of human rights and tenure reform in Thailand.

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