

**MEMORANDUM
ON
THE FOREST LAW ENFORCEMENT GOVERNANCE AND TRADE (FLEGT)
VOLUNTARY PARTNERSHIP AGREEMENT (VPA)
MULTISTAKEHOLDER CONSULTATION MEETINGS
ORGANISED BY THE MINISTRY OF PLANTATION INDUSTRIES AND
COMMODITIES**

SEPTEMBER 28, 2007

A submission from Jaringan Orang Asal dan NGO Tentang Isu Hutan/Network of Indigenous Peoples and Non-Governmental Organisations on Forest Issues (JOANGOHutan) and Jaringan Orang Asal SeMalaysia/The Indigenous Peoples' Network of Malaysia, (JOAS) for:

**The Ministry of Plantation Industries and Commodities
No. 15, Aras 6-13
Persiaran Perdana
Presint 2
Pusat Pentadbiran Kerajaan Persekutuan
62654 Putrajaya.**

JOANGOHutan consists of the following organisations:

Borneo Resources Institute of Malaysia (BRIMAS), Sarawak
Center for Orang Asli Concerns (COAC), Selangor
Indigenous Peoples Development Centre (IPDC), Sarawak
Institute for Development of Alternative Living (IDEAL), Sarawak
Keruan Association (Penan), Sarawak
Partners of Community Organisations (PACOS Trust), Sabah
Peninsular Malaysia Orang Asli Association (POASM)
SACCESS, Sarawak
Sahabat Alam Malaysia (Friends of the Earth Malaysia)
Save Our Sungai Selangor (SOS Selangor), Selangor
Sinui Pai Nanek Sngik (SPNS/'New Life One Heart'), Perak-based Orang Asli
community group

JOAS comprises 33 *Orang Asal* communities and community organisations or networks.

I BACKGROUND

We, the signatories to the memorandum would like to express our disappointment to the Ministry of Plantation Industries and Commodities on the consultation process of the Forest Law Enforcement, Governance and Trade (FLEGT) – Voluntary Partnership Agreement (VPA) negotiations currently taking place between Malaysia and the European Union on grounds which will be further elaborated below.

This document is produced in response to the recent Multi-Stakeholder Consultation Meeting organised by the Ministry in Kota Kinabalu on June 22, 2007 in particular, and other briefings conducted since 2006 generally.

It is submitted in the hope that the proper and effective structure, design and terms of the multi-stakeholder consultative process of the VPA which can garner the wide support of various stakeholder groups can indeed be developed and that the meaningful debates and deliberations on all core issues which have been well-expressed in the public domain on the problems surrounding timber extraction and trade activities in the country since the last 30 years can at last be integrated into the process.

As such, we would like to draw the kind attention of all the concerned parties to all the issues raised in this document.

II CONCERNS

I. Unclear meeting structure, direction and procedures

First and foremost, the consultation process related to the VPA, which commenced in 2006, has to date utterly failed to adequately inform invited participants, especially those in the civil society and community-based groups, on the content, objectives and equally important, directions of the several meetings that so far have taken place, prior to the meetings. Prior knowledge on the structure of the meetings is important to allow the various stakeholders to provide relevant advice to the responsible parties on the possible weaknesses and other flaws of the meetings as well as to prepare themselves for the meetings.

Secondly, since the beginning of the multi-stakeholder consultative FLEGT briefings in Kuala Lumpur in 2006, there has been an absence of meaningful discussions and debates within the process itself. All the meetings leading to the Kota Kinabalu process were very top-down in their approach and did not open any platform for genuine discussions to take place between all stakeholders.

All the past meetings were limited to short briefings on the progress of the VPA negotiations and a superficial discussion whereby participants were invited to express their concerns, without them being informed on whether and how any serious concrete actions will be undertaken to discuss and address those concerns in the future. In addition, civil society groups attending the meeting

were never sent any minutes from such meetings and will thus not be in the position to know how the content of the meetings had been recorded and reported.

This approach was also regrettably continued at Kota Kinabalu.

It is thus only appropriate for the Malaysian Government to institute a process whereby genuine consultation can first be designed so as to enable a disciplined, inclusive and meaningful multi-stakeholder process for the VPA to be built, as can be seen taking place in Indonesia. This is to provide a strong framework for an effective consultation structure to be developed. Tied to this process is also the need to hold similar preparatory processes in which all the relevant issues related to the VPA are determined, recognised and selected.

JOANGO Hutan and JOAS have already outlined the *Key Principles for the Malaysia-EU FLEGT Voluntary Partnership Agreement* in which they have described in detail the fundamentals of an effective multi-stakeholder process which must engage multi-stakeholder groups with openness and transparency where the free flow of information is possible. In addition JOANGO Hutan has also made several recommendations on the ways forward for a proper consultation process in its report *Forest Governance in Malaysia, an NGO perspective*, published in September 2006.

We believe the way in which the procedures and agenda of the Kota Kinabalu meeting were executed are in total conflict with the points that have been laid out by the two documents and with many established norms of multi-stakeholder processes on issues of great political importance.

JOANGO Hutan and JOAS members attending the Kota Kinabalu meeting had little understanding of the finality of the process prior to the meeting and were highly disappointed to see the lax manner in which the meeting honoured universal 'multi-stakeholder consultation' principles. As a matter of fact it was only towards the second half of the meeting that the representatives became clear that all documents presented during the plenary would indeed be finalised versions produced by the meeting.

The idea of utilising the presentation of the working documents during the plenary as an indication of their finalisation which in turn should be construed as evidence of some form of consensus being reached at the workshop session is extremely erroneous. The strong disagreement to this process was certainly voiced by a member of Workshop 1 who objected to the manner in which the plenary session was used to confirm consensus building and reaching when outstanding disputes and disagreements were in fact had not been properly addressed.

The very intent of finalising important documents feeding into the VPA process during the meeting was in itself unachievable and unrealistic, given the many issues which have been plaguing the Malaysian timber industry and the disorganised manner in which the workshops were convened in a span of no more than three hours. If this intent had been clearly communicated to all the

groups involved, we would have objected to them right in the beginning and would have recommended more effective approaches as alternative.

Compounding the matter is certainly the inability of the meeting to adequately respond to concerns voiced during the plenary. We were promised that the meeting would note on such responses, but to this day we have yet to receive any related documents to verify this. Nevertheless even if this were case, mere notations of such concerns are not an adequate method to address difficult and controversial issues which have long been associated with timber extraction and trade activities in the country. This exercise of merely footnoting valid concerns of civil society groups in the consultation meeting, if it indeed was done, is not an action of addressing and resolving those concerns.

We thus felt that the presence of multi-stakeholder groups had been used to merely rubber stamp the process rather than seeking their meaningful participation and contribution.

2. Irrational scheduling and agenda

The meeting was held for only one day. In the morning briefings were conducted to report on the progress of the VPA negotiations and the documents which would be further discussed in three separate workshops i.e. those on consultation framework, and downstream and upstream definition of legality.

We find such a planning as highly unacceptable. In truth the exercise of providing inputs and comments for such elaborate documents should have been approached more rationally in the manner in which other similar processes take place at national and international levels.

All the working documents should have been released much earlier to all interested and concerned parties within a reasonable time frame for comments and other inputs to be collected, before a more structured meeting is held to discuss all the outstanding issues recorded in the feedback process. In this way all groups would have had more time to organise their arguments more systematically and comprehensively. This would have also ensured that formalised recognition is actually given to all the comments raised during the feedback process prior to the meeting and adequate time is similarly established to deliberate on them. Such a structured public input feedback process is indeed not alien to the country's many legislative processes, the Environmental Impact Assessment (EIA) is clearly a process which has utilised such an approach to name only one.

We thus find it extremely frustrating that on top of being expected to provide quick inputs into the documents, consensus was also expected in less than 3 hours of discussions. The results stemming from such a consultation process is highly misleading, artificial and meaningless.

3. Recording, reporting and meeting documentation

To date, civil society groups have not received any reports or records of the meeting, although this issue of accurate reporting of meeting minutes and other related meeting documentations was raised by us during the plenary session. The consultation process should be committed to respond to public inputs as well as the production of public outputs.

It is very unclear to us, as with other previous meetings, where, when and how our concerns can be fully acknowledged and addressed.

4. Definition of legality

A key component of the VPA, *the definition of legality*, should be developed and debated in a participatory, inclusive and more organised multi-stakeholder consultation process. It is our opinion that the recent meeting is not the correct place to discuss, let alone finalise legality issues.

We found it indeed shocking that the meeting agenda actually sought to conclude discussions on legality in a span of three hours, without any regard to develop clear procedures, processes and schedules to discuss such an important issue.

We also find it inappropriate that discussions on the multi-stakeholder process and the definition of legality were happening side by side. This not only broke the resources of the civil society groups attending the meeting, which were already restrained by time, but in effect have ironically exempted consultations on a key component of the VPA i.e. the *Definition of Legality* from being discussed within the very terms and conditions the multi-stakeholder process the meeting was trying to define.

Legality discussions should in fact be accorded its own process but a consensus must first be reached on the terms, conditions and structure of the discussions and debates as well as their schedules, targets and all other related matters.

5. Core issues not adequately addressed

The following are some of the timber extraction and trade and VPA-related issues which in our opinion have not been adequately responded to by the meeting:

- Violations of Native Customary Rights (NCR) of indigenous communities by timber concessions and the extent of the NCR itself. Such issues are closely tied to the *Definition of Legality* and therefore must be adequately addressed within the VPA framework and not be relegated to internal and isolated discussions outside the framework.
- The non-transparent manner in which licences for timber concessions are granted in the country and the need for the VPA to ensure that corrupt and other unlawful practices related to this process will not be

commonplace in the country.

- The inaccessibility of much of timber and forestry-related information in the country.
- The position of the Malaysian Government on the artificial separation between legality and sustainability concepts in the VPA. In our view this will not only defeat the purpose of the VPA process but is also in conflict with the spirit of the EU FLEGT Action Plan which while acknowledging that the VPA only deals with the question of the legality, notes that the EU's wider objective is to encourage sustainable forest management, going as far as intending to encourage a review of the partner country's legal framework should its existing legislation is unable to ensure sustainability.
- The position of the Malaysian Government on the artificial separation between legality and workers' rights as well as social issues. We find such objections as ironic since safeguarding forestry workers' rights and protecting their welfare is inevitable in ensuring effective enforcement of all forestry laws and regulations.

With this long list of issues which we need to address in ensuring the meaningful implementation of the VPA between the EU and Malaysia, the manner in which the meeting was convened has totally ensured that they will not be debated on and resolved adequately.

6. Brussels commitments

We note that in the last round of negotiations in Brussels that took place in April 2007, among the commitments pledged by the meeting were the following:

- that further work was needed in developing a legality definition which would address all issues linked to the FLEGT process
- on the need to develop a procedure for stakeholder consultations with broad support amongst the parties involved prior to proceeding with subsequent consultations on the VPA. Malaysia agreed to discuss the characteristics of such a consultative process with relevant stakeholders

We find that both of the commitments have not been fully honoured by the concerned multi-stakeholder consultation meeting.

The manner in which issue of the legality definition and the stakeholder consultation procedures was processed by the meeting did not show in any way the demonstrable evidence of an acceptable level of commitment on the part of the Malaysian Government to develop and establish strong definitions and procedures which can gain the wide support of the Malaysian civil society groups. What took place in Kota Kinabalu did not make good on the commitment of 'further work'.

It is thus our view that the entire process to honour the two commitments should have never been rushed through and further work to honour them should not be seen as an inconvenience. The entire meeting however seemed to be designed to rush out a consensus but without having the ability to receive, digest and address all outstanding issues in a way that a genuine consensus can be obtained.

III RECOMMENDATIONS

We find it regretful that to date the Malaysian VPA process has been a great disappointment to us. The Malaysian Government has thus far clearly failed to garner the support of all the signatories of this document with regards to the manner in which it handles the VPA consultation process and the various core issues surrounding timber extraction and trade activities in this country.

We seriously note that some positive progress has indeed been made in the FLEGT-VPA consultative process in countries more economically challenged than Malaysia, where it has begun to bridge the gap amongst various stakeholders in the respective countries. Indonesia in fact has gone one step further in developing a strong definition of legality within a widely supported consultative process. The direction that the Government of Malaysia has chosen to embark on in this matter is thus highly unsatisfactory and unacceptable, even on comparative terms.

To this effect, it has also failed to address the concerns outlined by the documents *Key Principles* and *Forest Governance in Malaysia – an NGO perspective*.

We thus call the Malaysian Government to:

- seriously look into the grievances articulated by the this memorandum and the two aforementioned documents as well as all the other available resources which are in the public domain be they from the civil society groups, community-based groups, the academia, the legal practice and any other research works and concerned groups to fully review the manner in which it has approached the multi-stakeholder consultation process.
- seek to establish a genuine dialogue with such groups and parties in order to re-commence a genuine participatory and inclusive multi-stakeholder process which has the capacity to address all the concerns which we have raised and the ability to ensure that they are reflected in the VPA outcome.
- seriously look at some commendable outcome in other countries involved in the VPA process with the EU like Indonesia, Ghana and Liberia in relation to bridging the gap amongst various multi-stakeholder groups and building an acceptable multi-stakeholder process which can positively and meaningfully contribute to the VPA development and

outcome.

- form a multi-stakeholder steering committee to set the technical planning, direction and agenda of all the series of consultation processes. The well-balanced composition of such steering or technical working groups within the consultative framework is key to ensure that all activities they undertake will start on a fair footing.

IV CONCLUSION

The success of the VPA process between the EU and Malaysia will only take place if the Malaysian Government is willing to acknowledge the problems with timber extraction and trade activities in this country, which are inherently in conflict with the sustainable and equitable management of forests and the fight to root out illegal logging. Further, it must also be willing to institute an effective and meaningful multi-stakeholder consultation process which receives wide support amongst the stakeholders, including civil society and community-based groups.

The signatories to this memorandum will find it difficult to continue giving its undivided support to the process if the present management and structure of the VPA multi-stakeholder consultation process continues its existing approach in the future.