
Counter-brief

LOGGINGOFF

A civil society counter-brief on the Republic of Ghana-EU VPA

June 2010



The roots of a Denya tree that was felled during a storm in Western Ghana. It will have been roughly 61 metres tall, and was part of an art exhibition by Angela Palmer displaying roots taken from commercially logged forests in Ghana. The logs are intended as "ambassadors" to highlight the depletion of global resources.

p2 Illegal logging in Ghana - a symptom of governance failures in the forestry sector

p3 Multi-stakeholder processes in Ghana's VPA negotiations

p4 Box 1: What forest rights exist in Ghana?

p4 Box 2: Key facts about the Ghana-EU VPA

p5 The VPA in detail

p6 How the VPA deals with the domestic market

p7 The governance reform agenda offered by the VPA

p7 The challenges ahead: implementation of the Agreement

SUMMARY

On 3 September 2008, Ghana and the European Union (EU) initialled¹ a Voluntary Partnership Agreement (VPA). The VPA is a trade agreement between Ghana and EU that seeks to regulate the trade in timber between the two. It also aims to promote good governance in the forestry sector and combat illegal logging and associated trades. It will achieve this by reforming the policy and legal framework by which the forest resource is managed — including promoting the rights of communities. The Agreement was ratified by both Ghana and the EU in June and November 2009, respectively.

This briefing provides civil society views on the Agreement and its implementation from both Ghana and the EU. It begins by identifying the governance failures in Ghana's forestry sector and showing how the VPA intends to provide a tool for change. It concludes that successful implementation is crucial for the credibility of the VPA process in Ghana, and the EU Forest Law Enforcement, Governance and Trade (FLEGT) process in general. The honeymoon is over; we must now gear up for the real struggle to "move from print to practice". We strongly recommend that implementation efforts are focused not only the technical aspects of the Agreement but, more importantly, on wider reform of the whole sector.

ILLEGAL LOGGING IN GHANA — A SYMPTOM OF GOVERNANCE FAILURES IN THE FORESTRY SECTOR

Ghana's forests are found in the southern one third of the country, covering 8.2 million hectares, and forests play an important role in the economy of Ghana. The industry is a significant contributor to Gross Domestic Product (GDP) and to the foreign-exchange earnings of the country. Timber from natural forests accounted for almost 85 per cent of Round Wood Exports (RWE) during 2009 while the remaining 15 per cent was accounted for by teak.² Two thirds of the timber from natural forests was exported to other countries in Africa. A further 20 per cent was exported to the EU. The volume of RWE exported to the EU fell by two thirds between 2000 and 2009, but despite this, the EU remains a major trading partner for Ghana's timber industry. Due to its significant contribution to the formal economy and support for rural livelihoods, within the forestry sector different stakeholders and users compete strongly for forest resources. This has led to unsustainable harvesting of timber resources, deforestation and declining living standards of rural forest communities.

Illegal logging is commonly identified as the key problem in Ghana's forestry sector, but in fact this is only a symptom of the real problem: governance failures. For many years, communities who own and use forest resources for their livelihoods have been excluded from decision-making about how they are used. Forests are used by local communities as a source of food, medicines, and have cultural and even spiritual value for them. The environmental and ecological benefits of forests, in preserving watersheds and valuable flora and fauna species, cannot be overstated. Many farming activities are also supported by forest ecosystems, for example cocoa farming, which thrives in the forest humidity. Forests, therefore, are crucial in the lives of rural communities (about two-thirds of the total population of 23 million).

'Forest governance' refers to all the decision-making processes that affect how forests are used: who is empowered to make the decisions; in whose interest these decisions are made; and at whose expense.³ Currently, the State makes all decisions regarding forest utilisation without recourse to the resource owners (forest-owning communities). The current legal and policy framework therefore alienates forest-owning communities from key decision-making processes in the management and use of forest resources, with predictable consequences: benefits derived from the forest are not equally shared among the owners; there is unequal access to the forest's resources; and inadequate participation of communities in policy formulation. Communities often have no rights to commercially exploit forest resources, and therefore rarely benefit. Communities are even prevented from non-destructive access to forest resources. Community tenure rights are not enshrined in the constitution.

One of the main motivations, therefore, for Ghana to enter the VPA, was the guarantee of reforms that would clarify and promote the rights of communities to use and benefit from forests. This would also restructure the basic relationship between the State, industry and communities, thereby contributing to the sustainable management of forest resources and helping to fight illegal logging.

Good forest governance has five key principles of accountability, transparency, participation, coordination and capacity building. Importantly, the VPA seeks to deliver all these five principles by:

- facilitating and promoting the participation of civil society actors and by building their capacity to engage;
- increasing transparency in the forestry sector through providing open debate and by improving accountability;
- coordinating the efforts of different stakeholders.

MULTI-STAKEHOLDER PROCESSES IN GHANA'S VPA NEGOTIATIONS

Ghana's VPA negotiation process began with a meeting of forestry sector stakeholders and the EU in May 2005, in Accra. Initially, the VPA Steering Committee established by the government excluded the participation of civil society. It was only after protests by civil society actors that the government invited civil society to participate in the negotiations. In December 2006, the Government of Ghana agreed with the EU to start formal negotiations for a VPA. Forest Watch Ghana⁴ was then invited by the Forestry Commission (FC) to participate in the Steering Committee. The process of formalisation was achieved through the publication of an EU/Ghana joint statement.⁵ Even then, there were still concerns as only 24-hour prior notice was given to participate in meetings.

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Official negotiations between the EU FLEGT delegation and the Government of Ghana began with a meeting in Accra in March 2007, at which civil society participants were able to share their positions on governance reform, community rights and participation. Due to the diverse nature of civil society, a VPA Contact Group (CG) was created, facilitated and hosted by Forest Watch Ghana. This platform was made up of the wider civil society community, including timber traders and their unions; traditional authorities; forest forums; and representatives of Forest Watch Ghana. Two elected representatives of the CG served formally on the Steering Committee. These two representatives were also unofficially part of the Government of Ghana Negotiating Team, providing technical support.

Other than the CG, there were four working groups and a Policy Committee. The working groups dealt with the Legality Definition/Standards; Verification and Licensing Scheme; Domestic Market Regulation; and Timber Industry Restructuring. The task of the Policy Committee was to synthesise the work of these groups. The CG had broad informal access to all processes and decisions. The CG was represented in all four working groups and chaired two of them. It was also represented on the Policy Committee.

These civil society processes were supported by European NGOs (FERN and Global Witness), who provided funds and technical capacity. They also provided national stakeholders and communities with information about the FLEGT/VPA process. The International Union for the Conservation of Nature (IUCN), with the United Nations Food and Agriculture Organisation (FAO), also funded community meetings that fed into the process.

The FLEGT/VPA process allowed substantive stakeholder engagement on fundamental sector-governance issues, and a commitment to more participatory approaches, even though these were not captured in the final Agreement.

Box 1. What forest rights exist in Ghana?

Naturally regenerated trees are nominally owned by the traditional authority or chieftaincy (known in Ghana as the “Stool” or “Skin”). Management and commercial rights to timber species belong to the State in both reserves (protected) and off-reserve areas (areas outside Forest Reserves, National Parks and other lands gazetted for protection). The landowner or land user neither owns, nor has economic rights to timber trees naturally occurring on their land.

In off-reserve areas, a **planted** tree belongs to the person or people who planted it, and this gives clarity to economic rights over planted trees. However in the event of felling permits being granted to a timber company, farmers also have a right to participate in an inspection prior to logging and to veto felling for reasons that include, but are not limited to, damage to crops or soil conservation/erosion concerns (Timber Resources Management Act, (Amendment), 2002). Communities have rights to non-economic exploitation of Non-Timber Forest Products (NTFPs) including canes, rattans, mushroom, snails, etc but only at the arbitrary administrative authorisation of the District Manager of Forest Services Division of the Forestry Commission (FC).

Economic rights to forest resources: in the case of timber harvesting on Stool lands (which comprise roughly two thirds of land in Ghana), the FC takes 50 per cent of stumpage fees for the management of this resource, while the remaining revenue is divided according to a constitutionally-agreed formula between the following: the Office of the Administrator of Stool Lands (OASL) - 5 per cent; the Stool - 11 per cent; the Traditional Authority - 9 per cent; and the District Assembly - 25 per cent.

Box 2. Key facts about the Ghana-EU VPA

The objective of the Ghana-EU VPA is to provide:

- a legal framework;
- a wood-tracking system;
- government and independent monitoring of the Legality Assurance System (LAS). The LAS aims to ensure that all timber products imported into the EU from Ghana have been legally sourced, and in doing so promote the trade in legally-sourced timber products;
- a basis for dialogue and cooperation between Ghana and the EU, to further enhance forest-law enforcement and governance.

It is important to note that if the VPA is to serve its two-tier purpose of delivering legal timber and enhancing good forest governance, multi-stakeholder processes are essential. Hence all actors engaged in the negotiation process need to be consulted on, consent to, and actively participate in, the implementation of the LAS and the policy and legislative reforms.

The VPA envisages that new legislation will be introduced to: clarify existing inadequacies (in particular concerning the rights of farmers and different stakeholder groups); and respond to emerging issues of good governance within the sector. By agreeing the VPA, Ghana has made a commitment to carry out legal and policy reforms in the spirit of good forest governance. It is expected that such legal reforms could be completed in the next five years.

The VPA does not only cover timber exports into the EU, the LAS will also cover timber and timber products in circulation in Ghana, destined to be sold in *either* the domestic *or* international markets. The timber bound for domestic markets will, however, not have a FLEGT licence. Timber of non-Ghanaian origin in transit through Ghana will also not receive a FLEGT licence.

The VPA process provides a wide range of information that the public will have access to. To ensure credibility, every six months the whole system will undergo formal independent monitoring to ascertain whether the VPA is delivering its objectives of providing legal timber and improving governance. These periodic surveys are expected to identify weaknesses and recommend systemic reforms in the LAS. This independent monitoring is expected, in the long term, to be carried out by a local civil society actor or a consortium. However, civil society organisations will carry out regular and routine checks on the performance of the whole VPA process at the local and national levels. This is expected to identify general governance weaknesses of the VPA and bring them to the attention of the government, EU and/or the Independent Monitor (IM).

Civil society is expected to be formally involved in the implementation and monitoring of the VPA. It is expected that a VPA Multi-Stakeholder Implementation Committee will be constituted, to provide oversight for VPA implementation. This Committee will be chaired by the Deputy Minister of the Ministry of Lands and Natural Resources and will have two civil society representatives. Additionally, the Timber Validation Council (TVC) (which will have oversight responsibility for the processes for issuance and verification of FLEGT licences and for audits of these systems) is expected to have civil society representation and to ensure that the Timber Validation Department (TVD) functions in a transparent and independent manner.

It is also expected that, by the end of 2010, the subsidiary legislation needed to fully operationalise the LAS to deliver FLEGT licences, will be completed. Thus from December 2010, FLEGT licences are expected to be issued for wood and wood products for the EU market. Although it is unlikely that this deadline will be met.

THE VPA IN DETAIL

The first step in Ghana's VPA was to arrive at a definition of 'legal timber'. Ghana recognised that the existing legal provisions needed to undergo substantial reforms in order to address existing inadequacies and also meet international demands concerning the principles of good forest governance and international legal requirements. Such legal requirements are linked to international conventions that Ghana has ratified including the Convention on International Trade in Endangered Species (CITES). The resulting definition of "legal timber" forms an integral part of the VPA.

Through a rigorous multi-stakeholder process, a legality standard to underpin the LAS was developed. This involved civil society participants, government and industry. Through the process of developing the legality standard, shortcomings in a number of areas were identified:

- the lack of a clear governance vision for the sector;
- rights of local communities and resource owners to the land and the trees;
- rights of farmers to the land and the trees;
- the fact that the domestic market is being fed by illegal chainsaw operations.

There is the need for formal recognition that both the land and the forests that they support are the property of communities – not the chiefs who are traditional managers, and not the State, which manages specific forestlands as an agent of communities. The agreed reform of the legal provisions seeks to solve these problems. For instance, the legislative reform is expected to clarify resource governance issues, including: public interest in biodiversity sustenance; rural livelihoods; sustainable industrialisation; and cultural development.

It is also expected to identify and correct inconsistencies in existing forest laws that relate to the definition of legal timber, e.g:

- issuance of salvage permits in respect of lands under Timber Utilisation Contract;
- affirmation of local forest tenure and of different stakeholder rights (in particular, farmers in different types of forests);
- clarification of the respective scope of local (including customary) and national institutions in forest management to sustain and also develop and exploit forest resources (both timber and non-timber).

Ghana agreed on two approaches to the legal reforms envisaged within the VPA. The first is short subsidiary legislation for laws that do not require an extensive review process. This will enable the issuance of a FLEGT license by end of 2010. The second is legislation that will require extensive consultations, involvement of experts and considerable political debate. Such in-depth legal reforms will address, for instance, good governance issues, stakeholder participation, and benefit sharing. This process is expected to take three to five years. Both approaches require considerable and extensive stakeholder consultations, but a clear road map with timelines for dealing with this is outside the scope of the VPA.

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Once this subsidiary legislation has been passed, the LAS will be set up to trace legal timber. The LAS incorporates a wood-tracking system, which will trace and report timber shipments from their origin to the port, based on adherence to the legal standards in the VPA. A government-appointed authority will carry out spot checks to ensure the system functions properly. In Ghana, it will be the TVD that will audit the LAS while the Timber Industry Development Division (TIDD) of the FC will issue FLEGT licences to shipments. Even though all timber production will be part of the LAS, only timber entering the EU market will be issued with FLEGT licences. Timber entering any other market will be issued with export permits. As the Ghana VPA covers both the domestic and international market, a wood-tracking system needs to be in operation for both markets to prevent irregularities, distortions and illegalities.

The TVD will perform the functions of verification. This will involve the reconciliation of data generated along the entire process-chain of wood products destined for both export and the domestic market. The TVD will also measure compliance of wood consignments to the legal standard. The purpose of the verification and compliance monitoring is to enable the TVD to check if procedures provided for in the legal standard have been complied with.

The entire LAS will be open to external monitoring. The Independent Monitor (IM) will identify weaknesses and recommend systemic reforms in the LAS. This is expected to take the form of a formal contract with the government of Ghana, with full formal reports delivered to the Ministry of Lands and Natural Resources after each monitoring operation.

A summary of each report will be made public. In the short term, it is expected that this function will be outsourced to a foreign company or civil society organisation while capacity is built in-country for a local civil society to take over that role in the medium-to-long term.

Civil society will monitor the wider governance impacts of the VPA on benefit and access rights, participatory governance, livelihoods, etc. These areas clearly fall outside the scope of the LAS. However, information on the performance of the LAS (which forms part of the wider spectrum of issues monitored by civil society) will be made available to the IM to facilitate his/her work. It is expected that information on the wider governance performance of the VPA will be used for advocacy work to improve the whole VPA.

Implementation of this Agreement will be overseen by the Joint Monitoring Review Mechanism (JMRRM), comprising representatives of Ghana and the European Commission (EC). The JMRRM will ensure effective implementation of the Agreement through dialogue and exchange of information between Ghana and the EC. The JMRRM will also recommend the date upon which the FLEGT Licensing Scheme should be fully operational.

If the VPA is to be a success, the multi-stakeholder processes (hailed internationally as pioneering and of high standard) should be institutionalised in the implementation phase. It is important to build and increase capacity of local actors, such as the informal forestry sector, to adapt to these systems. The domestic-market restructuring, which will require strengthening of the sector governance and the legal framework, is essential for the success of the war against illegal logging and to promote sustainable utilisation of Ghana's forest resources. The credibility of the system depends on effective, ongoing monitoring. For such monitoring to take place, it is essential that the government provides adequate, relevant and timely information to all stakeholders.

HOW THE VPA DEALS WITH THE DOMESTIC MARKET

The Ghana VPA allows for the circulation of legal timber for both domestic and external markets. This means that trade in timber and timber products in the domestic market will be highly regulated and form part of the LAS. The domestic market is dominated by illegal timber products and activities such as chainsaw logging. Impact studies conducted during the VPA negotiation indicated the possible impacts of the VPA on the domestic market and livelihoods, and therefore proposed a restructuring of the local market.

During the negotiations, Ghana tabled the issue of legal compliance of the domestic market and its ramifications. This was to address the fundamental challenges of deforestation, revenue leakage and the price distortion that timber from the local market fosters. The broader issue of the initiative's potential impact on the country and how the negative effects will be mitigated was also a key element for negotiation.⁶

During implementation, it is important to tackle the issue of the restructuring of the domestic market head-on, in the light of the longer (three to five year) reform of the sector. For instance, mobile mills have been proposed as an alternative for small-scale loggers to process timber from off-cuts of big concessions, to supply the domestic market. Is this a viable solution? What other solutions are available?

Another proposal by the Domestic Lumber Trade Association (DOLTA)⁷ is that regularising the activities of the chainsaw operators could be a better option. Eg: reversing the ban on chainsaw logging; issuing permits to chainsaw operators for harvesting in off-reserve areas; putting tax regimes in place to maximise the economic returns to the government from such operations.

It is important that concrete benchmarks and milestones are set through multi-stakeholder processes to define such governance targets in the domestic market, and support and monitor their implementation.

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THE GOVERNANCE REFORM AGENDA OFFERED BY THE VPA

Although the overall vision for forest governance in Ghana, which encompasses provisions spelt out in the 1994 Forest and Wildlife policy and the Government Growth and Poverty Reduction Strategy, is not explicitly part of the VPA, the original goals of this vision, as follow, must be vigorously pursued:

- improved forest governance that allows transparent and fair resource-access while acknowledging the rights of multi-stakeholders to use the resource in a responsible way;
- fair benefits sharing, i.e. greater capture of economic rent from industry by the State; distribution of that rent in accordance with the constitution; and ensuring District Assemblies and traditional authorities are more accountable for the royalties distributed;
- greater multi-stakeholder (communities, industry, NGOs, government agencies etc.) participation in policy making and sector management with a view to promoting good governance through equity and social justice;
- the VPA should be seen as contributing positively to the national GDP.

A clear statement of resource-governance objectives (public interest in biodiversity sustenance, rural livelihoods, sustainable industrialisation and cultural development) was however part of the VPA text. Consequently, identification and correction of inconsistencies in existing forest laws that relate to the definition of legal timber were agreed within the VPA process and form part of the legally binding VPA text (see section “VPA in Detail”, above).

These reforms will enshrine the rights of communities to sustainably exploit and manage their own forest resources. Even though the final Agreement dropped a reference to the principle of Free Informed Prior Consent (FPIC), the general language of the Agreement allows campaigners to read FPIC as an obligation, as it mentions the requirement for written consent of communities in the VPA.⁸

THE CHALLENGES AHEAD: IMPLEMENTATION OF THE AGREEMENT

Ghana being the first country to initial and ratify a VPA was seen as a clear success by civil society organisations and the government alike. With its multi-stakeholder processes, it was a model to be followed by other countries. Getting Ghana’s VPA implementation right is therefore critical to sustaining global effort to combat trade in illegal logging and improve forest governance in timber-producing countries and the credibility of the EU FLEGT initiative as a whole.

The Agreement provides a reasonable platform for strengthening community rights and resolving the biodiversity, sustainability, rural livelihoods, official corruption, and national revenue objectives. Now we must gear up for the real struggle to move “from print to practice”⁹.

It is therefore important to focus our attention on the important and underlying governance challenge of reforming the forestry sector and especially the domestic market to recognise the tenure rights of forest communities. There is always the temptation to concentrate on the technical aspects of the Agreement such as the LAS and give less attention to the governance reform agenda, which in the long term holds the key to sustainable management of forest resources and combating the illegal timber trade.

The multi-stakeholder processes need to continue and deepen in the implementation phase. The mutual respect and trust among all stakeholders should be further improved. It is also important for donors and other bodies interested in this process to continue to provide capacity for stakeholders to engage and contribute meaningfully to the implementation of the Agreement. Civil society capacity needs to be increased to monitor the implementation of the Agreement while communities need to be widely and thoroughly engaged in the implementation.

The attention given by both the Government of Ghana and various EU Member States to the Reducing Emissions from Deforestation and Forest Degradation (REDD) programme has distracted attention from the FLEGT VPA. EU Member States who have supported the EU FLEGT process in Ghana, such as the UK and the Netherlands, should ensure their policies towards Ghana are consistent: they should not support FLEGT on the one hand while on the other hand allowing REDD money to undermine forest governance reform processes.

For more information please see the FERN briefing “Is REDD undermining FLEGT”, available at www.fern.org/REDDunderminingFLEGT.

END NOTES

1. The process leading to an operational VPA can be split into two stages: negotiation and ratification. The negotiation period ends with the initialing of the Agreement. The ratification period begins as soon as the Agreement is initialed, and the Agreement only enters into force once both parties have ratified. For further explanation of the VPA process, see: <http://www.fern.org/ratification>
2. Data is sourced from the Timber Industry Development Division (TIDD) of the Forestry Commission
3. Forest Governance Learning Group, Ghana sub-group, Practical tactics to improve forest governance in Ghana, February 2005.
4. Forest Watch Ghana is a coalition of some 35 NGOs and individuals advocating for fair resource access, benefit sharing and participatory governance for forest communities. The coalition, which is six years old, is the largest formal civil society grouping in the forestry sector in Ghana. It is hosted by the NGO Civic Response.
5. VPA Briefing Paper 1, Ministry of Lands, Forestry and Mines-Ghana, February, 2007
6. VPA Briefing Paper 1, Ministry of Lands, Forestry and Mines-Ghana, February, 2007
7. DOLTA is an umbrella association of key players of the domestic lumber industry, established to ensure sustainable use of the forest resource through sustainable management and legal access to forest products. The key areas of DOLTA's work are civic and social rights advocacy, economic empowerment, and access to decision-making processes. The association is made up of individuals and institutions such as chainsaw owners and operators, domestic lumber sellers, bench saw millers and small-scale carpenters.
8. Criterion 1.2 under principle 1 of the legality matrix of the VPA makes reference to "land owner, individual or group written consent" before a permit is issued to a Timber Company for logging.
9. Quote from Kyeretwie Opoku in the joint statement issued by FERN and FWG after the signing of the VPA in September, 2008.

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This briefing note is developed by NGOs from European and timber-producing countries involved in or monitoring the implementation of the EU FLEGT Action Plan, and specifically the implementation of the Voluntary Partnership Agreements between the EU and timber producing countries. They intend to provide joint North-South civil society positions. For information on each VPA see:

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