

Benefits of the Voluntary Partnership Agreement

A Liberian civil society perspective



PUP Logging Camp in Sinoe County, 2013

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Illegal logging is a global phenomenon, and tackling it will always remain a major challenge for producer and consumer countries. But to do nothing about it is not an option. The EU FLEGT Action Plan remains the most viable plan to tackle the problem; the EU must maintain its leadership in global efforts to tackle this menace.

Background

Liberia signed a Voluntary Partnership Agreement (VPA) with the European Union (EU) on 27th July 2011 in Brussels.¹ At the signing ceremony, the parties announced that by 2014 all timber from Liberia entering the EU would require a license under the agreement. The European parliament ratified the agreement in May 2012.² The agreement came into force on 1st December 2013 following ratification by the Government of Liberia.

Before the VPA negotiations commenced, Liberia had enacted a new forestry law in 2006³, adopted new regulations⁴ and a law establishing community rights⁵ on forestlands. In this context, the VPA was the ideal vehicle for implementing forest sector reform in a manner that would ensure sustainable forest management and improved governance of forest, through timber extraction and trade that complies with Liberian laws. In other words, a key objective was to ensure a supply of legally sourced timber from Liberia to the EU. On the other hand, Liberian civil society organizations that enthusiastically engaged with the VPA negotiations, viewed the agreement as an opportunity to improve overall governance in the forestry sector, i.e. improving stakeholder participation, ensuring rule of law, transparency, accountability and equity in the distribution of benefits. The rationale was that improving governance overall was a better guarantee for ensuring supply of legal timber.

¹ http://www.euflegt.efi.int/liberia-news/-/asset_publisher/FWJbfn3Zu1f6/content/eu-liberia-vpa-signed

² Government of Liberia & EU, Moving Towards VPA Implementation: Preparation for the implementation of the FLEGT Voluntary Partnership Agreement, 2011-2012. Available from: http://www.euflegt.efi.int/liberia-news/-/asset_publisher/FWJbfn3Zu1f6/content/liberia-and-the-eu-report-vpa-progress

³ <http://www.fao.org/forestry/16151-05fd47b845599b5d3a594a9b0240dacff.pdf>

⁴ <http://www.fao.org/forestry/16268-05ce3122d08147af911cd156ba603cf61.pdf>

⁵ http://growingforestpartnerships.org/sites/gfp.iiedlist.org/files/docs/liberia/National%20policy%20and%20legislation/Liberia_CRL_October_2009.pdf

Introduction

The European Commission initiated an evaluation of the implementation of the EU Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan in July 2014. This brief presents a Liberian perspective on the VPA and is developed as a contribution to the ongoing evaluation of the FLEGT Action Plan.

This brief argues that when the VPA is viewed through a forest law enforcement and trade lens, there is still some way to go, but that viewed from a governance improvement standpoint –the conclusion is that the VPA has delivered several benefits, including improved participation, accountability, more responsive law enforcement by the forestry authorities and equity. Some argue that these benefits are specific to Liberia, but this brief argues that that is precisely the reason why other countries should be supported and encouraged to learn from Liberia.

Finally, it concludes that it is up to EU leaders to decide whether improving governance has been worth the investment or whether failure to deliver legal timber to the EU is sufficient justification for reducing the support for the FLEGT Action Plan, which has now become the '*only game in town*' to address the global problem of illegal logging.

What are the indicators of improved governance?

Below is a summary of five indicators of improvements in forest governance, which are, in part, attributable to the VPA. These indicators illustrate how the VPA has contributed to improving forest governance overall.

Participation and public access to information

Much has been written about the inclusive nature of Liberia's stakeholder processes from the onset of the VPA negotiations. However, the fact that this approach has continued since the VPA came into force in 2013 is worth highlighting.

At the moment there are five community representatives and six non-governmental organization (NGO) representatives on the National Multi-stakeholder Monitoring Committee (NMMC), making a total of eleven civil society representatives, while the private sector has three representatives. Many contentious issues are now tabled for discussion at the NMMC and the NMMC provides a valuable platform for real-time discussion, thus leading to real-time action to address potential illegalities sometimes before they occur or intensify. Also law and policy making with respect to forests is now happening in an inclusive manner, including NGO and community representatives.

New regulations are drafted, vetted and validated with stakeholders, with the members of the NMMC serving as a hub to review and consolidate inputs to various drafts. For example, when the forestry authorities draft a regulation, it is first submitted to the NMMC for review. Following inputs from members, the first draft then goes out to other stakeholders to review and provide inputs. This process continues until the regulation has gone through a regional and national validation process, before it is finally submitted to the FDA Board of Directors for final approval.⁶

A key pillar underpinning the public participation processes described above is the application of the principle of transparency to the VPA implementation. For example, the forest sector stakeholder groups are granted access to relevant information through their representatives and through various public media. Access to information has been the bedrock of civil society organizations' successful advocacy for the rule of law in the sector.

Rule of law and accountability

Prior to the signing of the VPA seven Forest Management Contracts (FMCs) covering one million hectares had been allocated. Several United Nations Panel of Experts reports on Liberia concluded that all of the seven FMCs were illegal: granted in violation of various legal requirements. The international auditing firm Moore Stephens (based in the United Kingdom), commissioned by the Liberia Extractive Industries Initiative (LEITI), following an audit of the allocation processes for concessions in the extractive industries, found that all seven of the FMCs were granted in violation of various laws. The Government of Liberia still has taken no action to address these illegalities.⁷ This is something the VPA has not (yet) been able to address.

Following the signing of the VPA in 2011, civil society used the Pre-Joint Implementation Committee meetings and the VPA more broadly as the vehicle to challenge the allocation of Private Use Permits (PUPs) – new logging permits that covered more than two million hectares of forest land by 2012.⁸ As soon as the VPA came into force, one of the first actions of the government was to cancel all of these permits in early 2014. Several forestry officials – for the first time ever in Liberia's history – are now standing trial for their roles in the PUP affair. This can clearly be seen as a VPA success.

⁶ Annex 5: Process and timelines for the development of new regulations in Liberia. See Liberia – EU FLEGT Voluntary Partnership Agreement Aide Memoire, Second Meeting of the Joint Implementation Committee, Monrovia June 10 – 12th, 2015

⁷ <http://www.leiti.org.lr/uploads/2/1/5/6/21569928/151344593-leiti-post-award-process-audit-process-report.pdf>

⁸ <http://www.sdiliberia.org/sites/default/files/publications/2012%20Signing%20Their%20Lives%20Away.pdf>

Soon after the PUPs were shut down, logging companies turned to Community Forest Management Agreements (CFMAs). The Civil Society – Independent Forest Monitor (CS-IFM), a collaboration to monitor the implementation of the VPA in Liberia, issued two briefs outlining suspected illegalities in the allocation of the CFMAs and tabled the briefs at the NMMC and the JIC. The forestry authorities investigated and found procedural flaws in the allocation process and instructed the FDA to address these flaws. A broad-based stakeholder committee was mandated to harmonize inconsistencies in the laws and regulations governing the allocation process, which formed the basis for the flaws identified.⁹ Since then, more than 120 new CFMA applications have been submitted to the FDA but none of them have yet been approved (or will be approved) until the laws and regulations have been harmonized. This is another concrete VPA success.

Equity and benefit sharing

The Liberian forestry law and regulations contain provisions establishing community rights concerning different revenue streams from the forestry sector. For example, communities are entitled to thirty per cent of the Land Rental Fees paid by logging companies¹⁰ as well as cubic meter fees on all timber harvested within their community. Prior to the signing and ratification of the VPA, none of the communities' share of Land Rental Fees had been transferred to them. Civil society and community representatives raised the non-payment of the communities' thirty per cent of the Land Rental Fees at different pre-JIC meetings.¹¹ Following the ratification of the VPA, civil society and community again tabled their concerns at the JIC. The Government of Liberia has now paid the first US\$1 million to the National Benefit Sharing Trust Board for redistribution to communities.¹² This is the first direct transfer of portion of Land Rental fees to communities where the timber is extracted and is seen as another VPA success.

Conclusions and recommendations

In our opinion, the forestry sector has become a trailblazer for reforms in the natural resource sector. The VPA and its effective multi-stakeholder approach adopted since the onset of negotiation, has played a central role in reinforcing the pillars of forest sector reform, established by the forestry law of 2006, the ten core forestry regulations of 2007, and the other legal instruments that have followed since. The participatory approach to monitoring and evaluating law enforcement, with CSOs using the VPA structures to table concerns about possible illegalities in the sector, while maintaining

⁹ Liberia – EU FLEGT Voluntary Partnership Agreement Aide Memoire, First Meeting of the Joint Implementation Committee, Monrovia, May 27 – 29th, 2014

¹⁰ The National Forestry Reform Law (2006) Section 14.2 e (ii)

¹¹ Liberia – EU FLEGT Voluntary Partnership Agreement Aide Memoire, First Meeting of the Joint Implementation Committee, Monrovia, May 27 – 29th, 2014

¹² Liberia – EU FLEGT Voluntary Partnership Agreement Aide Memoire, Second Meeting of the Joint Implementation Committee, Monrovia June 10 – 12th, 2015

and exercising their right to report on the same issues has been particularly central to reinforcing the rule of law.

As outlined in this brief, the VPA is already having positive impacts on forest governance overall and halting illegalities and improving community benefits specifically. No other instrument to date has delivered these kinds of successes

The VPAs also have led to improved and enhanced public participation in decision making processes to equity and sharing of benefits from timber extraction and law enforcement. We do realise there is still some way to go before licensed FLEGT timber from Liberia can, however, enter the EU.

The current evaluation of the EU FLEGT Action Plan provides a critical opportunity to take stock of not only the challenges, but to also properly assess and evaluate the gains that can be attributed to the VPA. While it is up to EU leaders to decide whether improving governance has been worth the EU's investment or whether failure to deliver validated legal timber to the EU is sufficient justification for minimizing resources to implementing the FLEGT Action Plan, we hope the evaluators realise that from a Liberia perspective, FLEGT VPAs are the '*only game in town*' to address the global problem of illegal logging. The potential negative consequences of shutting the VPA down or reducing the resources for effective implementation should not be underestimated. Particular efforts should be made to highlight Liberia's success story and motivate other producer countries to follow the same path.