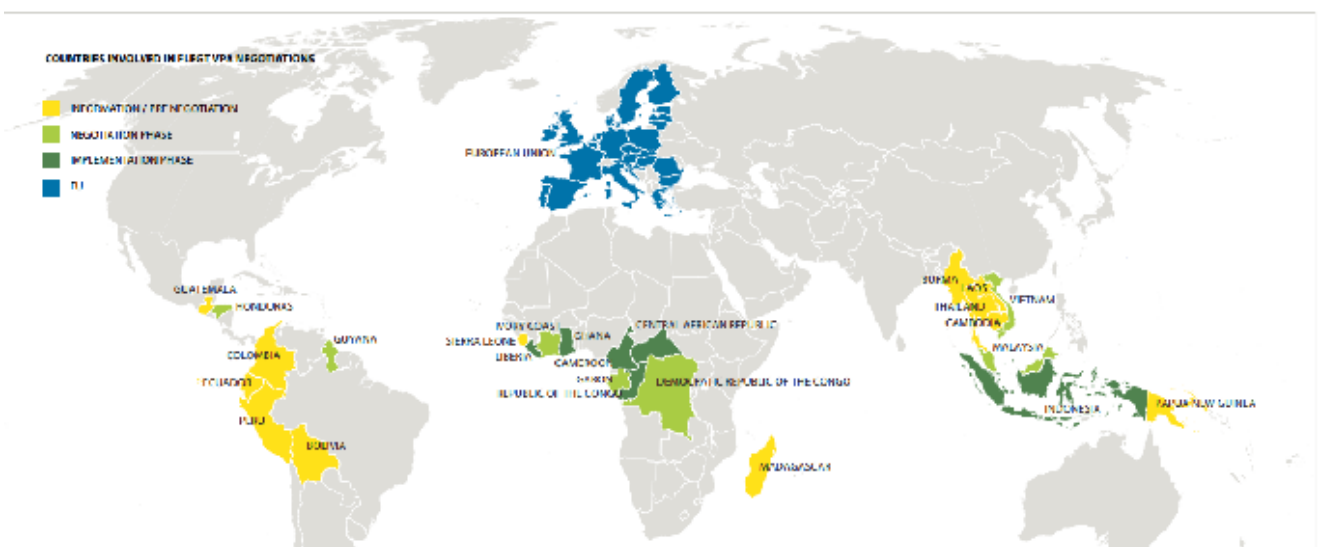


Forest Watch FLEGT Update Nov 2013



An ever growing number of timber-producing countries are applying to start EU Voluntary Partnership Agreement (VPA) negotiations. This includes countries which export very few timber products to the EU, and must therefore have other reasons to negotiate an agreement. This growing demand puts pressure on the European Commission which has limited capacity to deal with negotiation new VPAs whilst implementation of others is ongoing. It is likely that implementation will increasingly be handed to the EU Delegations, with a danger of leading to reduced consistency.

VPAs remain an important instrument for increasing transparency, and participation in decision-making as well as for building capacity of all actors and improving coordination and accountability; in other words to improve forest governance. However there are still plenty of issues ahead. For example, implementation remains slow; the legal reform linked to VPAs is often not participatory and the forestry sector as a whole is being overtaken by often illegal agricultural concessions. The latter means that a large percentage (from 30 to 70 per cent) of timber from VPA countries now comes from conversion rather than forestry concessions.

For more information see www.loggingoff.info, twitter.com/Logging_Off and www.facebook.com/loggingoff.info



VPA state of play

Six VPAs (Cameroon, Central African Republic (CAR), Ghana, Indonesia, Liberia and RoC) have been finalised; of which four (CAR, Cameroon, Ghana and RoC) have been ratified. Official negotiations are ongoing in the Democratic Republic of Congo (DRC), Gabon, Guyana, Honduras, Ivory Coast, Malaysia, and Vietnam, and are on the verge of starting with Laos and Thailand. Other countries expressing an interest include Bolivia, Cambodia, Colombia, Ecuador, Guatemala, Madagascar, Paraguay, and Sierra Leone.

VPAS by region - AFRICA

Cameroon

The VPA was ratified in December 2011 and implementation is advancing slowly. Access to information has been increased in line with the VPA annex VII on transparency. The Ministry of Forestry (MINFOF) set up a dedicated FLEGT VPA website, which currently holds little information (www.minfof.cm/apvcameroun). The MINFOF has hired a consultant to help them add information listed in the transparency annex to the website by the end of January 2014. The Joint Annual Report 2012 on implementation of the VPA has been published and is now available.

Implementation plays against the background of a controversial case of forest land being converted to oil palm by the Herakles Farms palm oil project. The 99-year deal aims to convert an area of 73,000 hectares of rainforest. Clearing started before negotiations about the project had been finalised. Fact-finding reports from Cameroonian and international NGOs have documented how the deal and clearing violates national and international law and does not conform with the VPA. NGOs have requested that the European Commission discuss the problem of illegal conversion timber during the upcoming Joint Implementation Committee (*Comité Conjoint de Suivi – CCS*) with the government of Cameroon. The VPA foresees the reform of the forest code, but after the criticism about the lack of civil society, community and indigenous peoples' participation, the reform process has stalled.

Central African Republic

VPA negotiations with CAR were concluded in December 2010 and the agreement was ratified in July 2012. The second EU-CAR Joint Implementation Committee (JIC), planned for March 2013 never materialised due to the severe political and humanitarian crisis that the country was plunged into since the coup by the Seleka rebels in late March 2013. There is chaos and without foreign support and intervention it seems unlikely that the country can get out of this crisis any time soon. In the meantime the Ministry of Forestry is not yet fully operational and has seen several Ministers and Directors since the coup. The FLEGT Technical Secretariat within the Ministry has convened some national meetings between the different stakeholders and is exploring the extent to which the foreseen legal reform process can move forward. The civil society platform has decided to work on a few priority legal reforms from their end in order to have something ready when the process picks up again. The EU has not taken an official position on the situation in CAR and hence the VPA process is formally stalled. It is unclear what the future holds for CAR, and securing peace, stability and security is the first priority.

Democratic Republic of Congo

The VPA negotiations, ongoing since 2010, are slowly moving forward. The Technical Commission continues to work on the legality definition and the development of a legality assurance system. The list of products which will require a FLEGT license is nearly finalised. How the EU-DRC VPA will address the problem of conversion timber has not been high on the agenda of negotiations, but may yet become a priority. Recent concern about timber entering Europe with dubious *Convention on International Trade in Endangered Species of Wild Fauna and Flora* CITES certificates (<http://tinyurl.com/oglc84>) may be another issue to be debated during upcoming negotiations. Of particular concern is one of three recent decrees (challenged by civil society at the Supreme Court) which establishes a new national fund for social services, since it may undermine the social components of the future VPA and conflicts with the constitution, the actual forest code and rights of forest communities.



Republic of Congo

Implementation of the VPA, which was signed 2010 and entered into force in March 2013 moves forward at a very slow pace although progress has been made with reform of the Forest Code. Three experts from the *Agence Française de Développement* (AFD) have been given six months to draft a new Forest Code and set up a consultation process, and it is essential that local NGOs, communities and indigenous peoples get the chance to provide input into the process. Once the text is revised and accepted the consultants will work a further six months on the implementing decrees. 2014 may therefore be an important year for RoC. The civil society platform *Plateforme de Gestion Durable des Forêts* (PGDF) is gearing up to participate in the process and a civil society legal working group, supported by ClientEarth, has been working intensively to analyse the forest code and formulate preliminary amendments. The PGDF and communities are also concerned about the lack of implementation of the Congo's Indigenous Peoples' Law which was signed in 2010 but has not been implemented.

NGOs are particularly concerned about the social and environmental impact of Malaysian company Atama Plantation's large scale palm oil project which covers 180,000 hectares.

Gabon

Negotiations started in September 2010, but have been stalled since May 2012. The government seems to be focussing instead on the development of a Sustainable Development Framework Law, which would create a biodiversity offset market in Gabon. Gabonese NGOs have not been consulted, but fear the law will allow operators to go ahead with projects which have a negative impact on local communities and their livelihoods, as long as they claim they are offsetting their environmental and social damage. This law will generate funding for conservation, but will lead to increased land conflicts, and further undermine community tenure. One set of communities stand to lose the land where the large scale development project goes ahead, whilst others lose the land that has been offset. In addition, the

Ministry of Forestry has called for a revision of the Forest Code based on limited consultation, disregarding earlier comments from local NGOs when the process was launched. This approach goes radically against the principles of the inclusive participatory and multi-stakeholder nature of the VPA process and confirms the lack of political will to move forward. The forest code and its reform are at the heart of the legality definition of the VPA, which is where the process got stuck.

Ghana

The Ghana-EU VPA was signed in September 2008, and FLEGT licenses are expected in 2014. In recent months, following a report from Global Witness indicating the large-scale issuing of illegal logging permits by the Forestry Commission (www.globalwitness.org/ghanapermits) and a pro-active Ghana NGO network (Forest Watch Ghana (FWG)) progress is being seen in several areas. First FWG has secured the government's commitment to stop the issuing of all ministerial permits; review the stumpage fees required by law; convert expired leases before FLEGT licenses are issued; and work towards greater transparency of the sector. Second, FWG has developed a transparency matrix for the VPA and submitted this to the Ministry of Lands and the Forestry Commission (FC). Third, the government is beginning to quicken the pace of the forest tenure reform as a result of NGO pressure. They are looking at commercial plantations and trees on farms or naturally occurring trees. FWG will follow up to ensure the enactment of appropriate legislation to strengthen local farmers/land owners' rights over trees they nurture.

Discussions on the verification protocol have also included FWG members, which will make it easier for local NGOs to monitor impacts of the VPA. FWG are informing local communities and the general public about the VPA, with over 130 communities being addressed in the last quarter. This has strengthened community capacity and knowledge about the new forest policy and forest benefit-sharing regimes. Most of these issues will be discussed by key stakeholders in November 2013 and it is hoped that real progress will then be made.



Ivory Coast

The first official VPA negotiation session took place in Abidjan in June 2013. A new and young informal platform consisting of social, human rights, environmental and developmental organisations has designated three representatives as part of the Technical Negotiating Committee. While Ivory Coast embarks on this new VPA FLEGT venture, a process to reduce emissions from deforestation and degradation (REDD) has also started and the hope is that there will be one common civil society platform participating in both processes. The priorities of the NGO platform include land and tree tenure security for local communities based on recognition of their customary rights, improved access and benefit sharing with regards to forest exploitation and sustainable management of the remaining forests. A new forest code is being agreed but it is unclear to what extent the civil society platform will be allowed to provide its input. At this stage the Ministry of Forestry wants to get the forest code approved quickly and then use it as a basis for the legality grid discussions. In the negotiations it was agreed that that Ivory Coast will include the domestic market in its VPA, as most other VPAs have done, and that the VPA will include all timber exports and imports. Three multi-stakeholder working groups have been identified and started by focusing on the key economic, environmental, and social issues of the legality definition, with civil society taking a lead on the latter.

Liberia

The EU-Liberia VPA was concluded on 9 May 2011. Although it has taken almost 18 months, it is rumoured that the Government will announce the ratification of the agreement soon. Several outstanding issues include (1) Ensuring that communities get the money they are owed according to the existing benefit sharing agreements. (2) Ensuring that unprofitable concessions are cancelled and re-allocated following the correct legal procedures. This is important as flaws in the contract allocation processes allowed non-qualifying bidders to obtain concessions, who are now unable to profitably operate and pay their land rental fees. (3) Ensuring social agreements between companies and communities are specific, enforceable and provide a better deal for affected communities. (4) The Forest Development Authority needs to be strengthened to be able to effectively implement the VPA.

Following a large number of illegal logging permits being handed out last year (see www.fern.org/MayVPAUpdate) the logging sector remains partially dormant. However forest management contracts and timber sales contracts remain active, despite some being linked to gross misconduct in the Private Use Permits (PUP) concessions. Most of the government's attention seems, however, to be with the palm oil sector which is creating social conflicts all over the country due to the government handing out large concessions on community owned land. Even though the palm oil companies are members of the Round Table on Sustainable Palm Oil (RSPO), they do not abide by its principles, notably the principle of Free Prior and Informed Consent (FPIC). This has led to formal complaints to the RSPO being filed by affected communities from Liberia's three largest oil palm concessions.

On a positive note the Government has adopted a new Land Policy, which is progressive and places community ownership of land under customary land rights that have the same level of legal recognition as private ownership. This policy will now be translated into a Land Rights Law. However, at least 70 per cent Liberia is either privately owned or has been allocated as concessions. There is therefore a big question mark as to what will happen once customary lands are formally recognised in the law, yet have already been allocated as agricultural, logging and mineral concessions. Furthermore, current definitions of what constitutes public lands pose a risk that un-demarcated customary land may be considered to be public land under the new legislation. Mechanisms need to be put in place to ensure that customary land that has not yet been demarcated cannot be taken as public land. These issues need to be addressed before the Land Rights Law comes into force.



A new civil society platform on the rise in the Ivory Coast advocating for improved forest governance.

VPAs by region – SOUTH EAST ASIA

Indonesia

The EU-Indonesian VPA was signed in Brussels on 30 September 2013. The ratification process has started in both the EU and Indonesia, and the hope is that it will be finalised by February next year. The VPA joint assessment that was started prior to signing is currently in its third phase, and a report recommends follow-up of an action plan for improving the Indonesian Timber Legality Assurance System (TLAS) (in Indonesia known as *Sistem Verifikasi Legalitas Kayu*, or SVLK). The target is to have FLEGT licenses being issued in 2014 for all 40 products listed in Annex 1 of the VPA. Following an appeal from the Indigenous Peoples Alliance (AMAN), on 16 May 2013, the constitutional court ruling required an amendment to the Forestry Act to recognise indigenous peoples' forest land based on community customary ownership. This influences the ongoing revision of the SVLK regulations and is an important achievement for civil society. The civil society independent monitoring groups (JPIK, APIKS) are exploring sustainable finance mechanisms and discussing with the Ministry of Forestry how they can strengthen the capacity of civil society organisations to improve their monitoring skills and how to safeguard their own security following a contentious case brought forward by JPIK on illegal logging in Indonesian Papua in May 2013.

Laos

The revision of the Forestry Law has been put on hold until the National Land Policy is approved in December this year. A FLEGT Technical Steering Committee and technical working teams, consisting of representatives of relevant ministries and the timber trade, and including space for an unspecified organisation to represent civil society, are now in place, and approved by the Ministry of Agriculture and Forestry (MAF). This committee met for the first time on 11 October, and a new purpose-built office has just been opened in Vientiane for the Standing Office. The German Government is providing EUR 5.8 million for technical co-operation for the government (ProFLEGT) to be implemented by the Department of Forest Inspection, the national focal point for FLEGT, and *Deutsche Gesellschaft für Internationale Zusammenarbeit* (GIZ) (the German Society for International Cooperation). The German Ambassador mentioned the importance of civil society organisations being represented in the technical steering committee, and awareness of FLEGT among Lao non-profit associations (NPAs) has been increasing following the work of NGOs like Village Focus International (VFI) and FERN who aim

to promote their involvement and increase their capacity. NPAs are keen to become involved, despite the intimidation they face when raising issues of livelihood and tenure security and the rights of forest dependent communities following the abduction of a high profile activist, and it will be important for them to secure space in the negotiations for their voices to be heard. Cohesion among the range of civil society actors will be crucial. Timber features highly in the Lao government's plans for the country's economic development, and the EU is seen as an important potential future market for this timber, so it is unlikely to tolerate voices defending the interests of anyone they feel may be standing in the way.

Malaysia

Having begun VPA negotiations in 2006, there is still uncertainty as to whether an agreement will be reached. Unresolved issues include the lack of an inclusive participatory process, lack of will by the government to address transparency and recognise native customary rights. Furthermore the Malaysian government's proposal of signing a VPA which excludes Sarawak is seen as problematic, notably by stakeholders in Indonesia and Burma. The Indonesian Ambassador to the EU has made several statements about finding a VPA with Malaysia which excludes Sarawak unacceptable, objecting on legal and moral grounds. For example at Chatham House in February 2013, he stated that such an exclusion would contravene international law, since both territories entering into a bilateral agreement are bound in their entirety. On 24 June, the Working Group on a pan-ASEAN Timber Certification Initiative met for the 12th time in Kuala Terengganu, aimed at strengthening ASEAN's support of sustainable forest management and harmonising forestry in member states, including certification. A high-level visit from the EU in September has reignited interest in VPA negotiations but political issues remain, and civil society engagement has to regain momentum after a long period of disillusionment and scepticism about whose interests the VPA will serve.

Thailand

Following an agreement earlier this year to open negotiations, some work has been done on the definition of legality, supply chains and consulting some stakeholders, but a first joint experts meeting has yet to take place, and a first formal negotiation session is expected before the end of the year. In June a European Forest Institute (EFI) team met the government and some stakeholders to learn how the government is structuring the process and which issues had been identified. Three sub-committees within the Thai VPA negotiation committee have been set up to support VPA negotiations, develop a TLAS,



and improve 'stakeholder coordination'. NGOs have begun discussing how they will contribute, and a series of national workshops began in August. Factors that will feature in the negotiations include the fact that Thailand is an important consumer country as well as a regional processing hub, that rubber-wood is treated as an agricultural commodity, and that those with a stake in smallholdings or community forestry are yet to recognise the potential of the VPA for advancing their interests. It will be challenging for civil society organisations to organise themselves into a coherent group able to claim their place and channel their concerns into negotiations. In October, immediately after FLEGT week in Brussels, the Food and Agriculture Organisation (FAO), EFI and the Responsible Asia Forestry and Trade (RAFT) partnership held a regional workshop in Bangkok on governance and trade in Asia to cover topics such as emerging legality requirements for timber, VPA elements such as stakeholder contributions, and sources of possible support.

Vietnam

The last negotiating round was held in Brussels a year ago, and the next has yet to be scheduled. The question of how Vietnam will demonstrate legality of the timber it imports, particularly from its neighbours to the west, has become more prominent on the agenda, as neither Cambodia nor Laos are likely to have a VPA with the EU very soon (see section on Laos above). Work on the Legality Definition and the TLAS is still underway, and the Vietnamese NGO FLEGT network has just given the government their comments on the latest drafts. It is also in the latter stages of its *ex-ante* assessment on the possible impact of the VPA on livelihoods, which promises to provide a better understanding of vulnerable forest users. Finally, they are about to embark on a review of the Forest Protection and Development Law from a civil society perspective, but are concerned about important national data gaps such as on the number of households without land use certificates.

VPA's by region – CENTRAL and SOUTH AMERICA

Guyana

Negotiations started in December 2012, but despite a joint EU/ Government of Guyana statement highlighting the importance of stakeholder involvement, there still has been no inclusive consultation process. In a second letter by European NGOs to the European Commission the NGOs stated "A key concern is that despite the Guyanese Government repeatedly stating that it is consulting with a wide range of stakeholders, the range

is actually limited and excludes people linked with opposition political parties and indigenous Amerindians viewed (by the government) as unsupportive of the ruling Peoples Progressive Party". The European Commission in a formal response on 9 October (www.fern.org/publications/ngo-statements/european-commission-response-ngo-letter-guyana-eu-voluntary-partnership) stated that VPA negotiations must indeed be open and transparent with the full participation of stakeholders. In that light, the Commission wants to give Guyana the time needed to develop these participatory structures and for stakeholders to organise themselves and provide their input into the VPA process. In this spirit the EU will provide funding for local NGOs, indigenous peoples organisations and the private sector to participate in the process. This can only be seen as a positive response to try to improve the situation in Guyana and create space for those stakeholders who have been marginalised in previous processes notably the Norway-funded REDD process. To be continued...

Honduras

The second round of negotiations between the EU and Honduras was held in Brussels on 3 and 4 October 2013. The Honduran delegation included four civil society representatives, two from the timber industry association, and two representatives from the community producer federations. Discussions included progress against the roadmap, agreement on timber products to be included, and inclusion of the domestic market. In addition agreement was reached on a participatory approach that will allow inclusion of all stakeholders. The Confederation of Indigenous Peoples (CONPAH) was not present, but they provided their views in a written statement recognising the value of the process but highlighting the importance of including safeguards, FPIC and respect for indigenous peoples' rights to protect their natural resources. They indicated the need for more information to allow for internal discussions first to assess the challenges and opportunities of the VPA. The CONPAH Assembly is planned and will result in a statement on their views and strategies about whether and how to participate in the process. Civil society ownership of the VPA process is increasing and their alliance is growing steadily through the inclusion of three sub-national platforms in Atlantida, Yoro and Olancho. A series of sub-national meetings and consultations are planned to start discussions on the legality definition. Civil society is calling for more transparency and continuity in the process following general elections in November 2013. A workshop including representatives of the new Honduran authorities is foreseen in this regard in order to inform them from the start on the VPA process and continue momentum.

