

Forest Watch Special – VPA Update

November 2012

Introduction

In October 2012 at a week-long meeting at which 23 NGO and community representatives of 11 countries participated, civil society organisations involved in the Forest Law Enforcement, Governance and Trade (FLEGT) process in their country confirmed that the Voluntary Partnership Agreement (VPA) process has delivered better NGO coordination and coherence at national and regional level; strengthened civil society capacity; and improved relations between different stakeholder groups such as NGOs, the private sector and the government. By creating a formal responsibility for civil society to be the independent monitor in some countries, notably Indonesia, the process has further strengthened and acknowledged the role of civil society in improving forest governance. By ensuring direct representation of communities in the VPA negotiation process, notably in Liberia, communities have been empowered and are now asserting their rights. The meeting culminated in a conference in the European Parliament on 9th of October 2012.¹

Their concerns though are also manifold. The first relates to slow VPA implementation. After signing and ratification, but before there is an effective Legality Assurance System (LAS) in place, there is a black hole. It is unlikely that any VPA country will have an LAS up and running in 2013, with the possible exception of Indonesia. To keep momentum going therefore, implementation clearly needs to be speeded up. The second concern relates to the EU Timber Regulation (EUTR), which will become operational on 3 March 2013, from which date onwards all operators that put illegally sourced timber on the market can be prosecuted. If FLEGT is to truly reduce illegal logging, effective implementation of the EUTR will be key. There are fears that Member States may not be ready and that illegally sourced timber will continue to enter the EU market. Hence it will fall to EU NGOs to point out the loopholes and for the EU and Member States to close them. Last, the increasing export to China and India from many VPA countries requires the VPA country governments to talk to their Chinese and Indian counterparts and ask them to also support the national FLEGT VPA process; and the EU needs to continue to talk with China and India so they too will develop regulations to address illegal imports.² Progress has been made in China, with the EU and China developing joint actions to tackle the trade in illegal timber. China is currently working to develop a national system that would require verification that all its imports and exports of timber products have been legally produced.

Status of VPA negotiations

Six VPAs (Cameroon, Central African Republic (CAR), Ghana, Indonesia, Liberia and the Republic of Congo) have been finalised; four (CAR, Cameroon, Ghana and Republic of Congo (RoC)) have been ratified. In Cameroon, CAR and Ghana a Joint Implementation Committee (JIC),³ consisting of the EU and the country Government has been formed to guide the implementation. The main role for the JIC is review and monitoring.

Official VPA negotiations are ongoing in the Democratic Republic of Congo (DRC), Gabon, Malaysia and Vietnam and are expected to start soon in Guyana, Ivory Coast, Laos and Honduras. Other countries that have expressed an interest include Bolivia, Cambodia, Colombia, Ecuador, Guatemala, Madagascar, Paraguay, Sierra Leone and Thailand.⁴

VPAs by region - AFRICA

Cameroon:

Following a first Joint Implementation Council (the 'Council') and Joint Monitoring Committee (JMC) meeting in March 2012, a second meeting was held in July 2012,⁵ against the background of a host of legal reform processes, most of which are instigated by the VPA process.⁶ In advance of the meeting the civil society platform had discussed its priorities, which include transparency, effective civil society monitoring and good representation of social and environmental NGOs and local and indigenous communities in the - to be created - VPA National Monitoring Committee (NMC). The next meetings of the Council and JMC are due to be held 28-29 November 2012.

The platform also met at the end of July to discuss the links between VPA implementation and the forest sector which led to a draft policy note on forest sector legal reform in the context of VPA implementation. This is planned for publication around the end of November. In September 2012 the Prime Minister passed an Act establishing the NMC. The NMC has four seats for civil society, including three community representatives.⁷ The Act also clarifies that the NMC's role is to monitor the impact of the VPA, to detect problems and to provide solutions concerning VPA implementation.

A new initiative, ITAC (Initiative pour la Transparence et la Lutte Anti-Corruption dans le secteur forestier au Cameroun) is being developed as part of VPA implementation. ITAC aims to implement the transparency commitments set out in the VPA and address corruption. Working groups have been formed, an evaluation grid on transparency and a strategy for publishing information is being elaborated, and an anti-corruption strategy is expected to be developed by the end of 2012.



The platform sees the FLEGT VPA as a tool for wider governance and legal reform in Cameroon. A first draft of the revised Forest Code has now been released, however there is a lack of clarity on the timetable moving forward, in particular on the nature and extent to which civil society and forest communities will have adequate time and resources to evaluate this draft and provide their feedback. Clearly this is a crucial step, and rushing the finalisation of the law at this important stage would seriously undermine trust in the capacity of the VPA implementation process to be a model of participatory reform.

At the same time a large part of Cameroon is being handed out in mining and palm oil concessions in a manner that lacks transparency and fails to respect the land and resource rights of communities already living on these lands, including the right to free, prior and informed consent.⁸ Corruption is also rife, and the independent monitor of Cameroon has shown that according to the independent observer, the government is involved in 80 per cent of all forest infractions. Hence, there is a long and difficult battle ahead.

Central African Republic (CAR):

VPA negotiations with CAR were concluded in December 2010 and the agreement was ratified in July 2012. The first JIC took place in September 2012 at which a revised roadmap was adopted.⁹ Two members of civil society attended the JIC meeting. This shows the process in CAR is more open than in most countries where civil society cannot directly participate in JIC meetings. A regional workshop on independent monitoring was organised at the end of August 2012 by the civil society platform together with colleagues from Cameroon, DRC and RoC. A strategy for independent monitoring was presented and discussed and will be validated later this November. An in-depth analysis on the social and environmental aspects of the VPA legality grid was conducted by civil society and concrete suggestions and input for legal revisions in the context of VPA implementation are forthcoming.

Democratic Republic of Congo:

After being stalled, VPA negotiations restarted in September. A video conference took place on 19 October with more planned before the end of the year. The VPA is expected to have at least two legality grids, one for industrial logging, and one for artisanal logging. The civil society platform is reinventing and organising itself to play a key role in the negotiation process with a workshop being held in the first week of December involving civil society representatives from all forest provinces.

Republic of Congo:

On 4 July, the President of RoC concluded the ratification of the EU-RoC VPA by promulgating a law and signing a decree which means that more than two years after its signature, the VPA will soon enter into force. An informal joint working group, including civil society has now been set up with the aim of advancing the implementation process while waiting for a formal Joint Implementation Committee to be created. The working group has revised the legality grid, improving technical coherence and removing inconsistencies, but it is yet to be published. The revision of the Forest Code and implementing texts seems to be stuck.

Two legal consultants have been hired to advance the legal reform process, and from October to December tests are being conducted in forest companies aiming to control procedures and assess the conformity of the legality grid and the verification system. With support of the European Forest Institute, considerable progress has been made in the area of communications: an official RoC VPA FLEGT Website www.apvflegtcongo.org is up and running, an electronic bi-monthly newsletter is being published, communication tools have been produced by civil society to explain FLEGT to communities and an accessible electronic database hosting documents linked to the VPA/FLEGT and REDD processes is in place.

Gabon:

Gabon started VPA negotiations on 23 September 2010, but negotiations have stalled with no activity since May 2012. The VPA focal point has been moved elsewhere and has not been replaced. The Government has seemingly lost any interest in getting an agreement signed. This is against a backdrop of the government handing out large scale agricultural concessions notably for palm oil and rubber, which have met a lot of local resistance.¹⁰ Research by land tenure specialist Liz Alden Wiley published by FERN in July 2012, clearly shows the dire land tenure situation.¹¹ While some customary use of land is upheld, no family or community can secure ownership of its traditional forests - colonial and post-colonial administrations have continued to hand over rights and resources to big business rather than invest in local initiatives. Rights-based reforms in land tenure and governance in Africa since the 1990s have simply passed Gabon by. The report was presented at a conference in Libreville in July 2012 and although the Government originally said it would attend the launch and discuss with civil society organisations, in the end nobody from the government turned up. The civil society



platform has in response developed a new campaign called 'GabonMaTerreMonDroit' (GabonMyLandMyRight), and has launched an e-list and a website¹² to share information on the issue of tenure rights. At the same time civil society is working on a manual for benefit sharing agreements between logging companies and communities as this is foreseen in the law but not yet implemented in the field.

Ghana:

The Ghana-EU VPA was signed in September 2008 but implementation remains slow. FLEGT licenses are not expected to be issued until 2014. The rolling out of a Wood Tracking System is expected by December 2012, and the independent auditor is still to be appointed. A verification protocol is being drafted and field tested, with input from civil society organisations. It will be key that the verification protocol is clear and includes financial, tax and logging controls.

The government Timber Validation Division (TVD) is operational to issue licenses, but although NGOs believed there was an agreement that NGOs would be represented to oversee the functioning of the TVD, in the end, the role of NGOs was substituted by Trade Unions and the National House of Chiefs. This has led to some concerns among the NGOs and makes the Multi-Stakeholder Implementation Committee (MS-IC) which includes two representatives of civil society even more important.

The longer term reviews concerning tree tenure and the domestic timber sector - which is larger than the export sector - are still at the very early stage. As both the FLEGT VPA and the Ghana Readiness-Preparation Plan require tree tenure reform, it is time that concrete proposals to introduce tenure reform are developed. A new domestic timber policy also needs to be based on this regime, even though there will be stiff resistance from forces benefitting from the current system.

Liberia:

The Liberia VPA was concluded on 9 May 2011 in Monrovia, and a pre-JIC meeting was hosted in Monrovia in March 2012.¹³ The next JIC meeting is planned for the first week of December. Ratification is slow, which is of concern to Liberian civil society organisations and communities, who have pressed the EU to be more pro-active towards their government and demand ratification. Their concern is fuelled by the fact that the Liberian Government has since the signing of the VPA handed out an estimated 20 per

cent of all land in private use permits (PUPs) with dubious legality. Timber from these PUPs is already entering the EU, notably in Greece. Another key issue of concern is the fact that more than one million US dollar owed to communities and paid by logging companies to the Ministry of Finance has not materialised. Even the Forestry Development Authority does not seem to be able to access it. The consultancy company LTS is drafting a verification protocol, which should include all elements of the legality definition. Civil society is so far not involved in the development and testing of these protocols, something which needs to change. An interim implementation committee has been formed in which seven community members have a seat as well as four NGO representatives. There is a common view among Liberian civil society organisations that the VPA still provides a major opportunity to put Liberia's unravelling forestry reform back on track and hence should be ratified as soon as possible.

Ivory Coast:

A new country on the block which held a first meeting on 20-21 September in Abidjan during which the government of Ivory Coast formally announced its willingness to start VPA negotiations. Many civil society organisations were present and participated in the various working groups, including those on representational issues and rural communities. Social and environmental civil society organisations working on rights and tenure issues and conservation organisations are hoping to create a civil society platform in the near future to actively and meaningfully engage in VPA negotiations once they start, which is foreseen for early 2013.

VPA's by region - ASIA

Indonesia:

Indonesia began implementing its Timber Legality Assurance System (known as Sistem Verifikasi Legalitas Kayu (SVLK) in September 2010, when it started a programme of audits and capacity building across the forestry sector. Timber products from about 350 factories that have been audited to the SVLK standard are now being exported. The total forest area audited to at least the SVLK standard is now about 9 million hectares, including plantations, natural forests, and ten community forests. The



revision of the SVLK standard in December 2011 to allow group certification of small producers has resulted in the first certificate being awarded to the Buleleng Handicrafts Association in Bali in November 2012, with a second one on the way.

On 1st August 2012 the Licensing Information Unit (LIU) was launched at the Ministry of Forestry, taking on responsibility for checking the validity of licences prior to export. The LIU will also be the first point of contact for licensing queries from competent authorities, customs and importers in Europe once the VPA is in operation.

In October the Minister of Trade signed a new law making it a requirement on exporters of 26 forest products to have a new export licence known as V-Legal by 1 January 2013, meaning the material has to come from SVLK audited factories and forests. The remaining 14 forest product codes will have to meet this requirement by 1 January 2014. The V-Legal licence is compatible with the FLEGT licensing requirements.

Shipment tests to nine EU Member States from 17 Indonesian companies started in late September with consultants from Indonesia and Europe monitoring the shipments. Six Member States have so far agreed to join the test, whereby their competent authorities will process dummy FLEGT licences sent to them by the participating importers. The test will be completed in December 2012 and the results used to strengthen the system both in Indonesia and Europe.

Signing and ratification of the VPA has been delayed by the need to update the VPA text and annexes as a result of the December 2011 revision to the SVLK, and the process of “legal scrubbing” by Indonesian and EU lawyers. The final complete set of documents is about to be sent off for translation into the 23 official languages of the EU, and then on to the Council and Parliament. Ratification of the VPA is not therefore expected until 2013. To improve the (mandatory) forest management standard, a multi-stakeholder consultation process has taken place to revise the SVLK. The new standard includes free prior and informed consent (FPIC), accommodates and facilitates small scale forest users and small and medium enterprises, and improves transparency and public participation in forest management decisions.

To monitor the implementations of the SVLK, Indonesian NGOs from Sumatra, Kalimantan, Sulawesi, Java and Papua developed an Independent Forest Monitoring

Network (JPIK) in September 2010. JPIK has now started its monitoring activities. So far the complaints have been handled directly by the auditors without recourse to the complaints mechanism.

Lao People's Democratic Republic:

Another newcomer is the Lao People's Democratic Republic (Laos). The Government of Laos informed the EU in February 2012 about its intention to start VPA negotiations, and an inter-departmental Working Group on FLEGT has now been set up, and a Focal Point appointed. In September 2012, the German aid agency GIZ and the Government of Laos agreed on supporting a multi-stakeholder process, funded by GIZ.

A Lao-EU FLEGT VPA Preparation Workshop is planned for 21-22 November 2012. In the workshop, different stakeholders will meet to get an understanding of the process and to identify next steps. It is hoped that local civil society organisations (known as NPAs – Non Profit Associations) will be well represented as civil society engagement in Laos will not be without challenges.

Malaysia:

Negotiations restarted in April 2012, but without the Malaysian State of Sarawak, which hosts most of the country's forests. The Malaysia State of Sabah also recently announced that it did not want to be part of a VPA with the EU, leaving only Peninsular Malaysia interested. To make the case for signing a VPA only with the Peninsular Bernard Dompok, Malaysian Minister for Plantation Industries went to Brussels in September to meet with the European Commission and EU NGOs and timber traders. His proposal was not accepted although it seems increasingly likely that the European Commission will begin to discuss a VPA with Malaysia excluding Sarawak, which is widely seen as a rogue state that would never be able to be part of a VPA. If this were to happen, Sarawak would be excluded from exporting timber to the EU.

European and Malaysian NGOs keep demanding an inclusive consultation process that allows for active consensus based decision making, as in all other VPA countries.¹⁴ A proposal for a Timber Legality Assurance System (TLAS) with Peninsular Malaysia has been put forward, but as yet there is no inclusive consultation process in place. There has been no real input into the TLAS from civil society organisations and many problems concerning transparency, tracing, independent monitoring and native customary rights remain.



Vietnam:

The last FLEGT update ended with ‘Despite some concerns about the extent to which [NGO] participation would be accepted, there are now signs that the government is willing to cautiously welcome the group’s potential contribution. The question now is how much time the Vietnamese NGOs will be able to secure for consulting the communities in the areas they have links to, what the result will be, and how will it be received.’ In the last six months there has been considerable progress. The local civil society platform has held two workshops and has developed guidelines for community consultations on the legality definition that is the basis of the VPA. Based on the guidelines, eleven of the network’s member organisations have conducted community consultations in eleven communes of six provinces selected as a cross section of the nation. A report is due in November 2012. The platform aims to continue working with communities and civil society organisations to build capacity and assist in the implementation of the VPA in a sustainable and inclusive manner.

VPAs by region – CENTRAL and SOUTH AMERICA

Guyana:

In March 2012, Guyana officially requested the EU to negotiate a VPA, after two years of exchanging information on the VPA process. In July 2012, the Government of Guyana and the EU issued a joint statement¹⁵ where both Parties agreed to initiate VPA negotiations by the end of 2012 with the aim of concluding them by September 2015. As noted in the joint statement, informal consultations in Guyana have resulted in an understanding amongst Guyanese stakeholders of the major issues that need to be addressed during the negotiation process, including the implications that a VPA would have on multiple land uses such as agriculture, forestry and mining and the impact on indigenous peoples on their titled lands with regards to commercial and subsistence activities. The timber domestic market and the potential synergies with existing forest

governance processes in Guyana should also be considered. Both Parties have emphasised the importance of stakeholder involvement during the process to ensure a credible and implementable agreement. Meanwhile, indigenous peoples in Guyana continue to press for the reform of land titling and demarcation rules and criteria for Amerindian Villages in order to reduce land conflicts and bring the country into line with international obligations relating to human rights and sustainable forest policy.

Honduras:

On the evening of 30 Oct 2012 in Tegucigalpa a 2-day workshop ‘Lucha Contra la Tala Ilegal; Aplicaciones de leyes, gobernanza y comercio forestales UE-FLEGT en Honduras,’ was launched. The aim was to provide civil society organisations with information and introduce FLEGT with a view to exploring the possibility of developing a civil society platform. It was a well-attended opening ceremony which the Honduran president was supposed to open. In the event he had to send a deputy, but it was nevertheless an important signal from the government that they support both the process and the inclusive involvement of civil society organisations.

Civil society organisations in Honduras seemed ahead of the game and eager to get the government to move on the VPA. Given previous VPA discussions elsewhere however, perhaps they are overly ambitious with regards to how quickly an agreement can be negotiated. An intervention from an indigenous leader made the point that indigenous peoples have not explicitly been referred to, but should not be overlooked in the formation of the civil society platform. Attendance was impressive (timber industry aside), and even included a handful of officers from the armed forces came in their role as what they referred to as ‘environment soldiers’. Although the government seems to be saying all the right things, they too were noticeably absent as the meeting progressed, and attendance diminished over the second day. Nevertheless it would seem that Honduran civil society is ready to go, and has a supportive government and legal framework. The issues that loom are the lawlessness and impunity with which illegal loggers operate, corruption and fear of violent reprisals for anyone denouncing illegal logging. Early days.

ENDNOTES

1. Guardians of the Forest. For more information see www.fern.org/forestguardians
2. <http://www.tropicalforests.ox.ac.uk/sites/tropicalforests.ox.ac.uk/files/hewitt.pdf>3. http://loggingoff.info/sites/loggingoff.info/files/Aide_Memoire_pre_jic.pdf
3. Called the Joint Implementation Council (the ‘Council’) in Cameroon and the JMRM (Joint Monitoring and Reporting Mechanism) in Ghana.
4. Expressing interest in this sense refers to contacting the EU either formally or informally to ask for more information.
5. For the aid memoires of the Council and of the Joint Monitoring Committee (JMC) contact the EU Delegation at Carl.FROSIO@eeas.europa.eu
6. Revision of the 1994 Forest Code, Development of VPA implementing Regulations, Development of Implementing Regulations relevant to the forest sector and a reform of the land code.
7. There are 14 seats in total, of which four are for civil society organisations, two for private sector, and the rest government representatives. For civil society organisations you have: one NGO, one representative of forets communautaires, one representative of forests communales, and one representative of peoples autochtones.
8. http://deforestationwatch.wordpress.com/2012/10/23/are-camerouns-forests-doomed/?goback=%2Egde_141485_member_178139531
9. <http://loggingoff.info/fr/document/aide-m%C3%A9moire-conseiljuillet-2012>
10. <http://www.brainforestgabon.org/>
11. <http://www.fern.org/landrightsingabon>
12. <http://gabonmaterre.org/>
13. http://loggingoff.info/sites/loggingoff.info/files/Aide_Memoire_pre_jic.pdf
14. <http://www.fern.org/malaysiastatement>
15. http://www.forestry.gov.gy/Downloads/EU_FLEGT_GoG_EU_Joint_Statement_Final.pdf