

Forest Watch Special – VPA Update

May 2012

Introduction

The EU Timber Regulation will come into effect on 3 March 2013, making it a criminal offence to put illegal timber on the EU market. A Forest Law Enforcement Governance and Trade (FLEGT) license provides a green light for imports into the EU and so this encroaching deadline has stoked interest in FLEGT Voluntary Partnership Agreements (VPAs). Whilst this renewed interest is certainly positive the increase in VPAs requires an increase in resources. This has not been forthcoming and there is a clear risk that the quality of the VPAs will be undermined.

To ensure VPAs remain effective tools to improve forest governance, they must be developed through a consensus based, in-country, inclusive, multi-stakeholder process, where all stakeholders are represented via a self selection process. To date, this has been the case in all VPAs signed, but a group of European NGOs has written to the European Commission raising concern that this is not the case with the Malaysia and Vietnam VPAs currently being negotiated.

As well as these negotiation difficulties, the six FLEGT VPAs that have been signed now face the key challenge of effective implementation which makes the governance improvements clearly visible to the outside world. Some governments do not seem to be in a hurry to make the required changes. It is therefore up to civil society organisations and the timber industry in those countries to get into the driving seat and move the process forward.

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Status of VPA negotiations

Six VPAs (Cameroon, Central African Republic, Ghana, Indonesia, Liberia and the Republic of Congo) have been finalised; two (Ghana and Cameroon) have been ratified. Ratification of the VPAs of Liberia and the Central African Republic is expected soon. Official VPA negotiations are ongoing in the Democratic Republic of Congo (DRC), Gabon, Malaysia and Vietnam. However negotiations have been temporarily suspended in DRC. Three other countries are expected to start official negotiations; Ivory Coast, Honduras and Laos. Countries that have expressed an interest include Thailand, Guyana, Bolivia, Madagascar, Sierra Leone and Ecuador.

VPAS by region - AFRICA Cameroon:

Although not much has happened since the ratification of the agreement in August 2011, the implementation seems to have picked up speed since the first Joint Implementation Committee (JIC) meeting (Yaounde, 6th March 2012).¹ There was an update on the revisions of the legality grid as well as on the recommendations from the Bonn workshop on corruption. Prior to the JIC meeting, the Cameroon Civil Society Organisation (CSO) Platform discussed their priorities, which include transparency (i.e. information that must be made publicly available), monitoring by CSOs, ensuring good representation of social and environmental NGOs, local communities and indigenous peoples in the 'Comité Nationale de Suivi' (National Implementation Committee) and the need to monitor all impacts of the VPA.

The Platform sees the FLEGT VPA as a tool for wider governance and legal reform in Cameroon. A revision of the legality grid and the 1994 Forest Code are ongoing. It is therefore important for civil society to remain pro-active in creating concrete proposals for the legal reform processes and ensure effective implementation of the VPA. Issues such as transparency, effective participation and monitoring by CSOs remain priority areas.

Central African Republic (CAR):

VPA negotiations with the Central African Republic (CAR) were concluded in December 2010 and the agreement is currently being ratified. Numerous problems still need to be addressed to ensure effective implementation. The date put forward for issuing FLEGT licences is January 2014. The CAR VPA is the first to not include the domestic market and as the export market is confined to a limited number of logging companies, this date could be feasible. However, this would in itself not do much to improve forest governance in CAR.

A consultant has just completed a report on a legal analysis of the legality assurance system (LAS) which includes several recommendations. Civil society has been developing a strategy for independent civil society monitoring.



Republic of Congo:

The VPA, signed in May 2010 and ratified in August 2011 still needs to be 'activated' by the President. The implementation is moving slowly and the original deadline for FLEGT licenses by December 2012 will therefore surely be missed. There seems to be a lack of political will to move the process forward. Several legal reforms are ongoing, although it is difficult to know where these are at. It seems the Government is moving towards a full revision of the Forest Code. This legal reform process has not been transparent nor participatory. The RoC CSO platform is advocating for inclusion of texts on community forestry in the new Forest Code but to date without success. To ensure that the new legal framework has political buy-in and brings more legitimacy and equity to the process, it is crucial that civil society is actively involved in the legal reform processes and the active implementation of the FLEGT VPA. Improving the way local community voices are heard during the implementation phase remains an essential implementation challenge.

Central Africa Region:

At the Central African regional level, the new FLEGT CEEAC unit (Communauté Economique des Etats de l'Afrique Centrale) was put in place in March/April 2012 for the coming three years. Capacity building of the civil society platforms in the Congo Basin would be part of the planned activities for 2012, as well as looking into trans-boundary issues with regards to traceability.

Gabon:

Gabon started VPA negotiations on 23 September 2010 and negotiations are still ongoing. A legality grid has been proposed, but not yet agreed. Priorities for civil society to have within the legality grid include benefit-sharing agreements between communities and timber companies, respect of customary use rights when allocating concessions, a thorough social and environmental impact assessment, and inclusion of detailed texts on community forestry. The government has promised to look into revision of the Land Code by the end of the year. Civil society has insisted on being part of independent monitoring and the government is debating this. It is not clear whether the government is committed to the VPA as there have been several delays with regards to a field test for the legality grid. The initial suggested date of December 2012 for signing the VPA now seems unrealistic and the roadmap will need to be revised, partly

because of the recent appointment of a new Minister of Water and Forests, in charge of the FLEGT file. In parallel, there is an increasing interest and presence of Asian logging companies and several large scale palm oil and rubber concessions have been awarded. The process to allocate these concessions has been neither transparent, nor participatory.

Ghana:

The Ghana-EU VPA was signed in September 2008. Although originally expected to be the first country to issue FLEGT licenses, implementation has been very slow. No FLEGT licenses are expected to be issued until 2013 or 2014. The rolling out of a Wood Tracking System is expected by December 2012, preceded by the appointment of a Timber Validation Council with one CSO representative. A verification system is expected to be operational by September as is a system for the implementation of the proposed domestic timber policy.²

This postponement of FLEGT licensing is to some extent good news as it allows for the conclusion of some of the ongoing legal reform processes, of which there are many. They include a Constitutional Reform process, a reform of the Forest and Wildlife Policy, a (Consolidated) Forest Act, a Domestic Timber Policy and a Freedom of Information Bill. The VPA process has led to inclusive participatory processes for most of these reform processes; notably the constitutional review and the Forest and Wildlife Policy have been developed in a consultative manner. All these documents (minus the Freedom of Information Bill) clearly spell out the need for tree tenure reform in Ghana (where communities own the land but not the naturally regenerated trees), as does the FLEGT VPA and the Ghana Reduced Emissions from Deforestation and Degradation (REDD) Readiness-Preparation Proposal (R-PP). There is therefore a clear opportunity to work towards concrete proposals to introduce tenure reform, even though there will be stiff resistance from forces benefitting from the current system. What is clear is that if tree tenure does not lie at the heart of these reforms they will not be successful. The Forest Watch Ghana (FWG) Coalition is therefore expected to make this a priority of their work.

Other FWG priorities include transparency, payments of taxes – with many companies being in arrears - and regular revision of stumpage fees as required by law. The previous concern around the issuing of a large number of salvage permits appears to have been solved for the time being.



Liberia:

The Liberia VPA was concluded on 9 May 2011 in Monrovia. A first pre-JIC meeting was hosted in Monrovia in March 2012. Since Liberia started negotiating a VPA, a large part of Liberia has been handed out in (sometimes overlapping) timber concessions, mining concessions, palm oil concessions and private use permits. An estimated 50 per cent of all land is now under a concession agreement, while there still is no attempt to document community lands owned under customary law. This is bound to create conflicts. Hence this problem underlies the implementation of the VPA. A specific problem is related to the large number of Private User Permits (PUPs) that have been issued, which take up an estimated 20 per cent of Liberia's land area; many of these PUPs will export timber and hence would need to go through the Legality Assurance System. As the 'legality' or otherwise of these PUPs is now under scrutiny following these and other controversies, the Minister of Agriculture confirmed there is now a moratorium on further PUPs and on further 'allocation of forest land of concessions requiring large land areas, except where food security is of concern'.⁴ Another outstanding issue is the controversy over the annual payments of a bid premium. This issue is being looked at and recommendations will be brought forward.

To monitor impact of the VPA, the Liberia CSO Platform has created a monitoring framework, and have set up a monitoring team to monitor the VPA implementation. The Platform is looking for further support to build the capacity to do this properly and reach out to communities. The JIC, also tasked with monitoring the impact of the VPA, has agreed to make monitoring, building upon the Poverty Reduction Strategy, a priority for 2012. There is a common view among Liberian CSOs that the VPA provides a major opportunity to put Liberia's unravelling forestry reform back on track and hence should be ratified as soon as possible but should allow addressing existing illegalities.

VPA by region - ASIA Indonesia:

Indonesia began implementing its Timber Legality Assurance System (SVLK: Sistem Verifikasi Legalitas Kayu) in September 2010, when it started a programme of audits and capacity building across the forestry sector. 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 and accommodates, 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 Indonesia's 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 concerning the implementation of the SVLK.

Malaysia:

Negotiations restarted in April 2012, but without the Malaysian State of Sarawak, which hosts most of the country's forests. A proposal for a Timber Legality Assurance System (TLAS) has been put forward but as yet there is no inclusive consultation process in place that allows for active consensus based decisions, inclusive of local CSO and community representatives. It is noteworthy that the government calls the latest consultation process 'a multi-stakeholder consultation' but the consultation itself remains only 'a hearing'. The many outstanding issues including transparency and native customary rights remain key issues to be resolved before an agreement can be signed; as well as how to ensure no timber from Sarawak gets into the other states under the TLAS.



Vietnam:

Since November 2010, following studies aimed at informing the negotiation process on stakeholders, legality definition, and timber flows, a group of Vietnamese NGOs have begun to coordinate with a view to feed into the negotiations. The priority for this group is to secure its political space, build its capacity, and argue for time to provide its input into the fifth draft of the legality definition. Despite some concerns about the extent to which their 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.

VPAS by region - AMERICA

Several exchanges and information sessions between the EU and Latin American countries have taken place on FLEGT issues, yet very little has moved when compared with Africa and Asia. This may change now Honduras has started with preparations for formal negotiation of a VPA. In a statement the Minister/ Executive Director of the National Institute of Conservation and Forestry Development, Protected Areas and Wildlife of Honduras made clear that the 'major preoccupation of the forestry sector in Honduras is improving governance as well as a better image and better access to markets.'⁵

	Central African Republic	Republic of Congo	Cameroon	Ghana	Liberia	Indonesia
Informal talks	Mid 2007	End 2007	2005	May 2005	2007	September 2006
VPA start negotiation	October 2009	June 2008	November 2007	May 2007	March 2010	March 2007
VPA conclusion	December 2010	May 2009	May 2010	September 2008	May 2011	May 2011
VPA signature	December 2011	May 2010	October 2010	November 2009	July 2011	May 2011
VPA ratification in country	2012?	2012?	August 2011	June 2010	2012?	2012?
VPA ratification EU	2012	January 2011	June 2011	March 2010	2012	2012?
1 st expected FLEGT licenses	2014	January 2013	January 2013	End 2013/2014	End 2014	2013

ENDNOTES

1. http://loggingoff.info/sites/loggingoff.info/files/2012_04_07_Aide_M_moire_Conseil_du_7_mars_2.pdf
2. <http://loggingoff.info/sites/loggingoff.info/files/Aide%20Memoire%204th%20JMRM%20Mission%202012-03.pdf>
3. http://loggingoff.info/sites/loggingoff.info/files/Aide_Memoire_pre_jic.pdf
4. http://loggingoff.info/sites/loggingoff.info/files/Aide_Memoire_pre_jic.pdf (point 25)
5. <http://www.fern.org/publications/recommended-reading/central-america%E2%80%99s-first-vpa-perspectives-flegt-honduras>

