



Mr Mogens Peter Carl
Director General DG Environment
European Commission
200 Rue de la Loi
1049 Brussels
Belgium

12 June 2008

Re: upcoming voluntary partnership agreement between the EU and Ghana

Dear Mr Carl,

FERN and Global Witness believe the EU FLEGT process has great potential to address the underlying causes of illegal and unsustainable logging practices. Specifically the work carried out by the Government of Ghana, the EU and civil society organisations in Ghana has proven that the process is able to drive necessary forest law reform, restructure the timber industry, strengthen civil society and make all stakeholders more accountable through a transparent system of checks and balances. We therefore fully support the EU concluding a voluntary partnership agreement (VPA) with Ghana on 22 of July as planned and hope and are confident this will happen.

However, in the effort to meet the July deadline, we fear some unacceptable compromises may be agreed on a few crucial aspects. These need to be addressed to ensure this VPA will be an effective tool for achieving the changes indicated in Briefing Notes put out by both the EU and the Government of Ghana. This is specifically important as the VPA with Ghana will be the first VPA and therefore set a precedent.

We are writing to request your commitment to remain true to the spirit of FLEGT through the coming weeks to make sure the last remaining problem areas, described below, are resolved in a way that will protect the public credibility of the system. If so, we will have a VPA that truly sets a good benchmark for other VPAs to come and will have the full support of civil society organisations in Europe and Ghana.

The three areas which particularly concern us are the following: the commitment to a meaningful, participatory and timely forest law review process, the independence and credibility of the Independent Monitor and the governance of the legality assurance system.

Concerning forest law reform process, we fully support the legality definition proposed as well as the commitment to legislative reform. Our concern lies in the fact that there is no clear timeline and action plan laying out how the reform process will proceed. A key concern is the transition from "written consent" to "Free Prior Informed Consent" for logging of community resources. As we understand it, the procedures for obtaining community consent are currently set out in subsidiary legislation, which is not subject to amendment by Parliament. The Government of Ghana could therefore achieve the higher standard within one year. For this to happen there must, however, be a clear understanding amongst stakeholder about how

the reform process will proceed. We therefore would like to ask you to ensure that the VPA will indicate a clear timetable and participatory process for the review of legislation.

Concerning independent monitoring (IM), we understand that the Government of Ghana wants to make IM a responsibility of civil society organisations. Whilst this is welcome, some clear principles need to be agreed on and implemented to ensure that the monitoring will be effective and lead to changes in implementation of the VPA where required. These principles would have to include the following:

- Full and unconditional access to all relevant locations and documentation for the purpose of audits and spot-checks;
- Full disclosure of the evidence-base for findings and recommended corrective actions;
- Time-bound triggers for public disclosure (and other protections against obstruction and procrastination by vested interests);
- A clear role for wider civil society (including a methodology that requires soliciting information from all stakeholders, in particular local communities and others with 'weaker voices').

Based on our understanding of the current points of discussion between negotiating parties, we particularly stress the need for all documents of the independent monitor to be simultaneously sent to both parties in the VPA Partnership: the Government of Ghana and the EU. In addition, experience in other countries where IM has operated has universally shown that ownership, accountability and responsive corrective actions are all strengthened when IM reports are also accessible to all civil society organisations and the public at large. Furthermore, if independent monitoring will be a task carried out by civil society organisations, sufficient funding and political protection, through active support from the international community (donors and NGOs alike) needs to be made assured.

Our last concern relates to the Legality Assurance System (LAS). We are aware that the Government of Ghana regards an independent TVE (Timber verification Entity) as unconstitutional. Although we do not want to be dogmatic about where such a body is positioned, it is clear that this body does need to be independent to fulfil its role. When this body is placed under the Forestry Commission there is a need for a clear, formalised and legally well-defined role for civil society in oversight. The Forestry Commission has been part of the problem in the past and although we would hope and expect them to become part of the solution, placing a TVE under the powers of the Forestry Commission represents a serious risk to the credibility of the system. We would therefore stress the need, in these circumstances, for multi-stakeholder governance of the system, through for example the Joint Implementation Committee comprising the same sort of representation as the VPA steering group does currently.

Without these measures, whilst the process of the VPA to date has opened up some key areas for debate and consensus for reform, it risks a situation where the credibility of legally licensed timber from Ghana rests on the shoulders of a few key individuals, and not the checks and balances provided by wider participation and accountability, and this represents something of a return to the past for Ghana's timber sector.

We sincerely hope the draft VPA agreement can be improved on these major areas and if so, would gain our full support.

Yours sincerely,

Saskia Ozinga

David Young



c.c

S. Manservisi, DG DG Development

Min Esther Obeng Dapaah; Ministry of Lands, Forestry & Mines; PO Box M212; Accra;

Fredua Agyeman, Technical Director, Ministry of Lands, Forestry & Mines

Andrews Adjei Yeboah, Deputy Minister, Ministry of Lands, Forestry & Mines

Soledad Blanco, Director, Directorate E, DG Environment European Commission

Hugo Maria Schally, Head of Unit E2, DG Environment of the European Commission