

Forest Law Enforcement, Governance and Trade

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Forest Watch FLEGT Update November 2014

Minimising security threats for people working with Forest Law Enforcement, Governance and Trade (FLEGT) Voluntary Partnership Agreements (VPAs) and other forestry issues was a major theme for participants in the Community Rights Network (CRN) when they met in Brussels in early October. The assassination of a journalist investigating illegal logging in Cambodia just the day before the CRN meeting was a tragic reminder of the serious risks many people face in trying to tackle illegal logging and improve governance (see this month's Forest Watch for more details and the CRN response).

The CRN meets every two years to share, learn and strategise how to make the most out of FLEGT VPA processes. They present their findings and concerns to the European Commission and MEPs. Other major themes this year included the declining importance of timber trade as a driver of deforestation, the conversion of forest land to agricultural commodities and the increasing importance of China and India. This year 35 representatives from 17 VPA countries joined the meeting, with people from Guyana, Burma, Laos and Indonesia taking part for the first time.

Those right at the beginning of the VPA process found it especially rewarding, as it was a chance to learn from the experience of others further along the road. Notably Liberia and Ghana had some inspiring stories to tell, as real results on the ground are beginning to emerge there (see country sections below for details).

A number of countries at various stages of agreeing or implementing a FLEGT VPA, including Liberia, Democratic Republic of Congo, Cote D'Ivoire, Vietnam and Guyana, have signed the New York Declaration on Forests. The Declaration calls upon signatories to end forest loss by 2030, support the private sector to eliminate deforestation from the production of agricultural commodities, and improve land tenure security.



Africa:

Cameroon

Work to implement Cameroon's VPA has begun in earnest. The Independent Auditor finalised a report examining among other issues the consistency of forest titles. The conclusions are not public, but are understood to raise serious concerns about the legality of the majority of the forest titles. A working group set up by the Joint Implementation Committee (JIC) and in which Civil Society Organisations (CSOs) are represented, will closely follow up the conclusions and recommendations of the report. The outcomes will probably dominate the VPA implementation process in Cameroon in the months to come.

Article 17 of the Cameroon VPA requires both parties to assess and monitor the social, economic and environmental impacts of the VPA on local and indigenous communities and mitigate possible negative effects on communities. The start of the VPA impact monitoring exercise, a process guided by the European Forest Institute (EFI), was planned to start this year, but has been delayed.

Since the beginning of 2014, monitoring of VPA implementation has fallen exclusively on NGOs. A group of forty CSOs involved with independent monitoring formulated eleven practical recommendations, based on the lessons learned while carrying out field work. The group calls upon all stakeholders including the government, the official independent monitor, and the national control authorities, to verify reported illegalities much more quickly and take the violations of social agreements more seriously.

Central African Republic (CAR)

With the security and political situation in CAR remaining difficult, it is uncertain when the VPA process will resume. In July, all warring parties agreed a ceasefire which has been welcomed as a first step in a wider political process that is meant to lead to general elections in 2015. However, accelerating the political transition and preparing to hold elections without significant improvements in security, accountability and reconciliation amongst communities will only increase the risk of further violence. The transitional govern-

ment is working on a new constitution and other legal reforms, including in the forest sector. CSOs documented continued looting of forests including artisanal milling. Organisations like Centre pour l'Information Environnementale et le Développement Durable (CIEDD) and Maison de l'Enfant et de la Femme Pygmées (MEFP) are providing input into the process including raising parliamentarians' awareness of the need to develop fully-fledged laws on transparency and indigenous peoples. The Ministry of Forests is considering convening a meeting of the VPA JIC to revive the VPA process and look into financing options. The EU is contributing significant financial assistance for the country's reconstruction. In September, a trust fund called 'Fonds Békou' was set up to prepare the transition from emergency response towards longer-term development assistance. However, it is unclear whether the EU will reengage in the VPA process soon.

Gabon

After more than two years, VPA negotiations were re-launched in October 2014. The Minister of Environment and Natural Resources stated that the resumption of the VPA negotiations fits with Gabon's strategic plan to become an emerging green economy and meets its commitment to develop community forests. Civil society, including indigenous peoples, has seats in the VPA technical coordination committee. The legality grid will be revised in the coming months. The field testing of the adopted legality grid is foreseen for July 2015, with a roadmap towards final validation of the grid by September 2015. Adapting the legality grid to accommodate community forestry is one of the key challenges ahead.

In the meantime the forest reform slowly proceeds and civil society is trying to play a role in it. On 1 August, Gabon passed a new Law on Sustainable Development (Loi No. 002/2014 portant orientation du développement durable en République Gabonaise). This law proposes creating a system that "offsets" negative impacts on the environment and communities through the buying and selling of "sustainable development credits". The law, poorly written and full of loopholes, fails to describe the mechanisms by which the sustainable development credits will actually be measured and traded. The concept of community and biodiversity offsetting in Gabon is based on the controversial logic

that damage to a valued area in one place can be “compensated” by maintaining a valued area in a totally different place. If the Gabonese law is seen as a model by other governments in the Africa region, the implications of this new law could be devastating.

Republic of Congo

The Republic of Congo’s VPA was ratified in February 2013, but the process has been stagnant for quite some time. In the last six months, however, there has been progress on agreeing the terms of reference for the development of a Legality Assurance System (LAS). Work is moving forward with the aim of launching the system, and the possibility of ‘pilot’ FLEGT licenses, in the second half of 2015. An Independent Auditor will also be recruited before mid-2015 to check to the LAS and its implementation, and identify any shortcomings and deficiencies. Finalisation of the new Forestry Law has slowed down, unlike the drafting of the implementation decrees by experts from the Agence Française de Développement (AFD) which is picking up pace. Civil society is worried that the timeframe (about two weeks) for stakeholders to provide comments is extremely tight and will not allow for meaningful consultation of NGOs, nor local communities and indigenous peoples. The Plateforme de Gestion Durable des Forêts (PGDF) who is actively involved in the legal review process, has asked the Minister of Forest Economy to ensure that further consultations will be held. Members of the platform will also soon monitor the implementation of REDD+ safeguards in the country, with a view to feeding recommendations into the national REDD+ strategy.

Cercle d’Appui à la Gestion Durable des Forêts (CAGDF), the local civil society in charge of Independent Monitoring in Congo has published its first report covering forest activities in the Sangha Department (http://www.observation-congo.info/documents/CAGDF_rapport1_Sangha.pdf). The report finds that a number of forest companies such as Atama and Congolaise Industrielle des Bois (CIB), are violating the forest law, and urges the Departmental Forest Authorities to take appropriate action.



Ivory Coast

VPA negotiations in Ivory Coast are being conducted in the context of some major redrafting of related national legislation. A new forest code was adopted on 11 June 2014. The law brings a number of important changes to the sector, the most significant being the transfer of ownership over trees from the government (under the old law) to the owner of the land (in the new law). This change impacts the social principles of the VPA legality grid, which has so far been drafted on the basis of the old forest code, so these principles have been put on hold whilst the implementing regulations for the new forest code are drafted. Civil society has submitted a letter to the Minister of Water and Forests requesting the inclusion in the drafting of these new implementing regulations.

The second VPA negotiation session, held in Brussels in June 2014, put in place three multi-stakeholder working groups to work on: the legality grid and legality assurance system; the domestic market; and a group working on communication and the transparency annex. Civil society has created three corresponding working groups to formulate its own positions for these thematic areas.

In August, the civil society platform validated its governing charter and recruited a legal consultant, who will assist the platform with drafting its contributions to the legality grid, and is helping them prepare for the drafting of the new forest sector laws. The platform also held a workshop in August to train journalists to support civil society in their forest governance advocacy.

Ghana

In August 2014, Ghana's Timber Validation Department (TVD) announced that the issuing of the first FLEGT license would be delayed because the Joint Monitoring and Review Mechanism (JMIRM) was unable to meet to oversee the process, due to the government's ban on international conferences during the Ebola crisis. Major issues that still need to be resolved are the long-overdue conversion of existing timber concession leases to meet current legal requirements, in particular the full payment of taxes and the development of forest management plans.

The TVD is a department within Ghana's Forestry Commission tasked with verifying adherence to VPA legality assurance system, while the Timber Validation Committee (TVC) is expected to monitor the work of the TVD. Forest Watch Ghana and Client Earth have engaged with the TVC to share their expectations of its functioning. The TVC found this engagement useful and were open to further collaboration in the future. A key challenge of the TVC is how it guarantees its independence and neutrality, as it has no direct source of funding and currently depends on the Timber Validation Department—the body it is supposed to monitor—as its secretariat.

The Government has stated its commitment to making public the list of documents demanded by CSOs in the last Joint Monitoring and Review Mechanism (JMIRM) meeting. Civil society is currently testing this commitment by requesting lists of existing timber extraction rights from national and local government offices. The momentum for forest sector legal reform is slowing. The supplementary legal reforms for the new forest code were intended to be drafted by the end of 2014, but this has yet to commence. In the meantime, ClientEarth is supporting local CSOs to develop position papers for these new legal reforms. Ghana's public procurement policy has yet to be passed; it is still being studied by different stakeholders. The government's review of tree and land tenure arrangements in off-reserve areas is expected to begin soon, with technical assistance from the World Bank. CSOs are undertaking tenure studies to input to this review.

Liberia

The VPA process in Liberia is starting to show results: communities have signed a memorandum of understanding with the Ministry of Finance for payment of the land rental fees of US\$1.4 million owed to them; people involved in the handing out of illegal permits (Private Use Permits (PUPs) see previous VPA updates, including May 2012) will be prosecuted; problematic Community Forest Management Areas (CFMAs) have not been cleared for logging, and efforts are underway to address legal contradictions that have been exploited to facilitate the award of the first four CFMAs used for logging.

Nonetheless the ongoing Ebola crisis has been a setback, with NGOs changing the focus of their community work to help deal with the crisis. Both the UK Department for International Development (DFID) and the European Commission have allowed partners to support the Ebola battle.

The VPA support unit, funded by DFID, has re-started its work and will focus on building the capacity of all actors involved in VPA implementation: government, private sector, civil society and communities. The unit has ensured private sector re-engagement, which has been strained following the PUP saga. The JIC, at its last meeting, agreed to focus on harmonisation of the Community Rights Law and regulation with the Public Procurement and Concessions Commission (PPCC) Act as requested by NGOs. They also agreed to develop a plan for community forest management, which seems a feasible way forward to ensure communities can make some money from forestry.

Last, an agreement signed between Norway and Liberia of US\$150 million may provide a further boost to improve governance in the forestry sector, or as in the case in Guyana it may remain meaningless. Some CSOs in Liberia are cautiously optimistic and have by letter asked to be kept informed and involved in the implementation of the agreement. So far the Forest Development Authority (FDA) has responded positively to this request. In the eyes of the government, the deal will provide the resources to deliver on the commitments including enforcing the moratorium on companies that logged under illegal PUPs. They also believe it will deliver on independent investigation to determine the legality of existing logging and other

land use contracts that the government has made to the EU and CSOs as part of the VPA process. However the fact that the plan is based on Liberia's flawed Reduced Emissions from Deforestation and Degradation (REDD) strategy remains a concern. Some in the timber trade sector (with support from others in the legislature) have made clear they will block implementation of the agreement, so some persuasion will be needed there.

Americas:

Guyana

In terms of formal negotiations, the Guyana VPA process has been on hold for over a year. The third negotiation, scheduled for March 2014, has yet to take place. This should be seen as a positive development as the original process was not inclusive, rushed and did not tackle key issues as seen by local Indigenous Peoples Organisations (IPOs).

With EU funding from March 2014, the Amerindian Indigenous Peoples Association (APA) has initiated work to enable a genuine, inclusive and participatory process that allows for meaningful and independent inputs from indigenous peoples. To support APA in their efforts, vigilance is needed by the EU to ensure that space will be created by Guyanese Forestry Commission (GFC) for this new way of interacting and to ensure that non-State actors in Guyana are able to freely engage in the VPA process without undue pressure or censorship by the government. In the often poisonous political context of Guyana this will require the EU to take a stand for democracy and human rights.

The new FLEGT facilitator, Alhassan Attah (former chief negotiator of the VPA in Ghana) has his work cut out in ensuring there will be a balanced and inclusive consultation process including opposition parties, APA and other NGOs. One of the key issues to be urgently addressed is the government's failure to recognise the ownership rights of indigenous communities to their customary land and territories. With this issue currently being side-stepped in the VPA process, and there still not being a date for the third formal negotiation, it is highly unlikely that Guyana and the EU will be able to sign a VPA between February and September 2015, as is laid out in the road map – at least if the

goal is a VPA that has credibility and is supported by all stakeholders.

Asia:

Laos

Three video conferences have been held between the Lao government and the EU, but without high level approval for the VPA process, stakeholders cannot move beyond preparatory meetings. For instance in August, a multi-stakeholder dialogue meeting was held in Cambodia to deliver training and design the architecture for VPA negotiations. It included civil society, government and private sector representatives. Unfortunately no conclusive decisions were made about the structure for negotiations, but civil society has made some proposals for their own engagement in the process.

Three provinces were identified for testing a draft Timber Legality Assurance System (TLAS), with external support, but the local administration in two of these provinces were unwilling to let the tests go ahead. This underlines the importance of ensuring that the different parts a VPA are developed with the input and political buy-in of all national stakeholders, and at a pace which suits them.

Revision of the national land policy is continuing. The latest draft requires local community consent for state acquisition of their traditional lands, with adequate compensation. It remains to be seen if this positive step will be maintained in the adopted policy.

Laos hosted a TLAS training workshop for ASEAN governments in October, the fourth of its kind, culminating in a roadmap for building an ASEAN FLEGT knowledge network. At the end of the workshop, civil society observers from ten countries met and presented a request for greater participation in TLAS developments in future.

Malaysia

Despite tentative indications earlier this year that VPA negotiations were about to restart in earnest in Malaysia, the process appears to have stalled again, with no solutions forthcoming on the key sticking points: inclusion of Sarawak in a VPA, and assurances for meaningful stakeholder participation in future. Following on from a well-received 'stakeholder information session' organised by EFI after a formal negotiation session in May, a delegation of Malaysian NGOs, community groups and legal representatives visited Brussels to increase the understanding of the European Commission and Member State competent authorities regarding the legal ambiguities around indigenous community land rights over forests and forest resources. So far the Malaysian government is refusing to acknowledge this ambiguity despite the issue having come up in multiple court cases over recent years, and does not consider this ambiguity in the draft VPA legality definition or assurance system. The Malaysian CSO delegation also visited the Dutch foreign minister to discuss the Netherlands' decision this year to provisionally admit Malaysian Timber Certification Scheme (MTCS) timber in its procurement policy.

As it has now been more than eight years since VPA negotiations began in Malaysia, and six years since large numbers of Malaysian NGOs and IPOs abandoned the process, a number of these CSOs are planning to meet in the new year to assess developments over the last six years and evaluate the merits of re-engaging or entirely disengaging with the VPA process in the future.

Corruption and rampant illegal logging in the Malaysian state of Perak has been making the headlines recently, because the state has been identified as a major offender by the Malaysian Anti-Corruption Commission. Also making the headlines is a new book by Bruno Manser Fund's Director Lukas Straumann, 'Money Logging', which reveals the intricate affairs of the state's former chief minister Taib Mahmud and the links with illegal logging there (see forest watch for a review).

Thailand

A military government has taken power in Thailand following the coup in May. There is some scepticism within the country about the intention of the military to return Thailand to civilian democracy in the near future as there is no agreed timeline to do so. The military has identified stopping illegal logging as a priority, and as a result the forestry department has been evicting forest users from land for which they have no titles (calling them illegal encroachers). A government decree identifying additional tree species that are illegal to fell is negatively impacting people's livelihoods, because the decree includes trees planted by local people for later harvest. The military is providing support to the Royal Forestry Department (RFD) to carry out evictions.

In this context there is doubt among stakeholders about whether a VPA process can do anything meaningful at this moment to resolve these forest governance issues, particularly as Thai industry is pressuring the government to push ahead rapidly with a VPA that focuses more on trade benefits than addressing the issues facing forest communities.

Formal VPA negotiations have not begun, and the EU insists it is not negotiating with the military government. Despite this standstill, preparatory work for VPA negotiations continues, and EFI and the Food and Agriculture Organisation (FAO) are funding the centre for people and forests (RECOFTC) to strengthen Thai stakeholders. In July a national FLEGT meeting brought together stakeholders including 49 CSO representatives. The EU Delegation will also open a government FLEGT workshop for provincial level RFD staff. Although CSOs are formally welcomed in to the VPA preparation meetings, practical barriers to meaningful participation call in to question whether this inclusiveness is offered in good faith (for instance, late notice ahead of meetings, availability, language and timing of documentation, and the fact that comments from CSOs are not formally minuted).

Vietnam

The deadline for completion of VPA negotiations has yet again been pushed back and rightly so. The government is now aiming to sign by the end of 2015. In October the EU and the Vietnamese government held the first VPA negotiation for almost two years, although there have been a number of technical working group sessions in the interim. This latest negotiation primarily dealt with assessing the remaining issues to resolve, rather than reaching concrete agreements. CSOs were among those invited to attend a debrief on the last day, which the NGO network appreciated, but which still fell short of full participation in the process. During this session, it emerged that the new head of the Vietnamese negotiating team was not yet aware of the livelihood impact assessment which has formed a major part of CSO contributions to the VPA process so far.

For the first time, the government tabled a proposal for dealing with legality questions around timber imported to Vietnam, which is a significant issue of concern for this major timber processing country. Details of the content of this proposal are not yet public, which calls into question the transparency of the process. Work to develop the transparency annex has not been very transparent. For instance, of 70 comments made about the transparency annex by the Vietnamese NGO (VNGO)-FLEGT network, only 20 were accepted, while the others were dropped without opportunity for discussion or clear explanation.

The VNGO-FLEGT network has taken steps to strengthen itself, by inviting an external consultant to facilitate a network review in the last 6 months, and to build a long term strategic plan for the network till 2025. Elections to the network steering committee will take place at the annual meeting later this year.

The government appears to be adopting a definition of land ownership within the VPA which is more sympathetic to forest dependent communities, but local people should be involved in independent forest monitoring programmes to verify how this translates into practice. This is one reason that securing a formal monitoring role within the VPA is a priority for the NGO network.