

# Forest Watch Special – VPA Update May 2011

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## Introduction

The EU Forest Law Enforcement, Governance and Trade (FLEGT) action plan<sup>1</sup> continues to shape up: six voluntary partnership agreements (VPAs)<sup>2</sup> between the EU and timber producing countries have now been finalised<sup>3</sup> and are in different stages of the ratification process.<sup>4</sup> Four more agreements are under negotiation, and because the 2010 illegal timber regulation will become operational in 2013, making it a criminal offence to place illegally sourced timber on the EU market, many countries are finding it even more attractive to join the VPA process.

The overall aim of VPAs is to improve forest governance, which includes strengthening local peoples' tenure rights, increasing transparency and strengthening civil society participation. To achieve this and ensure ownership by all actors, VPAs must be developed through an in-country multi-stakeholder process where civil society and local communities are represented via a self selection process. To date, Malaysia continues to be the only country that has not included civil society and local community representatives in their advisory bodies and the steering committees which guide negotiating teams.

## Status of VPA negotiations

Ghana was the first country to sign a VPA with the EU, followed by the Republic of Congo, Cameroon, Central African Republic (CAR) and, as of May 2011, Indonesia and Liberia. The ratification process has only been finalised in the case of Ghana. In the Republic of Congo and Cameroon, ratification is waiting for approval by their national parliaments, the CAR VPA still needs to be ratified by the EU.

VPA negotiations are ongoing with Gabon, the Democratic Republic of Congo, Malaysia and Vietnam. Other countries that have expressed an interest in joining the FLEGT process include Cambodia, Colombia, Ecuador, Equatorial Guinea, Guyana, Ivory Coast, Madagascar, Papua New Guinea, Sierra Leone and the Solomon Islands. There is also increased dialogue with Russia, countries in Central America and elsewhere in the Mekong region.

## VPAS by region - AFRICA Cameroon:

The EU finalised the ratification of the Cameroon VPA in spring 2011. The agreement will become operational after ratification by the Cameroonian parliament.

The level of civil society involvement in this process was unprecedented and led to a VPA with strong commitments to make information publicly available; continue independent monitoring of the forest sector; carry out reform of the legal framework applicable to the forestry sector; and include civil society representation in the monitoring of the VPA's implementation. The challenge is now to ensure the implementation process makes all this materialise.

## Central African Republic (CAR):

VPA negotiations with CAR were concluded in December 2010, and the agreement is currently being ratified. For the EU side, the VPA text is currently being translated into the 27 EU official languages and is expected to be sent to the Council in mid-2011. Meanwhile, following a calendar set up by the CAR team in 2010, the development of the various systems required to make the agreement operational has started. Civil society has chosen their representatives to oversee the implementation of the VPA and is in the process of building the capacity of their organisations. They will pay particular attention to the development of new legislation that should take place from September 2011.

## Republic of Congo:

The EU finalised the ratification of the Republic of Congo VPA in spring 2011. The agreement will become operational after ratification by the Congolese parliament. Work in country in preparation for the operationalisation of the agreement includes the setting-up of the tracking system and procedures to verify legality, as well as improvement of the legal framework. The process has restarted as stakeholders were not satisfied with the results of consultant's work to develop the legal texts that



must be operational before the delivery of FLEGT licenses. New consultants have been appointed. While the consultants' work is expected to advance in the coming months, some success can already be counted: a law to respect and protect the rights of indigenous peoples passed in late 2010. Civil society continues to be effectively engaged in the VPA, particularly through their participation in the multi-stakeholder secretariat set up to lead on the implementation of the agreement. Improving the way local community voices are heard during the implementation phase remains essential.

A major concern in the Republic of Congo is the lack of coherence between the World Bank's Reduced Emissions From Deforestation and forest Degradation (REDD) Preparation Plan (RPP) and the VPA. The REDD process has been heavily criticised by local civil society for its lack of participation and for not prioritising governance issues. The Congolese government has been told by the World Bank's Forest Carbon Partnership Facility (FCPF) to amend the national RPP submitted to the World Bank in June 2010. The latest text of the revised RPP, which is open for comments, however remains very weak.

### Democratic Republic of Congo (DRC):

A joint declaration by the DRC and the EU in October 2010 declared the opening of VPA negotiations. The first negotiation session, aimed at defining a roadmap for the talks between the two parties, followed in February 2011 in Kinshasa. The first element that is being discussed is the definition of legality. To date, a joint civil society consortium WWF – Codelt (a Congolese organisation of lawyers) has put time into analysing how to define legality, and it is expected that the different groups of actors will start shaping a joint proposal during 2011. A major concern is the national REDD process and the parallel World Bank facilitated FIP (Forest Investment Programme) process. REDD consultations in the DRC are being rushed, not involving forest communities from the provinces, and are heavily influenced by the government and financial institutions.

### Gabon:

Gabon started VPA negotiations on 23 September 2010. Since then, the Gabonese delegation, which includes representatives of civil society and the timber industry as well as the government, has been working on developing their legality definition. One negotiation session and several technical sessions between the Gabonese and the EU negotiations teams have taken place. The second negotiation session is planned for the end of May

in Brussels. It is expected that social issues such as the contracts that timber companies have with communities and respect for the rights of indigenous peoples will be discussed. Field trips by civil society will aim to enable better understanding of the problems and find possible solutions which can be included as part of the VPA.

### Ghana:

The Ghana-EU VPA was signed in September 2008 with the consent of all stakeholders. The multi-stakeholder consultation process worked well and outlined a process for forest law reform which needed to be finalised within five years. It was clear that the lack of clear concrete proposals for the reform process meant that the success of the VPA would depend on civil society's involvement during implementation. Unfortunately, there have been large delays. The main concerns remain the lack of attention given to the reform process, particularly to addressing the challenges of working with the informal sector, and the apparent lessening of political leadership to carry forward implementation, believed to be because of the hope of REDD money from the World Bank and specifically its FIP. There is therefore a clear need to ensure that donors, especially EU Member States, do not undermine the VPA process by delivering REDD money to the World Bank outside of any framework with clear governance targets. Considering these problems, it is presently unclear whether and when Ghana will deliver the first credible FLEGT licensed timber. It is also unclear whether certificates will be issued before overproduction for the domestic and export markets has been properly addressed.

### Liberia:

Liberia started formal negotiations in March 2010, and concluded VPA negotiations with the EU by initialling the VPA on 9 May in Monrovia. The last negotiation session before signing took place mid March in Brussels with the aim of agreeing on the final text of the VPA and associated Annexes. Issues that have been given specific attention include the envisaged Legality Assurance System, the independent audit, the role of civil society in the monitoring of the agreement, the transparency measures and planned reforms for regulating the domestic market (eg pit-sawing regulations). The Liberia-EU VPA negotiation was a participatory multi stakeholder process that involved all key forest stakeholders. It was also the first



agreement concluded with the direct participation of forest dwelling communities. Most of the civil society organisations' (CSOs) and communities' key concerns were addressed by the agreement concerning forest community benefits and rights. CSOs in Liberia have called upon the EU to remain supportive of the Liberian government and civil society in order to sustain the commitment to implementing the VPA. The VPA is considered to have been developed in a transparent process and is hoped to improve accountability, transparency and forest management. As part of the negotiation process, a field test of Liberia's Legality Definition was commissioned by EFI and undertaken by TFT. The group tested each indicator, verifier and legal reference to ensure its practical applicability and identify any possible problems. The session concluded with a rough outline of an implementation plan, which will be further elaborated by the Liberian side over the coming months. With other interest groups such as the palm oil sector and carbon traders increasingly eyeing Liberia's land, with potentially disastrous consequences, it seems that a strong VPA able to clamp down on illegal practices is needed now more than ever, and not just in the timber sector!

## VPAs by region - ASIA

### Indonesia:

Indonesia, one of the world's largest exporters of tropical timber, and the EU initialled a VPA on 4 May 2011. An estimated 60 per cent of exports from Indonesia is to the EU with a value of over €1 billion. This is the first Asian country to conclude VPA negotiations and the first country with a large export volume. During the period of January 2010 to February 2011, both Parties held seven Joint Indonesia-EU Experts Meetings to work on a number of policy commitments, to be included in the Agreement as Annexes. The work focused particularly on the Annexes which describe the national Timber Legality Assurance System (TLAS) and public disclosure provisions. The VPA is a great tool to address forest governance and has given a platform and a voice to discuss key issues. Civil society is broadly supportive of the agreement, although there are dissenting voices too, and is also thinking ahead how the agreement could be used in other areas.

Civil society organisations have been recognised formally as monitors of the system and are now developing procedures and undertaking capacity building to put this into place. There are a

number of still outstanding issues including clarity of procedures (there are no clear formats yet for auditors to publish public summaries nor a complaints mechanism); it is unclear if there will be guaranteed access to information and understanding of the need to build capacity of communities specifically in remote areas. As in their view REDD is not possible without improved forest governance in Indonesia they also would like to use the TLAS process as a model for developing REDD.

### Malaysia:

In Malaysia, there are many outstanding issues that must be dealt with before a VPA can be signed. These include recognition of native customary rights and the fact that there has not yet been a proper stakeholder consultation process. Problems related to deforestation and lack of recognition of rights to land are most stark in the Malaysian State of Sarawak, which holds a large amount of the country's forests, has a majority of indigenous peoples, and is home to over 100 court cases involving land claims. Recent elections this April reconfirmed the current corrupt and self enriching head of state, Abdul Taib Mahmud, into power, despite the negative impact of his 30 year reign on forests and peoples. It is therefore highly unlikely that a VPA could be signed in the near future with Sarawak. On a more positive note: an increasing number of court cases are being won by local communities. This shows that existing land tenure problems stem from the government's refusal or inability to implement its own laws. Key remaining NGO demands include that: disputes over land be settled prior to logging; timber harvested in disputed areas be considered illegal; and applicable customary laws not be limited to codified customary laws, but include unwritten customary practices that have been recognised – such as customs and usage as per Malaysia's Federal Constitution. It is clear that the VPA process has put the spotlight on the issue of rights to land, but whether it can be a factor in solving this remains to be seen. The fact that the EU has not succumbed to pressure to sign a VPA with Malaysia, can therefore be seen as a positive thing.

### Vietnam:

The first official Vietnam – EU VPA negotiation took place in November 2010. Since then, three studies have been launched aimed at informing the negotiation process: (1) a stakeholder mapping and analysis; (2) an analysis of a legality definition (and gaps which need to be bridged); and (3) a study on domestic and imported timber flows. As civil society engagement is a major strength of the VPA process as well as a central VPA principle,



the stakeholder analysis and suggestions on the mechanisms for stakeholder involvement are key to reaching a satisfactory agreement. It is expected that the different stakeholders will be brought into the process to discuss the results of the above studies, and it is hoped that it will then be decided how the multi-stakeholder dialogue will be structured to ensure a successful outcome of the VPA. Next official talks between Vietnam and the EU are planned for the second half of 2011.

## VPAS by region - AMERICA

Several exchanges and information sessions between the EU and Latin American countries on FLEGT issues have taken place in the last years, yet very little has moved in that region when compared with Africa and Asia. This could change now that Honduras has expressed interest in negotiating a VPA with the EU.

### Central American Region:

In a letter to Mr. Piebalgs, European Commissioner for Development Cooperation, dated March 2011, the Central American Commission for Environment and Development (CCAD) underlines its interest in exploring regional dialogue to support potential bilateral VPA discussions in the region. The letter is written on behalf of the Environment Ministers of the Central American region, and goes on to note that the FLEGT process combines their interest in ensuring good forest governance with the EU's aim to encourage sustainable consumption of forest products. So far, El Salvador, Guatemala, Honduras and Nicaragua have expressed interest in exploring the potential advantages of VPA negotiations with the EU.

### Honduras:

In April 2011, the Honduran Forest Institute (ICF) organised two seminars to inform stakeholders about FLEGT and tease out their level of interest, one in Tegucigalpa (capital of Honduras) and a second one in La Ceiba (the main hardwood producing region). The Honduran government has told the European Commission that they plan to continue to consult national stakeholders in the coming months with a view to taking a decision by August 2011 on whether they will ask the EU to start formal VPA negotiations. Civil society in country seem to think that a negotiation process that ensures they have a seat at the table and the space to discuss failures in the forest sector would be advantageous.

### REDD threat

As FLEGT advances, so do national plans to reduce emissions from deforestation and forest degradation (REDD). Despite the lack of an international framework to define REDD, Northern governments are committing money to the process and international institutions such as the World Bank are pushing through national level REDD plans. A recent study by FERN and FPP 'Smoke and Mirrors',<sup>5</sup> shows that these REDD activities are not likely to lead to improved forest governance, are not based on truly participatory stakeholder processes, re-affirm state ownership of land, strengthen international NGOs over local NGOs, and focus on counting carbon rather than addressing the underlying causes of deforestation. These developments therefore need to be closely monitored to ensure forests are being well managed, or preserved and rights recognised

For more updates and civil society views on VPA processes please visit: [www.loggingoff.info/document/vpa-update-0](http://www.loggingoff.info/document/vpa-update-0)

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#### ENDNOTES

1. For information on the FLEGT Action Plan see <http://www.loggingoff.info/processes/flegt>
2. For information on what a VPA is and how it works, see <http://www.loggingoff.info/themes/voluntary-partnership-agreements-vpas>
3. In order of conclusion: Ghana, Republic of Congo, Cameroun, Central African Republic, Indonesia and Liberia.
4. For information on how a ratification process works, see <http://www.loggingoff.info/document/process-ratify-timber-trade-agreements-loggingoff-briefing-note>
5. [www.fern.org/smokeandmirrors](http://www.fern.org/smokeandmirrors)

