

Forest Watch Special – VPA Update

May 2013

Introduction

The European Union Timber Regulation (EUTR) came into effect on 3 March 2013, making it an offence to place illegally sourced timber on the EU market. Although timber with a Forest Law Enforcement Governance and Trade (FLEGT) licence will automatically comply with the EUTR, no FLEGT licences have yet been issued. If effectively implemented, the EUTR will be an incentive for countries to negotiate a Voluntary Partnership Agreement (VPA) with the EU. If ineffective, interest in VPAs may well diminish. NGOs have already flagged the first cases of suspected illegally sourced timber arriving in EU harbours,¹ but ad hoc NGO alerts are not enough; Member States must make EUTR enforcement a priority.

There is great concern that VPA implementation in many countries is effectively stopped. The EU needs to take new developments such as growing demand for highly profitable commodities into account and ensure the VPA remains an effective tool to promote forest governance.

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VPAs state of play

Six VPAs (Cameroon, Central African Republic (CAR), Ghana, Indonesia, Liberia and the Republic of Congo (RoC)) have been finalised; and four (CAR, Cameroon, Ghana and RoC) have been ratified. Official negotiations are ongoing in the Democratic Republic of Congo (DRC), Gabon, Honduras, Ivory Coast, Malaysia, Vietnam and Guyana, and are expected to start soon in Laos. Other countries expressing an interest include Bolivia, Burma, Cambodia, Colombia, Ecuador, Guatemala, Madagascar, Paraguay, Sierra Leone and Thailand.

VPAS by region - AFRICA

Cameroon:

The VPA ratified in December 2011 is at the implementation stage. The Ministry of Forestry (MINFOF) is working on a new FLEGT VPA website, expected to be a key tool to implement the VPA transparency annex. All public information listed in the annex will be published on this site. It will also include information currently on (<http://www.minfof.cm>), such as the list of validated titles and infractions. The site is part of the Cameroonian strategy for forest sector transparency. Three relevant Ministerial decrees have come out but have not been fully implemented; a fourth, setting up a complaint mechanism is

expected to come out soon.

On 19 April the third meeting of the National Monitoring Committee (Comité National de Suivi (CNS)), a multi-stakeholder platform in charge of VPA monitoring, was held. Civil society and indigenous peoples were unable to prepare properly since the invitation arrived the day before the meeting (it should have been at least 15 days in advance). A Joint Monitoring Committee (JMC) was held on 25-26 April, including discussion of the revision of the 1994 forest code, highly criticised for not being a participatory process. The United Nations Committee on the Elimination of Racial Discrimination (UNCERD) called the Government to organise proper consultations.² Moreover, there are concerns that the forest reform instigated by the VPA opens the door to forests being converted into large scale plantations and destructive exploitation such as mining or big infrastructure. Specific examples confirm this trend and illustrate Cameroon prioritising the agro-industry at the expense of sustainable forest management.³ A Joint Annual Report on implementation of the VPA is expected to be published by late May 2013.

Central African Republic:

VPA negotiations with CAR concluded in December 2010 and the agreement was ratified in July 2012. The first Joint Implementation Committee (JIC) took place in September 2012 at which a revised roadmap was adopted. The next JIC meeting planned for March 2013 was delayed due to political instability. A coup by Seleka rebels on 24 March led to a new government on 31 March. Just before this crisis, a civil society platform meeting was held to launch a legal analysis of the social and environmental aspects of the VPA legality grid; and discuss civil society's priorities, recommendations and engagements in relation to the legal reform process. Key civil society players are under threat from the rebels and offices have been looted and cars and computers stolen. It is unclear what the future of the VPA process will be in CAR.

Democratic Republic of Congo:

A new FLEGT VPA platform was created at the end of 2012, but key challenges remain such as adequate communication between civil society representatives and their constituencies and coordination with local networks and organisations in the provinces. A Technical Commission, (including three civil society representatives), worked to refine the two legality grids (one on industrial and one on artisanal logging), the legality definition and the legality assurance system (LAS). The abuse of artisanal logging permits is one of the root causes of illegal



logging in DRC,⁴ with dozens of artisanal logging permits allocated to foreign industrial companies, violating DRC's forest laws.⁵ The VPA should require the publication of key information including all permits, their location, area, social agreements, contract documents, production, tax liability, and other payments on a publically accessible website. The legal framework on community forestry has been blocked for years and the civil society platform sees the FLEGT VPA as a tool to move it forward.

Republic of Congo:

The VPA, signed in May 2010, ratified in February 2013 entered into force on 1 March. An as yet unpublished study on the financial feasibility of the LAS shows that there is still tremendous work to be done before FLEGT licences can be issued. A Technical Secretariat (ST) created to prepare and follow up the JIC, held a first meeting on 22 April. The civil society platform (PGDF) requested and got three seats at the ST. The first JIC (in which the PGDF holds one seat) essentially dealt with organisational matters, but the PGDF did stress the need to involve local communities, have adequate participation at legal reforms, and improve communication with stakeholders.⁶

The VPA requirement to revise the forest code moved ahead at the end of 2012. There were fears that the reform process would be rushed. In a letter of 4 December the PDGDF expressed concerns about the lack of participation.⁷ The government has promised to organise proper consultations with support of the Agence Française de Développement (AFD) who will hire two international and one national consultant to help conduct reforms instigated by the VPA and REDD+.

Gabon:

Negotiations in Gabon, which started 23 September 2010, remain stalled. In November 2012 a new FLEGT team was put together within the Ministry of Water and Forestry, but in January 2013 the FLEGT dossier seemed to have been handed over to a new agency⁸ within the same Ministry. There is no new roadmap yet, nor any other activities, so it seems there is limited interest from the Government. The civil society platform 'Gabon Environment' has instead focused on a land rights campaign 'GabonMaTerreMonDroit'⁹ (GabonMyLandMyRight), raising awareness on tenure insecurity.¹⁰ At the same time, civil society has been working with Client Earth on a manual for benefit sharing agreements between logging companies and communities.

Ghana:

The Ghana-EU VPA was signed in September 2008, but implementation remains slow. A verification protocol exists but has not been shared widely for input from local civil society, despite NGO coalition Forest Watch Ghana (FWG) asking the Government to start a consultation process. The coalition wants to ensure the protocol includes financial, tax and logging controls.

No environmental or community based NGOs are presently represented on the Timber Validation Council. This has led to NGO concerns and makes the Multi-Stakeholder Implementation Committee which includes two representatives of civil society even more important.

The longer term reviews concerning tree tenure and the domestic timber sector are still at the early stage. There is an urgent need for concrete proposals to introduce tree tenure reform as the VPA, the Ghana Readiness-Preparation Plan, and a new domestic timber policy require it. FWG aims to set up a tree and land tenure working group to discuss the land and tree tenure road map presented to the Ministry.

Liberia:

The Liberia VPA was concluded on 9 May 2011, but ratification is slow. A brave presidential order to cancel all (illegal) Private Use Permits (PUPs) at the beginning of this year,¹¹ and the firing of senior staff of the Forestry Development Authority (FDA) has brought the logging sector to a virtual standstill. The fallout from this has made the legislators wary of ratification, despite having been presented by a united front of NGOs, industry and government representatives. Liberian civil society organisations and the FDA agree that the VPA provides a major opportunity to put Liberia's unravelling forestry reform back on track. Verification protocols drafted by consultants have still not been sent to civil society. In the meantime, Liberia has presented a revolutionary draft Land Policy. Once the policy has been transposed into law, the present situation will be upturned, the majority of Liberia's land will become community owned land under private ownership, existing concessions excluded. The majority will become community owned land, the rest being government land and private land. What to do with illegal concessions that have been handed out to palm oil plantation companies Sime Daby and Golden Veroleum remains to be seen.



Ivory Coast:

In December 2012, the Ivorian Prime Minister Daniel Kablan Duncan sent a formal request to the European Commission to start negotiating a VPA. Development Commissioner Andris Piebalgs agreed on 14 February 2013. There was a preparatory videoconference in early 2013 and 2 May. The first official negotiation session is scheduled for 20-21 June 2013. Social and environmental civil society organisations received funding from the Food and Agriculture Organisation (FAO) to develop a representative, neutral and legitimate civil society platform to participate effectively in negotiations. At the same time the Reduced Emissions from Deforestation and Degradation (REDD) process is picking up speed and civil society hope to have a common platform to advocate for improved forest governance and recognition of rights in both processes. Key issues of concern include the high deforestation rate due to agricultural expansion, the tenure insecurity that has already led to conflicts, lack of implementation on the land code, and the revision of the forest code.

VPA by region - ASIA

Indonesia:

The signature and ratification of the VPA, agreed in May 2011, is still delayed. The ratification process is foreseen to be completed by September 2013. In 2010, Indonesia developed its own TLAS (known as Sistem Verifikasi Legalitas Kayu (SVLK)), developed with broad participation of stakeholders. It allows small scale forest users and enterprises to get a group certificate and provides for public participation in forest management decisions. Since 1 January 2013 Indonesia requires exported timber to be accompanied by a document (known as V-Legal), which assures that timber is legal and comes from SVLK audited factories and forests. The V-Legal certificate does not however suspend operators from meeting EUTR requirements. Nevertheless, the SVLK is considered as an important element to assure the legality of Indonesian timber. It is seen as an instrument to give Indonesia a market advantage, not only to the EU, but also elsewhere.

Lao People's Democratic Republic:

A workshop organised by the EU, Lao government and GIZ was held in Vientiane last November to prepare for negotiations, and raise awareness of the VPA process among

stakeholders. Discussions included the definition of legal timber, the development of an assurance system to track timber flows, and the need for broad consultation of stakeholders. This latter point presents a serious challenge in that it will not be easy to ensure genuine participation from Lao civil society at a time where non-profit associations (NPAs) are feeling intimidated following the abduction of one of their higher profile colleagues Sombboth Somphone.¹² A first VPA negotiation session is now anticipated for the middle of this year.

Malaysia:

Malaysia has been negotiating a VPA since 2006, longer than any other country, but no final outcome is in sight due to the lack of both an inclusive consultation process and government willingness to address issues like transparency, land rights and the different opinions of semi autonomous states in Malaysia. The state of Sarawak has decided not to become part of a VPA, while Peninsular and Sabah remain keen to sign. With elections coming up soon, it is unclear what next steps will be. Neighbouring Indonesia, and more recently Burmese stakeholders, have indicated an objection to a VPA with Malaysia which would exclude Sarawak.

Vietnam:

The third VPA negotiating round was held in Brussels in November. Issues included the legality definition, the development of the Timber Legality Assurance System (TLAS), licensing, public information and independent monitoring. The roadmap was updated, recognising the volume of work still remaining, with a new stated aim to conclude negotiations by September 2013. Follow-up work on the legality definition and TLAS, was agreed with the Vietnamese Forestry Administration, VNFOREST working with the European Forestry Institute (EFI). It is unclear how timber from neighbouring countries, and Laos in particular, will be dealt with. Vietnam is not demanding transparency nor is it able to demonstrate the legality of all of its imports, refusing to interfere in the internal affairs of its neighbours without proof of violations. Whilst it claims to have strict import requirements and has signed memoranda of understanding with Laos and Cambodia on biodiversity conservation, it also increasingly gives preference to certified timber from other sources, arguing that Lao forestry is less developed. Against this background, it is encouraging that the EU was adamant that "unless it [the issue of imports]



is resolved, the EU is confident there will not be a VPA". The government also encourages imports of certified timber as it is easier to export.

Vietnamese NGOs (VNGOs) are gradually increasing their involvement in a country where participation in government negotiations is still quite novel. Regional links are being created with Civil Society Organisations in Laos and Indonesia. Eleven VNGOs have completed their community consultation exercise in six provinces; submitted their comments on draft 3 of the TLAS; met with the Director of VNFOREST; and embarked on an ex ante assessment on the potential impact of a VPA on livelihoods of particularly vulnerable groups.

VPAs by region – CENTRAL and SOUTH AMERICA

Guyana:

Negotiations started in December 2012, but despite a joint EU/Government of Guyana statement highlighting the importance of stakeholder involvement, there has been no consultation process comparable to other countries. The Amerindian Peoples Association (APA) therefore calls upon the

Government and the Commission to slow down the negotiation process. They call for their rights to land to be recognised by the VPA, which may require legal reform, and feel that without more information and better communication they cannot provide the required input.¹³ European NGOs have written a letter supporting APA and asking for the process to develop a meaningful inclusive consultation.

Honduras:

Official negotiations with Honduras started in January 2013. Although there isn't a national platform, NGOs and small producers are developing an understanding of the VPA and what they would like from the process. Trade with the EU worth less than one million USD a year, so the agreement should focus on addressing the systemic illegalities in the forestry sector. It is up to the EU to listen to local stakeholders and ensure their voices are heard in the negotiations. Up till now they have only had observer status and no real participative process has been developed.

ENDNOTES

1. <http://www.greenpeace.org/belgium/fr/actualites-blogs/actualites/Bois-congolais-bloque-dans-le-port-dAnvers/> and <http://www.globalwitness.org/library/illegal-logs-liberia-found-french-port-sweeping-criminal-sanctions-kick-across-eu>
2. Urgent alert action introduced by CED, OKANI and FPP: http://loggingoff.info/sites/loggingoff.info/files/2013-01-20%20EW-UA%20submission%20re%20Cameroon%20Forest%20Code_FPP;%20CED,%20Okani_FR.pdf; Reply of UNCERD of 1st March 2013: http://www2.ohchr.org/english/bodies/cerd/docs/early_warning/Cameroun1March2013.pdf
3. <http://www.oaklandinstitute.org/land-deal-brief-massive-deforestation-portrayed-sustainable-investment-deceit-herakles-farms>; <http://www.greenpeace.org/usa/Global/usa/planet3/PDFs/Forests/HeraklesCrimeFile.pdf>; <http://www.rfi.fr/afrique/20130501-cameroun-societe-americaine-herakles-farms-col-limateur-autorites>
4. <http://www.globalwitness.org/library/art-logging-industrially-congo-how-loggers-are-abusing-artisanal-permits-exploit-democratic>; <http://www.globalwitness.org/fr/node/8234>
5. http://www.globalwitness.org/sites/default/files/library/Shadow%20Permit%20Report%202013%20Final_Web.pdf
6. <http://loggingoff.info/fr/document/plateforme-de-gestion-durable-des-for%C3%AAts-sur-l%C3%A9tat-davancement-de-limpl%C3%A9mentation-de-lapv-a>
7. <http://loggingoff.info/fr/document/r%C3%A9forme-code-forestier-du-congo-brazzaville-pr%C3%A9occupations-de-la-plateforme-gestion-durable>
8. Agence d'Exécution des Activités de la Filière Forêt Bois (AEAFFB)
9. Website <http://gabonmaterre.org>
10. <http://loggingoff.info/fr/document/gabon-ma-terre-mon-droit>
11. see Forest Watch February 2013: <http://www.fern.org/publications/eu-forest-watch/forestwatch-issue-179-february-2013>
12. see Forest Watch January 2013: <http://www.fern.org/publications/eu-forest-watch/forestwatch-issue-178-january-2013>
13. <http://loggingoff.info/document/letter-amerindian-peoples-association-guyana-commissioner-forests>

