

Forest Watch Special – VPA Update November 2011

By Saskia Ozinga, Nathalie Faure, Tom Lomax, Feja Lesniewska and Indra van Gisbergen

Introduction

The EU Forest Law Enforcement, Governance and Trade (FLEGT) action plan has become increasingly visible in the past few months. With the advances made with the implementation of FLEGT Voluntary Partnership Agreements (VPAs) and the ongoing negotiations of new VPAs, more and more people interested in discussions around forests and climate are seeing the lessons that could be learned from the FLEGT Programme. The overall aim of VPAs is to improve forest governance, including 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 all stakeholders are represented via a self selection process. To date, this has been the case in all VPAs that have been signed or are being negotiated, with the exception of Malaysia. National Reduced Emissions from Deforestation and Degradation (REDD) processes in the same countries have to date proven to be much less inclusive and have not been built using the civil society platforms created for negotiation FLEGT VPA agreements, nor are their findings always based on or in line with the findings of the VPA process.

FLEGT VPAs that have been signed now face a key challenge: effective implementation. Although the FLEGT VPAs met with wide support in Ghana, Cameroon and the Republic of Congo (RoC), implementation has not yet been very forthcoming. The EU Timber Regulation, which makes putting illegal timber on the market a criminal offence, will be effective from 2013 onwards. The adoption of this law has already meant that more countries are finding it attractive to start negotiating a VPA and we hope it will also speed up effective implementation.

VPA state of play

Six VPAs between the EU and timber producing countries have now been finalised and four more are under negotiation. Ghana was the first country to sign a VPA with the EU, followed by RoC, Cameroon, Central African Republic (CAR) and, as of May 2011, Indonesia and Liberia. The ratification process has only been finalised in Ghana and Cameroon. VPA negotiations

are ongoing with the Democratic Republic of Congo (DRC), Gabon, Malaysia and Vietnam. Other countries that have expressed an interest in joining the FLEGT VPA process include Cambodia, Colombia, Ecuador, Equatorial Guinea, Guyana, Ivory Coast, Laos, Madagascar, Papua New Guinea, Sierra Leone and the Solomon Islands. There is also increased dialogue with China, 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 and Cameroon's Parliament ratified it on 9 August 2011. Although a project to test traceability of timber is underway, nothing much has happened since the signing of the agreement. A process for revision of the VPA legality grid is ongoing, and CSOs are preparing proposals to contribute to this revision. The good news is that the 1994 Forest Code and associated decrees are all in the process of reform. The President has hinted that a reform of the land law will also take place, although his aim seems to be to open up the country for land-acquisition by foreign investors for large-scale commercial agriculture rather than to enable local people to become land owners. Both processes should be monitored closely to ensure effective implementation of the VPA. Despite the VPA including clear transparency provisions (such as that information being published on the EU and Cameroonian Government's websites), the majority of the required information is not yet available. More progress is clearly required.

Central African Republic:

VPA negotiations with CAR were concluded in December 2010, and the agreement is currently being ratified. Numerous problems still need to be addressed to ensure effective implementation. These include that the VPA excludes the domestic market and that effective participation of communities and overall civil society remains weak.



Published by FERN, the campaigning NGO for greater environmental and social justice, with a focus on forests and forest peoples' rights in the policies and practices of the EU.

United Kingdom: 1C Fosseyway Business Centre, Stratford Road, Moreton-in-Marsh, Gloucestershire, GL56 9NQ, UK; T +44 (0) 1608 652 895; F +44 (0) 1608 652 878. Belgium: Rue d'Edimbourg 26, B-1050 Brussels, Belgium; T +32 (0)2 894 46 90; F +32 (0)2 894 46 10.

To receive this newsletter please subscribe at www.fern.org

Photo: Jutta Kill

In October 2011, two prime ministerial orders were adopted: the first on the creation and operation of the VPA joint implementation committee; the second on the designation of its members, including two civil society representatives. The committee's first meeting is scheduled for November 2011. The VPA implementation phase will focus on the development of the verification of legality systems and identified law reform. The date put forward for issuing FLEGT licences is January 2014.

Republic of Congo:

The VPA, signed in May 2010, was ratified in January 2011 by the EU and ratified by the Congolese parliament in August 2011. It still needs to be activated by the President. It was originally envisaged that FLEGT licenses would be issued from December 2012 onwards, but since the implementation process requires important and time consuming reforms, this deadline is likely to be postponed. Work in country in preparation for the implementation of the agreement includes developing new legislation, and the setting-up of a tracking system and procedures to verify legality. 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 continues to play an active role in the FLEGT process. Improving the way local community voices are heard during the implementation phase remains an essential implementation challenge.

Democratic Republic of Congo:

DRC entered into VPA negotiations in October 2010. A FLEGT Secretariat, in charge of facilitating the process, was set up by the government. A multi-stakeholder negotiation committee, which includes three civil society representatives, is in charge of preparing for and attending negotiations. Work has already been done on preparing the DRC position on the laws that DRC wants to include in the legality definition and on which verifiers will be used to check compliance. The DRC VPA process is, however, temporary on-hold due to the planned November 2011 presidential elections. The process is expected to resume in the beginning of 2012.

Gabon:

Gabon started VPA negotiations on 23 September 2010. Since then, the Gabonese delegation, which includes representatives of civil society and the timber industry, has been working on developing their legality definition. Two negotiation sessions

and several technical sessions between the Gabonese and the EU negotiation teams have taken place (the second at the end of October 2011). Negotiations seem to be slow and there is some doubt as to how committed the government is to the process. Social issues such as timber companies' contracts with communities and respect for the rights of local communities and indigenous peoples are under discussion for inclusion in the legality definition. Civil society has identified four principles on which to concentrate their efforts: the tenure rights of communities; benefit-sharing agreements between communities and timber companies, social workers rights and the respect of environmental legislation. There seems to be agreement between the Gabonese and the EU on the list of products to be included in the VPA, which so far includes all timber products already exported and potentially new export products. The Gabonese government expressed its intention to increase the range of timber products verified by the Legality Assurance System. The system would then also cover timber products traded on the domestic market and products exported to places other than the EU.

At Central African regional level, there are ongoing discussions on actions the CEEAC (Communauté Economique des Etats de l'Afrique Centrale) will carry out in the coming years under the FLEGT component of the EU funded ECOFAC V project. Research on different stakeholders' needs (civil society, administration, private sector) is being carried out in CAR, Cameroon, Congo, DRC and Gabon to guide the work of CEEAC the coming two years.

Ghana:

The Ghana-EU VPA was signed in September 2008. As the first VPA to be signed, expectations remain high that Ghana will be the first country to issue VPA licenses, although it is as yet unclear when. It is important though that the forest law reform process outlined in the VPA is realised and problems with the domestic market addressed.

A number of legal reform processes are taking place including a constitutional reform process, a reform of the Forest and Wildlife Policy, a (Consolidated) Forest Act and legislation to regulate the domestic timber market which is nearing the completion stage. Concrete proposal throughout the legal reform process from civil society organisations (CSOs) remain vital to ensuring that social, environmental and economic concerns from forest communities are clearly represented in the reforms.



One key issue is the question of ‘tree tenure’ which was revealed as a priority of the government at a recent meeting. Other VPA developments in Ghana include selection of an Independent Monitor and of an organisation to implement the Legality Assurance System.

Ongoing concern remains regarding the issuance of over 120 salvage permits. Ghanaian CSOs have complained about the issuance of these permits which they believe are illegal. The Forestry Commission responded that the permits are legal but that it will “investigate alleged use and/or abuse of permits to ensure that measures put in place to improve in forest governance.” It also states that “on the policy reform the long discussion of tree tenure and the related sharing of benefits accruing from the use of such resources will have to be brought to a logical conclusion so as to facilitate better management of the resources off-reserve and also reduce biodiversity loss on which our rural economy depends.” This debate will continue.

Liberia:

Liberia started formal negotiations in March 2010, which concluded with the initialling of the VPA on 9 May in Monrovia. The Liberia VPA negotiation was the most participatory multi stakeholder process to date, involving all key forest stakeholders. It was also the first agreement concluded with the direct participation of forest dwelling communities. Most CSO and community concerns about forest community benefits and rights were addressed. Implementation is, however, slow.

Furthermore, like in Ghana, the government has been issuing Private Use Permits (PUPs) which CSOs claim is in violation of existing legislation and the spirit of the VPA. According to documents available to civil society, more than 200,000 hectares has been given out in PUPs since 2010. In response to letters from Liberian NGO Sustainable Development Institute (SDI) the Government has stated “How can the issuance of a PUP.... run contrary to the tenets of the VPA, which was just initialled as early as May 2011, but not yet consummated to take effect on activities of the forestry sector.” This statement is concerning as it does not show an active Government commitment towards implementation. Furthermore, the government has not responded to two separate letters requesting confirmation of the exact number of PUPs issued to date.

The NGO Coalition working on the VPA recently wrote to the President and urged her not to sign into law legislation aiming to waive more than US\$200 million in Land Rental Fees

to logging companies. The group argued that not only will this deprive Liberia of millions in tax; it will also reward logging companies for violating the terms of their individual contracts.

In spite of these issues, Liberian civil society remains firmly in support of the VPA. There is a common view that the VPA provides a major opportunity for putting Liberia’s unravelling forestry reform back on track.

VPAs by region - ASIA Malaysia:

In Malaysia, there are many outstanding issues that must be dealt with before a VPA can be signed. Problems related to deforestation and lack of recognition of native customary rights are most stark in the Malaysian State of Sarawak, although not absent in any of the other states. Several news reports have indicated that the adoption of the EU Timber Regulation and Indonesia’s signing of a VPA has created turmoil in Malaysia, with the timber industry getting anxious that it will lose export to the EU unless it signs a VPA. Even the logging industry in Sarawak, who previously was adamant about not wanting to sign anything with the EU, seems to have changed its tune. Although it would not be possible to sign a VPA until the large problems in Sarawak are addressed, not least the recognition of native customary rights and increasing transparency in the sector.

If the Malaysian government is serious about signing a VPA, they must first start an inclusive consultative process, similar to those in every other country that has signed a VPA and delete travel restrictions and blacklisting of NGOs. Second, they must deal with the problems around Sarawak’s Head of State Abdul Taib Mahmud, visible to local campaigners for decades, which are now becoming more and more visible to the outside world. Various countries are starting to look into his alleged money laundering and other problematic practices. Ofcom – an independent regulator for UK communications industries - has announced it will launch an investigation into the activities of UK media and their association with the Malaysian Government, and the UK Foreign Office has launched a money laundering investigation into Taib’s UK assets. 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 improving the situation remains to be seen.



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. The first was a stakeholder analysis, the second, an analysis of a legality definition (and gaps which need to be bridged), and the third a study on domestic and imported timber flows. The stakeholder analysis is of particular importance as civil society engagement is a central VPA principle. It is expected that the stakeholders will be brought into a process to discuss the results of the studies, and it is hoped that it will then be decided how the necessary multi-stakeholder dialogue will be structured. There are however concerns about the political will to ensure an adequate participation, about the level of awareness among Vietnamese stakeholders, and about how they might secure a foothold in the dialogue. Already various FLEGT structures have been set up by the government, and without clear agreement on stakeholder involvement, the VPA negotiation might be seen primarily as a drafting process rather than a consultative development.

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. A delegation of staff from the European Forest Institute's EU FLEGT Facility and the European Commission visited Brazil in October on an exploratory mission to learn more about the country's forest policy and timber legality control systems. The group met with partners and presented EU FLEGT to the public, academic, non-governmental and civil society sectors in Brasília, São Paulo, Rio Branco and Belém, the latter in the Amazon region.



Published by FERN, the campaigning NGO for greater environmental and social justice, with a focus on forests and forest peoples' rights in the policies and practices of the EU.

United Kingdom: 1C Fosseyway Business Centre, Stratford Road, Moreton-in-Marsh, Gloucestershire, GL56 9NQ, UK; T +44 (0) 1608 652 895; F +44 (0) 1608 652 878. **Belgium:** Rue d'Edimbourg 26, B-1050 Brussels, Belgium; T +32 (0)2 894 46 90; F +32 (0)2 894 46 10.

To receive this newsletter please subscribe at www.fern.org

Photo: Jutta Kill