

Forest Watch Special – VPA Update October 2010

By Iola Leal Riesco and Saskia Ozinga

Introduction

The EU Forest Law Enforcement, Governance and Trade (FLEGT) action plan¹ is taking shape with three voluntary partnership agreements (VPAs) between the EU and timber producing (and exporting) countries ratified soon. Many more are in the pipeline, and a new timber law has been adopted, making it illegal to place illegally sourced timber on the EU market.

The overall goals of FLEGT VPAs go beyond controlling illegal logging; their focus is on improving forest governance, which includes strengthening local peoples' tenure rights, increasing transparency and strengthening civil society participation. To achieve these aims and ensure ownership by all actors, VPAs² must be developed through an in-country multi-stakeholder process where civil society and local communities are represented. To date, all countries except Malaysia, have included civil society and private sector representatives in their advisory bodies and the steering committee which guide negotiating teams.

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. In most cases these REDD activities do not lead to improved forest governance, are not based on intensive participatory stakeholder processes, strengthen international NGOs over local NGOs, and focus on counting carbon rather than addressing the underlying causes of deforestation. REDD programmes in FLEGT countries are therefore threatening to undermine FLEGT's achievements as governments jump on the bandwagon of easily-available funding for what are mainly business-as-usual practices. These developments need to be closely monitored to ensure the continuation of the successes of the EU FLEGT Programme.

Status of VPA negotiations

Ghana was the first country to sign a VPA with the EU, followed by the Republic of Congo and Cameroon. Ratification is under way and the European Parliament is currently working on resolutions that will give the Council the green light to conclude the process.³ Central African Republic (CAR) is next in line, with negotiations expected to be finalised on 6 December 2010.

On 23 September 2010, Gabon joined the group of countries negotiating a VPA, a group that now includes Indonesia, Liberia and Malaysia. Vietnam signed a joint-declaration with the EU in August 2010, and is expected to start negotiations in November. The Democratic Republic of Congo aims to be the next in line with a joint declaration on 20 October 2010 and the first negotiation session before the end of the year.

Other countries that have expressed an interest in joining the FLEGT process, and with whom the EU will exchange views in the coming months, 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 other countries in the Mekong region.

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 needs 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. Attention has been mainly on the development and piloting of the wood tracking system, which seems to be going well, although there is concern about the lack of a local counterpart and lack of involvement of local stakeholders in the testing of the system. A Timber Validation Department has been established and key personnel appointed.

The main concerns are the lack of attention given to the reform process, particularly to address 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.⁴ 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 for clear governance targets that complement and even increase the emphasis of the VPA.

Considering these problems it is presently unclear whether Ghana will deliver the first FLEGT licensed timber by the end of the year, as was planned.

In May 2009, the Republic of Congo became the second country to sign a VPA with the EU with the full support of civil society actors.⁵ Despite rushed negotiations, in-country civil society was given the space to raise their concerns, and key issues were addressed by the agreement. These included clarification



of communities' rights to forest land, and strengthening of communities' role in forest management and the attribution of forest concessions. While the process of ratification is ongoing and aimed to be concluded in the coming months, implementation has started with the set up of the tracking system and the procedures to verify legality. Support is also being given to strengthen civil society, and the legal texts that must be operational before the delivery of licenses are being developed. Participation of civil society in the development of new legislation and the direct involvement of local communities during the implementation phase remains essential. A multi-stakeholder secretariat has been established to lead on the implementation of the VPA and monitor developments. Civil society representatives within this structure should take an active role in ensuring citizen demands are duly addressed.

A major concern in the Republic of Congo is the lack of civil society and community consultation around the national REDD process. The process has been heavily criticised by local civil society for its lack of participation and transparency. The Congolese government has been told by the Forest Carbon Partnership Facility (FCPF) to modify the national REDD plan it submitted to the World Bank in June 2010. The new version should particularly address the lack of participation and establish links between FLEGT and REDD. Not doing so would have negative effects on the implementation of the agreed VPA, and so it is important that the EU ensures that any REDD activity will be based on a FLEGT type consultation process. Any REDD plan must also focus on improving forest governance as outlined by the FLEGT VPA.

Cameroon and the EU formally signed the VPA on 6 October 2010 at a ceremony in Brussels.⁶ The final step in ratification - approval by respective Parliaments - is underway. Despite initial difficulties, 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 ongoing implementation process should ensure all this materialises.

In Malaysia, serious outstanding issues must be resolved before a VPA can be signed. These include recognition of native customary rights and that the stakeholder consultation process is failing to bring consensus or deal with long standing conflicts. The problem is 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. It is positive that an increasing number of these cases are being won by local communities as this re-affirms that existing land tenure problems stem from the

government's refusal or inability to implement its own laws. Key NGO demands remain that: disputes over land be settled prior to logging; timber harvested in disputed areas be considered illegal, and applicable customary laws are not limited to codified customary laws, but includes unwritten customary practices that have been recognised – such as customs and usage as per the 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. Although it presently looks unlikely that these hurdles can be cleared, if solutions can be found, Malaysia could move quickly to implement its legality assurance scheme, as it is probably the country best organised to do so.

In Indonesia a legality definition and timber legality assurance system (SVLK) that was agreed some years ago by all parties, including civil society representatives was passed into law in June 2009, after a failed attempt by the government to make some changes. The SVLK was officially implemented in September 2010 and some 30 companies have already been verified and certified. Independent monitoring within the context of SVLK is designed to be multi-tiered. The monitoring of the verification and assessment process on the ground will be conducted by civil society (NGOs and Indigenous Peoples Organisations), while system monitoring, evaluation and improvement will be conducted by a multi-stakeholder Working Group. It is essential to have multiple civil society monitors in a large and diverse country such as Indonesia. Indonesia is proposing that implementation of the agreement is audited by a periodic evaluation both in Indonesia and the EU.

Indonesia and the EU have conducted two negotiations sessions, four Technical Working Group meetings and four Joint Experts Meetings. The next meetings of both groups will be held in November 2010 in attempt to conclude negotiation by the end of 2010 or early 2011.

VPA negotiations with CAR were launched In October 2009 with a provisional date of 6 December 2010 for signature. Negotiations mark this pace: (mostly bi-)monthly video conferences advance the technical discussions, while formal negotiations take place every two to three months. The main concern to date is the extent to which the different stakeholders (government, private sector and civil society) own the process as the hurried pace of discussions is leading to lack of effective consultation in country. Central African officials informally underline that they have no time to organise large consultations as discussions and technical documents take too much of their time. However, they also expect that representatives of the private sector and civil society in the negotiating team circulate information and convey messages actively. At least for civil society – which lacks capacity and means - the lack of formal consultation is hampering their political engagement. As improvements in forest governance largely depend

on how local civil society is engaged in the process, the ambitious speed of the negotiations may seriously diminish Central African's ownership of the agreement. It is important that the process – and therefore the opening of political space for the marginalised – takes a central role in the negotiation of VPAs, and particularly so in those countries suffering from serious political instability and lawlessness.

Liberia started formal negotiations in March 2010, and a second negotiation session took place in July in Monrovia. At this last meeting, discussions included a first draft of the legality definition and different elements of the Legality Assurance System (LAS), specifically if and how to include the domestic market in a VPA. There was only one civil society representative at this meeting, although civil society actors and representatives of local communities are part of various preparatory and steering committees. A next meeting is foreseen in October in Brussels. Many issues remain, including: whether or not products for the domestic market should be covered by the LAS; whether the legal compliance monitoring framework ensures that those barred from activity in the sector (because of complicity during the civil war) remain barred, the extent to which the legality monitoring framework incorporates areas of law where regulations remain to be developed (such as with community forest practice), and how to deal with imports.

In the meantime however, a new draft bill is throwing a spanner in the works. A new legislative proposal, passed by the House of Representatives, suggests waiving land rental fees amounting to tens of millions of dollars annually, to logging companies. The NGO coalition feels that rather than demanding logging companies fulfil their financial obligations, the new bill will not only allow them to escape the financial obligations agreed in their concession bidding and contracts. It also takes away a large part of the expected benefits for local communities. Communities hosting logging concessions are entitled to 30 per cent of the land rental fees, and if this draft bill becomes law, they will have their financial benefits taken away before they have received the first centime. This draft law has therefore aggrieved Liberian NGOs and communities, who call on the EU to show that these practices by the government and Forest Development Authority (FDA) are not acceptable. They want

the government to show it is serious about ensuring that forestry benefits Liberians, and that the contract obligations framed in the award of concessions are honoured. The next negotiation session promises to be an important one in keeping the process on the rails. With other interest groups such as the palm oil sector and carbon traders increasingly eying Liberia's land, with potentially disastrous consequences, it seems that a strong VPA able to clamp down on illegal practices is needed more than ever.

Gabon finally kick-started the VPA process on 23 September 2010. Gabonese civil society is expecting to fully engage in the process and has already had internal discussions about the definition of legality.

Among the front-runners of countries in the pre-negotiation stage is Vietnam. A Vietnam-EU Joint Statement was signed in August 2010 announcing the willingness of both parties, and formal negotiations are scheduled to start in November 2010. Vietnam differs from other VPA countries in that it is a timber processing (not producing) country, and civil society is concerned that they may not be able to engage freely in the process. As civil society engagement is a major strength of the VPA process as well as a central FLEGT principle, this poses a major challenge to reaching a satisfactory agreement.

The Democratic Republic of Congo (DRC) is also in-waiting. A formal DRC-EU Joint Statement declaring the opening of formal negotiations is expected to be issued on 21st October 2010, followed by a first negotiation session before the end of 2010. Ongoing preparations in country include work led by the international NGO WWF on how to define legality which, if it succeeds in involving all actors, could help set the basis of both the VPA legality definition, and work by SGS (a timber verification and certification company) in developing a timber tracking system. It is worth noting that the DRC is a country characterised for a very advanced REDD process. The FLEGT process should support the necessary work on improved governance in the forest-climate context, and due care should be taken to ensure that there is coordination between the two processes.

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

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. For information on how a ratification process works, see <http://www.loggingoff.info/document/process-ratify-timber-trade-agreements-loggingoff-briefing-note>
4. For a better insight on the impact of REDD to FLEGT processes in Ghana, see <http://www.fern.org/REDDunderminingFLEGT>
5. For a better insight on the Congo-EU VPA, see <http://www.loggingoff.info/document/vpa-congo-brazzaville-counterbrief>
6. For a better insight on the Cameroon-EU VPA, see <http://www.loggingoff.info/document/flegt-cameroon-counterbrief>