

Forest Watch Special Report – Update report on FLEGT Voluntary Partnership Agreements

By Saskia Ozinga and Iola Leal

Introduction

As part of the EU Forest Law Enforcement, Governance and Trade (FLEGT) action plan, the EU is negotiating and implementing voluntary partnership agreements (VPAs) with a number of timber-producing countries. Key components of the VPA negotiation process include defining legality, developing a timber-licensing scheme and agreeing how to verify legality and monitor the system. Once VPAs are implemented and, as part of them, legality assurance schemes established, all timber products covered by the agreement and imported from that country into the EU will be deemed legal. The first FLEGT licensed timber is not expected to arrive in the EU before 2011.

The overall goals of FLEGT are to improve forest governance, including strengthening local peoples' tenure rights, increasing transparency and the participation of civil society and providing assurances to EU consumers about the legality of imported timber. To achieve these aims and ensure ownership of all citizens involved in forest governance, VPAs 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 to guide negotiating teams.

Status of VPA negotiations

The first VPAs were signed with Ghana and Republic of Congo, although only the former has been ratified. Negotiations with Cameroon were finalised in January 2010, and it is expected that by February 2010 this country will become the third one to sign a VPA.

Negotiations are currently underway with the Central African Republic, Indonesia, Liberia and Malaysia. Gabon and Vietnam are in pre-negotiation stage, and a less advanced preparatory process has started with the Democratic Republic of Congo and Guyana. Countries that have expressed an interest in joining the FLEGT process, and whom the EU will exchange views with in the coming months, include Cambodia, Colombia, Ecuador, Equatorial Guinea, Ivory Coast, Madagascar, Papua New Guinea, Sierra Leone and the Solomon Islands.

The **Ghana**-EU VPA was signed in September 2008 with the agreement of all stakeholders in country. 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 to those involved that the lack of clear concrete proposals for the reform process meant that the success of the VPA would depend to a great extent on civil society's involvement during implementation. Unfortunately, delays by the EU meant the agreement was not ratified until December 2010, providing an excuse to the Ghanaian Government to not kick start implementation. This situation is further complicated by the fact that elections brought in a new government which, along with the new head of the Ghana Forestry Commission does not show the same interest in the VPA. With the World Bank planning to throw 'REDD money' at Ghana without the required painful restructuring of the forestry industry and a proper consultation process to determine what should be funded, there is a serious risk that implementation of the VPA will remain a low priority. This raises fears that frontrunner Ghana may not deliver just and equitable forest management any time soon.

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. Negotiations lasted less than one year (June 2008 - May 2009). When the process began, concerns were raised about whether the country's nascent civil society would be able to counterbalance the power of the forestry industry and ensure the VPA led to meaningful improvement of (forest) governance. Although civil society struggled to raise its concerns, the EU commitment to the participation of local organisations throughout the process was instrumental in ensuring that their demands were addressed. The implementation of the VPA has started and there is a structure in place that allows civil society to play a clear role in the implementation phase. Numerous activities will have to be implemented before the first timber can be shipped. These include clarifying the rights of communities to forest land and strengthening the roles that communities play in the attribution of forest concessions and in forest management. Direct involvement of local communities during the implementation phase will remain key.

Cameroon and the EU finalised VPA negotiations in January 2010, and the signing of the agreement is foreseen for February. Despite difficulties, local groups were able to participate in pre-negotiation and negotiation committees and felt that their voice was increasingly heard. The level of civil society involvement in this process was unprecedented and has led to strong written commitments by the government to: make information publicly available; continue independent monitoring of the forest sector;



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 Fosseway 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

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. Strong mechanisms now need to be put in place to ensure the continued participation of all the stakeholders during the implementation phase. This should include a process to involve local communities who did not participate actively during negotiations.

In **Malaysia**, serious outstanding issues must be resolved before a VPA can be signed. These include recognition of native customary rights and a stakeholder consultation process which is of major concern as it 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. The Sarawak Timber Association (STA) has produced a statement and a report denouncing the VPA if it attempts to address issues such as "sustainability, land rights and social economic conditions of indigenous people, independent monitoring and EU representation in the Joint Implementation Committee", all of which are core to FLEGT agreements. It seems therefore unlikely Malaysia can sign a VPA that will include the State of Sarawak. This may or may not preclude an agreement to be signed between the EU and Peninsular Malaysia and Sabah. As no new legality definition or near final Timber Legality Assurance System are publicly available, it is as yet unclear to what extent key NGO demands have been addressed. These include that disputes over land be settled prior to logging, that timber harvested in disputed areas be considered illegal, and that applicable customary laws is 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. What is clear is that the VPA process has put the spotlight on the issue of rights to land, but whether it can or cannot 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.

The **Indonesian** government has suddenly moved forward again with the VPA. A legality definition that was agreed by all parties, including civil society representatives, some years ago has now been passed into law, albeit after a failed attempt by the government to make some changes. A timber licence assurance system (SVLK) has been developed, is being evaluated to compare it with the EU demands, and is being tested in the field. Implementation of the VPA has been effectively postponed to September 2010 to give the Ministry the time to develop implementing guidelines and procedures, as to get verification and assessment bodies accredited by the National Accreditation

Committee. Independent monitoring is the next issue under discussion. Indonesia's proposal is to create a secretariat that will function as a hub of information and stimulate networking among civil society organisations (NGOs and Indigenous Peoples' Organisations). Complaints can be presented to this secretariat by any monitoring NGO or body, as long as the information is valid and the monitoring is conducted according to the guidance and code of conduct currently being developed.

In October 2009, the **Central African Republic (CAR)** and the EU launched VPA negotiations with the aim of signing an agreement within 12 months. As improvements in forest governance largely depend on how local civil society is engaged in the process, negotiations aim to provide the space for participation. Unfortunately, if unchanged, the ambitious speed of the negotiations could diminish the quality of the agreement. The local NGO platform is concerned that they will not have time to prepare meaningful contributions. Allowing time and resources for capacity building and sufficient exchange of information between civil society groups in Bangui and people in the field will be decisive in ensuring national ownership of the VPA and a successful outcome of the process. The process is very important in every VPA country, but particularly so in those suffering from serious political instability and lawlessness.

Liberia will have its first formal negotiations session in March. Issues like the legality definition and the tracking system are on the agenda. However, the negotiations have come under threat by NGO data showing serious breaches of various laws in the newly appointed concessions. They argue that current developments in the forest sector point to a future of disappointment and conflict across communities, and sustained tension between the state and those civil society actors and community representatives who are determined to ensure that the rights and interests of communities are upheld and protected. It is hoped that the VPA will provide a good platform to work towards solutions and identify necessary governance reforms that can be jointly implemented by the forestry development authority and civil society actors.

Among the front-runners of the countries in the pre-negotiation stage is **Gabon**. The roadmap for negotiations is already developed and the first negotiation session is expected to take place in March 2010. Preparing for negotiations, civil society in country has started to discuss issues around the definition of legality and has elected its representatives. It is expected that they will be invited to fully engage in the process.

Another country in pre-negotiation is **Vietnam**. Initial dialogue has included the establishment of a government inter-agency FLEGT working group and the planning for a multi-stakeholder dialogue. More dialogue is expected during the first quarter of 2010.