COMPENDIUM ON EXPERIENCES FROM THE VOLUNTARY PARTNERSHIP AGREEMENT (VPA) PROCESS IN CENTRAL AND WEST AFRICAN COUNTRIES

Accra (Ghana), 23-25 October 2012
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### Preface

Illegal logging results in serious environmental and social damage each year, costing governments an estimated US$10 billion in lost revenues. As a significant consumer of wood products, the European Union (EU) recognizes its shared responsibility with timber-producing countries to tackle illegal logging and trade in associated timber products. In 2003, the EU adopted an Action Plan on Forest Law Enforcement, Governance and Trade (FLEGT) to promote better forest governance and block illegal timber from entering the EU market. Specifically, the Action Plan aims to: support timber producing counties to improve forest governance and develop governance mechanisms; develop activities to promote trade in legal timber; promote public procurement policies; support private sector initiatives; set up safeguards for financing and investment; use existing legislative instruments or adopt new legislation to support the effective implementation of the Action Plan; and address the problem of “conflict timber”.

The main tool of the Action Plan is the negotiation and conclusion of Voluntary Partnership Agreements (VPA). VPAs are legally binding agreements between the EU and individual timber-producing countries that aim to eliminate illegally-produced timber from international and domestic trade and prevent illegal timber from entering the EU market. To date, the EU has signed VPAs with five countries in West and Central Africa (Cameroon, the Central African Republic, Ghana, Liberia and the Republic of Congo) and is negotiating with two other countries (the Democratic Republic of Congo and Gabon). It has also introduced the VPA process in the Côte d’Ivoire. The EU Timber Regulation has recently been adopted to complement the VPAs. Come 3 March 2013, the placement of illegal timber on the EU market will be strictly prohibited.

Each VPA is negotiated to address the unique circumstances and governance characteristics between producer countries and the EU. This context-specific scenario is arguably one of its greatest strengths, but it also raises challenges. Over the last decade, programmes and initiatives such as the ACP-FLEGT Support Programme, the EU FLEGT Facility and the IDL group have provided tremendous support to FLEGT practitioners in overcoming these challenges.
The conclusion of VPAs has also generated positive changes in countries that have engaged in the process. A few of these changes include the involvement of a broad range of stakeholders to define governance policies, the revision of legal frameworks and the development of national level wood-tracking systems in partner countries. Arguably, the VPAs are historical and unprecedented trade agreements for Europe as well, given the extent of involvement of non-state actors that have been allowed to influence the process.

Four years into the ACP-FLEGT Support Programme, it is time to look back and draw lessons from these experiences to continue to improve the clarity of VPAs, address loopholes and by extension, the efficiency of the schemes’ implementation. To this end, in October 2012, the ACP-FLEGT Support Programme, in partnership with the Forestry Commission of Ghana, the EU FLEGT Facility and the Strengthening African Forest Governance Project organized a regional conference on “Experiences from the VPA process in West and Central African countries” to share and discuss the opportunities, successes and challenges of the VPA process thus far.

This Compendium was published as a resource document for the conference, highlighting 16 experiences and the resulting lessons which have surfaced, in an aim to foster an exchange of information among stakeholders on how to overcome challenges and move forward with the VPA process, and ultimately ensure a legal supply of timber in regional and global markets.

2 ACKNOWLEDGEMENTS

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Special thanks go to the IDL group, the EU FLEGT Facility and the Forestry Commission of Ghana for their vital contributions to the organization of this regional conference, as well as the stakeholders directly involved in the VPA process, whose contributions have been vital both to the continued success of the agreements as well as in identifying current challenges to implementation.

The ACP-FLEGT Support Programme greatly acknowledges the contributions of the authors, moreover, whose experiences assembled herein provide valuable lessons upon which fully-functional VPAs in partner countries can hopefully be built.

* S. Ozinga, Voluntary Partnership Agreements, tools to empower civil society to take part in forest governance improvements, 2012
Theme One:
Legality Assurance System

3 THEME ONE: LEGALITY ASSURANCE SYSTEM

3.1 Private sector motivation for and perceived barriers to VPA implementation in Cameroon
Sophia CARODENUTO

Abstract

Illegal logging causes economic, environmental and social harm in tropical timber-producing countries where poor governance is pervasive and forest users are not motivated to comply with laws. Voluntary Partnership Agreements (VPAs) aim to reduce illegal logging by fostering forest governance reforms and introducing legality assurance systems (LAS) that guarantee the legality of all forestry operators and their timber. The successful implementation of VPAs depends, inter alia, on the motivation and active involvement of the private forestry sector. Interviews with a wide range of forest operators in Cameroon reveal different understandings of the concept of legality as intended by FLEGT and consequently, different perceptions of how VPA implementation would benefit or harm them. Intervenews also discuss numerous barriers to successful implementation that risk undermining the VPA’s principle objectives. An assessment of these perceptions — including their implications for governance — provides recommendations for improving private sector involvement throughout the VPA implementation process.

Introduction

Tropically forested countries often lack the state capacity for effective law enforcement, allowing actors such as concessionaires and chainsaw sawyers to operate with impunity. These private sector actors are the main target of efforts to improve domestic law compliance. The European Union’s (EU) Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan tackles illegal logging in tropical timber-producing countries through Voluntary Partnership Agreements (VPAs). These bilateral trade agreements propose Legality Assurance Systems (LAS) and governance reforms in timber producing countries in order to ensure the legality of all forestry operators and their timber. The successful implementation of VPAs depends, inter alia, on the motivation and active involvement of the private forestry sector. Interviews with a wide range of forest operators in Cameroon reveal different understandings of the concept of legality as intended by FLEGT and consequently, different perceptions of how VPA implementation would benefit or harm them. Interviews also discuss numerous barriers to successful implementation that risk undermining the VPA’s principle objectives. An assessment of these perceptions — including their implications for governance — provides recommendations for improving private sector involvement throughout the VPA implementation process.
**Theme One: Legality Assurance System**

**Cameroon’s Forestry Sector**

Forestry — both industrial and artisanal — contributes largely to the country’s formal and informal economy. Moreover, Cameroon’s private forestry sector encompasses a multitude of actors whose activities vary greatly in nature and scale of operation. This research defines the private forestry sector as being comprised of any entity — individual or group — involved in a forestry-related profit-seeking business, whether it is timber extraction, processing or trade, not including those who exploit forest resources for personal consumption. As mentioned above, forestry activities at all levels fall under the jurisdiction of the VPA, including small-scale timber operators (producers, traders and traders) on local markets as well as multi-national corporations managing numerous concessions. The advantage of analyzing such markedly different sets of actors at the same time provides insights into the hypothesis that the increasingly numerous concessions. The advantage of analyzing such markedly different sets of actors at the same time provides insights into the hypothesis that the increasingly numerous concessions.

Concession-based industrial timber production plays an important role in Cameroon’s forestry activities. The industrial forestry sector is mainly composed of concession-owners that integrate timber harvesting, processing and transport in their export-oriented activities. Due to large-scale operations of formal and informal timber operators on local markets, declining local purchasing power and low operation costs of CSM, the timber market is informally regulated and functions largely outside the law. Nonetheless, operators in this sector pay a significant amount of taxes, albeit informally. Despite its informal nature, scholars emphasize the LAS must cover timber circulating on local markets, especially in Cameroon where the “majority of illegal timber production … is now consumed locally.”

**Methods**

Qualitative field research was carried out in collaboration with the Center for International Forestry Research’s (CIFOR) regional office in Yaoundé from September 2011 to March 2012. In order to organize the private sector affected by this policy instrument as well as identify interviewees, a typology of actor groups was created before data collection. The typology is based on the following criteria: destination of timber sales or products i.e. (i) domestic or (ii) international market; ownership of enterprise i.e. (iii) national or (iv) international; and (v) FSC-certified or (vi) non-FSC certified. Due to difficulties in data collection, the criteria exclude operators openly acting illegally. When calculated in RWE, both industrial (year 2007) and artisanal timber (year 2008) production equaled roughly 2.1 million cubic meters. P. Cerutti et al. 2010. The Domestic Market for Chainsaw Milling in Cameroon: Present Situation, Opportunities and Challenges. OP 61, CIFOR, p. vii.

Recent studies demonstrate the industrial sector only makes up half of Cameroon’s total timber production. The volume of small-scale chainsaw milling (CSM) supplying local and regional markets is now estimated to roughly equal industrial production. CSM includes the felling and on-site conversion of trees into lumber. The wood is usually sourced from customary tree owners in local fallows or forests and sometimes from agreements with community forests. This dynamic and relatively unexplored sector has been growing steadily in recent decades in line with population growth, rising demand on urban markets, declining local purchasing power and low operation costs of CSM. CSM and related activities contribute significantly to Cameroon’s informal economy, providing many jobs in rural and urban areas. Due in part to an inappropriate or non-existent legal framework, domestic timber production, transport and trade is sporadically regulated and functions largely outside the law. Nonetheless, operators in this sector pay a significant amount of taxes, albeit informally. Despite its informal nature, scholars emphasize the LAS must cover timber circulating on local markets, especially in Cameroon where the “majority of illegal timber production … is now consumed locally.”

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13 M. Wit et al. 2010. Cameroon’s Forestry Sector, 853.
15 C. Pye-Smith. 2010. Cameroon’s Forestry Sector, CIFOR.
16 The debate surrounding the artisanal timber sector includes the sector’s terminology as some prefer to call it “informal” as opposed to “illegal” because although activity “do not quite respect all the national regulations, they do not necessarily break the law either” (P. Cerutti et al. n. 7 above at x).
17 Recent estimates cite up to €9,150,000 in informal payments are collected annually. P. Cerutti et al. 2008. Forests, Legality and Livelihoods: the case of Cameroon, Society and Natural Resources, p. 845-853.
The researcher conducted 24 semi-structured interviews. After data collection, the private sector typology was collapsed into the following four actor groups: (i) domestic-market serving, nationally-owned, non-FSC certified; (ii) export-market serving, nationally-owned, non-FSC certified; (iii) export-market serving, internationally-owned, non-FSC certified; and (iv) export-market serving, internationally-owned, FSC certified. Some potential actor groups are irrelevant for Cameroon, i.e. there are currently no FSC-certified companies serving the domestic market.

Data analysis included full transcription of all recorded interviews followed by qualitative content analysis. The motivations identified refer to positive impacts of VPA implementation, which include benefits to individuals (e.g. for small or one-man businesses), companies, the forestry sector as a whole or to the country and society at large. These have the potential to push the actors (now or in the future) to support the VPA. Barriers include institutions that private sector actors think currently hinder successful VPA implementation, including norms or current ways of functioning, as well as inherent qualities of the VPA that are incompatible with these ways of operating. The main objectives of Cameroon’s VPA – such as promoting economic opportunities for local enterprises – were included in analysis because they are considered fundamental elements for successful VPA implementation.

Results

Private sector actors in all groups perceive significant positive impacts potentially resulting from VPA implementation. However, interviewees also disclose numerous risks involved with implementation as well as fundamental barriers currently hindering implementation. Actor groups have different understandings of FLEGT in general and VPA implementation specifically; thus, the results are first presented for each actor group individually and subsequently discussed as a whole. Results are derived solely from words exchanged during the interviews while any important misconceptions regarding FLEGT or the VPA are dealt with in the discussion.

Nationally-owned/domestic market serving actor group

Although most domestic sector actors are unfamiliar with FLEGT or the VPA, they have clear ideas about why a reduction in illegalities in the sector are important, and the legal and institutional reforms required to meet the VPA’s requirements that would benefit them. Actors expect improved organization of the domestic timber market to result from VPA implementation. These organizational improvements will result in better access to forest resources and professionalization of the domestic sector. Therefore, efforts related to FLEGT will result in higher quality products that will sell for a higher price on both local and international markets. Actors in this group think FLEGT will encourage international business partnerships and foster access to more lucrative export markets. Most actors in this group agree that VPA implementation should result in poverty reduction and many hope the environmental and societal benefits of the forest will be better safeguarded. Thus, this group’s perceived incentives are largely underscored with normative motivations of more equitable and sustainable development resulting from the FLEG process.

In terms of barriers, this actor group cites inappropriate or insufficient laws, lack of awareness (either stated explicitly or inferred by the researcher) and the unwillingness or inability of consumers on the domestic market to buy more expensive (legal) wood products. Regarding the current laws regulating forest access, some think the government needs to create large amounts of timber harvesting titles and facilitate the process of obtaining them for the domestic sector to be included in any future LAS. Many also think the irregular and informal tax collection by “corrupt” officials throughout the local timber supply chains must be addressed in part through law reform. The fact that most were unfamiliar with the VPA or confused by questions concerning the legality of their wood demonstrates the lack of local consultations and/or awareness campaigns. Finally, actors in this group believe local consumers can/will not pay the higher wood product prices resulting from FLEGT.

Nationally-owned/export market serving actor group

Generally, nationally-owned and export market-serving economic operators have a more adverse view of FLEGT and are relatively more skeptical regarding the benefits of VPA implementation. Actors in this group have markedly
different levels of familiarity with FLEGT i.e. actors in this group represent nationally owned private sector interests during the VPA negotiations and thus are highly knowledgeable of Cameroon’s forest legislation and VPA proceedings.

When asked about the expected impacts of FLEGT, most actors were hopeful that VPA implementation would facilitate access to sensitive export markets. They expect easier access to European timber markets once Cameroon’s LAS becomes operational. For example, one actor believes a future FLEGT license will allow his company to compete with public calls for tender on European markets, formerly open only to sustainably certified timber. However, some actors find questions regarding VPA motivation for compliance absurd. One interviewee explains how the VPA is “involuntary motivation” on behalf of the EU, and that the private sector has no choice but to implement the additional VPA requirements since it has now become law.

Most actors believe Cameroon’s current legal framework disfavors national actors in the sector, explaining that VPA implementation without law reform risks resulting in the elimination of small and medium forest enterprises (SMFEs) from the sector. The primary barrier to VPA implementation for this actor group is the lack of access to credit in a sector requiring heavy upfront investments. This group believes the VPA will further increase operating costs without providing the required access to credit, thereby squeezing national actors (without international backing) out of the sector. One actor affirms “either the EU commits and follows through with its thinking or the state of Cameroon financially engages itself to support nationals.” Moreover, the interviewee argued that small-scale nationally owned companies will “disappear” from the sector soon after the EU Timber Regulation (EUTR) comes into force.

**Internationally-owned/export market serving/non-FSC certified actor group**

This actor group was more positive about the potential benefits of VPA implementation. Actors expect VPA implementation to result in an elimination of illegal players and easier access to markets. Illegal players operating “sans soucis” or without heed to legal requirements have lower operating costs and thus can afford to sell their timber for less. Eliminating these profiteers will level the playing field and make the price of legal timber more competitive.

They also explained that some VPA requirements since it has now become law. should thus increase profits for legitimate actors as well as provide them with more business opportunities, both internationally and on local markets. Actors in this group hope the VPA will allow them to access international markets similar to their FSC-certified competitors, without the burdensome SFM certifications. They explain the similarities between FSC principles, criteria and indicators and the FLEGT legality matrices. One actor explains concessionaires in the region are happy that FLEGT now counters the need to invest in expensive SFM certifications, pointing out that no companies in Cameroon are actively seeking FSC Forest Management certification now that the country has signed the VPA. On the other hand, actors in this group expect domestic market-serving artisanal loggers to be eliminated once the VPA is implemented, making their legally verified wood the only product available on the domestic market. One actor even pointed out the growing potential of local markets: “before, in the previous forester’s mentality, local markets were not interesting for those who only exported. Today local markets are becoming interesting …”.

This group perceives vested government interests in maintaining that status quo and the technicalities of LAS as being the most important barriers to VPA implementation. Interviewees explain the pervasiveness of bribes required for obtaining legal documents. Their biggest concern is VPA implementation will increase the amount of documents required, thus offering corrupt officials more opportunities to collect these bribes. Actors state that if the VPA is a “document check,” it will be futile because these papers are so often falsified. There is a strong perception that the technicalities inherent to the LAS are a barrier in and of themselves. The fact that the FLEGT licensing authority is held within the non-transparent and unreliable government ministries fundamentally jeopardizes the credibility of the VPA in spite of the bi-annual independent audit.

**Internationally-owned/export market serving/FSC certified actor group**

This group was generally optimistic about the benefits of VPA implementation as they expect their investments in FSC to have considerable pay-offs and do not foresee many (if any) changes to business as usual. Their motivation to support VPA implementation is comparable to that of the previous actor group: the VPA will eliminate illegal players and secure or increase access to markets, formerly open only to sustainably certified timber. However, some actors in this group are skeptical about the additional legal requirements the VPA imposes. They are highly knowledgeable of Cameroon’s forest legislation and VPA proceedings, explaining that the new laws and regulations are necessary to ensure the credibility of the VPA in spite of the bi-annual independent audit.

However, the VPA also requires actors to undergo bi-annual independent audits, thereby increasing the amount of documents required for compliance. This group believes these additional requirements will increase the amount of documents required, thus offering corrupt officials more opportunities to collect these bribes. Actors state that if the VPA is a “document check,” it will be futile because these papers are so often falsified. There is a strong perception that the technicalities inherent to the LAS are a barrier in and of themselves. The fact that the FLEGT licensing authority is held within the non-transparent and unreliable government ministries fundamentally jeopardizes the credibility of the VPA in spite of the bi-annual independent audit.
markets. There is an added emphasis, however, on the valorization of existing investments in FSC certification. Actors in this group firmly believe they have already made the investments required and once the VPA is functional, they should more or less continue with business as usual. Some even assert FSC-certified companies should receive FLEGT authorization automatically. These actors explain how FSC certification goes above and beyond that required by law and are highly confident their investments in FSC will pay off significantly once FLEGT comes into force.

In the case of this actor group, the barriers to successful VPA implementation refer to the VPA objectives to reduce poverty and foster sector development. Actors explain how strict adherence to the law will not allow the sector to develop or society to benefit. Actors instead point out the benefits of local development initiatives undertaken through voluntary FSC certifications.

Discussion of findings

The interviews in this study covered a range of actors in the forest producing sector that are affected by the VPA and proposed LAS. The criteria for selection as noted above aimed to ensure that the full range of actors was included to the extent possible. Indeed, some types of actors are underrepresented and some are not included at all – illegal actors for instance – since it was not possible to include them under the scientific conditions of this study. Due to the small number of actors interviewed, this is not a synopsis of the state of VPA implementation or a demonstration of the full extent of private sector involvement in the VPA. Instead, this study provides insights into the perceptions of different actor groups in an exploratory manner.

The results show how small-scale nationally-owned actors, especially those serving the domestic market, stand to gain the most from successful VPA implementation. Domestic market actors hope for market organization and less informal taxing, while those in the higher-tiered actor groups expect little change from the status quo. Many of these expectations mirror the VPA’s stated objectives, however, some actors may falsely anticipate how the VPA will improve their situation. For example, all actor groups express expectations of increased access to certain markets and higher prices for their timber. However, it remains unclear who will have easier market access or whether a FLEGT license will result in higher timber prices.

Previous scholars caution that international forest policies in the Congo Basin are causing a “concentration at the top” of the export-oriented internationally owned concessions and simultaneous “fragmentation at the bottom” of nationally owned SMFEs. Although it is too early to assess VPA impacts in Cameroon, this qualitative study demonstrates that small operators, especially those serving the domestic market, face the most significant barriers to VPA implementation. The informal functioning of the domestic sector seems to be incompatible with current legislation and the LAS. An institutional analysis suggests the conflicts between formal “state” laws and informal “non-state” rules or practices are so strong that they threaten the implementation capacity of the LAS in the domestic sector. Furthermore, domestic market serving actors seem to be out of touch with the debate surrounding the VPA. For example, they consider their activities to be licit and even expect important benefits to result from VPA implementation while other actors imagine the “informal” market will be eliminated through VPA implementation. For actors most familiar with the VPA, inherent complexities and institutional placing (in the Forest Ministry) of the LAS are perceived to be the most important barriers to VPA implementation.

Conclusions and Recommendations

Actors serving the domestic market arguably stand the most to gain from VPA implementation, and more focus should be placed on them in order to achieve the socio-economic development objectives of the VPA. In order to avoid adverse governance and development impacts and fulfill all VPA objectives, smaller-scale national operators must be better integrated into the VPA implementation process, both politically and practically. Political integration can be achieved through a better representation of domestic market serving actors in institutional structures monitoring the impacts of VPA implementation i.e. the Joint Implementation Committee. In practical terms, alternative solutions to the complex and highly technical LAS need to be found in order to better incorporate a larger number of actors. For smaller actors, there is a mismatch
between formal goals and actual capacity, meaning policy learning must take place. Good governance implies flexibility and adaptive co-learning between policy makers and regulated actors. Experimentation with different implementation approaches must be part of the VPA process.

The end goal of intervention in the domestic market is to improve the sustainability of smaller-scaled forestry activities as well as improve its contribution to socio-economic development. Localized assessments of the domestic timber supply chain can identify where the largest “legality” gaps are, which can simultaneously improve value chain efficiency, reduce resource use and possibly raise the quality of wood products on the local market. Demand-side intervention must take place simultaneously in order for these legal wood products to then have sufficient consumers. This can be done through a public procurement policy requiring the Government of Cameroon to buy nationally-produced and legally verified wood products or through market analysis identifying consumer populations willing to pay more for higher quality wood whose legality has been verified.

The EU’s commitment to import only legally verified wood products must not undermine the governance and sustainable development objectives of the FLEGT Action Plan by excluding nationally-owned private forestry actors. The challenge is to simultaneously take into account and promote existing corporate extralegal efforts, especially those who invested in SFM. Again, the end goal of FLEGT is to improve the legality (and expectant sustainability) of forestry activities in tropical forests. Forestry companies that can invest in SFM must continue to perceive the benefits of doing so and policy-makers should clarify the role of FLEGT-VPAs in fostering law compliance, including the benefits of VPA implementation for the different private sector actor groups. This also should beclarified in order to mitigate potential conflicts i.e. will industrial sawmills be the only legal suppliers to domestic markets in the future? What kind of facilitation to export markets will domestic market actors receive through VPA implementation? Each actor group has different reasons for engaging in the VPA process and these nuances must be accounted for in order to ensure meaningful participation of all levels of the private sector and strengthen the private sector’s commitment to the policy. Furthermore, a better understanding of the concrete benefits of the VPA, especially for whom the benefits will be, allows for closer observation of the socio-economic impacts of the policy during implementation.

3.2 In search of a workable Wood Tracking System for Ghana’s FLEGT/VPA: Informed lessons from a pilot project
Richard GYIMAH

Abstract

This paper provides a generic analysis of an electronic wood tracking system (WTS) used in Ghana’s VPA pilot scheme by assessing the various stages of the forestry business process. The analysis focuses on issues such as electronic data capture and transmission, report generation, transaction time and cost implications. Weak infrastructure and low capacity of actors in terms of information technology literacy, coupled with a relatively high upfront cost (≈12 USD per m³) of an electronic wood tracking system that may not guarantee higher revenues or price premiums present good arguments why Ghana should opt for a flexible semi-electronic WTS that is robust, cost-effective and efficient in terms of reduction in transaction time. The full range of benefits that an electronic WTS may potentially offer could take some considerable time to materialize and hence there is a need to keep the cost of WTS as low as practicable.

Introduction

The Government of Ghana and the European Union (EU) signed the world’s first Forest Law Enforcement, Governance and Trade (FLEGT)/Voluntary Partnership Agreement (VPA) on 20 November, 2009. A key element of VPA is the implementation of a Legality Assurance System (LAS). The LAS is expected to monitor, control and verify the management and use of Ghana’s forest resources to ensure that only legal timber products are produced, sold and/or exported from Ghana. A major component of the LAS is a Wood Tracking System (WTS) which monitors timber movements throughout Ghana and provides the Forestry Commission (FC) with the ability to track consignments of wood products from the point of export or sale back to their point of origin, ensuring legal compliance for exportable timber.

Since 2009, Ghana has initiated a series of planned programmes including a pilot WTS aimed at developing systems to deploy the LAS. The pilot electronic WTS was aimed at understanding the processes and operational procedures employed in the Ghanaian timber industry and to ensure that the delivery of the
WTS aligns with the FC goals as well as meets the requirements of VPA. The WTS pilot provided useful lessons on: (i) project management and governance issues; (ii) WTS contractual issues; (iii) potential benefits and value-for-money of the WTS; and (iv) system development and WTS implementation issues.

Ghana has currently moved past the WTS pilot phase and completed the process for engaging the services of a consortium for a national WTS roll-out. One of the key informed lessons from the pilot is how to settle on a cost-effective and efficient WTS that can be sustainably financed and at the same time show robustness in establishing a reliable chain of custody scheme that meets international best practices. For this reason, this paper explores a suitable approach for Ghana’s WTS by examining some practical issues encountered during the WTS pilot.

Brief overview of available timber-tracking technologies

The role of technology in timber tracking systems is to provide a means of modelling and recording the physical flows of timber and timber products throughout the supply chain. Over the past few decades, these WTS technologies have developed to cater for a range of different niche functions whilst serving specific client needs. “Current timber tracking technologies vary in complexity, being governed by funding, project objectives and the technology that is available”.

Available timber tracking systems can generally be grouped into (i) paper-based systems (ii) semi-electronic (iii) electronic, and more recently (iv) chemical identification methods (e.g. DNA and isotope sampling technology).

In many situations such as the paper-based tracking systems, documentation accompanying timber and timber products alone does not satisfy new international market requirements such as the EU-FLEGT and forest certification schemes. There is a need to directly trace the movement of material through the supply chain and this is largely achieved by product identification mechanisms. In recent times, technological advancement through semi-electronic, electronic and DNA systems are providing robust schemes for tracing wood material through timber supply chains. However, affordability (cost implications) and availability of such advance systems, especially in developing countries, remains a challenge.

Irrespective of the WTS type used, a key function of tracking systems is to link the physical timber or timber product to a database model of which labeling is an important factor (2012). A wide variety of labeling options is available for wood chain of custody systems. No labeling technology is perfect, but some type of label is essential if the chain of custody system is to be effective. Some of the commonly used labeling technologies for wood products are briefly outlined in Table 1, with their respective strengths and weaknesses.

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### Theme One: Legality Assurance System

#### Compendium on experiences from the Voluntary Partnership Agreement (VPA) Process in Central and West African countries

<table>
<thead>
<tr>
<th>Label Type</th>
<th>Strengths</th>
<th>Weakness</th>
</tr>
</thead>
</table>
| Conventional paint and chisel labels | • Paint and chisel marks are easy to apply  
• Painting and chiseling cost very little and require no special training or maintenance programs  
• These labels can be robust and survive road and water transport very well  
• Materials are usually readily available locally  
• These labels can be integrated into forest management, logistics, stock inventory functions  | • Painting or chiseling labels is time consuming; this has cost implications in high labor-cost environments  
• Hand painted labels that use up a lot of space are suitable only for application on large log surfaces  
• Painted and chiseled labels are prone to errors during applications and when being read  
• Unscrupulous persons can easily replicate paint and chisel labels  |
| Branding hammers            | Show similar strengths to that of conventional paint and chisel labels mentioned above. Additional advantages include:  
• Hammer marks do not use up a lot of space and are suitable for a range of log sizes and large-dimension sawn timber  
• Hammer marks can be used in conjunction with serial-coded numbers that are not easy to copy.  | • Marks left by hammers often are difficult to read  
• Hammer marks can be easily replicated and distributed to unauthorized persons  
• Hammer marks are not easily keyed to associated documentation and thus they cannot easily be used as part of a comprehensive chain of custody system  
• Information on the hammer mark cannot be used to identify individual log  |

### Table 1: Strengths and weaknesses of selected labeling technologies

<table>
<thead>
<tr>
<th>Label Type</th>
<th>Strengths</th>
<th>Weakness</th>
</tr>
</thead>
</table>
| Conventional labels (barcoded tags) | • Attaching is relatively quicker than using hammers but quicker than paint or chisel labeling  
• Conventional labels are relatively inexpensive. Usually easier to read than other marking technologies  
• Well-designed and manufactured labels can be very reliable. Materials can be designed for specific purposes and within the range of operating conditions that occur for wood products  
• Large amounts of data can be stored and labels can be coded to support a wide range of application  
• Barcoded data can be instantly scanned into electronic format and captured in external monitoring and stock inventory systems  
• Large quantities of labels can be produced/printed cheaply  
• These labels not only support chain of custody systems but can also enhance forest management and stock inventory functions  | • Conventional labels can be easy to duplicate or counterfeit unless suitable security mechanisms are integrated into the design of the labels  
• Barcoded labels can be difficult to read/scan in dusty, dirty or wet conditions  
• They can easily be removed or fall off  
• Conventional labels cannot usually be manufactured in the forest and therefore have to be pre-printed for log tracking purposes.  
• Barcoded labels require relatively expensive and sensitive electronic scanners, although the cost of these scanners is dropping continuously  |
| Nail-based labels (e.g. Radio Frequency Identification) | Nail-based labels offer similar advantages as conventional labels, provided that they are imprinted with machine-readable (“barcode”) information. They have the additional advantage of being more robust and thus able to withstand transport and handling better.  | However, they can be more difficult to remove than conventional labels and are more expensive. In addition they cannot usually be printed on-site and thus cannot be customized as easily for an individual location.  |
Analysis of Timber Tracking Technology Used for Ghana’s WTS Plot

Ghana’s current system to monitor timber harvests and flows and associated revenue payments is largely paper-based. No central database exists for, *inter alia*, reporting and checking on field operations, or evaluating information on companies in order to establish legal compliance of their operations. A robust system to guarantee legal sources of wood and compliance along the entire supply chain is therefore required. In turn, Ghana piloted an electronic wood tracking system making use of computers, barcoded labels and hand-held computers (Motorola-MC55) which were equipped with barcode scanners and global positioning systems (GPS). This electronic wood tracking system was selected with the hope of establishing a robust supply chain and at the same time improving FC’s management efficiency. The entire WTS operated on a service provider’s software platform that allowed for some configuration and customization of the Forestry Commission (FC)’s business process. The core steps upon which the electronic WTS operated were:

(i) data collection in which geographic, timber and timber product metric information and other related information is collected at each stage of the supply chain as shown in Figure 1;

(ii) data transfer where data is repatriated into a central database either through the internet directly or from a storage device that uploads data to the central database;

(iii) data storage where data is stored in a database in order to generate reports and perform data reconciliation;

(iv) data analysis where non-conformities are detected through reconciliation of data and also, allow for management decision.

The pilot WTS started from the point of Timber Utilization Contract (TUC) allocation through harvesting operations to the point of timber consignment export.

Brief Description and Assessment of Business Process adopted for the WTS pilot

The WTS pilot project rested on Ghana’s definition of legal timber which makes use of seven principles, namely: (i) source of timber; (ii) allocation of timber rights; (iii) harvesting operations; (iv) transport; (v) processing; (vi) trade; and (vii) fiscal obligations. The WTS was thus fashioned not only to track timber flows but also track associated financial flows. Although five major supply chain types exist in Ghana’s forest business process, only one supply chain as shown in Figure 1 was piloted. The various stages are analyzed briefly as following:

- **Uploading data for TUC and details of TUC grant into the central database was very quick, easy and allowed for convenient data management and report generation. Most of the information required was available and thus entry of data into the system was easy and required little training.**

**Figure 1. Schematic representation of supply chain used in Ghana’s WTS pilot.**

![Figure 1](image_url)

The WTS was piloted for the period of two years and monitored by the Forestry Commission (FC) under the aegis of the Ministry of Food and Forestry. A total of 22,176 TUC was executed in the period of 22 months. In addition, all the participating operators were trained on the technology so that they could migrate to the new system. The WTS was designed to be independent and used a forensics software platform which was not connected to the internet or linked to any other database. The technology was designed to be robust and secured and was easily migrated to other species when the TUC was successful.
• **Barcode label management** was a new introduction to the forest control process chain and therefore became an essential task of the pilot exercise. Barcode tags were used as the labeling device for the WTS pilot. This addition to the forestry business control process involved tag ordering, tag receiving, tag supply to users and tag cancellation. During the pilot test run, only one department of FC was responsible for tag management. Different types of barcode labels were administered to users for the following processes: (i) stock enumeration and yield selection, (ii) tree felling and log production, (iii) log transport, and (iv) mill processing and (v) export. Labeling technologies that make use of barcodes are generally cheaper and offer effective means of tracking. However, it is important to select suitable barcode labels/tags for appropriate stages of the wood tracking system. Furthermore, decentralizing tag management will speed up access to labels for tracking.

• **Stock enumeration (stock survey) and yield selection** was broken down into seven modules: (i) forest compartment registration; (ii) harvesting schedule registration; (iii) compartment boundary demarcation; (iv) stock survey; (v) stock survey validation; (vi) yield selection; (vii) administrative allocation of yield. The stock enumeration procedure introduced a significant change: the use of hand-held computers (HHC) to record tree metrics, GPS and other attributes relevant to stock enumeration as well as labeling devices such as barcode tags. This new approach did not significantly change the number of personnel required to perform stock surveys compared to the existing conventional method. This stage of the process required extensive training (classroom and field demonstrations) and a good knowledge of computer literacy and equipment usage. The effectiveness and efficiency of the gadgets and procedures used in terms of reduction in transaction time and cost did not meet full expectations. Furthermore, network and internet connectivity in certain remote areas proved challenging and therefore data transmission to the WTS central data base was in some cases difficult to achieve. In addition, production of digital stock and yield maps that conform to FC’s Manuals of Procedures (MoP) for stock enumeration and yield selection was not fully achieved. Related to this was also the challenge of automation of most of the modules under stock enumeration and yield selection. Overall, achievement made at this stage was minimal. It was quite evident that less automation of the process and more practical solutions needed to be thought through at this stage of tracking system. For example, taking the individual GPS of every enumerated tree in the forest proved costly in terms of number of HHC required to do the job, and the value addition was not apparent. Relative tree location using off-set distances from a survey line could be maintained as practiced in existing FC MoP. Report generation, map production and stock data management using electronic means showed potential for improving forestry business efficiency.

• **Tree felling and log production** presented challenges that were largely related to (i) continuous presence of personnel during harvesting operations to take tree metrics data; (ii) logistics; (iii) re-engineering of the harvesting procedure to clarify the role of FC and logger; and (iv) a good knowledge of computer literacy and equipment usage. The use of barcoded plastic tags and HHC for labeling tree stumps/logs and data capture respectively was appropriate for the harvesting and log production stage (see Figures 1A, B & C). The procedure allowed tree and log information to be linked and reconciled with ease. Direct data repatriation from the HHC to the central database only becomes a challenge if there is no internet network coverage. Alternatively, the data captured could be stored on the HHC and then downloaded onto an office computer where there is internet connectivity and finally uploaded to the central database.

• **Log transport** is controlled by two divisions of the FC, namely the Forest Services Division (FSD) and Timber Industry Development Division (TIDD). The existing procedure is that an FSD officer completes a Log Measurement and Conveyance Certificate (LMCC) before a logger transports the timber. TIDD officials at designated points re-measure the logs and grade them whilst the logs are still on trucks. This procedure did not see any significant innovation during the WTS pilot phase. WTS was designed in such a way that data collection for LMCC issuance was conducted “blindly” from the tree and log information captured in the forest. This means that officers recording the data did not receive any immediate return from the system and therefore could not perform real-time verification of the cross-cut logs being conveyed. Officially and/or ideally the LMCC should be completed by a forestry officer in the forest before the loaded trucks
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Legality Assurance System

are dispatched. This is not possible because the forestry officer who is also responsible for other field operations is usually not present in the forest at all times when the truck leaves. As a result the LMCC is issued by the officer who is stationed at a transport node located some distance from the forest and thus able to service several truck loads from different forest routes. The issue of long waiting times before LMCCs are issued and endorsed persists. This is because logs on the trucks had to be re-measured and barcodes scanned for authentication (see Figure 3). Transaction time was therefore not reduced at this stage as anticipated. A lot of business re-engineering is needed at this stage to simplify transport documentation if the LMCC is to be retained.

• At the mill entry point, the first control is the sawmill gate where the truck information is registered. The documents normally registered at the security gate include the Company’s gate pass, driver’s time book and log book. At this stage of the WTS pilot, the TIDD schedule Officer worked closely with the processing Company in respect of inventory of logs entering the mill. Logs from the pilot site that entered the mill were piled at a log yard and checked for consistency in the following: (i) felled tree measurements; (ii) log production details and (iii) LMCC. The TIDD schedule officer was responsible for conducting the above listed checks and also, recording all log details at the log yard unto the HHC. This procedure allowed reports such as logyard inventory details, logyard summary, logyard summary vs. LMCC to be generated from the WTS. A potential weakness that may occur with this arrangement is in relation to logs that are traded by “middle men” in the city or town where there is a processing facility. Because these logs do not need to pass any control point they may be transported without LMCCs so there is no properly recorded information about their origin or their volumes. This provides a potential avenue for mixing illegal material in the supply chain.

Key considerations for Ghana's WTS as a way forward

In order to maintain the chain of custody throughout the mill processing, the WTS was designed to primarily rely on quantities of materials entering and leaving a transformation point, which was backed by a material traceability scheme. Reports generated by the WTS at this stage included mill cross-cut inventory details, log yard summary vs. mill cross-cut, wood volume input/output report as well as recovery rate calculation. The WTS also enabled the generation of a history report where labels identifying trees, logs and mill cross-cut logs could be traced and linked to a consignment of processed wood. The history report however lacked simplicity and ease of application in management decisions. Much work remains to be done on the design of a simplified internal wood control system that can be adopted by mill operators which will enable easy interface with any national WTS. Building capacity of and providing standardized procedures for mill operators to fit into any WTS to be deployed nationally was seen as very critical.

• Processed wood for shipment followed routine procedures for export consignment as laid down by FC. Key actions required to be fulfilled by TIDD before export included inspection and grading of lumber, shipment boarding details and export/FLEGT request. Electronic data capture for export procedures already being practiced by exporters through the Ghana Customs Network (GCNet) should be explored further and interfaces established to improve transaction time.

• The software platform allowed associated billable events to be interfaced with the WTS. This flexibility presented an opportunity to ensure optimal revenue capture along the supply chain and also reduce potential leaks that may arise from non-payment of required statutory forest fees.

In adopting a national WTS, it is important that some key factors are considered in the light of the WTS pilot analysis made. For instance, for operators to stay in business, it is necessary that the transaction time of the WTS is reduced and the cost (investment and operational) of implementing the system remains competitive. In view of this, the following considerations are briefly discussed.

1. Some studies have shown that for countries where infrastructure is very basic and training needs are high, timber tracking system costs can reach nearly
A conservative estimate for the upfront cost (i.e. initial investment and operational) of timber potentially traceable by the piloted WTS in Ghana approached US$12/m³. In developed countries – with good infrastructure and skilled staff – the figures ranged between US$2 and US$3/m³. However, the figure calculated per m³ depended on the volume of timber tracked through the traceability system. If the volume increases significantly the costs of timber tracking remains almost stable over a given period. This is why most timber tracking companies no longer charge prices per m³ but either charge monthly or a fixed fee for the software. In Ghana, officially captured timber (roundwood) production figures in the past 5 to 10 years have varied between 0.70-0.8 million m³/annum, far below the expected national annual allowable cut of 2.0 million m³. A timber tracking system that will enable more wood volumes to be traced will therefore be cost-effective and justify any investment made. It is important to note that system costs depend on (i) the type of tracking system; (ii) scale of operation; (iii) specific customer needs; (iv) intensity of verification; (v) infrastructure required; (vi) user-friendliness and ability to integrate into operations; (vii) training needs; and (viii) support and maintenance needs.

In recent times, electronic timber tracking systems have shown much promise in respect to changing market requirements for internationally-traded wood products. Some potential merits of electronic timber tracking include: (i) increased transparency of the supply chain for suppliers and retailers; (ii) improved effectiveness and efficiency; (iii) reduced losses in timber volume and quality; (iv) a good method of stock control; (v) prevention of illegal material from entering the system; (vi) reduced levels of fraud and theft; (vii) easy transfer of digital data/reduced likelihood of reading errors; (viii) remote verification and monitoring is possible; (ix) automation of processes such as alerts of non-compliance, data reconciliation and generation of management reports. Notwithstanding these merits, electronic tracking systems have several potential constraints, especially in developing countries, including:

- weak infrastructure (e.g. roads, communications, network and internet connectivity, etc.);
- little staff training (levels of information technology (IT) and literacy);
- inefficient government verification framework systems;
- little guarantee of higher revenues or price premiums despite additional costs incurred by tracking systems;
- inherent problems of compatibility and articulation with different existing tracking systems;
- and the risk of an unbalanced timber tracking solution, given that the planning phase requires cooperation between IT and forestry experts and the likelihood of one party dominating the process is high.

There is therefore a need to be mindful of these constraints so that solutions offered are practically implementable and cost-effective. The above constraints can be easily identified in Ghana's experiences during the WTS pilot project. For example, forest reserves in Ghana – from which significant timber harvesting occurs – are located in remote areas where road and communication networks are poor and hence forest access to conduct forest operations remains a challenge. In such situations the adoption of fully automated tracking systems that make use of internet connectivity in-situ may help overcome some of these difficulties. Additionally, the different categories of timber firms in Ghana (i.e. large, medium and small-scale operators) have different capacities (human and financial) in adopting national electronic wood tracking systems and hence, there will be the need to bring these firms to a level of common readiness to embark on such electronic WTS. These examples, among other factors, suggest that an electronic tracking system that is flexible enough to allow for manual interfaces without necessarily negatively affecting the robustness of a WTS will be suitable for Ghana's VPA implementation. The present forestry working environment in Ghana undoubtedly poses some challenges to operating a fully electronic tracking system. A decision to go entirely electronic, though ideal, will come at a high cost.

3. From a regulatory view point, the robustness of the WTS will determine its capacity to minimize leaks and provide assurance of legal compliance of timber and timber products being traded. Conventional labeling technologies that make use of barcodes are relatively cheap, reasonably robust and effective for tracking systems (see Table 1). Conventional labeling technologies that make use of barcodes allow manual interfaces for data capture and repatriation enabling a flexible semi-electronic WTS to be implemented. In this way the data and operational requirements of the different categories of firms can be managed relatively well and hence, the cost of operating a WTS may be reduced.
Additionally, for the tracking system adopted, there should be clearly defined measures so when inconsistencies/infractions are detected at any stage of the supply chain, an appropriate action can be taken to maintain the legality of the wood material.

Conclusion

Ghana may have to consider opting for a semi-electronic timber tracking system in the beginning, with a deliberate plan of rolling out a fully-fledged electronic system when infrastructure needs and other technical and financial competencies have been enhanced. Weak infrastructure (e.g., roads, communication, network and internet connectivity, controls), low capacity of actors in terms of IT literacy coupled with additional costs of full electronic tracking systems that may not guarantee higher revenues or price premiums are real issues that render a flexible, semi-electronic tracking system a sound solution in the short-term. A semi-electronic WTS which is robust, cost-effective and efficient in terms of reduction in transaction time holds promise for Ghana’s mandatory traceability system to be adopted under the VPA. A semi-electronic WTS such as the one suggested by the author should be based on combining both manual and electronic systems on a software platform. As a pioneering country for the VPA, the full range of benefits that a full electronic WTS may offer will likely take some time to materialize and hence, for the time being, there is a need to keep costs of WTS as low as possible.

Ghana plans to implement a mandatory national WTS by 2013. By the end of September 2012, Ghana expects to complete a WTS contract with a software consortium that was selected through an international competitive bidding process. Ghana has nonetheless benefited from the WTS pilot scheme, which has provided valuable lessons learned in the area of system design, including scope of work, WTS implementation strategy and project coordination and governance.
THEME TWO

PARTICIPATION MECHANISMS IN NEGOTIATION AND IMPLEMENTATION OF VPAs
4 THEME TWO: PARTICIPATION MECHANISMS IN NEGOTIATION AND IMPLEMENTATION OF VPAs

4.1 Forest Law Enforcement, Governance and Trade Processes in Ghana: Strengthening the weak elements of community participation

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Abstract

Voluntary Partnership Agreements (VPAs) are meant to catalyze structural changes in the form of policy, legislation and institutional reforms at national levels. Without long term community engagement in Forest Law Enforcement, Governance and Trade (FLEGT) processes, these changes will be difficult to achieve. This paper reviews the extent of participation in these processes and sheds light on key lessons from past FLEGT actions that can guide community participation in future FLEGT/VPA processes. Mechanisms that catalyze involvement of communities in monitoring FLEGT/VPA processes defined within the Legality Assurance System (LAS) were analyzed. A comprehensive review of existing literature, stakeholder interviews and analysis of results of a FLEGT pilot project in the Western Region of Ghana were used. The results point to the conclusion that VPA processes are characterized by vaguely defined community roles, with processes lacking incentives to promote community participation in FLEGT actions. The paper puts forward a number of recommendations and further proposes a community participation framework.

Introduction

In addition to the technical requirements of the Legality Assurance System (LAS) of Voluntary Partnership Agreements (VPAs) with timber producing countries, a credible LAS should include coordinated community-based forest management monitoring processes. This calls attention to the need to unlock feasible and inclusive mechanisms and processes that provide space for active local community engagement in FLEGTVPA processes. Enhancement of national ownership of FLEGT processes cannot be achieved without the stimulation of community actions. FLEGT processes at the national level can only be resilient if local communities participate in monitoring timber harvesting operations at the local level. The communities can complement the work of independent monitoring and verification agencies by checking along the timber supply chain through the traceability system. These checks can include where and how trees are harvested and transported from the source. Communities have rich experience and knowledge that could be shared to inform and consolidate national FLEGT processes. According to Osumba6, a major reason presented for the increase in forest destruction was lack of community involvement in the management of forest resources, especially those who live adjacent to them, given the widespread perception forests belong to the government.

The concept of community participation

The term community has two general meanings. The first refers to the social ideals of solidarity, sharing and consensus. The second refers to actual groupings of people. These groupings may be defined by region, age, ethnicity, sex or geographical location. In Ghana, the Forestry Commission (FC) generally defines communities by geographical locations, specifically their proximity to a reserved forest. Sharing of proceeds among communities from execution of social responsibility obligations by timber companies are solely based on a minimum community distance of 5 km from a forest. FAO and The Programme on Forests (PROFOR)7 define participation as involvement of citizens and stakeholders in decision-making, either directly or through legitimate intermediaries representing their interests. Pateman8 suggests that suitable definitions of participation must include four elements: participation by someone, participation with someone, participation in something and payback anticipation: a driving force in communities participation in forest management, IASC, p. 5.

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7 www.aifo.it/english/resources/online/apdrj/selread100/comm_participation_boyce_lysack.pdf
Theme Two:
Participation mechanisms in negotiation and implementation of VPAs

Analysis of the Multi-Stakeholder Process: Weak civil society elements

It has become imperative to clarify the rights of communities to forest land and strengthen the role that communities play in the attribution of forest concessions and in forest management. This must feature prominently in VPA processes in Ghana and other VPA countries (Cameroon, Central African Republic, Indonesia, Liberia and the Republic of Congo). As stressed by Ozinga and Leal\(^1\), direct involvement of local communities during the implementation phase will remain key to a successful implementation of VPA in Ghana. Stakeholder participation in the VPA by Ghana and other VPA countries during pre-negotiation and negotiation phases has unanimously been applauded by some stakeholder groups, for example the European Union (EU) and some civil society organizations. Ghana has made strong written commitments to make information publicly available; continue independent monitoring of the forest sector; carry out reform of the legal framework applicable to the forest sector; and include civil society representation in monitoring the implementation of VPAs. One of the important contributions local forest communities can make towards the implementation of VPAs is to supplement reports of independent auditors with primary field data. Communities can provide information to third parties and support monitoring implementation of VPAs\(^\^{12}\). Communities can perform this function provided they are adequately trained to collect, analyze, interpret and transmit information.

In theory, Ghana has good policy intentions regarding the involvement of rural people in forestry and wildlife conservation to maintain life-sustaining systems, preserve scenic areas, and enhance the potential of recreation, tourism and income-generating opportunities\(^\^{12}\). These intentions have been very illusive until its revision in 2010 (which has yet to receive parliamentary ratification). Although Ghana’s VPA and other negotiated VPAs (Cameroon, Liberia, Indonesia, Republic of Congo and the Central African Republic) have not resulted in the issuance of FLEGT licenses yet, the negotiation processes have shaped the forest governance landscape in Ghana. Opportunities for stakeholder engagement have paved the way for generally accepted frameworks that consolidate the control of the forest, and allow transparency and accountability. The systems established have been widely agreed by stakeholders. Civil society has been identified as one of the primary stakeholders that have been deeply involved in the VPA process.

In spite of these successes, civil society representation has been erroneously skewed towards NGOs and in effect other important interest groups such as forest communities have been swallowed up during the process. Civil society as defined by the World Bank refer to the wide array of non-governmental and not-for-profit organizations that have a presence in public life, expressing the interests and values of their members or others, based on ethical, cultural, political, scientific, religious or philanthropic considerations. Civil society organizations therefore refer to a wide array of organizations: community groups, NGOs, labor unions, indigenous groups, charitable organizations, faith-based organizations, professional associations, and foundations\(^1\). By this definition, NGOs (Civil society) have failed to represent community interests in the Ghana VPA process. The Forest dependent communities living on the fringe of forests are considered an important civil society group that should have had an autonomous representation in the VPA multi-stakeholder process in Ghana. This is a fundamental missing element in the country’s VPA process. As identified by Othman et al\(^1\), involving forest dependent communities has been a big challenge. The reason for keeping communities at the peripheries is to ensure continuous maintenance of state control over forest resources, including financial returns, and lack of capacity of communities. In the case of Ghana’s VPA, two NGO representatives are represented on the Multi-Stakeholder Implementation Committee (M-SIC) to negotiate and express key concerns on behalf of communities. Determining which civil society group should be represented in the multi-stakeholder process was solely made on the basis of familiarity with key individual critics of the VPA process. Notwithstanding, nominated representatives are expected to represent their constituents at meetings and consultation sessions and give feedback to their constituents (NGOs and communities) but this rarely happened and still remains a serious gap in the VPA process. This situation has arguably contributed to acute


\(^{14}\) M. Othman et al. 2012. FLEGT Voluntary Partnership Agreements, 53 ETERRA/NEFT.1, p. 114
“information starvation” of NGOs and communities that live close to forest areas in regards to the progress and gaps that may present opportunities for other interest groups to intervene. The Liberian VPA process is expected to aim at maximizing the consultation of civil society and the involvement of community representatives. According to Lomax, this has the dual benefit of providing an agreement over which civil society has a sense of ownership and responsibility, as well as raising awareness of the VPA process itself. The next section of this paper demonstrates how field project lessons can be used to strengthen these weak elements.

**Lessons Learned: What works and what does not work**

The experience of Friends of the Earth-Ghana (FoE-Gh) on implementing forest governance projects in six regions of Ghana and particularly from the implementation of a project funded by the ACP-FLEGT Support Programme in the Wassa Amenfi West District suggests five key lessons in terms of what works in practice and what does not work. These lessons can be used to guide the design of frameworks and formulation of policies for enhancing community participation in FLEGT processes. Although the lessons relate to the Ghanaian context, they have implications for other community-driven FLEGT initiatives in other parts of Africa and the world at large.

**What Works**

*Establishment of FLEGT Multi-stakeholder Dialogue at District Levels and Strengthening of Collaborative Structures at the Community Level*

Well established forums and platforms for discussing forest governance issues are most likely to become effective engagement tools at the community and district levels. The concept of district Community Based Multi-Stakeholder Dialogue Platform that draws all forest interest groups at the community and district levels proved to be very effective in addressing pertinent forest governance issues (for example, illegal mining in forest reserves, illegal logging, elite capture, and corruption) when tested under the ACP-FLEGT Project. Sub-structures (Community Forest Committees, Community Biodiversity Advisory Groups) that form essential elements of dialogue platforms already exist in communities in Ghana but they are structurally and functionally weak. The weak stems from the fact that they are temporary (project driven) with no legal backing. They lack the capacity to undertake forest management activities and there are no incentives to motivate them. If these sub-structures are strengthened by formalizing and recognizing them as community structures that are backed by law, trained and resourced, they will be capable of participating in forest management activities. The dialogue platforms have the potential to foster information sharing about illegal logging and forest governance. This will enormously help communities to get involved in discussing national FLEGT issues.

*Building Capacity of Forest Dependent Communities in Monitoring Forest Governance, Forest Harvesting Operations and Transport*

Many problems of forest governance are due to a lack of capacity. It has been recognized that the VPAs would need to be accompanied by provisions for capacity building to support the establishment of a licensing system and improve governance and enforcement. Addressing capacity gaps should not be limited to technical staff at the Ministries and the Forestry Commission but should be extended to communities who can also play a role in VPA implementation. Considering the difficulty of drawing forest communities from the peripheries to the core of decision-making and forest governance processes, capacity building was essential and successful in getting community members, both men and women, to participate and contribute to forest discussions. More training should be offered to communities that live close to the forest to participate effectively. Monitoring of forest harvesting and transport by communities can only be carried out effectively from a position of in-depth knowledge. Training communities will prepare them to participate fully in the VPA implementation. Besides harvesting operations and transport of timber, training of community members in Social Responsibility Agreement negotiation, forest governance advocacy, interest-based negotiation and VPA processes will adequately prepare them to effectively participate in the VPA process. Monitoring of forest governance and forest harvesting operations in particular can best be done by people who live close to the forest reserves and off-reserve areas. The knowledge

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and skills acquired by communities will help them to exhibit readiness to resist illegal logging because it is deemed a moral duty. Fortunately, legislation in Ghana is already designed to promote sustainable forest management and in some cases only minor modifications are needed. Often, the problem is not with the law itself but with weak enforcement, detection of infringements and subsequent prosecution of offenders. Communities can contribute to fill this gap if they are trained, empowered, and incentivized to monitor timber-harvesting operations to ensure compliance with acceptable standards. The work of the auditor, who will be appointed by the governments of beneficiary countries, are expected to be factual, evidence-based and include field checks.

Independent monitors or auditors could link up with trained communities to tap credible information to monitor the VPA process.

“Our participation in training and education sessions to monitor forest operations has been a life changing experience. If we don't know the laws and the forestry procedures, how do we know what is legal and what is illegal. We have never had the opportunity to interact closely with forestry officers like we are doing now. Our involvement in forest management has been passive over the years. FAO and Friends of the Earth-Ghana have created the opportune time for us to get involved. The timber harvesting procedures of the forestry staff have been oversimplified for us to understand and I and my colleagues have started working together with our respective Chiefs to monitor forest operations in the reserve and outside the reserved area. I think this marks the beginning of halting illegal timber operations in our locality. We shall protect our forest. It is our heritage, it secures our life. We shall not leave the monitoring task of the forest in the hands of the forestry officials who may be part of causing the problems. We shall resist any illegal act by any perpetrator.”

A study conducted by FoE-Gh points to the weak land-tenure system in the Western Region of Ghana where an ACP-FLEGT Pilot Project was implemented. Inadequate tenure policy framework restricts the engagement of forest communities in forest management and leads to inequitable benefit-sharing. Insecurity of tree and land ownership is a key impediment that hamper involvement of communities in monitoring and tracking illegal logging. This situation, combined with high levels of poverty, has increased the involvement of communities in illegal logging activities. Lack of recognition of the rights of forest dependent peoples and minority groups in forest management is a key forest governance issue that needs to be effectively redressed. In Liberia for example, inadequate benefits accruing to communities from commercial forestry is a clear contradiction to the practice of customary ownership that has been operating throughout much of the country for centuries. Liberian law accords very little security of tenure to local communities over forests that were traditionally used, managed and owned according to strict customary rules and administrative structures. According to Lomax, a stronger legal footing would better empower community structures to hold government and the private sector accountable in the management of forests.

A thorough study carried out by FoE-Gh reveals that in general, traditional land tenure arrangements have been found to be inadequate in ensuring security of ownership and access to a large segment of the community. Changing trends in customary arrangements also mean that mechanisms which held the system in check and ensured transparency and accountability on the part of custodians are no more effective. Insecurity of tree and land tenure is endemic in Ghana, contributing to a myriad of challenges such as the decline in agricultural production and lack of long-term investments in land. CBLA is a rights-based approach to community administration of land that can contribute to effectively address power relations while seeking to enable stakeholders to define and negotiate equitable rights, responsibilities and access to land and

Figure 1. Andrews Mensah, Forest Reserve under FoE-Ghana. A participant expressing the value of knowledge gained in the FAO-AFRIPEL GH ACP-FLEGT Pilot Project.

“...”

trees. Six communities in the Wassa Amenfi West District were assessed for feasibility of implementing CBLAs. The results revealed that CBLA was feasible with impressive impact predictions of assuring communities secure and long term ownership of trees and land. It has been identified as an interim measure to resolve land and tree ownership problems at the community level. Friends of the Earth-Ghana (FoE-Gh) under the auspices of the ACP-FLEGT Support Project is providing financial support and working closely with the district Customary Land Secretariat that was established under the Ghana Land Administration Project to create the necessary platform to interact with communities and encourage them to voluntarily formalize their land and tree titles. This idea could be replicated at the country level to promote long-term investment in private tree planting by individual farmers, to incentivize farmers to grow trees and keep an eye on forests to halt illegal logging.

Community on VPA via Community Radio

An analysis of the communication strategy used by FoE-Gh in its forest governance projects points to the fact that the use of Community Radio (CR) is a very effective mode of communicating information with local communities. Most community members seldom read materials in their local language and the English language. CRs create an interactive platform for discussing and disseminating information on VPA to forest communities. It presents the opportunity for communities to interact directly with other stakeholders on forest governance issues.

What Does Not Work?

Failure to provide alternative livelihood means

Ghana pays little attention to informal sector activities that involve a large number of local communities whose livelihoods largely depend on forest resources. This is attributed to the fact that government policy and legislation focuses on the formal forestry sector and timber production. The implementation of the ACP-FLEGT pilot project reveals that illegal logging in the Western Region of Ghana is predominant in the off-reserve areas and difficult to control by the Forestry Commission and forest fringe communities. Farmers permit illegal chainsaw operators to fell and saw trees on farms to get a share of the financial returns. As stressed by Lartey, if the lack of incentives for having trees on farms is not addressed by policies and laws at the national level, it will be difficult to reduce illegal logging with the help of communities. Long term livelihood interventions should be considered the first option to incentivize community participation and put a halt on community involvement in chain-sawing. The ACP-FLEGT pilot project trained communities in monitoring of forest governance and forest harvesting operations by timber firms. Findings indicate that without financial and material incentives, the trained community members are unable to perform effective monitoring of timber harvesting operations.

Conclusion

Workable legislative frameworks that can clarify responsibilities as well as the rights of communities are urgently needed to address the present complex natural resource issues of land/tree ownership. Unless the roles of communities are clarified and recognized, social conflicts over natural resources will escalate. This will in ultimately defeat the objective of improving forest governance and halting illegal logging. Defining clear roles for communities in the VPA process presents a sure way for government to demonstrate commitment to involve stakeholders in the VPA process.

Experiences acquired from working with six communities in the Wassa Amenfi West District through the ACP-FLEGT Pilot project suggest that communities will be able to play a role in monitoring and verification of timber legality along the supply chain. The framework proposed here is based on engagement with key stakeholders (VPA Secretariat of Forestry Commission, Forest Service Division, Chiefs, NGOs, District Assembly) and the lessons learnt from capacity building sessions of the ACP-FLEGT Support Pilot Project. Among the seven


key timber legality verification protocols established by the Ghana Forestry Commission, four main areas have been identified with specific roles outlined in the timber legality verification protocols at the community level (see Table 1).

<table>
<thead>
<tr>
<th>Roles</th>
<th>Timber rights allocation</th>
<th>Timber harvesting operations</th>
<th>Transport of timber</th>
<th>Fiscal obligations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Verify</td>
<td>- Participate in defining FMU boundaries</td>
<td>- Post-felling checks</td>
<td>- Validity of documentation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Provide information on ownership</td>
<td>- Pre-felling inspection</td>
<td>- Yield markings with physical logs</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Tree enumeration</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Monitor</td>
<td>- Environmental regulations/damage</td>
<td>- Compliance with transport regulations</td>
<td>- Payment of stumpage fees/royalties/land rent</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Compliance to fulfillment of social obligations of luggers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Report</td>
<td></td>
<td></td>
<td>- Forest offences</td>
<td></td>
</tr>
</tbody>
</table>

Source: Friends of the Earth-Ghana, Stakeholder Workshop Report, 2012

Based on the aforementioned lessons, the following policy recommendations are sketched:

1. Community Based Land Agreements should be supported at the community level as an interim measure to ensure security of tree and land ownership.
2. The capacity of civil society and community groups to carry out monitoring and verification activities must be built and considered a core priority by VPA countries. Financing community actions should be thoroughly debated; there is a possibility of deriving funds from timber revenues collected by the Government, the District Assembly, NGOs and communities.
3. FLEGT dialogue platforms should be formally established with the support of NGOs to promote dialogue at the community and district levels. The sub-structures for the dialogue platforms e.g. Community Biodiversity Advisory Groups, Community Forest Committees and Community Resource Management Committees must be resourced and trained to perform forest management activities. Government must provide legal backing to sub-structures.
4. Social safeguards and associated livelihood components should be sufficiently elaborated and addressed in the FLEGT process. Forest governance projects that are designed to tackle illegal logging will not achieve any meaningful outcome if communities are not involved. Community participation objectives cannot be achieved unless the benefits from complimentary livelihood interventions outweigh community gains from illegal mining, chainsaw operations and unsustainable farming practices. Awareness must be raised on the value of environmental services.

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Abstract

Although Ghana was ultimately successful as far as ratifying the first Voluntary Partnership Agreement (VPA) in the world, the participatory element of the agreement had significant weaknesses with implications for the sector still today. The VPA negotiation process and pilot phase implemented in Ghana was mostly dominated by Accra-based NGOs who in most cases are out of touch with communities affected by the implementation of the agreement. Most of the negotiation process took place at a national level with no or limited engagement at both the local and region level. The negotiation phase which was implemented with a lot of assumptions affected the quality of the outcome of the negotiation, leaving most people (community members) ill-informed and hence unable to meaningfully participate in the negotiation process. This will have consequences on the livelihoods and willingness of communities affected in implementing VPA policies. Further VPA implementation needs to consider how to build the capacity of regional and local CSOs to effectively monitor VPA implementation, since they are present on the ground where the process takes place in practice. This paper will look at the process of VPA negotiation by looking at the various stakeholders that were involved in the process, their level of participation, how centralized/decentralized the scheme was, and how/if benefit sharing was considered during the negotiation process. It will also look at the experiences and lessons learned from Liberia and make recommendations to Ghana during its implementation phase, in a hope to serve as a basis to inform other multi-stakeholder negotiation initiatives in Ghana and other countries.

Introduction

Ghana and the European Union (EU) signed a Voluntary Partnership Agreement (VPA) on 3 September 2008. The aim of the VPA is to “regulate the trade in timber between the two countries and also to promote good governance in the forestry sector and combat illegal logging and associated trade.” This process took almost six years from informal talks (May 2005) to VPA ratification (March 2010). The process has widely been regarded (by both Ghanaian nationals and outsiders) as a role model and one of the best participatory processes in the country’s forestry sector policy in regards to negotiation and formulation, or indeed in any sector.

However, although Ghana was ultimately successful in terms of the ratification of the first VPA in the world, the participatory element of the VPA had significant weaknesses with implications for the sector still today, in particular for the successful implementation and monitoring of the VPA in Ghana. The VPA process made the assumption that community, district and regional level institutions (stakeholders) would be reached by the participation of a few elite representatives. This led to over-centralization and over-concentration of the entire VPA process at the national level and among these few people.

Stakeholder Representation and Structure

Institutional Structure of the Negotiation Process in Ghana and Liberia

In Ghana and Liberia the institutional structure of the negotiation process was similar: there was a Negotiation Team, a VPA Steering Committee, a VPA Secretariat, and Working Groups (Ghana had four working groups while Liberia had two). Ghana also had a VPA Policy Sub-Committee which was not part of the structure in Liberia. The national Negotiation Teams were responsible for the successful negotiation of the agreement on behalf of both governments. The VPA Steering committees were also mandated to, among other things, organize ministerial briefings for relevant ministries and bodies; facilitate the development of a VPA communication strategy; liaise with the European Commission (EC) in Ghana and Brussels, and to proactively monitor and seek updates on the development and dynamics of the EC’s negotiation process.

The VPA Secretariats provided the required technical and administrative support to the process. This included the preparation of technical documents for the consideration of the Steering Committee, ministerial briefing notes and information briefs, as well as general support to VPA Working Groups/technical teams and the implementation of schemes more broadly. Ghana also had a VPA Policy Sub-Committee which was responsible for the collation of findings and reports from the different Working Groups into coherent positions and negotiating strategies. The Committee flagged issues that required broader
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Consultation or policy review within the Forestry Commission. Although though both countries had legal standard definitions, verification systems and licensing working groups, Ghana again had two additional working groups: the domestic market regulation and timber industry restructuring working groups.

Stakeholder Representation

On a broader scale, there are four major stakeholders identified in most countries in the world. These include: government, the private sector (timber companies and timber trade associations), civil society organizations (CSOs) and communities.

During the VPA negotiation process in both Ghana and Liberia the number of stakeholder groups identified was so large that there was a need for each stakeholder constituency to have a representative. It was simply impossible for the two Governments to have face-to-face contact with everyone. This situation forced the two West African countries to consider broad stakeholder participation through the establishment of multi-stakeholder committees where representatives of various stakeholders became members of the multi-stakeholder committee. This established structure allowed the selection of a representative acting on behalf of larger stakeholder groups.

During the negotiation process, both governments identified and invited similar stakeholders (see Table 1). These included both direct stakeholders and a number of indirect public sector stakeholders which ensured the smooth negotiation of the VPA. However the scope, participation and composition of the stakeholders in the negotiation process were somewhat different in the two countries which arguably affected the successful implementation of the VPA process.

The Ghana negotiating team was drawn from the Ministries of Finance & Economic Planning; Ministry of Lands, Forestry & Mines (including the Forestry Commission); Trade, Industry, Ministry of Trade Industry, PSI & PSD; Justice and Attorney General. The timber trade association and Civil Society

were invited to provide support to the negotiating team. The team was led by the Deputy Minister of Lands, Forestry and Mines (in charge of forestry) while the negotiation team in Liberia included all the relevant stakeholders including CSO.

In relation to the VPA process, the Government of Ghana used the concept of participation to mean socio-political participation, while making a number of assumptions that ultimately led to the over-centralization and over-concentration of the negotiation process at the national level and among a few individuals within select organizations. During the negotiation process in Ghana the public actors were invited from the start while other stakeholders had to force their way into the process. It took the efforts of the elite CSOs to advocate for the inclusion of civil society organizations. These elite CSOs are the international and national CSOs that have access to government process as a result of their continuous engagement with government. As Kingsley explained: “Initially, the VPA Steering Committee established by the government excluded the participation of civil society. It was only after protests by civil society actors that the government invited civil society to participate in the negotiations.”

In December 2006, the Government of Ghana agreed to start formal negotiations for a VPA, and Forest Watch Ghana was invited by the Forestry Commission of Ghana (FC) to participate in the Steering Committee. The international NGO FERN recalls:

“Initially the Government had no real intention to create an inclusive process: there had been little contact with either civil society organizations or the timber industry. Only through threatening court cases and the use of media were civil society groups able to participate in talks which, in the event, proved highly successful.”

The CSO representatives to the steering committee were elected during a contact group meeting among CSOs. The VPA steering committee was made up of 15 members from three major stakeholders: government, private sector
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and civil society organizations (see Table 1). According to Chris Beeko,³⁴

"at the negotiation stage only stakeholders that were regarded as having some relevance for timber export and general trade, customs, finance, legality issues and forest governance in Ghana were selected. This phase of the VPA process was focused on negotiating the deliverables, so stakeholders that were deemed capable of shaping the process were invited to take part in the process by the VPA steering committee. They should be there, ‘not just to increase numbers but more importantly to contribute meaningfully to the process’ (i.e. to shape or inform the negotiating position of the Government of Ghana).”

Table 1 shows that in Liberia, communities had seven representatives on the Steering Committee while in Ghana there was no community representative. What explains this difference? The Government of Liberia saw that NGOs and community representatives had different interests and represented different stakeholders and hence provided seats for the two stakeholders on the Steering Committee. The Government of Ghana thought that communities did not have relevant knowledge in timber trade and forest management. Communities were considered incapable of shaping the process and unable to participate meaningfully because of their limited command over the English language.

However, in neither country were community representatives invited to be members of the Negotiation Team. In both countries, CSOs were part of the negotiation committee but with significant differences in their legal status; in Ghana the CSOs representatives did not have legal status as negotiators but in Liberia the NGO coalition1 was represented on the negotiation team. In Ghana CSO and private sector representatives primarily provided technical support to the Negotiation Team, whereas the CSOs and private sector representatives in Liberia had the same negotiation powers and authority as the government actors during the negotiation phase.

In Ghana, CSOs faced an additional problem: there were situations and moments where they were given late notice of their participation in meetings. This situation affected the gathering of information by CSO representatives before meetings, since there was very little or no time to consult their constituency before the actual meeting.

The VPA process created space for CSOs to influence the process through the creation of Working Groups. CSO representatives were part of all these Working Groups and even chaired two of these.³⁴ They were also represented on the Policy Sub Committee which was tasked with synthesizing the work of this group. This gave CSOs the opportunity to ensure that decisions taken at the working group level did not change at the policy level.

However, most of the concerns raised by CSOs were not taken aboard or considered for inclusion in the final policy document (even though CSOs had

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³⁵ Domestic Market Regulation working group was chaired by Mr. Kwabena Nketiah and Dr. Akwetey also chaired Legal Standards working group.
broad informal access to the key processes). It seems that the representation of CSOs in the process was in most cases considered by Government just as a way of fulfilling outside pressure for participation and inclusion. An example was the CSOs’ advice that the new Timber Validation Department (TVD) should be established outside the Forestry Commission; but when the final document was released, TVD had become a department under the FC and the head of the department reported directly to the chief of the FC (the Chief Executive) and was the coordinator of the VPA secretariat that led the process. Despite these limitations, in Ghana the VPA process allowed substantive stakeholder engagement on fundamental sector-governance issues, and a commitment to more participatory approaches.

The Issues

The Assumption

During the Ghanaian VPA process it was assumed that various representatives represented their constituents and their interest in the process. It was also assumed that these representatives would report to their constituents and seek their opinions about the process. Their feedback into the process would help shape the negotiation by ensuring it considered the interests of the larger stakeholder group and not just a few. However, two major stakeholders in the forest sector identified earlier were not included in the process: community members and domestic lumber associations (chain saw operators). The major assumption that informed the decision of the government was that CSO represents the interest of communities and are in a better position to represent their interests in the process. Also, chainsaw operators activities are notably criminalized in Ghana and it would have been considered immoral to deal with criminals during negotiation. Also, it was assumed that Timber companies will supply the domestic market with lumber when the laws are enforced.

The Gap: over-centralization

The consultation process in Ghana was over-centralized at the national level and over-concentrated among few stakeholders at the national level with little or no information flowing to the lower structures or their constituencies. CSOs and the private sector were expected, among other roles and responsibilities to: provide forums for members and larger stakeholder discussions, share lessons learned, ensure the process was transparent, identify existing networks for involvement and help raise awareness about VPA at the local level as well as build capacity. However, no resources were provided for CSOs and the other stakeholders to ensure they could fulfill their responsibilities.

During the time of the negotiations in Ghana, the major platforms (community, district and regional forest forums) that were used by NGOs to share information and gather feedback from community members were either not active or not established. Most of the information that was shared with the NGO representatives on the Steering Committee did not actually trickle down to lower levels (community, district and regional). In some cases where the information did reach the community, it was difficult to get feedback into the negotiation process, because most of the information was shared through briefing papers and radios which in most cases did not give community members the opportunity to provide feedback to influence the process. In Liberia, nationwide community consultations resulted in communities and CSOs having seven four representatives respectively on the Steering committee; NGOs also sat on the negotiation table.

Generally, in both countries, there was significant information sharing at the national level among stakeholders but in Ghana there was very little or no information sharing with members at the lower level (community, district and regional). On the side of the CSOs, there was some communication flow between the representatives on the steering committee as well as the working groups and its members. This information flow was carried out about informing members about the process and some of the issues, but did not give or make available detailed reports about what was actually discussed during the various meetings. However, the information flow from the members to the district stakeholders and community members either did not take place or was very minimal. Also, in both countries reports on committee meetings were not made available on the VPA web sites for public consumption (a way of promoting accountability and transparency) because members would be able to track what was actually agreed upon in the meeting and what was later written in the agreement. However, the two countries did very well in providing web

35 Organized by Forest Watch Ghana, Care International, and Forest Commission, TBI Ghana.
sites with the intention of providing links to reports. In the Ghanaian web site, however, out of the four reports from the four working groups only one of the reports can be downloaded from the link provided, while any of the reports on the Liberian negotiation can be downloaded from the web site.

In Ghana, the CSOs information flow was very effective and members had a better understanding about the process. The Forest Watch Ghana (FWG) Secretariat made information sheets about the VPA for its members and occasionally – during their regular meetings and contact group meetings – they would inform them about latest proceedings at the VPA. Feedback was generated and sent back to the VPA Secretariat for discussion. Within the FWG there were adequate reporting and feedback mechanisms: “information trickled down to all members of this stakeholder group”.

On the other hand, the situation was different for the CSO representative from academia in Ghana. The representative who was invited by the government did not report back or share any information among his constituents. He was not even aware that he was representing academia during the negotiation process. According to Bossman, he thought he was invited based on his rich experience in forest certification: “It is only coincidental that I double as a teacher in Faculty of Renewable Natural Resources (FRNR). Even if some of the teachers know something about VPA at all, they might have read it from somewhere else.”

Within other key stakeholders, particularly the Forestry Commission, information sharing was very high among top level officers but very low among junior officers of the Commission. Officers at the FC headquarters and Resource Management Support Center in Kumasi as well as Regional Forest Service Division staff had received lot of information through workshop and other VPA related documents. According to Bossman, “this was in direct response to a recommendations made in a consultancy report to explore the scope and reach of the VPA implications for the FC”. In general, it was a one way information sharing mechanism and very little emphasis was placed on getting feedback from those officers into the negotiation process.

For non-traditional forest institutions, VPA information sharing was very weak and did not exist at all among the stakeholders. This was attributed to the fact that the representatives either did not report to their members or members did not show interest in the process because they saw it as a new issue. “I have not been able to minute my superior on VPA discussions yet. I have been so busy with my regular duties that I sometimes forget about VPA”.

All the above scenarios illustrate that the VPA secretariat assumed that representatives reported and sought feedback into the process but no mechanism was put in place to ensure that reporting and feedback took place. At the VPA SC level, information sharing was very weak when it came to critical aspects of the negotiation process. The VPA secretariat chooses which information they need to make public and which information they withhold, even from the VPA SC members as well as the public. Some stakeholder groups felt that not all reports were shared with representatives, let alone their larger constituencies. An example of this is that even after the agreement was signed web site launched, reports from the various committees which informed the agreement during the negotiation process were not available on the web site. This means it is very difficult for the general public to find out if what the committees discussed were actually considered during the negotiations.

“We are not involved in the process why are we denied such reports? Reports on proceedings at Working Groups do not reach us. We share in discussions and decision-making but we never get to know what the final document looks like. If we are involved in the process why are we denied such reports? If we are involved in the process why are we denied such reports? If we are involved in the process why are we denied such reports?”

Adeleke from IUCN remarked: “The idea of setting up the VPA SC was to get representatives from various stakeholder groups to talk. Since people don’t represent themselves but their groups, it was expected that they report back to their constituencies, but this has not worked probably because some of these representatives are too busy to do so.”

11 wageningenuniversity.com/VPAs_2.htm
12 http://vpaliberia.com/memorie.htm
At the VPA secretariat level, information such as reports, minutes and so on were mostly kept from the public, including members of the VPA SC members for reasons that are unclear. The secretariat might not have wanted to release information that would enhance discussion, or perhaps the VPA SC members never asked for those documents for study and verification. The VPA secretariat might have kept information away from the public because it did not want to be totally transparent; it wanted to keep the contributions for the final document from the public until dissemination was necessary. It might have been a way to disempower stakeholders, to make it difficult for them to question the process and the content, as well as to monitor the implementation. Members of the steering committee and the working group might have kept information from their constituents to retain power, or because there were no resources for them to ensure that their constituents would receive the information.

Consequences

The over-centralization and concentration of the VPA process at the national level and within a few elite NGOs and other stakeholders has serious implications for the successful implementation of the VPA. The laws of Ghana are very sound in terms of ensuring the supply of legal timber to the EU and domestic market. However, the problem has been the implementation and monitoring of the laws, which ought to be performed NGOs and communities.

For the successful implementation of the VPA, various stakeholders must effectively play their various roles and responsibilities. Especially for communities and district assemblies (since they were not involved in the negotiation process) playing their role during implementation (ensuring legality) might be problematic. But stakeholders who were not involved in the negotiation might now be less able and less willing to participate in and monitor the implementation of the VPA. It is vital that a nationwide sensitization and education is made for communities to understand the agreement and its relevance. In Liberia, the sensitization process for communities kicked off from the very beginning of the negotiation process.

Recommendations

There is a need for Ghana to deepen the multi-stakeholder process during VPA implementation and to ensure that all stakeholders, regardless of educational background, are given the chance to be part of the process and voice out their concerns. Stakeholders, moreover, should be allowed to select their own representatives. Mechanisms, moreover, should be put in place to ensure that information (e.g., decisions) is sent to constituencies and that feedback reaches the negotiation table. The procedures will need to cover issues of roles and responsibilities for representation and reporting back to other members of their constituent and soliciting their feedback. These mechanisms include the need to develop procedures for the selection of their representative to any committee.

Effective information sharing among the representatives is necessary. This should be in the form of sharing committee reports, statements, etc. either by making it available on the institutions’ web site or sending it through emails of major stakeholders or representatives. There is also a need for a wider stakeholder consultation process which should be planned, coordinated and documented. This consultation process should be organized at different levels (national, regional, district and community level) to involve regional stakeholders in the consultation process.

Additionally, there needs to be an agreed mechanism on how consultations should be carried at the various levels. This should be decided together and published. Mechanisms on how reports should be made available also need to be clarified. Additionally, there should be clear guidelines or procedures through which stakeholders’ comments and concerns are incorporated into on-going discussions.

It is also very important to ensure that constituents have control over who represents them on any committee or board. This can be done when constituents are notified of the availability of a seat on a committee and qualification or qualities that are expected from the representative. The constituent will therefore have to develop procedures and rules governing the appointment, reporting, etc. In this case it will ensure that the constituents select or appoint someone they trust and will ensure that the representative reports back. This way accountability, transparency and information sharing will be enhanced.

For the successful implementation of the VPA, it is very important to embark on a nationwide education and sensitization on VPA for different stakeholders so that they can understand the VPA and can contribute meaningfully to its implementation. Countries like the Democratic Republic of Congo, Gabon,
Malaysia and Vietnam who are in the process of negotiating VPAs, as well as the Cote d'Ivoire, Honduras and the Lao People's Democratic Republic who are expected to start official negotiation, as well as nations like Thailand, Guyana, Bolivia, Madagascar, Sierra Leone and Ecuador that have expressed interest in the VPA can all learn from the processes in Ghana and Liberia and hopefully these experiences will better inform the processes of VPA negotiation in their respective countries.

4.3 Voluntary Partnership Agreements, tools to empower civil society to take part in forest governance improvements
Saskia OZINGA1

Abstract

Forestry issues in many timber-exporting countries have largely been dealt with in a top-down fashion by government and the timber industry, while civil society has been excluded from policy-making discussions. To make real progress on illegal logging and forest governance, non-governmental/civil society organizations (NGOs) and forest-dependent communities, including indigenous peoples, must be involved. One of the greatest achievements of the Voluntary Partnership Agreements (VPAs) to date has been that in several countries they have radically altered the negotiating and policy-making landscape. For the first time civil society has been involved in decisions which affect the environment and their future livelihoods. Overall, VPA negotiations have seen a level of involvement of civil society – such as local environmental, social and human rights groups – unprecedented in the negotiation of a legally binding trade agreement. The challenge now is to ensure that these achievements continue in the implementation phase and expand to include other sectors and other forest-related policies.

Introduction

Almost a decade after it was first approved, the European Union’s Forest Law Enforcement, Governance and Trade (EU-FLEGT) Action Plan remains the subject of much debate: has it been a success or a failure? Some hoped to see improvements in the recognition of tenure rights or forest management, while others hoped to be able to buy and sell FLEGT-licensed timber. But all of this has yet to occur. The implementation of the FLEGT Action Plan – and specifically its central plank, the Voluntary Partnership Agreements (VPAs) – has been challenging and slow.

As this article will demonstrate, however, there are clear successes to underline, despite all of the problems stemming from the international context, the difficult political environment in VPA countries, the lack of capacity at all levels in VPA countries and the limited resources available. What is more, these successes are essential building-blocks for future governance improvements.

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Improving governance is a slow and painful process, and although much still needs to be improved, the FLEGT Action Plan remains the EU’s best instrument yet. This article points out some of the successes to date, some of the key challenges and the next steps required to bring about positive impacts in forests and in forest peoples’ lives.

**Context/setting the scene**

Two decades ago – at the Rio Earth Summit in 1992, when tropical deforestation was high on the international agenda – most countries in the tropics, in the boreal region and in the EU refused to admit that there was a problem with rampant illegal logging. Many flatly denied that illegal logging was even happening. Only in 2001, after a meeting in Bali, did a ministerial declaration acknowledge for the first time that “illegal logging and the associated illegal trade directly threaten ecosystems [and result in] serious economic and social damage, particularly on local communities, the poor and disadvantaged.” We have come a long way since then.

In the EU, NGOs started campaigning for the European Commission (EC) to take action against illegal logging in the late 1990s. After it had been demonstrated that on average 50 percent of tropical imports and 20 percent of boreal imports were illegally sourced – and that the EU had no mechanism to stop illegally sourced timber being laundered – in March 2003 the EC presented its EU Action Plan, clearly influenced by the Chatham House/FERN publication “Options for Europe”. When the EU Council adopted the Action Plan, it stated that “VPAs should strengthen land tenure and access rights specifically for marginalized rural communities and indigenous peoples; strengthen effective participation of all stakeholders, notably non-state actors – including NGOs and forest communities – had a say in the development of legally binding trade agreements (VPAs), which assess the fairness and enforceability of the existing legal system and point to required reforms. In other words, the EU is attempting to reduce illegal logging by helping countries to improve forest governance, and thereby forest management and justice in the forest.

To do this effectively requires (1) an assessment of all relevant existing laws – including customary law – and resolving gaps, overlaps and inconsistencies, to make them more just and enforceable; (2) a strategy on how to enforce these laws; and (3) a strategy on how to monitor enforcement. Such an assessment and follow-up requires an inclusive multi-stakeholder consultation process where stakeholders and rights-holders can have informed discussions on the shortcomings, problems and changes required to make the forestry sector just, transparent and accountable. This is what civil society organizations in Europe and VPA countries set out to achieve for the first time.

By making this statement, the Council not only acknowledged the need to address illegal logging, it also showed a clear understanding that, to be effective, the underlying causes that lead to illegal and unsustainable forestry practices need to first be addressed. As the Council pointed out, these underlying causes include lack of recognition of tenure rights of local communities; lack of effective civil society participation in decision-making and implementation; lack of transparency; and corruption. The Action Plan itself and the Council Conclusions thereby allowed the relatively young debate within the EU on illegal logging to shift from “law enforcement” to “improving governance”. This was significant, as the enforcement of existing laws can only work if these laws are legitimate and just. Enforcing laws that undermine poor peoples, or laws that undermine the traditional practices of forest communities and indigenous peoples (whose activities have often been criminalized) would only backfire.

Unfortunately there are all too many unjust and illegitimate forest laws. Hence a fundamental reform of forest laws and policies often becomes a prerequisite to improving forest justice and forest governance. The strength of the FLEGT Action Plan is that it makes it a crime to put illegally logged timber on the EU market, and at the same time it supports tropical forest countries in the development of legally binding trade agreements (VPAs), which assess the fairness and enforceability of the existing legal system and point to required reforms. In other words, the EU is attempting to reduce illegal logging by helping countries to improve forest governance, and thereby forest management and justice in the forest.

To do this effectively requires (1) an assessment of all relevant existing laws – including customary law – and resolving gaps, overlaps and inconsistencies, to make them more just and enforceable; (2) a strategy on how to enforce these laws; and (3) a strategy on how to monitor enforcement. Such an assessment and follow-up requires an inclusive multi-stakeholder consultation process where stakeholders and rights-holders can have informed discussions on the shortcomings, problems and changes required to make the forestry sector just, transparent and accountable. This is what civil society organizations in Europe and VPA countries set out to do after the Action Plan had been adopted: create the conditions to allow for an inclusive multi-stakeholder process that defines legality.

However, this was easier said than done. In only one country, Liberia, had there been experience with an inclusive transparent consultative process in which non-state actors – including NGOs and forest communities – had a say in the
Theme Two: Participation mechanisms in negotiation and implementation of VPAs

Compendium on experiences from the Voluntary Partnership Agreement (VPA) Process in Central and West African countries

design of a legally binding trade agreement. In some countries, local (i.e. non-international) and independent NGOs barely existed; in others, the seats were immediately filled by international conservation NGOs. There was neither history of NGO cooperation, nor any history of regional cooperation across different VPA countries. This was the situation that existed when the Action Plan was approved in October 2003. Taking the Council Conclusions as a basis for assessment, how well has FLEGT performed in practice?

Effective participation of stakeholders in policy-making and implementation

By August 2012, the EU had agreed VPAs with six exporting countries. Ghana was the first to sign in 2009, followed by the Republic of Congo (RoC) and Cameroon in 2010. Indonesia, Liberia and the Central African Republic (CAR) signed in 2011. Negotiations are also under way with the Democratic Republic of Congo (DRC), Gabon, Malaysia and Vietnam. Four other countries have formally asked to start negotiations: Honduras, Côte d’Ivoire, Guyana and Laos. Other countries have expressed interest, including Thailand, Bolivia, Burma, Guatemala, Paraguay, Uganda, Zambia, Madagascar, Mozambique, Sierra Leone and Ecuador.

As Fred Pearce points out in a recent report, most VPA negotiations have gone well:

“Exporters have broadly welcomed the increased certainty that FLEGT licences would give them in the face of the new EU member states’ border regimes. NGOs have welcomed the way that most agreements legally enshrine the rights both of civil society to be involved in framing forest policy and law, and of forest communities to have a say in when and under what conditions logging concessions are handed out, or to point out where these rights need to be strengthened. The negotiations have proved empowering for many civil society organizations and community representatives.”

Many NGOs in countries negotiating VPAs are impressed, and often surprised, that the EU has taken its involvement in negotiations so seriously. As Silas Siakor, the founder of the Sustainable Development Institute in Liberia, wrote after his country’s VPA was signed in May 2011, “a major strength of the VPA is that ... it involves the EU”, and that as a result the Liberian government had to “ensure that stakeholders from industry, civil society, local communities and other people dependent on forests, are involved in implementing and monitoring.” He saw the agreement as an essential curb on the instinct of his country’s Forestry Development Authority to bypass civil society in trying to harness the forestry industry for reviving the national economy. Liberia has been exceptional in providing direct representation for forest community groups in VPA negotiations through the NGO Coalition for Liberia. This should become a model for other countries to achieve similar levels of engagement.

Cameroun, which has some of the largest forest stands in central Africa, exports most of its timber to Europe. NGOs in the country have described their involvement in the VPA negotiations as “unprecedented.” According to Rodrigue Ngonozo, head of Forêts et Développement Rural, the negotiations helped them make the case for community forestry and to secure village land and forest rights. Symphorien Azantsa, coordinator of the NGOs involved in drawing up the agreement, emphasized the practical value of having NGOs at the table: “The VPA has identified major shortcomings in the Cameroonian legal framework. Addressing those shortcomings will largely depend on ... the stakeholder processes that will inform the law reforms.”

But dialogue has often been difficult. The Republic of Congo has no history of civil society involvement in forest policies, nor does the Central African Republic. Preliminary meetings, organized initially by European NGOs, eased the tensions between government and civil society, but neither the Congolese timber companies nor the Asian companies working in the country could be persuaded to take part. However, a study of stakeholder engagement by FERN concluded afterwards that “a framework has been established with the potential to give local communities ... influence over what happens to the forests”. Roch Euloge N’Zobo of the Observatoire Congolais de Droits de l’Homme (OCDH), a human rights organization, said that the talks “give us hope that local forest people will be heard, their rights respected and their concerns addressed”. Pearce continues in his report:

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Gabon and Malaysia indicate that an effective VPA may not be possible due to lack of political will to engage non-state actors in the development of such an agreement. In Malaysia, negotiations for a VPA – which began in 2006 – have stalled over the EU’s insistence on comprehensive consultation with civil society NGOs. According to WWF-Malaysia’s Ivy Wong Abdullah, “There has not been a genuine multi-stakeholder consultation.” Unlike in every other country, representatives of civil society in Malaysia have not been invited onto any of the internal committees which decide the definition of “legal” timber. Some NGOs and indigenous peoples’ organizations are boycotting the “stakeholder” process as a result.

Despite such difficulties, the engagement of civil society in the negotiation of the VPAs has been much more extensive and meaningful than in other national forest-related policies such as REDD (Reducing Emissions from Deforestation and Forest Degradation). The six countries that have so far agreed a VPA have broadly met (at least during the negotiation phase) the Council’s request for VPAs to strengthen effective participation of all stakeholders, notably non-state actors and indigenous peoples in policy-making and implementation. This is highly significant. In the history of the EU, there has never been a trade agreement where non-state actors have been engaged and allowed to influence the process in such a way; nor has there ever been a process in which different stakeholder groups, including the trade and NGO sectors, have designed a trade agreement that they all consent to.

However, the challenges remain clear. The effective engagement of non-state actors, notably NGOs and forest communities, is not possible in all countries (e.g. Gabon, Malaysia); implementation remains challenging and the forestry sector is often a smaller player than other more destructive sectors such as agriculture (e.g. palm oil) and mining. Hence to impact effectively on forests sector needs to be expanded to also real in these more powerful sectors. Before we look in more detail at these challenges and the next steps, we will consider other Council requirements.

VPAs should strengthen land tenure and access rights for communities and indigenous peoples

Progress on land tenure and access rights has been much more limited, as would be expected. All VPAs mention the need to strengthen community tenure rights, and work alongside tenure specialists (both within the country in question, and externally) who can indicate where laws need to be changed (e.g. Liberia, Cameroon and Gabon). To have a real impact on tenure rights, it will be necessary to involve other sectors that impact on forest land including agriculture and mining. There have been some clear successes on this front:

11  F. Pearce. 2012.
12  F. Pearce. 2012.
Increasing transparency and addressing corruption

It remains to be seen whether VPAs can increase transparency and address corruption once the Legality Assurance Systems (LAS) are up and running. Elijah Danso, who has worked as a forest consultant and social activist in Ghana for two decades, has argued: “from the start, we saw FLEGT as a possibility to enforce reforms, like competitive bidding and transparency for concessions and changing ownership rights to forests in favour of farmers.”15 Although all VPAs (apart from Ghana’s) contain transparency annexes, detailing which documents should be made available and where, it is too early to know whether or to what extent VPAs will increase transparency in practice.16

However, there are some successes to highlight. In both Ghana and Liberia, controversial logging permits have been suspended or cancelled after concerns were raised by civil society actors. In Ghana, salvage permits were issued as a means to bring timber cut as a byproduct of other development projects, such as mining or road construction, onto the market. While only two salvage permits were issued in 2009, more than one hundred were issued in 2011. According to Elijah Danso, “they became a conduit for illegal logging, undermining the essence of the VPA.” When it became clear that the VPA rules would not allow the export of logs extracted under salvage permits, the government acted to close the loophole.17

In Liberia, there were similar developments. Private use permits (PUPs) allow loggers to bypass the rules for engaging with forest communities and civil society and impact assessments required for logging concessions. Timber from PUPs is therefore not meant for export. Nonetheless, in 2011 over 40 PUPs (covering 20 percent of Liberia and 30 percent of its forest area) had been issued and timber from these PUPs was being exported.18 The legality of most PUPs was, however, questioned. This abuse was highlighted by the EU, among others. As a result of civil society pressure, the Liberian president has now put PUPs on hold and called for an enquiry. The VPA process legitimized civil society concerns and provided a legally binding framework where these concerns could be addressed.

Another perceived success has been the appointment of independent civil society monitors in Indonesia and Liberia, paid for by the EU, and the extension of independent monitoring as part of VPA implementation in the Republic of Congo and Cameroon. The reports of these independent monitors will be taken into account by the body assessing the effectiveness of the VPA, consisting of representatives from the EU and the government of the relevant country. All this is expected to increase the transparency and accountability of commercial activities in the forests, provided that the VPAs are effectively implemented and monitored.

Challenges and next steps

The challenges ahead are numerous, and fall into three categories. First, some countries that are currently in the negotiation phase are not open to effective non-state actor engagement (e.g. Malaysia and Gabon); this severely undermines the legitimacy of the VPAs signed. The EU would be wise to refrain from endorsing these agreements, and to concentrate instead on effective negotiation and implementation in countries that do show political will towards improving forest governance. Furthermore, with the exception of Liberia and to some extent Ghana, there has been no active participation of communities in the negotiation of the agreements – participation was largely through NGOs – which reduces the legitimacy of the process. A mechanism needs to be developed to rectify this in the implementation phase, while taking in account the size of this challenge in (large) countries in the absence of community representative structures.

Second, implementation is faltering in all six countries that have signed VPAs. Only upon implementation will the benefits (or lack thereof) in forests and on peoples’ lives become visible. The EU and the governments of the countries in question therefore need to show concerted efforts to secure implementation of the VPA, including the necessary forest and policy reforms, and also include the engagement of non-state actors in the implementation and monitoring of

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16 As pointed out by Global Witness: “The VPA annexes with Cameroon and Liberia place a new, binding obligation on authorities to publish key information. This is a notable advance in Cameroon in particular, where there was limited recognition of transparency in existing legislation. Nonetheless, the lessons from Liberia is that it may be difficult to maintain momentum – for instance neither the obligations to transparency in the 2006 National Forest Reform Law nor in the 2010 FOI Act have been fully implemented.” Available at Global Witness: www.globalwitness.org/latest/updates/750/vpa-gap-2012/.
17 J. Yiah. Private Use Permits (PUPs) and the Voluntary Partnership Agreement (VPA): Do They Demonstrate Legality? Presentation.
the agreement. This has to be the EU’s main priority; in turn, sufficient capacity and funds should be allocated to this. In terms of EU policy, the VPA concept and process should inform all other forest-related policies of the EU and its member states. For instance, if it is not possible to negotiate and implement a VPA, no effective REDD agreement will be possible either. REDD should therefore be made conditional on a VPA.

Third, the forestry sector is often small, and other more destructive sectors such as agriculture and mining can undermine improvements in the field. Although often (and rightly) seen as problematic in itself, the forestry sector could become a positive trend-setting force for industries such as palm oil, rubber and mining which are often more destructive, especially from a land-tenure perspective. Long-term plans should therefore be developed for adapting the concept of a VPA, and negotiating and implementing processes, to other industries (such as palm oil, beef and mining). Unfortunately the EU’s history of developing Economic Partnership Agreements (EPAs) is not a happy one, and the Directorate General for Trade could learn lessons from the VPA – the only trade agreements developed with full consent of non-state actors – on how to develop an inclusive agreement that will have no or minimal negative social and environmental impacts.

Conclusion

When the EU Council adopted the FLEGT Action Plan in 2003, it stated that “VPAs should strengthen land tenure and access rights specifically for marginalized rural communities and indigenous peoples; strengthen effective participation of all stakeholders, notably non-state actors and indigenous peoples in policy making and implementation; increase transparency; [and] reduce corruption.” Nearly ten years later, engagement of non-state actors (notably NGOs and the timber trade) in the negotiation of VPAs has been achieved in all six VPAs. The agreement however is still in its infancy, and many challenges need to be addressed before the gains achieved with the process and content of the signed agreements can translate into actual improvements in the lives of forests peoples and forest ecosystems. Effective engagement of non-state actors, notably forest communities, needs to be strengthened in the implementation of the agreements. Governments also need to show continued political will to execute the agreements, including implementing the necessary legal reforms. The EU, national governments and local civil society organizations moreover need to ensure that the process of developing the VPA can be applied to other sectors and products. VPAs, and VPA-type inclusive multi-stakeholder processes in other sectors, may be tools to address forest loss and illegality in the forestry sector, but they may prove to be even more valuable. VPAs are legally binding trade agreements, which have their roots in a concern for justice and poverty as much as in law and market economics. Hence they could be used as a template for ensuring civil society engagement in other trade agreements negotiated by the EU, including EPAs. They could also function as a template for developing similar trade agreements with other products, notably palm oil, beef and mining products. For this to happen there need to be, in the short term, concerted EU and VPA country efforts towards effective implementation of the signed VPAs, inclusive of civil society engagement. This will require a sound political understanding of the situation in each country involved, agreement on the ways forward and improved donor coordination.

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19 www.bilaterals.org/spip.php?idn933

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4.4 The coalitions of actors, a catalyst for a true multi-actor and governance process: the case of the Central African Republic

Jean Jacques Urbain MATHAMALE1

Abstract

There is no specific or conventional formula to follow for States that wish to commit themselves to the Forest Law Enforcement Governance and Trade (FLEGT) process. However, guidelines would help assist the States in preparing for initiating negotiations with the European Union. The Central African Republic, once it commits itself to this process, will benefit from the lessons learned by Cameroon and the Republic of the Congo, and to a certain extent, Ghana, to build its own strategy towards committing itself to FLEGT, because these countries were the forerunners in the process. The experiences that we highlight here, i.e. the coalitions of actors, deserves to be duplicated, strengthened and improved for other processes, such as Reducing Emissions from Deforestation and Forest Degradation (REDD). As a strategy, it certainly has had problems, but the stakeholders' willingness to move forward has made it possible to reduce the difficulties and to strengthen the participation of the coalitions. As a challenge, one can cite the case of civil society where a platform was quickly set up with organizations that were not all experienced in the field, which shows that it was created by the true willingness of all concerned.

Introduction

The key strategy of the international community to counter illegal logging is to provide support for improved governance in producer countries so as to allow only legal timber to be exported to European markets. The Forest Law Enforcement, Governance and Trade (FLEGT) process is the European Union's (EU) response to the growing scourge of illegal logging and its associated timber trade. The EU FLEGT Action Plan in particular advances a range of measures to curb illegal logging and its associated trade.

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In the Central African Republic, the FLEGT process began in April 2007 with the appointment of a focal point by the Minister for Water, Forests, Hunting and Fisheries responsible for the environment to monitor the process with a European counterpart, and also to ensure coordination and administration of the process, highlighting the Government's willingness to sign an agreement with the EU.

A National Coordination Committee (NCC) was set up in 2008 by Decision of the Ministry, consisting of 13 members. Two representatives from civil society worked together with representatives of the private sector and government. The Committee's role was to inform local actors about the process and the preparatory stages leading to the eventual opening of negotiations and signature of a Voluntary Partnership Agreement (VPA) between the Central African Republic and the EU.

According to the methodology, three groups of stakeholders were identified to be involved in the process, namely: the government administration, the private sector and civil society. Each group constituted a team called a "coalition".

The working methodology proposed by the National Focal Point for preparing the national paper for negotiations with the European party consists of the following:

1. Consultation by the coalitions of actors.
2. Summary workshop or coalitions convened.

The facilitation of these meetings, particularly in Central Africa, was assigned to an international organization, the World Wide Fund for Nature (WWF), which was appointed and accepted by the parties. The aim of the facilitation is to prepare the consultations with the necessary logistics and assist in drafting Session Reports by each coalition. It decides in common agreement with the coalitions on the date and place of the meeting and sends out invitations.

After the consultation by the coalitions, a report is finalized in which the interest of the parties is freely expressed. The next step is the plenary meeting of the three coalitions to compare the three opinions and draft a national paper, which the National Negotiating Committee should use to negotiate with the European party.
This mechanism was in operation up until the initialing and the implementation of the Agreement. Currently, consultations on important issues such as the appointment of representatives in the various implementation and monitoring bodies are held directly by stakeholders, notably civil society, the private sector and the public sector.

For civil society, the platform “Environment and Sustainable Management of Natural Resources” (ESMNR) is the official interlocutor. In spite of these participation mechanisms, the process boasted achievements as well as challenges.

Achievements

The coalitions allowed the stakeholders to directly give their points of view and to defend them during the meeting in the summary workshop. The final documents more or less reflect the interests and the position of all of the stakeholders.

Civil society’s roadmap was developed by mutual agreement by the organizations, marking a step forward in civil society’s participation. The roadmap has generally been followed by the organizations during the process. The position statement was signed by all of the non-governmental organizations (NGOs), setting the conditions of their participation. Civil society’s coalition consisted of 30 members from different organizations. Its availability, commitment and constructive and pro-active nature throughout the negotiations up until the initialing earned it the respect and merit of the other stakeholders who, in the agreement, will assign the independent monitoring of forest activities to the coalition to supplement the independent auditor. Following this work, the Central African Republic civil society saw the need to continue collaborating in a network in order to successfully carry out its monitoring and advocacy work. To this end, the platform was revitalized by integrating, as set out in its charter, its participation in different national processes, taking into account the rights of the communities and the management of natural resources and environmental protection.

The ESMNR has been operating to support the Government in several processes, such as REDD, ITIE, Convention 169 of the International Labor Organization and the revision of laws, namely, the Federal and Land Code, the Agropastoral Land Code and the implementing regulations for the Environmental Code.

To date, this platform has accrued expertise in terms of governance, participatory management and experience in multi-actor processes. Civil society developed a pro-active approach, which has been followed by the other coalitions with the aim of advancing negotiations by ensuring that all details would be included. This resulted in an exchange of documents and information sharing, and quick meetings and exchanges. This practice had the advantage of seeing information circulate quickly and allowing the various actors to hear each others’ arguments. The platform has made it possible to benefit from an overall contribution and to understand the various contrasting concerns.

Today, the agreement assigns civil society with the specific role of Independent Monitor. Its coalition appointed its representatives in complete independence in the various bodies and intervenes in all the activities. Concerns about the promotion and protection of local and native communities’ rights and the environmental aspects are integrated into the agreement; even if these local and native communities have not effectively participated in the process, their interests have at least been supported and defended by civil society, which have collaborated with other civil society organizations (CSOs) in the sub-region, notably in the Republic of the Congo and Cameroon, in order to obtain documentation and share their experiences on various topics.

Thus, civil society participated in all phases of negotiation in a spirit of tolerance, together with other stakeholders, up to the initialing of the agreement, and later in its implementation. It has never been excluded from the process.

Challenges

Major obstacles emerged during the negotiation process, including, among others:

- failure to comply with notice periods of the coalition of actors’ consultation sessions;
- late delivery of materials and documentation, often the day before or even during the consultations;
- partial delivery of materials and documentation;
- weak and/or lack of information sharing between the actors and the coalitions;
- lack of financial and technical support.
These obstacles apply equally to civil society and the government administration, which did not have the necessary technical and financial support. This situation did not allow for a quality contribution based on real capacities.

In order for civil society to be involved, it sent a document to the National Focal Point and the other coalitions on the conditions of its participation during consultations. It has been observed that several of these points were not taken into account, notably, the notification period and the delivery documentation set at 15 days prior to the consultations in order to facilitate full ownership and a good contribution.

Differences emerged several times in the platform, notably due to its mixed nature; the human rights NGOs threatened to walk out several times.

Some of the obstacles have been identified by other coalitions, above all regarding the exchange of information between stakeholders and communication of real-time information in due course.

FLEGT first as a process, then as a theme and finally as an agreement facilitated greater involvement and greater awareness and accountability of stakeholders. The institutional framework in which the sessions and the working strategies operated promoted raised awareness among stakeholders.

Civil society agreed with the entire mechanism, even if at times it expressed criticism regarding some activities which thwarted the delivery of good recommendations. The short duration of the consultation sessions between actors, however, the lack of reliable information or difficulty in accessing it from all parties and the pace in the negotiations did get in the way of a smooth-running process.

Civil society has behaved responsibly considering the issues. It has promoted debates by focusing on discussions that would normally slow down negotiations or even trigger a withdrawal from the process.

The prevailing trend was to always make concessions provided that one accept the positions of both sides.

Conclusion

The coalitions of actors were a true catalyst for a multi-stakeholders process – a framework for reflection, analysis and proposals. The proposals by the coalitions and the document-sharing have yielded a wide range of options. It was remarkable to see how civil society produced a definition of a legality and traceability grid and made very positive recommendations such as the inclusion of social and environmental issues. The FLEGT process remains a multi-actor process, having worked from beginning to end with the different actors grouped in determined coalitions to present and defend their divergent concerns and integrate them into the negotiation mechanism. The rights of the local and indigenous communities were supported and defended by civil society, which has established close ties with other CSOs of the sub-region, notably from the Republic of the Congo and Cameroon, in order to obtain documentation and share their experiences on several themes.

Recommendations

To date, in the Central African Republic, the FLEGT process is still solid. Lessons learned must contribute to future ones, which is why we recommend experience-sharing with the actors. Governance, through a multi-actor framework, is a factor of transparency. We recommend that other national and international processes take the form of coalitions with the aim of creating a conducive framework for transparency and governance. Civil society in the Central African Republic plays a major role in this process and can benefit and share its experiences with its counterparts elsewhere. Finally, civil society and other stakeholders must have financial support to achieve the same level of information and create a true framework of exchanges.
5 THEME THREE: FLEGT IMPLEMENTATION APPROACHES

5.1 Implementing VPAs: Outlining approaches for civil society’s participation in VPA-related law reforms
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Abstract

Voluntary Partnership Agreements (VPAs) present an innovative approach to tackling the illegal timber-related trade while reinforcing forest governance in timber-producing countries. The multi-stakeholder processes that have been put in place for designing and implementing these agreements are one aspect of governance efforts undertaken in producer countries. Ghana and the Republic of Congo are the first two countries that signed VPAs, in 2009 and 2010 respectively. In both instances, civil society has been engaged in helping to define timber legality and contributing to the ongoing legislative reforms. The question is, how do these VPAs and associated legal reform processes allow for participation of civil society and how is this reflected in practice?

This paper provides an analysis of the level of participation of civil society at different stages of the VPA. It notes lessons that can be taken on board both by countries that have negotiated VPAs and countries at the beginning of the VPA process. It provides suggestions for how to ensure a qualitative VPA implementation process, starting with legitimate and effective law reforms. Taking concrete steps to improve civil society participation is essential to ensuring the successful implementation and enforcement of the VPAs and all related law reforms.

Introduction

As both a market mechanism to tackle illegal logging and a process to strengthen forest governance, Voluntary Partnership Agreements (VPAs) are innovative. They not only have the potential to make concrete changes in timber producing processes, they also offer an opportunity for stakeholders to be involved in the design and implementation of the process and subsequent law reforms.

The participation of civil society and the private sector alongside national governments and the European Union (EU) in VPA processes is in itself an improvement in natural resource governance that could bring greater legitimacy and transparency to the forest sector as a whole. To make this a reality and turn rules into practical participatory processes, certain conditions must be met and supportive mechanisms put in place.

In a broader context, countries face greater challenges, such as garnering sufficient political will to properly implement the VPA agreement. There is also the question of the technical capacity of actors and resources engaged to support the process. These challenges should also be taken into account when examining the way in which VPAs are shaped and implemented.

Experiences of civil society’s participation in law reform processes in Congo and Ghana throughout the negotiation and pre-implementation stages of the VPAs allow us to draw out lessons learned so far in terms of on-the-ground successes and challenges. Recognizing the novelty of these processes and the challenges posed, we offer further avenues that could be explored to ensure relevant actors are fully contributing to the implementation and enforcement of VPAs.

Participation of civil society in VPAs and related law reforms: essential elements

Participation of civil society in decision-making processes, such as the negotiation of VPAs and the law reforms flowing from them, is a cornerstone of good governance. To ensure that such participation is made effective, we will outline the prerequisites that must be incorporated in the VPAs. These elements are fundamental parts of any framework for participation and are relevant throughout the process. In addition, as law reforms are complex and challenging processes, giving greater attention to their planning, coherence and timing is of particular relevance to participation.

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A well-designed framework for participation

To ensure that the participation of all stakeholders in VPAs and law reforms is effective, the process and content of the VPAs should be drawn around the following key elements: access to information, accountability, participatory rules and control and verification mechanisms. While such an annex can be very useful, it will be made accessible, in particular to regional groups and local communities. Information should be sufficient and detailed enough to allow for the meaningful involvement of civil society. Most VPAs (in fact all but Ghana’s) contain an “access to information annex” requiring particular timber, trade and law-related information to be made public. While such an annex can be very useful, it will only be so if it ensures immediate access for the public. It is noteworthy that the balance between the level of information to be made accessible and the means to communicate it sometimes differ within a particular VPA. For example, the Congolese VPA offers a great level of detail as to what information must be published. However it is uncertain whether the means of providing that information (e.g. web sites, annual reports and the written press) will make it widely accessible, in particular to remote groups, such as local communities.

A clear definition of the roles, rights and responsibilities of stakeholders involved in the VPA will lead to greater accountability, another essential element in improving forest governance. This will not only bring clarity to mandates but also increase the ownership and responsibility of each stakeholder. Procedural rules framing accountability should be accompanied by complaint mechanisms that allow for remedies and/or sanctions to be applied whenever actions have not been carried out pursuant to the rules agreed to by all the stakeholders.

Linked to accountability is the actual definition of “rules for the participation” of stakeholders in the negotiation of the VPAs and subsequent law reform processes. Civil society and other stakeholders need to have fora where they come together to agree on their interventions; these fora themselves need rules. The practicalities of the application of the principle of participation must be set out, with steps and timelines clearly indicated. Both the Congolese and Ghanaian VPAs include provisions on the involvement of stakeholders in the implementation of the agreement, but they do not clearly indicate how this is to be set up in practice, what level of engagement is envisaged or what methodology is to be adopted to do so. These are issues which need clarification.

Finally, it is crucial that monitoring and control procedures are in place to ensure rules are respected and enforced. These procedures must guarantee that both technical rules on the listing system and procedures for decision-making are respected. This will entail detailed provisions on independent monitoring, a strong VPA license monitoring mechanism, and an independent committee that is representative of stakeholders to verify the implementation of the VPA and publicly reports its results. This committee should be set up as soon as a VPA is signed to allow for monitoring to take place at the earliest stage. It is essential, also, that clear procedures are in place by which a stakeholder’s substantiated claim that the VPA is not being properly implemented and adhered to can be reviewed and resolved by the committee through a transparent, timely, accountable and effective process.

Specific elements required for law reforms processes

Law reforms are complex processes. As such, certain issue need to be addressed to ensure that participation of civil society is meaningful. For example, how to best define the role of civil society actors in the process of reforming laws, both in terms of content and approach; what support should be made available and by whom; and what kinds of information must be provided.

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Footnotes:

5. The term “implementations” is not yet defined in any of these two VPAs. However, references made within the schedule for implementation to stages from the signature of the agreement until the issuance of licenses and the monitoring of the implementation suggest that the “monitoring and control” part in the Congolese VPA covers all stages within the VPA process. See Congo VPA, article 16 and Ghana VPA, Annex VIII and, article 14 and Annex VIII.

6. See “Published information” is to be found in all stages of the VPA process. See Congo VPA, article 16 and Ghana VPA, Annex VIII and, article 14 and Annex VIII.
To enable participation in legal reform processes, *information* relating to legal instruments and also to the process of reforming the law are essential. This must be prioritized and effectively disseminated by public authorities. Access to the laws, as well as to an interpretation of their provisions, will be critical in determining the level of understanding and therefore the quality of contributions that civil society can bring to the negotiation process. It has been a challenge for civil society in some VPA countries to get access to all the laws and regulations mentioned in the legality grid, as well as to achieve a working knowledge of the process and institutions involved in reforming the legislation.9

Overall *coherence* is needed in the content and process of legal reforms. Coherence is relevant at two levels when looking at legal issues in a VPA context. Firstly, national laws have to be brought into line with the aims set out in the VPA by integrating international commitments and cross-sectoral reforms into the VPA for example, and their incorporation must be planned accordingly through national law where gaps are identified. Secondly, coherence is needed within the process of law reform itself, which requires thoughtful planning with a view to reform sectoral policies before law reforms take place.10 For example, broad legal reforms in the forest sector should be preceded by an assessment and, where needed, a review of the national forest policy, as the orientations and objectives it sets will better guide law reforms.

Setting realistic *timeframes* for law reform processes is an important component that has proven to be a challenge in many VPAs. If not set appropriately this can undermine civil society’s capacity to participate. Poorly planned law reform processes often result in weakened outcomes. For real and meaningful involvement of civil society to be possible, enough time to consult relevant actors and allow civil society representatives to carry out their own internal consultations must be factored in. There should also be the option to revise timelines when necessary and justified, with, of course, consultation and appropriate communication of the resulting changes.

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9 Both in Congo and Ghana, broad and timely access to the laws and regulations within law reform processes have been challenging. In other countries, e.g. Gabon, access to laws by civil society has also been difficult at the VPA negotiation stage, making negotiation on the legality grid less well informed.

10 i.e. reforms that are not necessarily directly linked to the forest sector but will have an impact on the effectiveness of the VPA, such as reforms on tenure that have been linked to the forest sector but will have an impact on the effectiveness of the VPA. For example, reforms on tenure could affect the ability of communities to secure their forest rights, amongst others.

11 For information on forest policy, see: FAO. 2010. Developing effective forest policy - A guide. F-90 Forestry Paper 161.
an element to be integrated in new supplementary regulations. A methodology for adopting supplementary legislation to the forest code is also usefully outlined, based on a process of consultation of civil society and its participation in expert committees. However, procedures to monitor and ensure rules are applied for a particular law reform process should be detailed to complement this methodology.

In comparison, Ghana has fewer specific references to civil society’s participation in its VPA. It rather refers to the aspiration to carry out extensive consultation of stakeholders, mentioning strategies, modalities and programmes in the implementation of the VPA. Although there is no direct mention of civil society actors in contributing to law reforms, they must be considered a stakeholder and expected to participate in the consultation process. The language of the text is more general as it refers to the desire to undertake legal and policy reforms “in the spirit of good forest governance” and offers examples of reforms that are envisaged to do so, for example, stakeholder participation and benefit sharing. Here too, detailed procedures should be agreed on how to conduct law reforms and to involve civil society and other stakeholders in these processes, so as to ensure certainty and increased accountability.

The multi-stakeholder approach is built into the two agreements in different ways. The difference between the Congolese and Ghanaian VPAs should not in practice impact on the actual opportunity for civil society to participate, as it reflects the difference in approach to drafting and interpretation between civil law and common law countries rather than a divergence on the role that civil society should play in the VPA process. Nevertheless, it is necessary within any legal system for there to be clarity in distinguishing the roles, responsibilities and rights, and to communicate them transparently, to ensure that opportunities for participation are used to their full effect by all stakeholders. It is the duty of the State to make the necessary provisions so these requirements are met.

Lessons learned include:

- The need for the VPA’s “fine print” to be clear and detailed and identify transparent procedures for civil society’s participation in law reforms.
- Particular attention should be given to the issues of representation and mandate, the direct participation of local communities and indigenous people and the technical support offered.
- Participation of civil society at all stages of the VPA process should be clearly recognized in the agreement to avoid confusion and facilitate its role.

Practice: participation of civil society throughout the VPA process

The negotiation process

The starting point of civil society’s involvement in VPA legal issues is at the negotiation stage of the VPA, as contributions can be made to the legality grid and the scope and nature of the law reforms which are included in the agreement. The level of involvement at this stage of the process is crucial as it will have the potential to significantly influence the definition of timber legality, thereby impacting on the quality of the agreement and new forest-related rules.

Although the negotiation process was relatively fast in Congo (about 10 months), it allowed for a fair degree of participation of stakeholders during the negotiation stage. A Technical Secretariat – in charge of preparing the Congolese position on the VPA – and a national advisory group – to review and validate documents in discussion – were set up to facilitate the negotiation of the agreement. Both bodies included the participation of civil society actors. In parallel, civil society created a platform for information sharing and exchanges, with a view to internally discuss the process and relay their positions to the negotiating table. The platform’s contributions were particularly instrumental in inserting a number of provisions into the VPA to strengthen the rights of communities. However, to participate directly in any part of this process and be able to secure their own interests, local groups (communities and indigenous people) required support, which was not

16 Congo VPA, Annex IX, 3.
17 Congo VPA, Annex IX, 5.
18 Ghana VPA. Two direct references to overseeing the functioning of the Timber Validation Department: Annex V, 5.2 and capacity building requirements for civil society: Annex IX.
19 Ghana VPA. Two direct references: participation to overseeing the functioning of the Timber Validation Department:
21 The process extended from June 2008 until 9 May 2009, the fastest negotiated VPA so far.
22 The platform includes various NGOs working principally on environmental, human rights and social issues, including NGOs defending indigenous peoples’ rights. It does not however include members of local or indigenous communities.
23 That includes among others a reference to the United Nations Declaration on the Rights of Indigenous People (UNDRIP) in the preamble of the VPA, provisions for the involvement of civil society and communities in law reforms and implementing legislation relating to the rights of indigenous people and the conditions for participatory forest management.
provided. For their participation to be viable, technical assistance (e.g. legal support, information on the VPA and its potential impacts and implications) as well as the financial resources necessary for groups to develop their own technical capacities should have been mobilized by public authorities.

Similarly in Ghana, substantive stakeholder engagement was made possible at the negotiation stage through the participation of civil society in various consultative and decision-making committees and groups set up to contribute to the agreement. However, this was the result of significant pressure from consultative and decision-making committees and groups set up to contribute at the negotiation stage through the participation of civil society in various technical capacities should have been mobilized by public authorities.

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In terms of timing for law reforms, two different approaches have been adopted within the Congolese and Ghanaian VPAs:

- In Congo, the legal and policy reforms identified in Annex IX of the VPA will have to take place before FLEGT licenses can be issued. The issuance of the first license was initially planned for August 2011 with supplementary legislation expected to be in place by June 2010.
- In Ghana, a two-tier approach has been favoured. The first tier is the adoption of legislation that is essential to allow the licensing system to function, through supplementary regulations. This should have been in place by the end of the first year after the VPA was signed in November 2010. The second tier includes mid-term reforms, with the enactment of legislation that requires extensive consultation, within three to five years (between 2012 and 2014). This second tier includes reforms on governance, stakeholder participation and benefit-sharing, issues that are at the heart of forest governance and should therefore be addressed as soon as possible in the process.

Both the Ghanaian and Congolese timelines for reforms are now running behind. Although consultations and drafting of secondary legislation have already started for a number of texts, much still has to be done to complete this process. While ideally realistic timelines should be set up and adhered to, it is important that the roadmaps included in the VPAs are allowed sufficient time to be fully reviewed in light of progress made to update the timelines for law reforms and FLEGT licenses. The grounds for doing so and an agreed process involving all stakeholders should also be set out in the VPA. A balance should be struck between allowing a certain degree of flexibility when circumstances justify timelines to be reviewed, and avoiding abuses.

Some lessons learned include the need to:

- set realistic timelines and planning for law reforms at the negotiation stage, to ensure clarity and consistency of the processes;
- involve local communities and groups more directly into the process of negotiation e.g. through the organization of awareness-raising sessions at the regional level and technical capacity development;
- provide an appropriate window of time to allow stakeholders to contribute to the negotiation process, including ensuring effective access to documentation;
- better equip civil society through greater legal support to contribute to the definition of complex components in the legality grid; and
- build into the VPA a process allowing for adjustment of timelines where necessary, and to communicate them clearly.

Participating in law reforms

A concern emerged when negotiation processes were completed: how do we ensure the participation of civil society during the phase following the signature of the agreement and until FLEGT licenses are granted? This phase is crucially important. For instance, the processes and procedures to enable civil society to effectively participate during this stage set a precedent for continued participation in the implementation of the VPA. Even more importantly, it is only through their effective participation in this stage that civil society can contribute inputs to the content and structure of the laws and institutional structures being reviewed to include recognition in law of procedural rights that would enable civil society to continue to exercise an effective monitoring function throughout the implementation of the policies adopted through the reformed laws. Yet the role of civil society has been less clearly defined at this stage.
In Congo, a few legal reforms have already taken place as foreseen in the VPA, including the revision of the Forest Code and supplementing legal texts. In 2011, seven legal texts were adopted to supplement the Forest Code. Two consultants were left in charge of analyzing forest legislation, organizing national consultations and making recommendations for these texts. This approach has the potential to allow civil society actors to make substantial contributions to these regulations. However, it has in fact been more difficult for them to participate in an informed way in this process in comparison to their engagement in VPA negotiations. This is partly because of the lack of visibility on the scope and timeline for the reform. In particular, the process has been long (it is still ongoing) and there was confusion as to the extent of the review envisaged (a full or partial revision of the Forest Code) and of how contributions through consultative sessions were to be included in the final texts. Drafts were not always sent to civil society for comment in a timely manner and material to be discussed at workshops not always available in advance. Finally, the establishment of an “experts committee” to support the drafting of supplementing legislation, as foreseen in the VPA, has not yet happened.

The revision of the Forest Code in Congo underlines the importance of, in particular, defining clear processes for the conduct of law reforms and setting clear and realistic timelines. Additionally, given that the timetable set out in the VPA roadmap slipped, it was difficult for civil society actors to have visibility regarding the process, and in turn challenging to organize their strategy and contributions. It is crucial that a new VPA roadmap is agreed to as early as feasible.

In Ghana, several legal reform processes have occurred simultaneously. These have included the broader, longer-term reforms including the Wildlife and Forest Policy Review, the Domestic Lumber Bill, the draft Consolidated Forest Act as well as efforts to address the fundamental matter of tree tenure rights. Most of these reform processes are ongoing. Initial regulatory reforms and amendments were also intended to specifically enable the establishment of the Legality Assurance System so that FLEGT licenses could be issued. This included the Timber Resources Management (Forest Law Enforcement, Governance and Trade Licensing Scheme) Regulations (LI Regulation) that passed into law in June 2012. The LI Regulation provides the legal framework for an institutional body, while the Timber Validation Committee (TVC) that has the mandate to review FLEGT licenses applications and those issued, conduct inspections and investigations as well as undertake its own non-compliance procedures. It is therefore central to the successful implementation of the VPA.

The process of participation by civil society in the drafting and subsequent revisions to the drafts of the LI Regulation appears not to have been conducted in the most effective and transparent manner by the relevant government authorities. There appeared to be confusion over timelines for submission of comments on drafts, access to up-to-date drafts for interested civil society members and even the actual timelines for the passage of the law through the Parliament. The text adopted as legislation included several significant changes that were not included in the final draft text including the provisions on membership of the Committee. The March 2012 draft provided for a seat for a civil society representative, as had been agreed in the VPA, but in the version adopted in June, this had been dropped. The text itself did not address outstanding questions regarding rules to avoid conflict of interest, the election of members and specific procedures to ensure transparency of the process.

The Ghanaian experience with the LI Regulation shows that the issue of access to information should be carefully attended to, with a mechanism to allow for dissemination of information to civil society actors, including those based remotely. It also points to the necessity of having a mechanism in place to follow up on passing of legislation and a possibility to make changes when the legislative process is not inclusive enough, does not reflect the VPA text itself and/or include multi-stakeholder consultations.
From the experience of civil society in both countries, we can draw the following conclusions: there is a need to:

- clarify the scope and process leading to legal reforms, including how decisions are made and by whom, and how contributions are incorporated;
- establish a mechanism to monitor the rules of engagement of civil society as inserted in the VPA, against the process actually conducted. A mechanism should also be available to act on the basis of the monitoring results and seek redress e.g. by referring an ill-conducted process to an independent body or freezing the process until participation is ensured;
- have in place (and update) the policies necessary to allow legal reforms to be coherent and moreover driven by relevant international commitments and national policies;
- insert strong procedural rights in law reforms to ensure participation is translated into practice, such as rules specific to access to information, participation in decision-making and access to justice;
- provide for supportive measures, aside from VPA law reforms e.g. capacity-building for civil society, developing judicial and legal skills for local administration, technical VPA bodies etc., supporting knowledge-sharing on legal reforms between civil society platforms at national and regional levels; and
- foster greater dialogue between stakeholders to build trust and recognize the role of different actors, through regular meetings and better channels of communication.

On the horizon: continued participation in the implementation and enforcement phases

This paper has highlighted civil society experiences in Congo and Ghana during the first phase of VPA implementation – the development and adoption of law reforms necessary for the delivery and legitimacy of the VPAs – and drawn lessons for how civil society participation during this crucial phase can be improved. But simultaneous to these law reform processes are other aspects of VPA implementation in which civil society participation must also be secured. Notably, the role of the VPA Joint Implementation Committee (JIC) is critical in ensuring real and meaningful participation of civil society in the future. A JIC should be set up and made operational upon signature of the VPA, to ensure an early follow up on the VPA process. It should pay particular attention to monitoring law reform processes, including timelines, and the operation of VPA participatory processes and committees in practice.

Furthermore, allowing for an independent monitor to play a strong role in the VPA process will be crucial for the participation of civil society. A periodic review of the legality grid, allowing for feedback from an independent monitor, will ensure the VPA process is grounded and well-tailored, reflecting the situation on the ground and capable of adapting to new challenges. Similarly, experiences from monitoring of forest legality in the field should also be allowed to feed back into ongoing relevant law reform processes. This would allow for greater rationalization and coherence in these processes. The importance of the JICs and independent monitoring cannot be overstated in relation to civil society’s effective participation in VPA implementation and enforcement.

Notwithstanding, making the effective participation of civil society in reformed forest governance frameworks operational requires something more: the recognition of procedural rights, such as access to information, right of participation, and access to justice, in the content and structures of the reformed laws and institutions going forward. Through securing and exercising such rights in law and in practice, civil society can become full and effective partners in managing the natural resources upon which they rely.

Conclusion

Lessons drawn from the Ghanaian and Congolese experiences in the VPAs will benefit other countries engaged in the VPA process at an earlier stage, both in their successes and failures. The involvement of civil society actors in the negotiation of VPAs and in related law reforms in Ghana and Congo have been the first steps towards recognizing their role and importance as participants in forest governance. There are several positive outcomes that can be drawn from the experiences of both countries. Among these is the setting up of multi-stakeholder negotiation and implementation committees and the development of civil society platforms. Moreover, the recognition of civil society as a worthwhile and credible independent monitor in Congo is an equally important step in terms of participation in the process.
Alongside these successes, challenges remain to ensure that civil society’s involvement is optimal. Above all, VPA processes are inherently influenced by wider social and political circumstances, such as the lack of political will to tackle illegal logging and governance reform, enduring mistrust of civil society actors and various expectations of the VPA process from different stakeholders. These continue to be major obstacles to the inclusiveness of the process. The participation of civil society in law reforms has also thrown up particular challenges due to the nature of these complex cross-sectoral reforms, including the lack of legal capacity and of clear rules of engagement and responsibility, as well as the poor planning and timing of those processes. Civil society, for its part, needs to vigilantly exercise their rights to participate where possible, and voice their concerns about failures and the consequent lack of legitimacy of the VPA processes and outcomes (e.g. where their rights to information, participation and redress are constrained), although this is often a daunting task in light of capacity constraints as well as political context.

As outlined, more systematic approaches will be needed in Congo and Ghana to address the issues of access to information, participation in decision-making, monitoring and mechanisms for appeal. These will be critical to guaranteeing that adequate space for civil society’s participation is maintained in the next stages of the VPA process and that participation is effective from a qualitative point of view. It will be equally essential in ensuring the FLEGT timber licensing system can deliver and, more generally, improving forest governance.

5.2 Implementation of the Ghana-EU Voluntary Partnership Agreement: Some issues and early lessons

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Abstract

Producer countries that have signed Voluntary Partnership Agreements (VPAs) under the European Union’s Forest Law Enforcement, Governance and Trade (FLEGT) are required to develop systems which can deliver timber legality licenses to the European market. Trends on the European market, however, suggest that these producer countries have limited time to deliver these licenses if they are to retain their share of the market. It is also obvious that a partner country’s ability to deliver these licenses and commit to the agreement is not all about technology. There are intricate governance, budgetary and organizational underpinnings which complicate delivery. This paper examines the scope of national commitment under a typical VPA and the considerations that need to be taken into account to successfully implement the agreement. Early lessons from the Ghana’s experience in implementing the VPA are also discussed.

Introduction

Countries adhering to the Voluntary Partnership Agreement (VPA) are required, within a specified period of time, to begin trading with the EU using timber legality licenses. In many cases, the delivery of these legality licenses requires fairly comprehensive national level undertakings. In Ghana’s case, a period of two years was envisaged in the agreement to complete all tasks necessary to deliver the license. Countries that followed later negotiated a more generous time frame ranging between three to four years. Perhaps early lessons from Ghana’s case had already started informing subsequent negotiators as to the scale and enormity of the task of delivering legality licenses.

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The development and delivery of legality licenses are meant to be derivatives of legality assurance systems (LAS). The framework of the LAS which is predefined by the EU is a central part of the VPA negotiation and implementation. At the negotiation phase, countries decide on the scope of the standard of legality as well as what construct of a control system will regulate and deliver a legality license. The focus and dynamics shift considerably when a country moves from the negotiation phase to the developmentplementation phase.

In designing, developing and implementing the LAS one quickly notices a series of nested processes, some at the agency level and others at the state cabinet and legislature level. Additionally, there are other elements of the agreement where implementation is not necessarily as technically based as the LAS. This is true for countries broadening the governance base of the sector reform process and who are also involved in developing and making legitimate trade of timber on their domestic market. Considered from this perspective, the scope of activities required to implement the agreement becomes easier to appreciate.

This paper looks at the governance and socio-political environment within which the implementation is taking place, the technical and institutional approach being used to deliver the legality licenses and goes on to discuss the weaknesses and strengths that may be inherent in the approach. Early lessons are also highlighted at the end of the paper. It is not the intention of the paper to do an in-depth treatment of the technicalities of developing a LAS. The paper rather examines, from a broad perspective, aspects of the technicalities of the VPAs and provides thoughts for policy considerations in implementing and delivering on the VPAs.

As already portrayed in earlier papers the authors distinguish five distinct phases of the agreement, namely (i) in-country consensus building (ii) bilateral negotiation (iii) ratification (iv) systems development and (v) implementation. In the ensuing discussions, the focus is more on the development phase of the agreement. The actors within country have to figure out how to drive it to its logical conclusion. Ordinarily this would not be an issue if focus was on the agreement and the arrangements in place to implement it.

As a bilateral agreement, the commitments under the agreement naturally operate at the country and not institutional level. Institutional commitments that will ensure that deliverables are in place are therefore not the immediate focus of the Agreement. The actors within country have to figure out how to kick-start, apportion and develop the elements of the Agreement as well as drive it to its logical conclusion. Ordinarily this would not be an issue if there were established and well functioning institutions. This can however be presumptuous when systems are still developing. There are other assumptions inherent in the approach to the VPA that also needs unpacking.

The envisaged time frame for the delivery of the entirety of negotiated elements under the Ghana VPA was four years. All of the key elements of the agreement, however, were expected much earlier. The enabling legislation for implementing the VPA and a fully fledged legality assurance system, functioning country-wide, were meant to be delivered within the first twenty-four months of signing the Agreement. Notwithstanding the notable progress that the Ghana VPA has made since the negotiations were concluded, the key elements were not delivered within the envisaged time frame. The agreement notes that the Joint Monitoring and Review Mechanism (JMRM) shall, after a determined process, make recommendations to both parties to agree on a date “from which the FLEGT Licensing Scheme should start full operation”. This recommendation is yet to be made because the due process to assess readiness of the systems has not been conducted. The systems are not ready to be assessed. This brings into focus the implicit assumptions in the agreement and the arrangements in place to implement it.

As a bilateral agreement, the commitments under the VPA are naturally expected to be met in the country of origin. Institutional commitments that will ensure that deliverables are in place are therefore not the immediate focus of the Agreement. The actors within country have to figure out how to drive it to its logical conclusion. Ordinarily this would not be an issue if there were established and well functioning institutions. This can however be presumptuous when systems are still developing. There are other assumptions inherent in the approach to the VPA that also needs unpacking.
The governance (socio-political) environment

By their very makeup, VPAs are largely set up with producer countries that are at different stages in their socio-political development. It is not unusual for such countries to have an air of fluidity in their processes and institutions – characteristic of transition societies. The nascent and to a large extent fragile nature of the country systems can usually be attributed to the fact that these states may be emerging from prolonged periods of civil strife or may be recovering from one form or other of autocratic rule. A multi-actor approach to policy making may therefore be still taking root in many of these policy environments where government has been more evident than governance. In such set-ups, change of individual actors can mean a lot for programme implementation as well as for structured work flow in general. It is without question that implementing an agreement with the peculiar governance underpinnings characteristic of the VPA and which inevitably places demands on the broad spectrum of actors (state and non-state alike) requires a certain level of structure in the governance environment as well as the socio-political system in general.

The VPA systems development in Ghana began at a time when the natural resource and environment sectors were experimenting with a new system of budget support: sector budget support (SBS). Development assistance for programmes had previously been extended to government departments through direct project support mechanisms. The VPA implementation therefore, by default, joined in this donor assistance experiment.

Ownership and support of the initiative is varied among stakeholders. The bilateral nature of the agreement requires it be ratified in the legislature of most of the partner countries before national level adoption. The processes leading to the placement a negotiated document for ratification in a country’s legislature can be elaborate. Ghana’s ratification process was achieved over a period of eight months. This was accomplished at a time when parliament changed both in composition and leadership as a result of a national election. This may perhaps be a reflection of the ownership the agreement had gained among the country’s legislators given that the ratification process had started during the tenure of the fourth parliament of the fourth republic and ended during the term of the fifth parliament. Ownership and support of the initiative is not that readily demonstrated across the spectrum of stakeholders. There are still some “blind spots” in industry when one engages the sector on the VPA. Not all are familiar and supportive of the initiative. Experts are beginning to argue that the drop in Ghana’s timber exports to the EU since the advent of the VPA may be attributable, at least in part, to the drive by industry players to look for less demanding markets – markets where legality licenses are not an issue. The buy-in of the media is more difficult to gauge as traditionally, their contribution to policy debate in the sector has remained rather weak. Civil society organizations (CSO) perhaps exhibit the most affinity for the initiative. The VPA implementation has benefited from a number of CSO/NGO self initiated projects. Community capacity building projects, industry VPA oriented capacity building projects etc. are on going because of CSO efforts. This space could hardly have been filled by government (public sector institutions) alone.

The Technical Environment, the approach

The uniqueness of legality licenses is in the provision of assurances that declarations made concerning consignments are credible and verifiable. Although forest control systems for making declarations already exist in VPA partner countries, these declarations do have not the credibility that legality licenses seek to offer. Deficiencies in the credibility of existing country declarations may be attributable to structural shortcomings in their forest control systems. These weaknesses may be as a result of the weak or obsolete technical infrastructure used in delivering services or inherent shortcomings in the very design of the systems. Paper based systems are used in most partner country forest control systems to collect forest transaction data. These transaction data which, when accumulated nationwide over a period of one month, could translate into tens of thousands of records, are processed through manual entry onto computer systems. Mostly, by the time the data entry is completed on moving consignments, only post mortem controls or sanctions can be applied. In certain instances, the consignments would have already crossed country borders. Where country systems are not sufficiently robust to check and correct anomalies during production or processing, it is clear that declarations accompanying the consignments can only be accurate within some margins.

The governance environment within which the control systems are operated may themselves lack the requisite credibility that may be necessary to lend
confidenct to the robustness of such systems. Where there is evidence of flagrant non-compliance by producer and regulators alike as well as historical and persisting evidence of non-application of sanctions for offenders of forest laws, export declarations fail to carry credibility. Instead, they become a subject of controversy. As a result of varying degrees of a mix of these factors, declarations emanating from most partner country forest control systems fail to make a convincing statement about their credibility on the international market.

In designing systems to deliver legality licenses with the required credibility, there is often the dilemma that confronts the decision maker, namely, to develop a completely new system that effectively replaces the existing forest control system (between innovation and shift in paradigm) or to embark on tweaks to the existing systems (continuous systems improvement). While it may be easier to introduce a system that may tend more towards shifting paradigms in environments that do not have well entrenched control systems, it is more difficult to completely change the game in more established systems. The more the requirements placed on the actors to change their established way of doing business, the more difficult it is to get their buy-in. Conversely, if the system is still to take root in the organizational processes and culture, it is more likely to convince users to take a look at new technology or other ways of operating.

Considering the governance challenges confronting the forest sector of most partner countries as well as the rather low level of sophistication of technology for forest regulation/control, it would appear that radical changes rather than gentle tweaks to existing systems may be the way forward. There may still be others who could do with simple systems improvement.

Finding an approach to use to deliver the varying elements of the agreement

Implementing the VPA as solely a technical endeavor already alienates the important governance underpinnings that the agreement espouses. Some researchers8 have already distilled meaning out of the FLEGT acronym. Law enforcement (LE), governance (G) and trade (T) are distinct policy elements that have been distinguished. The implementation approach taken, however, is tending to be a determining factor in the delivery of these elements. There is no question about the apparent urgency in positioning partner-country systems to ensure that the coming into force of the European Union Timber Regulation (EUTR) in March 2013 does not create further trade problems for them. Additionally, the key tangible element that will indicate a VPA is being implemented in earnest and upon which the construct of impact assessment is based is the establishment of the LAS and the issuance of legality licenses. In structuring the requirements of the annual report for the implementation of the agreement, the framers do not lose sight of this (the annual report is actually expected to report the volume of FLEGT licensed timber exported as well as the number of FLEGT licenses issued). On matters of stakeholder involvement, the agreement is rather weak in Ghana’s ease. Article 16 states “Ghana, where feasible, shall endeavor to encourage stakeholder consultation in the implementation of this agreement”. This statement gives too much room for maneuver. Perhaps downplaying stakeholder involvement (multi-actor governance) in the implementation begins from here. All put together, one can conclude that the commanding focus for VPA implementation is the establishment of legality assurance systems. Subsequently, there appears to be a strong pull towards the legality-license-issuer-finishing-line for partner countries. This pull is undoubtedly determining, to a large extent, the approach for the delivery of the entirety of the elements the agreement.

The Ghana case: developing the systems

As a way of making some sense of VPA implementation, a breakdown structure was prepared for discussion and subsequent adoption by the recognized stakeholders. In this structure, six main deliverables were identified under which different work packages and tasks were further developed. The intention was to disaggregate the VPA into manageable deliverables that could be farmed out to different agents for implementation. These deliverables formed the basis and design of programme implementation and include (i) ratification of the agreement by the Ghanaian Parliament; (ii) institutional reform necessary to operate a LAS regime; (iii) issuance of the FLEGT license; (iv) domestic market development and regulation; and (v) legislative reform and (vi) industry restructuring.

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The implementation of the identified deliverables was led by the Forestry Commission. This is where the resources and drive for the VPA have been channeled, working through the VPA Secretariat now known as the Timber Validation Department (TVD). Cross-functional teams were formed around the different deliverables to oversee their implementation. Initially, non-state stakeholders were left out of these teams. Some schools of thought had held that the deliverables were mostly technical in nature and focused mostly on internal processes of the Forestry Commission. This perhaps was the first test of the depth of change that the VPA (having gone through the negotiation stage) had introduced into the forest sector governance environment. The non-state actors were brought in at a later date following the formation of the Multi-Stakeholder Implementation Committee (M-SIC).

Ghana’s forest control system is recognized to be one of the most elaborate in the sub-region. A tracking system is in place that systematically collates forest statistics from forest to the port. Well established agencies apply the different components of the forest control system. It however does not wield the reputation or credibility which is expected of legality licenses. In recent times the credibility shortcomings have been accentuated by the country’s consistent reported inability to stem the tide of illegal logging and the associated forest loss. Forest loss has been attributed mostly to the chainsaw menace and encroachment by farmers. FAO now quotes Ghana’s rate of deforestation to be around the 2 percent/annum. Among the weaknesses that have been identified in the existing control system is the time taken to reconcile field data and apply the intelligence gathered in a manner that can enable real-time regulatory interventions. There are also shortcomings in the robustness of transaction data capture. “Critical control points”, as they are known in forest tracking, are points whose quality of management determine the robustness/quality of a particular forest control regime. These are points where the integrity of the system can be compromised either through the introduction of extraneous material or generally through the doctoring of transaction data. Under the Ghana forest control system, ten such points are enumerated and mentioned in the agreement, beginning with the source of timber extraction through to the point where the harvested and processed material is finally exported.

Weaknesses associated with the first critical control point (source of timber) include inaccuracies in demarcation of the boundary of the forest unit designated for logging. Although accuracy of tree location is another issue, some developers of the forest tracking system have argued that scarce resources need not be committed to obtain a high accuracy of individual tree location. Currently positions of trees are taken using devices with global position systems (GPS). It is worthy of note that every year tens of thousands of timber information (TIF) forms are generated. These are data or records on which the calculation of stumpage, the main revenue that is shared among constitutionally determined beneficiaries, is based. These records are initially generated manually and later on keyed onto computer systems for further processing. The information derived from these forms, when cross-checked against upstream data (concession yield information or approved removals) assist in establishing the levels of harvesting. Considering the central role that this set of records plays in the management and regulation of the forest, the need for its integrity cannot be over-emphasized. A wrongly named tree species, a miscalculated tree volume and the inclusion of trees obtained outside the demarcated/sanctioned compartment can have far reaching implications for the integrity of the data. The absence of a readily available and updateable central data base containing all stock survey results and yield balance compounds the difficulty as comparison/reconciliation with the TIFs becomes more elusive. Every critical control point presents its own peculiar challenges. The avenues available to perpetuate some of these mistakes or in some cases malpractices determine the need to apply improvements to the existing systems or to consider shifting paradigm. In Ghana’s case, technical changes were made at the critical data capture points to reduce errors in data capture as well as speed up and improve the collation/reconciliation process. However, the business process associated with the application of the control system did not change.

Technical systems development approach

An assessment of the above gaps in the control systems application suggested that an improvement rather than innovation or shift in paradigm is required. Consequently, the business process has remained largely unchanged. The introduction of technical inputs such as geographical position systems (GPS) on hand held field data loggers, a central database receiving and reconciling data on real-time basis, was assessed to be adequate in resolving the issues identified.

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On the institutional side, a verification and validation entity (Timber Validation Department - TVD) has been created within the Forestry Commission. The development of the improved tracking system that will contain these new technical advances is intended to be mainstreamed inside all activities within the Forestry Commission. However, besides the nuclear team at the TVD, no staff was identified in the other arms of the FC as specifically dedicated to the initiative. Tasks were expected to be performed outside of routine work schedules. The challenges here are obvious. The rationale for this approach was to build ownership of the improved system across the regulatory agency from start to finish.

The funding mechanism for the development of the improved system was enveloped in the normal budgetary cycle of the Forestry Commission. At the time of implementation of the pilot of the Wood Tracking System (WTS), the natural resource and environment (NRE) sector agencies were drawing their budget through a Government of Ghana-Donor arrangement, the sector budget support system (SBS). This was a system that was new to the NRE sector. This arrangement meant the development partners contributed funds directly to the Government (Ministry of Finance & Economic Planning); the fund was accessed by the three sub-sectors through their respective ministries and disbursed to the implementing agencies. Simply put, an on-going project and funds available. In real practice, one who implements a project should not notice these layers of bureaucracy, however, delays in the release of funds make these steps all too glaring. The WTS implementation had to be stalled at a point because of delays in the release of funds through this mechanism. It is worthy of note that this SBS arrangement is beginning to fall apart with some donors beginning to reminisce the direct project support mechanism. The WTS implementation had to be stalled at a point of note that this SBS arrangement is beginning to fall apart with some donors beginning to reminisce the direct project support mechanism.

The alternative would have been a total project approach where the systems would probably have been developed on a “build, operate and transfer” (BOT) basis. Such an approach would have had all the characteristics of projects, namely, dedicated project staff implementing all aspects of the project, dedicated resources effectively by-passing the bureaucracy of the public service or the Forestry Commission in this case, a project manager who had the responsibility and authority to apply project resources and last but not least a time based delivery of the different work packages under project. This approach though would have meant that a whole new elaborate programme of staff buy-in and fresh training would have been required after the system was ready for transfer. Elements that do not feature in the technical construct of the LAS are the broader issues of governance such as the review of forest policy. The Agreement envisaged an improved governance environment where obsolete and disjointed laws are reviewed as well as where equity of access to the resource is evident. The Agreement also envisages the possibility of the implementation adversely impacting livelihoods. These are to be investigated and the corresponding mitigating measures put in place to minimize impacts. The multi-stakeholder implementation committee (M-SIC) is the forum where oversight is meant to be given in a manner that ensures that the Agreement is implemented in its entirety and successfully. Broader governance issues that do not particularly feature under the LAS should therefore be picked up under the M-SIC. The broad stakeholder representation of this body is supposed to help achieve this.

The JMRM also has its role to play in the monitoring of the implementation of the Agreement. This includes the development of the framework that will assess the impact of the implementation of the agreement. In the development phase of the agreement, the JMRM sessions have proved to give impetus to the implementation process.

Discussion and Conclusion

It is apparent that the success of a VPA could be hinged on the socio-political political environment in a given context. This observation, which is not exclusive to VPAs, is also shared by Mitchell et. al.13 in analyzing the West African gas pipeline project. The slip/overrun in time budgets for the delivery of the elements of Ghana VPA is not without reason. Realities of the socio-political environment during the pilot phase have shown that even though it is relatively stable in many respects, it still exhibits some fluid characteristics. One aspect

of the fluid nature of the system has already manifested i.e. the unpredictable funding mechanism of the NRE sector development programmes. The VPA was designed to partake, by default, in the experiment of moving from direct project support to sector budget support. This experiment proved counterproductive given the scheduled delivery of elements required by the VPA. VPAs are extensive governance undertakings. Additionally, the need to deliver legality licenses within specified time frames requires that mechanisms that prop up the implementation, not least funding mechanisms, to be fairly stable. This lesson must not be lost in future endeavors.

The choice of a technical systems development approach may also require deeper reflection. While it may be attractive because it is in line with improving credibility of the legality of declarations, it may just be adequate to embark on improvements on certain existing systems. In Ghana’s case the introduction of technical inputs to strengthen existing processes was sufficient. The choice may be largely dictated by the level of weaknesses or robustness of the existing system on one hand and the familiarity that the existing system may have with the users on the other. Introducing entirely novel ways of operating to a broad array of actors/users has its own risks. Notwithstanding the foregoing, delivering a legality license is still a formidable task whether one is tweaking existing systems or embarking on extensive process re-engineering.

The timely delivery of VPA elements as well as the overall success of implementation is also linked to the project management approach adopted. The initiative is being delivered mostly through public sector agencies. The bureaucracy of the public service system which can hinder VPA implementation is indisputable. Besides being caught up in the bureaucracies, there is also the need to induce an early buy-in of the LAS. This early buy-in condition resulted in the mainstreaming approach in Ghana’s case. Institutional actors who were drafted in to participate in project implementation were unable to give the attention that the initiative required. In such situations the opportunity to fall at the mercy of agents who are either disinterested or who see their future endangered by the success of the initiative is a real threat. Careful consideration must be given to the inherent weakness of the system regardless of approach used. In addition to technical considerations, the socio-political environment is a factor worth analyzing.

There are also lessons for students of governance. The apparent emphasis on law enforcement (LE) and trade (T) in obscuring governance (G) is perhaps linked to the fact that the latter is contained in the processes that deliver the technical tangibles of the Agreement. The elements of governance in themselves are not deliverables. They are more process issues. In delivering the “LE” and the “T” the “G” becomes visible. Notwithstanding, it is still possible to lose sight of the “G” in the midst of delivering the technicalities of the Agreement. At the early stage of the systems development, which we have called implementation for purposes of analysis, focus on the “G” seems to have weakened Ghana’s implementation process. While there was notable movement in stakeholder activity in the consensus building and negotiation phases of the VPA initiative, the same cannot be said of the development phase which has been a focus of discussion in this paper. Additionally, the pursuit of technical deliverables in the programme implementation might contribute to the shift in focus. There is an apparent slow down in stakeholder activity. This will be more acute in regimes where non-state actor involvement in the policy process is still forming and their capacity is therefore low. Efforts may be required to scale this up as one seeks to promote the “G” all the while implementing the “LE” and the “T”. Overall, measured against objectives of the EU-FLEGT Action Plan and their expected outputs, the implementation approach, particularly in Ghana’s case, is likely to yield some results but optimum results will only be attainable if due consideration is given to the underlying governance issues outlined in this paper.
THEME FOUR

MONITORING FOREST GOVERNANCE
6  THEME FOUR: MONITORING FOREST GOVERNANCE

6.1  Independent Observation by Civil Society and the Community (IO-CSC): concepts, issues and challenges
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Abstract
The improvement of forest governance has become a more complex process than expected, costing a great deal of time and resources. As a result, this raises the question about the effectiveness and sustainability of standard independent observation (IO) models. It is necessary to extend the field of IO action to the dynamic processes of forest governance. According to the experiences of the Organisation Forêts et Développement Rural (FODER, Forest Organization and Rural Development), the Independent Observation by Civil Society and Communities (IO-CSC) is a simple, efficient and independent IO mechanism, responsibly involving civil society and communities. Objectivity, credibility and sustainability will be strengthened by taking into account the various paths of development.

Introduction
Independent Forest Monitoring (IFM), developed by Global Witness and IM-FLEGT and implemented by the Resource Extracting Monitoring (REM), Forest Monitor (FM) and Agreco-CEW, are two highly reputed independent monitoring concepts within the international forest community. However, it has been observed that over ten years of IFM and IM-FLEGT have not been sufficient to end illegal logging or to contain it below a tolerable threshold. Today, it is affirmed that illegal forest felling and its associated trade are but one facet of the visible tip of the disastrous iceberg of weak governance in the forest sector. By relying on experience developed in Cameroon by FODER and being replicated in the Central African Republic, this paper attempts to respond to the questions: How can the Independent Observation by Civil Society and Communities (IO-CSC) constitute simple independent monitoring mechanisms by involving national actors in a responsible manner? How can we guarantee objectivity, independence, credibility and the sustainability of an Independent Monitoring led by civil society and the communities?

The issue of illegal logging
The forest not only contributes to the gross domestic product (GDP) through tax revenue, but also serves as a way of life for native populations and a means of livelihood for local communities. It also contributes considerably to the conservation of biodiversity and the maintenance of climatic balances. Illegal logging occurs when timber (as a profitable product to trade) is harvested, transported, bought or sold in violation of national laws concerning logging activities. Despite laudable efforts undertaken by the Government of Cameroon for almost two decades to clean up the forest sector and render it one of the economic and social pillars of development, illegal logging and its associated trade feeds corruption and diverts substantial financial resources from the public treasury. Illegal logging weakens the capacity of very poor forest communities to sustainably satisfy their livelihood needs and dangerously degrades the quality of the environment, with serious consequences on the social fabric, the ecosystem and the climate. According to the Center for International Forestry Research (CIFOR), illegal logging is responsible for a loss of CFAF30 billion per year in Cameroon.

Conventional models of independent monitoring
There are two official, traditional IO models, which are based on a formal contract in the form of a Protocol Agreement between the Government and an international non-governmental organization (INGO).
**Definitions and scope of action**

- **Independent Observation (IO):** is a strategy for collecting information that can serve as a basis for forest law enforcement, as a means to pressure on forest sector actors and for building the capacities of local populations in defending their interests. It identifies the gaps in the law or in the regulations in force.

- **Independent Forest Monitoring (IFM):** This type of IO was developed for the first time by Global Witness (GW). The principle of IFM is cooperation between the government, civil society and the private sectors in timber-producing countries. GW has worked for over ten years in four countries: Cambodia, Cameroon, Honduras and Nicaragua. IFM involves the use of an independent third party, which, through a common agreement with the state authorities, provides a legal conformity assessment.

- **Independent Monitoring-Forest Legislation Enforcement and Governance (IM-FLEG):** Implemented by REM (2005–2009), Forest Monitor and Agreco-CEW (2010–2013), IM-FLEG is a non-governmental approach, which supports the implementation of forest legislation and governance. It assesses whether the legal measures and regulations are respected; monitors and advises on the official system for applying forestry regulations; strengthens the bases for forest law enforcement; influences the actors in the forestry sector; and strengthens the capacities of local populations in defending their rights and interests in forest management.

Their scope of action is limited to forest law enforcement and the monitoring of forest infractions with the aim of promoting sustainable management of forest resources and fighting against illegal logging.

**Methodology and tools**

IFM and IM-FLEG have similar methodologies based on finding information and collecting data.

- **Information search.** This consists in finding and collecting reliable and verifiable information on illegal logging. When the observer receives information on a infraction, he or she contacts the Brigade nationale de contrôle (BNC, National Control Brigade) and collects information on the validity of the logging title and on the regularity of the timber transportation and processing, where necessary. All the collected information is analyzed with respect to the provisions in the Forestry laws and by-laws in force.

**Data collection:** This is performed with the aid of the following equipment:

- a vehicle for field visits;
- a map of the area where activities are observed;
- a dictaphone and a notepad for interviews;
- a digital camera for taking pictures;
- a GPS for identifying geographical coordinates allowing to spot the exact location of violation and also necessary for mapping;
- a pair of boots, a safety helmet, a vest for body protection;
- measuring tape to determine the diameter of the log;
- A Thuraya phone for communication in the forest

**Drafting of the report:** The draft presents, in a summarized manner, the events, analyses, conclusions and recommendations.

**Report validation:** The report is submitted for validation by a review committee of the Ministry prior to dissemination.

**Strengths and weaknesses of the conventional models**

The conventional models have advantages and disadvantages:

**Strengths**

The advantages of the IO are notably linked to its formal and contractual status with the administration. Its contract gives it the right to access information other than that available to the public. It receives copies in a timely manner of all the memoranda and other information concerning the forest law enforcement missions of the Ministry of the Environment and Forests, and on the litigation related to logging. Moreover, it contributes to improving law enforcement operations by the competent services of the Ministry in charge of Forests and Fauna. The enforcement observations are rapidly taken into account by the
The involvement of actors in these processes, transparency, specifications, the use of forest revenue, poaching, the work carried out by the IO, the mining sector and the management of the public investment budget.

**Methodology and tools**

The methodology of the IO-CSC is based on information and awareness-raising, capacity building (training and equipment) of riparian forest communities, monitoring by the communities and the verification of relevant cases highlighted by FODER.

**Methodology**

The methodology is based on:

- **Information and awareness raising:** The method consists in identifying which information is required, collecting it and then disseminating it to riparian forest areas.
- **Capacity building (training and equipment):** This concerns training members of the riparian forest communities (Community Forest Monitors, CFMs) or communities living in these forests on independent techniques for monitoring forestry activities such as competent use of tools of data collection (GPS, digital camera, maps, data collection cards, etc.) and providing them with the necessary equipment to carry out this task effectively.

**The action (monitoring visits, assistance and verification):** Trained and equipped, the Community Forest Monitors (CFMs), who are in constant contact with the forest, easily carry out forest visits to observe the forest logging activities and to collect data on potentially illegal activities. Each CFM has the mandate to transfer acquired knowledge within his or her community. The data is recorded on a data collection card. Following the recording and counting of the cards, a field mission is carried out by FODER to assist the community, verify the truth of the information and prepare
A forest community monitor measures the diameter of a log in the east region.

**Analysis:** The information and data collected (GPS coordinates, photos, measures of the diameters of logs or stumps, interviews or videos) are cross-checked with the observations made on the field during missions. This analysis is important for the reliability of the information and the credibility of the IO-CSC.

**Networking-lobbying:** This method consists in using networking to promote the role of the local and native communities within the structures in charge of VPA-FLEGT implementation.

**Tools**

Several tools are provided for obtaining information, data collection and analysis.

**Information search:** Documentation on logging (information meeting report, allocation order and logging title, statement of boundaries, annual logging license, annual operating permits, report on forest law enforcement missions and previous observations) and on the regulations in force.

**Data collection:** Most of the equipment used is the same of that of the conventional models:

- a vehicle for field visits;
- a map of the area where activities that can be observed by all;
- a dictaphone and a notepad for interviews;
- a digital camera for taking pictures;
- a GPS for identifying geographical coordinates allowing to spot the exact location of the infractions and also necessary for mapping;
- equipment for protection, consisting in a pair of boots, a safety helmet, a vest;
- measuring tape to determine the diameter of the log;
- a pair of batteries each for the digital camera and the GPS;
- a machete for opening paths through the forest;
- data collection cards.

**The analysis:** All the information and data collected are analyzed.

**Constraints and challenges**

The IO-CSC faces a number of constraints and challenges, notably those linked to access of information. The official information is difficult to obtain despite the provisions of VPA-FLEGT Annex VII, which provides a list of all the information to be made public. Delays were observed in the transmission of data collection cards due to the lack of a functioning postal service at the local level, loss by intermediaries and the lack or poor performance of IT in the forest areas. The communities can report on alleged illegal activities to the nearest services of the Ministry of Forests and keep the cards until a FODER team arrives; this makes it possible to mitigate the delay in the transmission due to the loss of data collection cards by the CFM. Moreover, the lack of formal recognition of the IO-CSC by the state and international actors as a tool contributing to monitoring logging leads the administration to react belatedly after having received the report. The low number of monitoring-verification missions is, above all, linked to limited human resources.

**Achievements of the Independent Observation by civil Society and communities**

There are two types of IO-CSC achievements: The competent use of the tools of independent monitoring of the forest activities by the CFM (near the forest) is an undeniable achievement of the IO-CSC and the CFMs contributed to increasing the number of reports on cases of forest infractions.
Lessons learned from the current experience of the Independent Observation by civil society and communities

Current experience of independent monitoring by civil society and the communities allow to draw lessons learned. Information, awareness raising, ethics and cooperation (between the administrations, and between the MINFOF and the other actors) in the fight against illegal logging is necessary. These concepts involve transparency and to some extent allow to fight against corruption. Therefore, there must be a connection between respect for ethics and the effectiveness of forest law enforcement and the combination of the preventive approaches (transparency and integrity) and repressive approaches (infraction reports and forest law enforcement). Sources of reliable information in the detection and suppression of forest infractions is therefore important.

Insecurity in the forest also points to the need to introduce risk analysis techniques in the detection of the paths of illegality in forestry. This implies not only the recognition by the populations on the role of the CFM, which contributes to the strengthening of their mandate, but also the awareness and the involvement of other levels of government, the police and defense forces in the fight against the increase in illegal logging and illegal timber trade.

The use of press conferences and national and local media as lobbying tools also allows to fight against the increase of infractions in the forest sector.

Conclusion: Perspectives and development paths

To address the constraints and challenges faced by the IO-CSC and thus strengthen objectivity, credibility and sustainability, the following recommendations are made:

- Increased collaboration between the structures in charge of forest law enforcement and monitoring of logging operations, the official independent observer (Agreco-CEW in Cameroon) and civil society could improve the information and verification of infraction reporting from third parties. This approach could also significantly improve the planning of monitoring missions.
- The transfer of knowledge and capacities within the same community and between members of two neighboring communities is necessary for the sustainability of community action.
- The setting-up of a hot-line allows to constantly communicate on the monitoring process.
- The creation of a simple and accessible online database allows for the direct transmission of information on illegal forest activities to the BNC, IO, the Commission Nationale de lutte contre la Corruption (CONAC, National Anti-Corruption Commission) and civil society.
- An increase in the frequency of monitoring-verification visits (i.e. a strong presence on the field) is also necessary for the continued improvement in the quality of infraction reports and the effectiveness of external monitoring.
- The establishment of an independent monitor at the regional and departmental level, and a forest integrity pact could significantly contribute to reducing corruption and improving the fight against illegality in the forest sector.
- The use of Thuraya phone for communication in the forest could allow to monitor the CFMs in real time when they are faced with a case of illegality.
6.2 Why aren't governments more open?
Civil society oversight tools to improve transparency and accountability in the forest sector

David YOUNG1
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Abstract

Transparent access to information and decision-making are both pre-requisites for accountability; at the same time, inequitable access to information undermines many efforts to improve governance. The Voluntary Partnership Agreement (VPA) negotiations have broken new ground in bringing consultative and inclusive. These binding commitments in transparency and the rule of law now need to be implemented if the credibility of the VPA process is to be maintained. Tools and approaches for an independent but recognized role for civil society in the checks and balances that make any system of accountability function have been developed in recent years, and this paper documents some examples: civil-society initiated Independent Forest Monitoring in Liberia and Cameroon, as well as VPA transparency assessments in these countries and in Ghana. It concludes that Agreements have missed opportunities to clarify and strengthen the role of civil society oversight, but that alongside the formal VPA tests there are good initiatives that need formal recognition.

Transparency, Accountability and Governance

The contribution transparency makes to governance has been recognized for at least 250 years, since the writings of French revolutionaries. The sixteen century political philosopher Rousseau described how democratic governments obtain their legitimacy through a social contract, whereby citizens delegate decision-making powers to governments in return for decisions in the common interest. We are all familiar with the consequences of decision-makers making misguided or self-serving decisions against the interests of unknowing citizens. We have all observed the inclination towards secrecy that provides a protection against being accused of making mistakes, and allows insiders to exchange favourable policies for personal gain.

Since the 1980s, the concept of “good governance” has been adopted within business and subsequently in development thinking, and a growing body of literature describes the contribution transparency makes to improving the efficiency of public policy making. UK development programming from 2006 placed a major emphasis on “the demand side of good governance” and the UK Department for International Development (DFID) wrote extensively about a Capability, Accountability and Responsiveness framework, stating “…what makes the biggest difference to the quality of governance is active involvement by citizens…it’s the only thing that can in the long run transform the quality of decision making in developing countries and the effectiveness of states.”

Good governance requires three things: capability, accountability and responsiveness4

- State Capability = the ability and authority of leaders, governments and public organizations to get things done
- Accountability = the ability of citizens to hold leaders, governments and public organizations to account
- Responsiveness = how leaders, governments and public organizations actually behave in responding to the needs and rights of citizens

The Making the Forest Sector Transparent programme implemented by Global Witness and seven national-level NGOs in forest-rich developing countries has applied this thinking to the forest sector. The first major publication from the programme, the 2009 Annual Transparency Report5, presented a clear theoretical analysis of the role of transparency in a sector notorious for its opaque dealings and elite capture. Making the Forest Sector Transparent built on Global Witness’s pioneering work in Independent Forest Monitoring as a tool for civil society oversight, which sought to present objective, evidence-based descriptions of systemic weaknesses in forest

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5 DFID. 2006. Governance, Development and Democratic Politics, DFID’s work in building more effective states, Work for the Poor, DFID White Paper, UK
governance, through “the use of an independent third party that, by agreement with state authorities, provides an assessment of legal compliance, and observation of and guidance on official forest law enforcement systems.”

Most recently, in this continuum of increasing momentum for transparency, the international Open Government Partnership (OGP) has sought to benchmark government transparency, and provide clear pathways for improvement across a range of sectors. In April 2012, 73 states met in Brasilia to announce their own OGP commitments and sign a declaration of principles. The governments of Ghana and Liberia (but not yet Cameroon) have endorsed the OGP declaration. The Government of Ghana “has in principle accepted to join” OGP and the President of Liberia wrote to “declare my Country’s commitment to the five common expectations of [the OGP] and submit the Republic of Liberia for membership of this partnership.” Although neither country was represented at the first annual OGP meeting in Brasilia, both are reportedly in the process of developing commitments.

Open Government Declaration

- To increase the availability of information about governmental activities
- To support civic participation
- To implement the highest standards of professional integrity throughout our administrations
- To increase access to new technologies for openness and accountability
- To report publicly, lead by example, and espouse these principles.

These initiatives have not been constructed under a Forest Law Enforcement, Governance and trade (FLEGT) framework, but clearly pursue the same objectives. The original FLEGT Briefing Notes expressed the intent to “encourage transparency through the provision of accurate information on forest ownership, condition and legislation” and that “the involvement of civil society is important for transparency and to ensure that enforcement actions do not have adverse impacts on vulnerable communities.” Subsequent revisions of this Briefing Note included “improved transparency and information exchange between producing and consuming countries, including support for independent forest monitoring.”

All VPA transparency assessments in three countries

NGOs from Cameroon (Centre pour l’Environnement et le Développement; CED), Ghana (Centre for Indigenous Knowledge and Organisational Development; CIKOD) and Liberia (Sustainable Development Institute; SDI) have participated in the Making the Forest Sector Transparent programme since 2009 (together with other NGOs from the Democratic Republic of Congo, Ecuador, Guatemala and Peru) and have so far produced annual assessments of transparency in the forest sector for three years. In all seven countries, the assessments are based on a range of indicators on key aspects of forest sector governance, covering both Framework indicators, which relate to legal documents, procedures or institutional set-ups that govern the forest sector, and information indicators, which relate to data and documents on forest activities (such as permit allocation, production, trade and management). The assessments use a simple traffic-light system of “yes”, “partial”, or “no” to show whether each criterion is met or not.

References:

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The emerging picture is one of positive, but very slow improvement in the quality and quantity of information about the forest sector provided by the state. However, the three countries have made binding commitments to improve transparency in their VPA text, so civil society in the respective countries have recently produced a specific interpretation of their report card assessments to match the VPA commitments\(^\text{17}\). Availability of information is a necessary precursor to improvements in accountability and governance, and given that VPAs have been a central part of the forest sector narrative in these countries for many years, it should be possible to see a step change in the availability of information as a simple step governments can make to demonstrate commitment to FLEGT before progressing to more complex technical and political aspects of VPA implementation.

**What do the VPAs say about public information?**

- **The Liberia VPA**, Annex IX on Public Information and Transparency Measures, describes 50 types of documents and data in six categories that will be routinely published in web sites, forums, meetings, newsletters and local media, and 21 other types to be made available on request under the Freedom of Information (FOI) Act.

- **The Cameroon VPA**, in Annex VII on Published Information, lists 75 types of data and reports in ten categories to be published to enable monitoring and strengthen forest sector governance. It also commits the parties to make all information accessible when requested by another stakeholder, and it specifies the methods and channels for publishing information, including official reports, web sites, multi-stakeholder forums, public meetings and local media.

- **In the Ghana VPA**, there is no specific annex on public information, but transparency is highlighted in the implementation of the LAS which lists various documents and data as outputs.

Assessments were carried out between May and June 2012 by reviewing web sites and other information sources of relevant authorities and organizations, and contacting key informants. CED conducted the assessment in Cameroon, having piloted the methodology one year earlier\(^\text{18}\). The assessment was carried out by SDI in Liberia, where data “to be made available on request” were not assessed, since the measures to support the FOI requests barely exist at present. In Ghana, the Rural Environmental Care Association (RECA), working on behalf of Forest Watch Ghana, needed first to create the list of commitments to assess. It identified – and then assessed – 68 types of data and reports in ten categories that should be made publicly available to support confidence and ensure accountability.

**Finding from the VPA transparency assessments**

The pie charts illustrate the split of “traffic lights” indicators to show whether VPA information exists and is available for each of the three countries.

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Although the context and the status of VPA implementation differs in each country, most of the applicable Framework documents are available (the three pie charts to the left are mostly green). In Cameroon, some implementing regulations covering aspects of the forest law are missing, and in Liberia some important laws including the FOI Act itself have not been published on government web sites.

In contrast, the assessments reveal major deficiencies in information indicators in each of the countries (the three pie charts to the right have significant red and very little green).

- In Cameroon, public information is lacking on “small title” permits, production, pre-emptive rights, processing and exports. Although some forest management documents are public, access to key ones such as annual operating plans, social agreement terms and conditions and environmental impact assessments is limited. There are also gaps in information on payment of taxes and ﬁnes.
- In Ghana, little information is available on official websites, and the decision to provide information following a written request depends on who is requesting it, who they know in the authority, how they prepare the request, and what purpose they state for wanting the information.
- In Liberia, Private Use Permits, agricultural concession contract agreements and social agreements between communities and permit holders are not routinely published. With regard to forest law enforcement, the evidence suggests that information does not exist on what penalties are imposed and what volumes of timber are confiscated and/or sold.

**What do the VPA transparency assessments tell us?**

Across all three countries, the gap assessments have shown that current forest sector information dissemination is failing to meet good governance commitments. Not only are local communities often unable to access key data and documents, there are also signs that authorities are reluctant to provide timely information, as they have delayed providing details while continuing to use discretionary powers to allocate permits that risk undermining the VPAs.

**Liberia: Civil society-led monitoring**

**Overview**

In May 2011, representatives of the Government of Liberia and the EU initialled the VPA. This marked the culmination of about two years of negotiation that involved the participation of representatives from the timber industry, civil society and local communities in Liberia. Civil society played an active role bringing community participants to national discussions and supporting community level platforms to increase awareness and solicit community inputs into the discussions. With the goal of supporting the successful implementation of the VPA, civil society sought to secure formal recognition and support within the context of the agreement for Liberian civil society monitoring of commercial activities in the forestry sector. Liberia’s Forestry Regulation 108-07 establishing a Chain of Custody system provide for monitoring of forestry activities by civil society, local communities and independent third parties, and NGOs sought to ensure that this right was recognized and incorporated into the text of the VPA. As a result, the final text of the VPA includes various references to civil society monitoring, for example, “other stakeholders including civil society will monitor implementation of the VPA and, in so doing, contribute to effective implementation of the LAS.” Regulation 108-07 also envisaged a “move over time toward a formal system of Independent Forest Monitoring.”

The Liberian civil society monitoring programme started in March 2012, with the goal of actually improving forest governance, thus going beyond merely curtailling illegal logging. On the one hand it is about citizens, especially civil society and communities exercising their rights to know and on the other hand it is about gathering information to support and inform their rights to participate in forest governance, and strengthen their advocacy for improvements in governance.

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What is it?

The civil society monitoring programme – still in its early days – involves: (1) supporting law enforcement by investigating, documenting and reporting illegal logging; (2) ensuring the rights of communities are respected by monitoring logging companies' compliance with social obligations enshrined in the law, regulations and Social Agreements with communities; and (3) monitoring improvements in the overall wellbeing of communities by tracking benefit flow to communities where logging takes place. The programme is a collaborative effort and brings together monitors selected from four Liberian NGOs and is hosted by the fifth organization, SDI.

The approach aims to ensure that the implementation of the VPA contributes to equitable development and benefit sharing from the exploitation of forest resources, and improves community level governance with specific focus on how benefits including revenues from forest use are shared at the local level. The overarching aim is to ensure that real changes in the wellbeing of forest communities are systematically monitored – mostly from the point of view of forest peoples themselves.

How does it work?

The programme is designed to pursue two strands of monitoring. The first strand investigates issues and reports alleging illegal logging as they emerge. This may involve unannounced field investigations in regions where logging is concentrated or rapid field missions to verify reports of illegal activities. The reports of these investigations are then formally presented to the Independent Auditor and the JIC for further investigation. Unlike these two agencies, which only function periodically, civil society monitoring can conduct real-time investigations that serve as early warning to urge the appropriate authorities to act in a timely manner.

The second strand involves an annual “social audit” against a specific set of indicators to systematically document and report improvements or lack of improvements in forest governance. This builds on the Making the Forest Sector Transparent programme; SDI has developed a tool to monitor some broad indicators and specific sub-indicators. The tool tracks the following: (1) how much money a community entitled to a share of logging revenue has actually received; (2) what projects the community spent their share of the revenue on; and (3) how decisions about what project to spend the money on were derived. The sub-indicators are designed to explore each of these in more depth.

Results?

The first assessments, under the second strand, targeted ten communities across four counties where active logging activities are ongoing. The assessments interviewed key informants including members of community forestry committees and local government officials, and employed structured interviews to gather data. The data is being analyzed and the first report of the monitoring programme will be published in October 2012.

What next?

The first strand, that of monitoring forest law enforcement, has yet to complete its first report, and the social audits are helping to train and consolidate the new team. Once produced, the reports of the monitoring programme are expected to serve different but interlinked purposes: informing civil society advocacy on forestry issues, tracking action (or inaction) on reported infractions, and contributing to fulfilling citizens’ right to know. Providing information to the public on activities in the forestry sector will embolden civil society and communities to challenge logging companies and duty bearers when they act against the interests and rights of other stakeholders in the sector. The social audits also allow the team to test data gathering using a standard format. It is expected that repeated iterations will allow for comparison over a period of time thereby providing evidence of how the situation is changing.

Recommendations for improvement

Those involved recognize that for the civil society monitoring programme to yield the desired results, it will have to quickly evolve into a professional and credible pilot that the Government of Liberia and the EU, as well as other stakeholders, take seriously. Ensuring that the program performs is critical to its medium and long-term sustainability. To achieve this, the following recommendations are proffered:
The civil society monitoring team and wider Liberian civil society should seek active partnerships with international NGOs to benefit from low-cost high value skill transfers to those involved in field work.

The Forest Development Authority, and other relevant government agencies, should formalize the relationship with the monitoring team (through Memoranda of Understanding or similar), so that (a) the team is not hindered or obstructed in carrying out field activities, and (b) the reports are officially received, acknowledged and acted upon.

The civil society monitoring team should seek to work constructively with private sector actors that demonstrate openness and willingness to engage while ensuring that the credibility of the initiative is not compromised. This could serve as an incentive for logging companies to strive to do perform better and thereby reduce their negative impacts on communities and the environment.

Beyond the civil society monitoring team, civil society organizations operating in different parts of the country need to integrate data gathering for the social audit into their own work programs. This will significantly keep the cost of the program low and therefore sustainable. This should be piloted with a rigorous quality control checks to ensure the veracity of data that is included in the analysis.

Cameroon: Community-based Forest Monitoring

The VPA between Europe and Cameroon was initialled in May 2009, signed in October 2010 and ratified in August 2011. In Cameroon, the Ministry of Forests and Wildlife is the main entity responsible for forest management. This responsibility includes conducting inspections and controls to ensure compliance with the laws concerning logging. This also includes the opportunity to conduct effective inspections and levy fines and penalties against offenders of the forest law. In contrast to the Liberia VPA, there is little mention in the text of civil society-led monitoring, yet Cameroon has had an officially recognized Independent Observer for forest operations since 2002. There is limited recognition in the VPA text that this function will continue alongside the standard VPA Independent Auditor.

Cameroonian civil society believes that a key reason that the forest sector remains poorly administered is because of the lack of qualified personnel in the rural areas that host logging operations and because of the lack of equipment necessary to travel to illegal logging sites and adequately document illegal operations. In response, in 2010, NGOs initiated local monitoring by community members as a contribution to improving the efficiency of forest administration. This consolidates over ten years of informal cooperation between the Independent Observer and community informants, and is lead by Cameroonian NGOs, whereas the Independent Observer has to date always been lead by an expatriate organization.

What is it?

Local forest monitoring recognizes the contribution local forest communities can make in the oversight of activities conducted on their land. The method is based on the presupposition that communities, while exercising their access rights, travel through the forest daily. These communities are thus better informed than anyone else about ongoing activities in the forest and are capable, with minimal training, to collect vital information to help fight illegal logging.

How does it work?

CED’s programme is one of five implemented by different local NGOs that assists communities in monitoring the forests that surround them. The CED programme has three components:

- Selection and training of participating communities. Community members come to CED to file complaints (or to other organizations that pass the information to CED) or are selected in zones where CED investigators previously uncovered the existence of illegal logging. In both scenarios, the risk of large-scale illegal operations is a key impetus for forest monitoring. Training provided by CED aims to give communities and individuals basic knowledge on forest legislation, with an emphasis on logging licenses and regulations that must be respected by logging operators. The training also helps to identify warning signs that illegal logging is taking place.
- Communication channels and a verification mechanism. Community monitors are able to directly transmit information to CED, usually by cell phone in coverage areas (this can involve travelling long distances to access the cell network). Their observation activities are conducted on a voluntary basis, but communication costs are covered by the CED programme. After having
received a “denouncement”, CED investigators organize a verification mission. A site visit is conducted and if an infraction is confirmed, proof is collected: GPS points for mapping, pictures and sometimes video footage. A report is subsequently completed. For example, in the first three months of 2011, local observation allowed the documentation of 15 cases of illegal logging in just two of the dozen Departments in Cameroon where most logging takes place. The cases involved large companies as well as small companies and where associated with forest authorities at the local or national level.

• How to use the information? The use of data collected depends on the type of infraction and the identity of the offender. In the past, information was forwarded to the official Independent Observer, ultimately for an official response by the government. Under a functioning LAS, reports are expected to be given to the Independent Auditor and potentially, directly to the JIC.

Results?

The decision to support local communities and individuals is improving the cost-effectiveness of the Independent Observer, and with this, the probability that official field visits confirms and documents illegal activities is even greater. At the same time, the Independent Observer is bound by official protocols and an “administrative machine” that slows it down. This inefficiency in follow-up contrasts with the speed at which information and proof of illegal logging is collected. When the Ministry of Forests decides to organize an inspection mission, the rate at which illegal operations is taking place is often higher than at time the infraction is initially reported. At times, illegal operations have ceased because everything of value has been taken.

The involvement of numerous communities reduces the risk that monitoring is captured by this bureaucracy and means that information from communities is rendered public more often and more quickly than in the case of the Independent Observer. The quantity of reports should increase further as the community-led programmes expand to Cameroon’s entire forest zone – not to mention the possibility of covering other natural resource operations such as agricultural plantations, mining and poaching.

What next?

Compared to previous work by community monitors, the VPA provides opportunities to cover other aspects, including, inter alia, using some elements of the VPA legality grid as a basis for monitoring the compliance of loggers with the laws, monitoring the use of the portion of logging taxes dedicated to local development, monitoring of the compliance of logging companies with social commitments (in the cahiers de charge and in the management plans) and compliance with certification requirements. The skills developed at a community level can moreover be extended to other sectors, and CED has already involved community monitors in intelligence gathering on poaching of large mammals and the illegal trade of wildlife products. The capacity for community monitors to understand and detect infractions to the forestry law has been important for building their self-esteem. The next challenge will be for the government to formally incorporate local monitors in the institutional framework for crime detection and repression.

Recommendations

Local/community monitoring of forest activities should be formally recognized as part of the institutional design for controlling forest actors. Four major steps are needed to achieve this goal:

• Provide training to local monitors, to ensure their effectiveness in the issues monitored.
• Incorporate into planned revisions of the law a clear role for community monitors in intelligence gathering that specifies the nature and extent of the protection they are entitled to in the course of carrying out these activities.
• Incorporate into the revised law incentives to communities or community members for their involvement in these tasks that are carefully calibrated to recompense them for their contribution, without encouraging biased or false denouncements, by linking them for instance to the results of any formal investigation made on the grounds of intelligence gathered by local monitors.
• Incorporate the role of community members in the design of VPA implementation, specifically in independent monitoring, covering all aspects of opportunities provided by VPAs, such as those listed in the previous section.
Conclusions

What do these examples show us?

The three case studies presented here clearly show how civil society can play a constructive role in improving the quality and quantity of information on the forest sector across a range of issues, from basic information as listed in the VPA commitments to transparency, to law enforcement through Cameroon’s monitoring, to broader development objectives as in Liberia’s social audits.

The VPA transparency assessments have established a baseline for monitoring each state’s progress in complying with their VPA. Key recommendations from the assessments are that designated forest authority units need to be made responsible for managing information, and that appropriate channels and methods of information dissemination are used. NGOs also need to consider their role in collating, interpreting and disseminating complex information without replacing the role of the state.

The VPA is about more than just legal timber. In Liberia, civil society actors value the VPA for its potential contribution to ensuring transparent and participatory decision-making about forests and forest resources, ensuring respect for community rights in forestry, strengthening the rule of law through effective enforcement and ensuring that communities benefit from the commercialization of forest resources including timber. If compliance with the law or implementation of the VPA does not deliver on these broad objectives, then from a civil society standpoint, the VPA will not be deemed a success. In a country that has not experienced an Independent Observer, the monitoring programme is fully independent of the state, but recognized in the VPA text. This recognition needs to be strengthened if the civil society monitors are not obstructed in their work, and their reports are going to make a difference.

Similarly in Cameroon, there is an aspiration for clear legal recognition and formal integration into surveillance mechanisms that verify conformity with the law. Some people believe that communities have no legal mandate to monitor, so that in the case of violent confrontations with illegal loggers, for example, they would not benefit from health care or legal protections. Notwithstanding, communities’ wishes to denounce illegal operations are based upon their perception of a more fundamental right to citizen participation rather than a specific legal mandate. It is in the interest of communities to survey “their” forest, as illegal logging deprives them of the resources they depend on and reduces revenue the community would have received if logging were conducted legally.

Importantly, these approaches are tailored to specific local interests, based on a mixture of the rights, entitlements and responsibilities of forest dependent people. These are increasingly codified under the law and other norms, and include, for example, the right to participate in policy and rule making processes as well as in monitoring implementation; the entitlement to a proportion of forest revenues, including land rental fees, royalties on logs harvested; and benefits in cash or in kind through social agreements; and the responsibility to contribute the efficiency and effectiveness of forest administration in a system of “checks and balances.”

These examples show how it can be difficult to determine the mix of overwrought bureaucracy and deliberate efforts to conceal information that results in governments being less open. Whilst improvements to some extent depend on the technical and human resource capacity of forest authorities, too often this is used as an excuse, and inequitable access to information undermines many efforts to improve governance. Where information exists – as shown by the VPA transparency assessments – it should be published without delay. Where it needs to be collected and acted upon – as with ongoing forest law enforcement and governance monitoring – organized civil society and trained local communities need a respected and legally recognized role.

What is needed next?

There is unmet potential for VPA implementation to provide much greater support to the complementary roles of NGOs and government if the benefits of transparency to forest sector governance are to become a reality. In meeting this potential, the following actions are needed:

- The VPA transparency assessments need to be conducted regularly, as a formal submission to the periodic JIC meetings between the EU and each partner country (and, when established, to an Independent Auditor). They should be conducted by an independent, objective third party such as a local
NGO or research institute. The official annual JIC reports should respond to the findings of each assessment. The methodology should be adopted by all VPA countries and adapted as appropriate.

- Local civil-society led independent monitoring initiatives need to be recognized as legitimate. They are qualitatively different from self-mandated watchdog/campaign work, sometimes referred to as external monitoring, in that to be effective they need a clear relationship with the government for two reasons. First, to provide for unhindered access to observe permit allocation, logging operations, processing and benefit sharing; second, to ensure the reports are officially accepted, adopted and acted upon by the relevant authorities as well as civil society.

- The terminology of independent monitoring needs to be clarified. There is minimal formal acknowledgement of this role in the VPA texts, and the terms “auditor”, “monitor” and “third party” are at times used inconsistently by NGOs and governments. This paper proposes three distinct roles: Independent Auditor (under a VPA), independent monitoring (l’observation indépendant in French) and self-mandated watchdog/campaign activities (referred to by others as external monitoring).

- Those using any of the three tools mentioned in this paper — VPA transparency assessments, civil-society led independent monitoring and social audits — would all benefit from improved professionalism in information management, research and investigative skills. Such capacity building of local actors, and of the national-level NGOs that mentor and support them, is critical to their performance and thus their sustainability. Furthermore, there is no justifiable reason why these activities should await completion of a VPA before being implemented. As seen in Cameroon over the last decade, they have the potential to make a valuable contribution to forest governance irrespective of a VPA.

- Resources are required to ensure these activities become a routine part of the checks and balances that will ensure credibility and a role for civil society in the implementation of each VPA. Ultimately, for the commercial logging sector to become viable and sustainable, the revenues raised should ensure legality (often the tax regimes are not up-to-date, or not implemented according to the law, denying the state and communities the benefits expected). During the development phase of implementing each VPA, development assistance may be required to establish these components.

### 6.3 Assessment and perspectives on the independent monitoring of forests within the context of the FLEGT Voluntary Partnership Agreement (VPA) in the Republic of the Congo

Alfred NKODIA

**Abstract**

The Congo basin in Central Africa is home to the world’s second largest continuous block of tropical rainforest after the Amazon. In the Republic of the Congo, the forest is the second most important natural resource and contributes around 5 percent of the gross domestic product (GDP). Nevertheless, although improvements have been recorded, the forest sector in the country still faces serious problems in forest governance. By signing the Voluntary Partnership Agreement (VPA) with the European Union, the Republic of the Congo reaffirmed its commitment to promote forest management involving all stakeholders. It is within this framework that civil society aims to carry out the Independent Monitoring of Forest Law Enforcement and Governance (IM-FLEG) for the Timber Legality Verification System. What are the lessons and difficulties recorded by the IM-FLEG from 2008 to 2013? What form could IM-FLEG take to be credible?

**Introduction**

The Congo basin1 in Central Africa is home to the world’s second largest continuous block of tropical rainforest after the Amazon. In the Republic of the Congo, the forest is the second most important natural resource and contributes around 5 percent of the gross domestic product (GDP). The revenue from national forest sector amounts to around €250 million per year. Forestry production generates roughly 7 400 direct and 14 800 indirect jobs.2 The European Union (EU) is one of the main markets for exporting forest products. Since 2000, with the adoption of the Forest Code and its subsequent laws, the Republic of the Congo has committed to promoting multi-stakeholder management of its forests through the collaboration and participation of all actors concerned. Furthermore, the Republic can benefit from the knowledge and experience of the EU’s support to the natural resources sector.3

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1 e-mail: alfrednkodia@yahoo.fr
2 Including Cameroon, the Republic of the Congo, the Democratic Republic of the Congo, Central African Republic, Gabon and Equatorial Guinea.
civil society in the management of developed forest concessions and protected areas. The signing on 17 May 2010 of the Voluntary Partnership Agreement (VPA) with the EU clarified and expanded this involvement. Nevertheless, despite the improvements observed, the forestry sector in the Republic of the Congo still faces governance problems. These problems are characterized by, inter alia, an increase in illegal logging and trade, a lack of efficient procedures for granting titles and licences of logging and/or forest law enforcement, poor redistribution of income from logging, penalties that are neither sufficiently severe nor dissuasive and low level of enforcement.

It is in this context of promoting good governance and transparency of forest resources management that IM-FLEG has been operating since 2006. This activity was implemented as part of a project executed in two phases (phase one: December 2007 – September 2010; phase two: December 2010 – June 2013) with the financial support of several donors including the EU, the United Kingdom Department for International Development (DFID), the World Bank, the Netherlands International Union for Conservation of Nature (IUCN); a third phase is being prepared. Initially implemented by two international non-governmental organizations (NGOs), Resource Extraction Monitoring (REM) and Forests Monitor (FM), a national civil society organization, Courrèges d’Appui à la Gestion durable des Forêts (CAGDF), was integrated as a partner during the second phase. IM-FLEG played an important role in monitoring the enforcement of forest law and with civil society during the negotiation phase of the Agreement.

In this context, civil society, grouped together within the platform for the sustainable management of forests, selected the implementation of independent forest monitoring as an instrument for its effective involvement in monitoring the implementation of the Agreement, in general, and of the timber legality verification system, in particular. This is how the mechanism was chosen as one of the sources of information that must be consulted by the independent auditor who will be appointed within the VPA.

But what are the positives aspects observed and lessons learned drawn by the IM-FLEG from 2006 to 2012? What shape should this IM-FLEG take, and who can lead it, considering the important stakes of VPA/FLEGT, in order to provide more credibility to civil society’s action? This viewpoint, both prospective and retrospective, is the essence of this article, which is might also serve as a model that can be capitalized on and improved by the other countries involved, or countries about to commit themselves to this process.

Assessment of IM-FLEG in the Republic of the Congo

From 2006 to 2012, IM-FLEG achieved several positive outcomes but has also faced several problems. As it would be difficult to list all of them in this article, the most important ones shall be presented here.

Before reviewing them, it should be recalled that the achievement of these outcomes and the recognized credibility were made possible by a certain number of favourable provisions at the national level, which have proved to be real assets in the implementation of the IM-FLEG. These assets include:

- The commitment of the Government of the Republic of the Congo through the Ministry of Forest Economy, which led to a formal invitation by REM and FM to develop IM-FLEG in the country, and which resulted in the signing of a Protocol Agreement between the three initial parties, joined during phase two by CAGDF. This institutional framework allowed IM-FLEG to have access to a large quantity of relevant information from the Ministry of the Forest Economy. A mission order, valid for one year, was regularly issued to IM-FLEG by the Ministry. This document, which formalizes the IM-FLEG activities with third parties, allow it to carry out its activities in the sector for one year without having to request an order each time a mission has to be performed. Similarly, once the IM-FLEG mission report is published, the credibility of these observations cannot be contested. This is because after the report has been submitted to the private and/or governmental bodies, the purpose of the mission, i.e. the final report, prior to its publication, is examined and then validated by the Review Committee, which is a multi-party body composed of representatives of the IM-FLEG, the Forestry Administration, civil society and the donors concerned.

- Financial autonomy with respect to the Republic of the Congo and the private sector, which allowed IM-FLEG to be free from conflicts with third parties, allow it to carry out its activities in the sector for one year without having to request an order each time a mission has to be performed. Similarly, once the IM-FLEG mission report is published, the credibility of these observations cannot be contested. This is because after the report has been submitted to the private and/or governmental bodies, the purpose of the mission, i.e. the final report, prior to its publication, is examined and then validated by the Review Committee, which is a multi-party body composed of representatives of the IM-FLEG, the Forestry Administration, civil society and the donors concerned.

1 In total, the Republic of the Congo has six forest concessions under management plans: Kolwezi, N'Goni and Pods Felix in Sangha, UPA Modulo Enanga, Lopola and Loundoungou Tikoukal in Likouala.

5 Today, the Ministry of Sustainable Development, the Forest Economy and the Environment (MIDDEF).
of interest or influence peddling, and to have a sufficient operational capacity to carry out its missions according to its planning and in total independence. This autonomy is one of the measures of its independence with respect to these two entities.

- The dissemination on the Internet of mission reports, annual reports and other summary notes was a way of reaching the greatest number of people internationally.
- The involvement of the European Commission, through its Delegation, provided IM-FLEG not only with sufficient funds for its activities, but also, as donor and partner of the Republic of the Congo, to use its influence for the smooth implementation of its action plan.
- The signing of the VPA, which affirms the Independent Monitoring of Forests as a link in the timber legality verification system produced in the Republic of the Congo, provided greater credibility of the action taken by the IM-FLEGT in the Republic of the Congo.

**Outcomes obtained**

During these six years of implementing the IM-FLEG project, actions focused on monitoring the enforcement of forestry legislation and governance, and on strengthening the capacities of civil society. It is on this basis that the presentation of the major outcomes achieved will focus on three targets, namely, civil society, government administration and the private sector (e.g. forest companies).

**Capacity building of civil society based on training**

Independent monitoring of forests is a fairly recent practice in the Congo Basin in general. The IM-FLEG helped a large number of civil society actors (national and in the sub-region of the Congo Basin) to assimilate the necessary legislation and regulations for monitoring the compliance of activities conducted by the forestry sector under this legislation. Some of the actions carried out for civil society organizations were:

- Two-year training of national experts (certified forestry engineer, the team leader and a lawyer) selected from among the civil society actors, with the aim of ownership and sustainability of independent monitoring. At the end of their training, these experts from the Republic of the Congo created their civil society organization, referred to as the *Cercle d’Appui à la Gestion Durable des Forêts* (CAGDF), which became a partner of REM and FM in the implementation of IM-FLEGT phase two.
- CSOs from nine forestry departments were introduced to forest activities monitoring through the identification and detection of easily identifiable infractions as well as the monitoring of compliance with treaty obligations during three workshops, held in May and June 2009 and August 2010.
- The signing of 17 Departmental CSOs that were set up and working in the country on monitoring the compliance of the socio-economic indicators and verifiers of the legality grid for natural forests of the VPA in the nine Forestry Departments. As a result of the training, with the methodological support of IM-FLEG (CAGDF, FM and REM) and following approval of their survey plan, these CSOs received grants of CFAF 3 to 4 million (€6 097) in order to allow them to take charge of field work with respect to legality indicators. With respect to the collaboration framework that it contributed to setting up between the departmental CSOs and the local representatives of the Forestry Administration, this action allowed to ease the often strained relations between these two categories of actors. Indeed, during the implementation of this activity, the CSOs have finally established formal contact with the local forest and company administrations for specific requests. Certainly, some heads of these administrations were not always cooperative, but in other departments, the CSOs were successful in obtaining the information that they could not have easily accessed before, such as agreements, proof of compliance to certain specifications and access to logging sites, as well as to areas where companies were expected to contribute to the development of the department.
- At the sub-regional level of the Congo Basin, during four workshops, the IM-FLEG strengthened the capacities of around ten CSOs of the Congo Basin involved in the FLEGT process in terms of the use of independent monitoring techniques and the analysis of mechanisms planned for the collaborative and participatory management of the forest concessions in the Congo Basin.

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3. Signing of service contracts between Forests Monitor, CAGDF and local CSOs on 1 September 2011.
Within the framework of monitoring the enforcement of forest legislation and regulations, and measures taken by the Forestry Administration

From 2007 to 2012, IM-FLEGT published 33 reports on the missions carried out in the nine forest departments and the city of Pointe-Noire. This paper summarizes the major observations that IM-FLEGT made at the Forestry Administration level with regard to its capacity to comply with and enforce the provisions of the laws and regulations in force, as well as the measures taken to rectify the situation. The persistence of causes and consequences of the gaps observed can seriously undermine the compliance of the commitments taken as part of the VPA.

Within the framework of monitoring the application of forestry legislation and regulations by the Forestry Administration

IM-FLEGT found that, in general, when monitoring the enforcement of the forestry law, the Forestry Administration is faced with structural problems: a lack of coherence at the national level of the system for punishing infractions and laxity in recovering amounts owed to the public treasury.

From a structural point of view, the departmental administrations severely lack quality human resources and sufficient material and financial resources to carry out regular enforcement on the worksites. In all the Directions Départementales de l’Economie Forestière (DDEF) on average, the number of forestry personnel does not exceed 20 per 1,000 ha, whereas annually, the funds receive almost 35 percent of the allocated budget. The Departmental Director of the Forestry Economy of Pointe-Noire also stated: “Since its opening in 2006, our Directorate has never been paid out of state funds.” The operational rolling stock (e.g., vehicles, motorcycles, outboards) for the use of agents to effectively control large forest areas for which they are responsible are either inadequate or completely amortized. The result of this situation is that four enforcement and inspection missions were not carried out, as had been planned by forestry legislation, resulting therefore in a lack of regular logging monitoring. Similarly, IM-FLEG has observed a poor location of the offices of the brigades that have to monitor forestry activities daily in their area of competence. Indeed, for example, Souanke has observed a poor location of the offices of the brigades that have to monitor forestry activities daily in their area of competence.

In all, 2012, IM-FLEGT observed that during its enforcement and inspect missions of the worksite, DDEF-Niari did not sanction the offending companies for the flagrant offenses such as the poor maintenance of worksite documentation (for the companies Congolaise industrielle des bois du Niari (CIBN), Atelier de la Louessé (ADL) and ACI), corrupt manoeuvres to avoid paying taxes due (CIBN and AIT), cut below the diameter limit (CIBN and ADL) and cutting above the authorized quotas (SOFIL), although IM-FLEGT estimated “a market value of €11,263,347 for the board feet cut above the authorized quotas (illegal felling) for all companies between 2007 and 2010. In Kouilou, the Departmental Directorate of Forest Economy (DDEF-K) underestimated the amounts of some transactions for whose penalty was established under Article 147 of Law 16-2000 on the Forest Code. The Article provides that the offender will be fined with CFAF100,000 per m³ of felled tree and the confiscation of the fraudulently logged timber. This underestimation has caused a loss of PCAF1300,000 and the timber was not confiscated. In the Lékoumou, however, the company Xino-Congo frères (SICOFOR) in the UFE Gouongo felled over 8,067 Okoumé trees, but only 3,018 are taken into account in the PV prepared by the DDEF-Lék. The same applies for this same

(Sangha), Mossendjo (Niari), Ollombo (Plateaux) brigades are so removed from the main roads, sometimes located tens of kilometres away, making it difficult for officers who work there to monitor the circulation of forest products.

In addition to these structural constraints, the Forestry Administration is also faced with a dire problem of punishing infractions. Although the Law defined different penalties to be imposed for offenders, in practice, IM-FLEG noted that the interpretation and subjective enforcement of penalties under the forest code in force seriously undermine the impacts expected by the legislature. The maximum amount of financial sanctions under the laws are very often largely lower than the benefit that a company could gain from certain illegal activities. For example, following legal action taken against Asia Congo Industries (ACI) for a total of CFAF493,640,000 (€752,549) negotiations took place between the Forestry Administration and ACI, resulting in penalties amounting to only CFAF123,410,000 (€188,137), i.e. a 75 percent reduction. Similarly, when comparing the mission reports and records of the Report on Offences (PVs), it emerged that many infractions that would have normally ended up in PVs were never sanctioned. For example, in 2012, IM-FLEGT observed that during its enforcement and inspect missions of the worksite, DDEF-Niari did not sanction the offending companies for the flagrant offenses such as the poor maintenance of worksite documentation (for the companies Congolaise industrielle des bois du Niari (CIBN), Atelier de la Louessé (ADL) and ACI), corrupt manoeuvres to avoid paying taxes due (CIBN and AIT), cut below the diameter limit (CIBN and ADL) and cutting above the authorized quotas (SOFIL), although IM-FLEGT estimated “a market value of €11.263,347 for the board feet cut above the authorized quotas (illegal felling) for all companies between 2007 and 2010. In Kouilou, the Departmental Directorate of Forest Economy (DDEF-K) underestimated the amounts of some transactions for whose penalty was established under Article 147 of Law 16-2000 on the Forest Code. The Article provides that the offender will be fined with CFAF100,000 per m³ of felled tree and the confiscation of the fraudulently logged timber. This underestimation caused a loss of PCAF1,300,000 and the timber was not confiscated. In the Lékoumou, however, the company Xino-Congo frères (SICOFOR) in the UFE Gouongo felled over 8,067 Okoumé trees, but only 3,018 are taken into account in the PV prepared by the DDEF-Lék. The same applies for this same

company, but in the Letilli concession16 where it cut over 7,340 of Okoumé, it was only penalized for 652 trees. “DDEF-Lek explained to IM-FLEG that this considerable decrease in the PV was justified by the fact that the company could replace the Okoumé species with other species that were requested but not logged.”17 The poor implementation, or lack thereof, of enforcement of the forest law is at times linked to the malfunctioning of the system. For example, nothing was done despite the orders given by the Departmental Directorate of Likouala to the CIB company to open up and draw a small boundary forest path that separates the Loundoungou–Toukoulaka Unité Forêt D’Aménagement (UFAs, Forest Management Units) in Likouala and Kabo in the Sangha, as required in the forest regulations under Article 83 of Decree 2002-437. The order was ignored because CIB17 had requested and obtained from the Directeur Général de l’économie forestière (DGEF, General Directorate of Forest Economy) “a special waiver to the application of the regulatory proviso relating to the opening of borders between forest concessions granted by taking into consideration the development of logging in its neighbouring concessions”.18

The poor level of tax recovery and trade regularly documented by IM-FLEG is also characteristic of the weakness of the penalties applied to the companies indebted to the State. In 2011, IM-FLEG revealed that EUR 1,991,368 of taxes and transactions had not yet recovered by the Forestry Administration,19 while no single forest company was object of any coercive measure. Even the 3 percent increase in tax on a three-month delayed payment is no longer applied.

Within the framework of the compliance to legislation and forest regulations by private companies

Similarly, during these six years of field research IM-FLEG was able to make observations on compliance by the companies with forest legislation. The major observations made by IM-FLEG and brought to the attention of the Forestry Administration fall into three categories: fraudulent action, illegal logging and poor maintenance of worksite record:

- fraudulent action taken to avoid paying the sale price of the wood and taxes due, which consists in falsifying the actual production (underestimation of volumes of timber log; the species declared at a lower tax than the one produced; number of trees declared is lower than actually cut) in order to reduce the value of the tax owed;
- unauthorized logging or illegal felling during which the companies, due to the market and timber availability, will take the initiative to log timber in the non-authorized perimeters or of non-authorized species or logging of species below minimum exploitable diameter.

In 2011, these two infractions were observed in 14 of the 15 concessions visited by IM-FLEG.20

- The poor maintenance of worksite documents and the lack of making on the stumps, abutments and logs regularly observed may be due to the negligence of the officers committed to this task, but may also reflect the willingness of society to cover up the traceability of the timber and manipulate production statistics. In 2011, these two infractions were observed in 11 out of 15 concessions visited by the IM-FLEG.21
- The felling of a higher number of trees than that indicated in the annual cutting authorization consists in logging, for a species or for the whole area, a number higher than the regularly granted quantities. In 2011, this infraction was observed in five out of 15 concessions visited by the IM-FLEG.22

Measures taken by the Forestry Administration and companies with respect to the IM-FLEG observations

The few examples cited above illustrate the thorough work that has been performed by the IM-FLEG and which allowed the Forestry Administration and logging companies to take corrective measures for certain cases. Thus, it has become an important partner for the Forestry Administration in the implementation of the law. According to a high official from the Ministry of Forests, who summed up for the evaluator the general opinion that this department had of IM-FLEG interventions, these interventions:

- allow a rigorous ongoing application of the forest law;
- assist in filling many of the gaps that the Forestry Administration thought...
had already been resolved, allowing to update technical documents and to encourage the forest operators to improve their compliance in the application of the forest law; concretely applying psychological pressure on the forestry actors (forest operators and the Forestry Administration), leading them to then pay more attention to the application of the forest law; encourage an increase in the budget earmarked for the DDEF – it is envisaged to allocate CFAF 1 billion (€1 524 000) for nine DDEFs, i.e. CFAF 100 million (€152 450) for each DDEF, against an average of CFAF 8 million (€12 000) granted in past years.23

- Similarly, following the recommendations formulated by IM-FLEG, after missions carried out in the forest concessions of the Departments of Niari, Kouilou and Likouala, operations were successfully monitored. The six statements made in Likouala resulted in PVs being established by the DDEF. In Niari, out the 36 statements, 12 were confirmed, while in Kouilou, the Forestry Administration “confirmed the IM-FLEG statements”.24 In Niari, in 2011, IM-FLEG deplored the fact that the DDEF calculated the value of damages and the interest concerning the felling in addition to its authorized quotas by multiplying the smallest value of FOB by the total volume illegally felled. This considerably underestimated the market value of the timber and therefore that of the fine. Finally, in 2012, it was observed that, just as IM-FLEG suggested, the value of damages and interests of the above mentioned infraction is now calculated according to species, volume and the FOB value.25 The Forest Administration documents are now well maintained in all the departmental directorates, in response to heavy criticism formulated by IM-FLEG had in this regard. Furthermore, the warning that IM-FLEG had been issuing for some time on the non-compliance of the logs export quota of 15 percent of total production is beginning to have an impact. Indeed, on 10 May 2012, the DGEF suspended export of logs of 13 companies.26

For companies, the results are mixed. Companies where Asians manage the work sites and the companies with capital from the Republic of the Congo, mainly based in the south of the country, are the ones that make the least effort to reduce illicit practices. The main infractions noted above are frequently observed. The Asians argue that they do not read or speak French; it is therefore difficult for them to obey the law. Those from Republic of the Congo argue that they often recruit illiterates. For some, however, the results are satisfying. In 2009, the company Nouvelle TRABEC accumulated infractions, but in 2012, its compliance with the law was acceptable. As regards large companies in the north of the country, such as CIB, IFO and Mokabi SA, given that their concessions are developed and certified, the stakes would be too high not to take into account the IM-FLEG observations.

Weak points and lessons learned

The positive outcomes achieved by IM-FLEG clearly demonstrate its commitment to work independently in overseeing the enforcement of forestry legislation and ensuring good governance. However, this should not hide the problems or shortcomings that IM-FLEG encountered in its implementation:

- The administrative delay has been the biggest handicap of the IM-FLEG. Indeed, according to the different protocol agreements that IM-FLEG has signed with the Ministry in charge of Forests, the latter issues to IM-FLEG the permanent mission order, valid for a year. Then, the Reading Committee examines and validates the report of the IM-FLEG mission and its President, after integrating amendments, gives his/her opinion for publication. These measures, however, despite providing IM-FLEG with legitimacy and credibility, were not applied in the necessary time. For example, for the 2011–2013 phase, the IM-FLEG began in January 2011, but its permanent mission order, a document which is signed by the Minister in order for it to carry out its missions, were not issued until April 2011 and its renewal in late June 2012. Similarly, reports submitted to the Reading Committee between June and July 2012 are not yet validated and thus may not be published, yet the missions took place between April and June. In addition, regarding the mission reports that had been validated by the Reading Committee in April 2012, as of June, the Forestry Administration still had not granted clearance for their publication. These administrative delays are likely to have a negative impact with respect to taking into consideration the comments made by the IM-FLEG related to the timber legality monitoring.

- Poor mobilization of the CSOs in transferring information published by the IM-FLEG. IM-FLEG does not lobby, but when it publishes its reports, useful information can be retrieved by the CSOs to better establish their lobbying
strategy. However, after several capacity-building sessions of CSOs, there is no guarantee of feedback, observations or lessons drawn from IM-FLEG activities. These shortcomings strongly risk weakening the activities of the Independent Forest Monitoring (IFM) if the national CSO, which will lead it, does not receive support from other CSOs. Throughout years of this practice, IM-FLEG did not intensely monitor the compliance of obligations indicated in the particular specifications concerning the contribution of forest companies to the socio-economic development of the departments where they operate. It should be highlighted that this was part of the VPA provisions that the companies should respect in order to be granted the licences. Indeed, during its missions, IM-FLEG often limited itself to request companies for proof of having complied with these obligations. Yet, it did not often occur that companies established a Statement Report on the handing over of a work or a good. The affirmation or denial of the company was sufficient. But IM-FLEG did not attempt to verify the effectiveness of the work or works, and to verify how the beneficiaries assessed them. Most of the missions were focused more on the forest. Due to poor awareness of the Forestry Administration, especially among Asian forestry operators, IM-FLEG missions generated confusion over roles between the two “controllers” But the frequency of missions in these concessions, the explanations and the way that OIFLEG works made it possible to remove these misunderstandings. Independent monitoring is not comfortable for those being controlled, especially if they are not completely in compliance, and this has sometimes caused misunderstandings with certain leaders of the Forestry Administration and company managers, which resulted in a refusal to collaborate. However, these weak points or lessons to be learned from the six years of practice, far from being insurmountable issues, are rather more like a lever for developing appropriate strategies for the next phases, in order to make the IM-FLEG more effective.

Perspectives

Independent Forest Monitoring (IFM) is fundamental to the VPA and to FLEGT more broadly. If it is recognized as such, it is because stakeholders in the implementation of the Agreement were convinced by the quality of the work performed by the IM-FLEG over these years. Moreover, considering the immense work that still needs to be carried out, above all in the context of the effective implementation of the Agreement with respect to the issuance of different authorizations, the presence of an IM-FLEG is as useful as it is fundamental. Had the bottlenecks or the weak points of the previous phases been identified, the activities of this IM-FLEG would have been better channelled.

To date, IM-FLEG has benefitted from the expertise of REM and FM. However, their withdrawal in June 2013 in order to allow the national CSOs to take charge and make the project sustainable burdens the latter with heavy responsibilities in the face the VPA/FLEGT issues. In this case, civil society’s major asset is the local expertise in independent forest monitoring, grouped within the CAGDF. However, although the CAGDF technically has the affirmed competence, it still must fulfil several prerequisites for the effective taking over of the IM-FLEG. Some of these prerequisites are the recognition and support by civil society of the structure that will have to lead this OIFLEG. Indeed, the tension between the various structures on this aspect would considerably weaken the FLEGT action. Also, for example, will the CAGDF, which aspires to lead the IM-FLEG, be responsible for unifying civil society around this action? In this way, it will gain the “legitimacy” from its peers. However, the agreement does not specify the CSO that is capable of leading the IFM, but rather, mentions civil society, which implicitly or explicitly will have to grant a kind of clearance to the leaders of the future action. Given the stakes, the support of civil society is essential, because pressure will be high in the absence of a physical presence of international NGOs.

In addition, the full ownership of this activity by the CSOs – especially those who have already received training in the IM-FLEG and those that will make up the network of independent forest monitors that Congo environnement et développement (CEDEV), a CSO, would like to set up – will allow, without hesitation, the body that will be in charge of IM-FLEG to obtain information coming from civil society, verified, if possible, and transmitted to the bodies in charge of issuing licences. In addition, since observations of the IM-FLEG are required in the legality verification system, notably for the granting of certificates and licences, it would be important to review the current method that validation and dissemination of information is conducted because the method used today, with the Reading Committee and the clearance by the Forestry Administration for the publication of reports, will not be able to respond to the urgency of issuing licenses. Consequently, a formal rapid communication system for
the observations should be established with the bodies responsible for the implementation of the VPA, particularly the Forest Legality and Traceability Unit (CLFT), in order for IM-FLEG to effectively play its warning role for the benefit of the LAS and all stakeholders.

Conclusion

The advent of the VPA gives a new dimension to the involvement of all stakeholders in forest governance (administration, civil society, forest companies, local and native populations). The responsibility of carrying out independent forest monitoring is assigned to national civil society as an instrument for monitoring timber legality, making it an indispensable link in the legality verification system. The Republic of the Congo has had the advantage of having anticipated the VPA by authorizing an IM-FLEG, resulting in, *inter alia*, training of national experts on the issue coming from civil society. Thus, today, REM and FM must hand over the monitoring to national civil society so that the latter will fully play its part in the legality verification system. Through independent forest monitoring, civil society of the Republic of the Congo already has major strengths: experienced operational experts trained by REM and FM, an available logging database, a civil society platform for the sustainable management of forests, grouping around 20 CSOs that are informed on the VPA/FLEGT issues and IM-FLEG. Nevertheless, once the availability of national expertise is determined, it will be important for civil society to build new strategies and strengthen the management mechanisms of this type of activity with respect to the new dimensions that involve the withdrawal of REM and FM and of its role in the monitoring of timber legality, and, consequently, in the issuing of FLEGT licences.
THEME FIVE

COMMUNICATION ON THE FLEGT/VPA PROCESS
Theme Five: Communication on the FLEGT/VPA Process

7

Theme Five: Communication on the FLEGT/VPA Process

7.1 Engaging key stakeholders in West and Central African FLEGT/VPA Processes: IUCN Experiences in promoting China’s engagement

Wale ADELEKE

Abstract

The Forest Law Enforcement, Governance and Trade (FLEGT) process and one of its related implementation instruments – the Voluntary Partnership Agreements (VPAs) – is as the name implies voluntary. It is an agreement between the European Union (EU) on one side and a tropical forest producing country on the other. Although a significant proportion of West and Central African wood goes to EU markets, it also goes to other markets, for example China. There is, therefore, no gain in saying that VPAs will only function if the world’s major trading blocks are involved in the process. China, as a key country in the forest products supply chain, puts considerable emphasis on fighting illegal logging, and is willing to play a strong role in finding global solutions. For this reason, China (as well as other tropical wood consuming countries) is a key stakeholder in FLEGT processes and needs to be convinced and engaged.

Introduction

China is one of the biggest log-importing countries in the world. 35 percent of China’s demand for logs is met through imports from Russia, Papua New Guinea, Southeast Asia and Africa. In recent years, China’s import volumes have grown at a rate of nearly 15 percent. Africa is one of the major suppliers of timber for China, especially tropical timber. The logs imported from Africa make up nearly 10 percent of the total volume of imported logs. Logs, moreover, make up over 90 percent of the timber imported from Africa.

At a conference on Forest Law Enforcement and Governance (FLEGT) co-organized by the EU and China in September, 2007, the two parties reached agreements on a number of actions, including: (i) making a high political commitment to fighting illegal logging; (ii) establishing mechanisms to tackle illegal practices and verify legality; and (iii) exchanging information on trade, certification and other relevant issues. At a follow-up meeting between the European Commissioner for the Environment and the Director of China’s State Forestry Administration (SFA) in April 2008 during the Sino-EU High Level Economic and Trade Dialogue, both sides agreed to establish a coordination mechanism for FLEGT issues, and to cooperate further on forestry issues in Africa, especially in the Congo Basin countries.

It was against this backdrop that China’s SFA welcomed and supported a study tour to West and Central Africa hosted by the International Union for Conservation of Nature (IUCN). Between 24 April and 10 May 2008, eight Chinese forest sector representatives, made up of four senior SFA staff, one staff member of the Ministry of Commerce, and a representative of both the Ministry of Forestry and IUCN, toured Ghana, Gabon and the Democratic Republic of Congo. The study tour was supported by the IUCN project Building Multi-stakeholder Coalitions in Central and West Africa and China for the Negotiation and Implementation of Nationally Defined and Innovative Actions in Support of Forest Law Enforcement Governance and Trade (FLEGT)/Voluntary Partnership Agreements (VPAs) and financed by Britain’s Department for International Development (DFID). Support for the study tour also came from the United Nations’ Directorate General for International Cooperation via another IUCN project, Livelihoods and Landscapes, and from Italy’s Directorate General for Development Cooperation.

The overall intent of the study tour was to engage China, as a major consumer of African forest products, in global discussions on FLEGT. Its specific objectives were:

• To give participants a better understanding of the issues and trends – as well as the policy framework – in forest law enforcement, governance and trade in selected Central and West African countries.
• To strengthen technical support to African forestry development and promote China’s engagement in Africa.
• To contribute to finding ways to guide the activities of Chinese forestry companies, such as educating them on African laws.
• To explore the nature and impacts of Chinese interests in the forest sector in Central and West Africa.
• To explore opportunities for further collaboration in forestry. This included the possibility of bringing ideas to the attention of finance and commerce ministries in both China and Africa for possible development under the Forum on China–Africa Cooperation (FOCAC).
The three countries were chosen for the study tour because they produce large volumes of timber for the Chinese market, they have the potential to do so (for example, the Democratic Republic of Congo and Gabon), or because they have advanced experience with FLEGT/VPA processes (e.g. Ghana). The Ghana leg of the tour was jointly hosted by IUCN Ghana and IUCN Liberia and made up of a four-man Liberian delegation comprising of IUCN’s national FLEGT/VPA facilitator and representatives from government and the private sector.

The tour allowed the Chinese delegation to engage with forest stakeholders from government, civil society and the private sector in each of the host countries. Their discussions involved issues ranging from the trade in timber products to illegal logging, future investment in African countries and the opportunities for cooperation between China and African countries.

Summary of Learning Exchanges

**Ghana**

Ghana launched the VPA negotiation process under the FLEGT framework, both to respond to growing consumer concern in Europe about the legality of timber imports, and to pursue its national goal of transforming the country’s timber industry into an integral element of sustainable forest management (SFM). The VPA process began in 2006 and builds on previous SFM efforts, including Ghana’s 1994 Forest and Wildlife Policy (which made SFM one of its objectives). The Government of Ghana saw concluding a VPA with the EU as an opportunity to for promoting SFM and good governance, improving forest community participation, enhancing transparency and increasing market opportunities.

Ghana banned the export of raw logs in 1994, and its primary export market is the EU. Although China is not a large consumer of Ghanaian timber products as of present, the delegation found that the government of Ghana is very interested in improving its collaboration with China. Ghana’s Forestry Commission (FC) is seeking development assistance from countries such as China for many aspects of forest management, including stock surveys, harvesting and post-harvesting checks, aiding forest fringe communities, and strengthening the chain of custody. Forest plantation development is also a priority for the government, as Ghana’s natural forest estates cannot meet growing domestic demand.

China is willing to offer Ghana support for SFM within its capacity. Various channels exist for Chinese–African cooperation. SFA is also willing to establish inter-institutional relationships with forest departments in African countries and to conduct technical exchanges.

The delegation was surprised to learn that chainsaw processing is illegal in Ghana, as they had apparently not heard of other similar cases. Ghanaian law permits harvesting trees with a chainsaw, but any timber should be transported to a mill for processing. One of the reasons for banning chainsaw processing is its inefficiency. Another is that those involved seldom pay timber fees, depriving the government of an important source of revenue. Ghana, like China, has a permit system for regulating timber harvesting, transport and processing, but chainsaw loggers can easily evade the law. Unfortunately, many forest fringe communities in Ghana have no legal means to access the timber resource, and so engage in or support illegal chainsaw processing for their own livelihood needs.

**Liberia**

It was evidenced during the study tour that the Government of Liberia has established a working group specifically for China. The Chinese delegation was interested to know why this was so. They were informed that the idea of a working group stemmed from the close economic and technical cooperation developing between the two countries. The working group serves to facilitate the effective exchange of information between the two countries.

The Forestry Development Authority (FDA) is seeking technical and financial assistance to carry out its forest management programme. It is looking in particular for international assistance in developing a forest inventory, as the last national inventory was carried out in the 1980s. Liberia also lacks a wood processing industry, so will need sawmills and other machinery, as well as technical training to develop domestic capacity.
Although the FDA raised the issue of cooperation with China's SFA, the delegation indicated that they were not fully prepared to respond because bilateral cooperation was not part of the original terms of reference for the tour. The delegation suggested that FDA initiate correspondence with the SFA on the matter. The delegation was able to respond to the interest of the FDA's Managing Director in learning of the opportunities for non-timber forest products (NTFPs), indicating that the SFA is happy to offer or facilitate the development of such. Furthermore, the SFA will require any Chinese companies who operate in Liberia in the future to comply with Liberian forest laws and regulations, including the requirements of the chain-of-custody system now being established.

Gabon

Gabon is one of China's major timber suppliers in Africa. In comparison with its African counterparts, Gabon exports the largest number of logs to China. The export volumes from Gabon are nearly three times the export volumes of the Republic of Congo, who ranks second after Gabon. China's imported logs from Gabon make up around 45 percent of the total import volumes from Africa. China is also Gabon's major timber exporting country. About 40 percent of Gabon's timber is exported to China.

The study tour confirmed the fact that Chinese, Malaysian and Italian companies are among the newcomers in Gabon's forest sector, which traditionally has been dominated by French and Gabonese interests. As at the time of the tour, Chinese companies held only a small share of the export quota. The delegation gained a better understanding of Chinese operations in Gabon from its meeting and site visit at Hua Jia Industry. Hua Jia was one of the first Chinese forest companies to invest in Gabon, beginning operations in 2001. A subsidiary of the state-owned Zhong Lin Group (China International Forestry Group Corporation), Hua Jia is now involved in every level of the timber business from harvesting to processing and trading.

Hua Jia owns a concession of 400 000 ha, out of a total area of 2 million ha held by Chinese companies in Gabon (roughly 10 million ha have been allocated to industrial concessions and other timber activities in the country). The company produces 50 000–60 000 m³ of logs yearly, most of which is exported to China.

It also produces about 30 000 m³ of sawn-wood and 20 000 m³ of veneers for the European and African markets.

Democratic Republic of Congo

The Democratic Republic of Congo is the most forested country in Central Africa, and hence of major interest to the Chinese. The country's forests cover almost 60 percent of its total land area (some 135 million ha), more than twice the size of France. In August 2002, the government of the Democratic Republic of Congo adopted a new forest code and imposed a moratorium on issuing new concessions – or extending and renewing existing ones – until a legal review of the concession system could be completed. Nevertheless, one-quarter of the country's forests is still locked into concession agreements.

In its discussions with the government, the delegation examined the substance of the new code, specifically its provisions for concessions, exploitable tree species and wood export volumes. Other issues discussed included the potential benefits to local communities from forest exploitation that respects the ecosystem balance, and the economic and environmental implications of the Democratic Republic of Congo's current concession area. Using in part aerial photography, the concession system was calculated to cover 22 million ha, of which 300 000 are closed to harvesting.

In a meeting with senators and parliamentarians, the delegation was given a presentation on the constraints to adopting the forest code, in particular the lack of implementation measures and the slow progress towards ratifying the Central African Forest Commission Treaty (aimed at protecting the forests of the Congo Basin). The politicians expressed a belief that closer cooperation with the Chinese parliament on environmental matters would be beneficial. For its part, the delegation explained the role of China's National People's Congress (similar to a parliament) as well as the Chinese government's efforts to combat deforestation and introduce SFM.

In discussions with key FLEGT-related government bodies, including the General Directorate of Administrative and State Revenues (DGRAD), the Office of Law Enforcement (OCC), and the Office of Customs and Excise (OFIDA), the delegation explored the Democratic Republic of Congo's institutional
framework in greater detail. DGRAD’s main roles are to formulate tax policy for forest resource management, encourage best practices in forest management and combine the development objectives of logging companies with growth of forest revenues. OCC’s roles and functions are to control the quality, quantity, conformity and prices of export goods, exercise technical control over equipment and works and determine the volume, quality and value of timber exports according to Convention of International Trade in Endangered Species (CITES) requirements. OFIDA has two main roles: collecting taxes according to market prices and designing tax schemes for plants and wood. Currently a duty of 6 percent is levied on the free-on-board value of raw timber exports.

The delegation also noted the agreement signed between OCC, OFIDA and the Democratic Republic of Congo’s national CITES management authority to tackle wildlife and timber fraud. In this regard, OCC has an important role to play in tracking timber exports, but capacity building in certification and timber tracing is vital. The need for capacity building in monitoring trade was also flagged to the delegation in an earlier meeting with the General Secretary of the Environment and a director of the Democratic Republic of Congo’s International Trade Office.

Experiences and Lessons Learned

The study tour generated many valuable facts, opinions, ideas and lessons. The SFA’s main issues and lessons learned include:

1. The delegation obtained valuable first-hand accounts of forestry in all of the countries visited, which helped depict the social, economic and governance framework of the forest sector and the structure of the timber industry in each respective country.
2. Important information was obtained about the latest developments in forest policy in these countries, including new legal reforms and international initiatives such as FLEGT and the Congo Basin Forest Partnership.
3. Important partnerships were built which will help advance efforts to promote mutual opportunities in SFM and economic development.
4. The delegation expressed the view that China is interested in developing a mechanism similar to FLEGT to combat imports of illegal wood from Africa. Work is being undertaken to explore this potential.

The IUCN, meanwhile, highlighted the following issues and lessons learned:

1. The tour strengthened ties between China and the countries visited. It was the first visit of its kind to focus on forest sector issues concerning both China and Africa.
2. The exchanges between China and Africa allowed the two sides to discuss and exchange views on, as well as build a basic shared understanding of, SFM.
3. It became clear that different ministries in different countries see SFM differently. It is therefore important for IUCN to facilitate a better understanding of SFM and better communication of forest policies throughout all ministries.
4. The weak capacity of national forest administrations in African countries is a major challenge, which needs to be addressed.
5. The study tour highlighted IUCN’s ability to facilitate multi-stakeholder dialogues and its role in promoting SFM in Africa.
6. IUCN noted that the SFA has a strong interest in economic cooperation with African countries, for example in timber processing and silviculture.
7. Though not necessarily correct, there is a perception among local and international stakeholders that China’s environmental performance is poor, and that it only seeks to exploit Africa’s natural resources. The Chinese government and private sector are in fact sceptical of reports alleging misconduct by Chinese companies overseas. They feel that such reports are biased and inaccurate, and that China in many cases is being singled out because of its competing interests. IUCN could help Chinese companies build their capacity to reach out and communicate with local forest stakeholders to dismantle these misconceptions.
8. The delegation only viewed a selection of African countries during their tour, which may not have provided the Chinese delegation with a complete picture.

FLEGT-related developments after the study tour

The study tour took place over four years ago. There have been a host of positive developments since. Early in 2009, a high-level meeting took place between the European Commission (EC) and the Government of the
People’s Republic of China during the visit of Chinese Prime Minister to the EC. Nine cooperation agreements to foster dialogue on global solutions to economic and financial crisis were signed. The establishment of the EU–China Bilateral Coordination Mechanism (BCM) was one of the nine agreements. Activities already carried out under the agreement include policy dialogues, exchanges of information on relevant activities concerning forest law enforcement and governance, as well as a number of initiatives that aim to contribute to a reduction of illegal logging and associated trade. Some examples include:

a) In September 2010, the EU and China BCM met in Beijing, China to discuss developments on Forest Law Enforcement and Governance. The meeting reached an agreement on the development of joint EU–China activities to be implemented by European Forestry Institute’s (EFI) EU-FLEGT Asia Programme. The first set of agreed activities included those relating to awareness-raising, timber tracking and tracing and timber and green public procurement in China. The establishment of EFI’s EU-FLEGT Asia China Joint Project Office in Beijing facilitates BCM workplan implementation in China.

b) There were also a number of initiatives carried out in the African region with the intention of involving the participation of the Chinese government and the private sector. Among these was the workshop held in March, 2010 by the Commission of Central African Forests (COMIFAC) with the support of the Government of Germany-facilitated Congo Basin Forest Partnerships (CBFP). The workshop took place immediately after the 3rd Race-Wood edition (between European timbers importers and African producers of tropical wood). The participants at this workshop included representatives of national and international forestry companies, international distributors/importers, investment companies and sellers, Chinese manufacturers/producers, Chinese embassies and of the State Forestry Administration (SFA). The Workshop’s objectives was to assist political and private actors in the forest sector to understand the “complementarities” and interdependence between African, European and Chinese policies on promoting legal and responsible wood trade.

c) Also, in March 2012, the EFI’s FLEGT-Asia Regional Programme and the European Timber Trade Federation (ETTF) jointly held a number of FLEGT briefings to raise awareness on the EU-Timber Regulation and FLEGT Action plan. The two organizations also visited Shanghai to attend the annual meeting of the Center for International Forest Products Trade hosted by the State Forestry Administration of China and deliver updates on the EU forest product trade policy and development and challenges of the EU forest product market and industry to some 160 participants from Governments, NGOs, International Organizations, Universities and industry.

Conclusions

The dynamics of the global economy and geopolitics more broadly is changing in fundamental ways, with huge risks and uncertainties for the forestry sector. There is a rapid structural rebalancing of economic power away from the Euro-American belt to Asia-Pacific and emerging markets. This rebalancing of economic power will inevitably affect the geo-political landscape and trade relations. In light of this, China will have an increasing role to play in making FLEGT work in developing countries – especially in Africa. Efforts should be geared to involving and engaging China in related processes and implementation measures.

China has already signed ministerial agreements with over 20 countries around the world to cooperate in forest management. It is believed that China will be interested in signing partnership agreements with individual timber-producing countries in Africa as well to cooperate on forestry issues. So far, South Africa is the only African country with which China has signed such an agreement, but the potential for collaboration on the continent is vast. The SFA shares Ghana’s Forestry Commission’s opinion that the government of a producing country should determine whether or not domestically produced timber is legal, since it holds responsibility for managing its national forest estate. In turn, according to SFA, the key issue is how to help producer country governments improve their forest governance capacities.

On several occasions during the study tour, the delegation expressed its willingness and interest in building cooperation with African countries to
reduce illegal logging and improve forest management. Some of the options to enhance cooperation suggested include inter-institutional exchanges and information-sharing and technical assistance. For their part, the African countries are seeking development assistance for a range of initiatives in the forest sector. It will be important to define a road map for making these initiatives a reality.

7.2 Music, a tool for awareness- and information-raising on FLEGT/VPAs: The example of the “Our Voices Count” CD

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Abstract

The CD “Our Voices Count” consists of 11 tracks, three of which are songs on Forest Law Enforcement, Governance and Trade (FLEGT) and the importance of involving local communities in the process. Eight other tracks were developed so that the local populations could express themselves, with the titles of these tracks representing their communities. The CD continues in the direction of FCTV awareness raising, which uses music as a new awareness-raising tool and for disseminating information. It is not only music for dancing, but also for listening to the messages on forest governance and precisely on Voluntary Partnership Agreements (VPAs) and on FLEGT. The CD is also a tool for advocacy because many messages are sent to the government. There are information, messages and complaints. Over 1 200 copies of this album have been distributed free of charge, and its reproduction is authorized to reach the largest audience possible.

Introduction

Information and awareness-raising are at the base of understanding and implementing any process, programme or project. Grassroots actors are an important link in the chain to be considered in the transmission of information. They are the final addressees who generally determine the success or failure of the initiatives. It is necessary, therefore, to inform them well and to raise awareness to effect a behavioural change conducive to fulfilling expectations of actions undertaken by third parties. In the same way that information is relayed from the grassroots, it is also relayed to the local or central authorities.
in order to inform them of basic concerns and allow them to make decisions by taking into consideration realities on the ground. This approach is important within the framework of advocacy actions in the forestry sector and is fully and continually being replicated. This change can be observed through the many programmes and processes on forest management and governance such as Reducing Emissions from Deforestation and Degradation of Forests (REDD+), Climate Change, the FLEGT Action Plan, community forestry and forest taxation.

To achieve the objectives of conveying information, several approaches are adopted by different actors in the field. Tools such as brochures, posters, flyers, among others, are commonly used. Music is also increasingly used, and affirmed artists are often becoming involved in the production of music commercials for raising awareness or consciousness on the issues and actions that threaten the daily lives of local populations, such as HIV and AIDS, malaria and many others.

Did not the German philosopher of aesthetics, Heinrich Lützeler, wanting to compare music to other arts, define it as “the generally recognized magical force that affects humans and reaches down to the most basic fibre of their mind and heart”? This definition inspired the FCTV to adopt this approach of using music as a tool for conveying information from the bottom up and from the top down. For over three years, FCTV and its partners, Living Earth Foundation and Bristol Zoo Garden, have been experimenting with this tool and did so within the framework of the community information project as part of the implementation of the FLEGT Action Plan. What does this approach consist of and what are the lessons learned as well as the perspectives of this fascinating tool?

**Review of awareness and information tools and the role of music**

Awareness raising and information are elements of communication for development based on behavioural changes, social change and the promotion of specific ideas. A study examined this approach within United Nations organizations and found that in order to communicate and transmit information to the general public and other target groups, several means are available to actors, which include non-governmental organizations (NGOs), associations, government and many other organizations or entities. In the forestry sector, brochures, posters, flyers and comic strips are generally produced. It is not uncommon for brochures and other flyers to be forgotten once read, but posters that withstand the weather remain visible as long as possible to the targeted communities, with the only flaw being that they cannot be moved. New approaches such as the use of topical documentaries contribute to efforts in seeking more attractive options to influence behaviour and causal change. Music is also an option that is explored as a means of conveying information, taking into consideration that it attracts a wide audience. Fame Ndongo’s work *Media et enjeux de pouvoirs* states that music is the third socio-cultural power in Cameroon.

Cameroonian cultural and musical studies have explored the rhythm well beyond typical perceptions of its deviant and shameless meaning. The case of *Bikutsi s’engage* (note: Bikusti rhythms are politically committed) is worthy of note because it has a text full of political invective “that makes the body move and the head think.” Music today is based on social issues and artists such as André-Marie TALÀ, Alpha Blondy, Manu Dibango and many others talk about these issues. Music has, therefore, an awareness-raising value, which is recognized by authors such as Nana Guillaume and Dibango & Rouad. In traditional cultures, music is experienced actively and its primary role is one of social connector. Through it, the individual can affirm his or her specific place in the group.

Taking the above into consideration, Nana Guillaume asks: can one imagine a society without music? In other words, music is, in some way, an important link between people and societies, and knows no borders; hence, its universal character makes it a vehicle of important messages without limit in space and time. Music is therefore an important tool for advocacy issues because it strongly conveys ideas and messages, and then challenges decision makers on issues and actions that threaten societies and that occasionally remain long dormant within the communities. It is a tool of social communication that can lead to changes both in policy and in personal behaviour. It is therefore an advocacy tool par excellence because as soon as it becomes difficult to put thoughts into words...
or give reasons for a fight, music can be used, provided that it is intended for a wide audience.

Music as an innovative approach of the FCTV and its partners in awareness raising, information and advocacy on forest governance

The approach of FCTV and its partners

Environmental education is the activity par excellence of the Fondation and its partners. True to the organization’s motto, “to transform ideas into actions”, the FCTV works with communities on a daily basis to bring ideas originated locally to decision makers. After several years of working on the field, it can be observed that the tools used to convey the messages have become routine. Yet, we know that education and media strategies contribute towards mobilizing public opinion and can influence decision makers. Working with the Baka populations who express themselves best through song, we observed during workshops and meetings that they rarely speak in front of other ethnic groups with whom they share the land. FCTV found that music is an effective means to break down barriers that inhibit people from expressing themselves. Music is a fundamental part of Baka culture. They sing to accompany their daily activities, to celebrate marriage, to mourn and above all, to convey messages. We know that music plays an important role in the socialization, contributing to shape social behaviour, and generally contributes to social evolution. Like songs, videos, posters and banners, music is a creative tool to help convey messages. This idea was used for the first time in the Dja Periphery Community Engagement Project (DPCEP) in 2006, where it was observed that by developing thematic music related to conservation, awareness can be raised quickly. The innovative aspect is not simply the fact of producing music, but rather, the focus is placed on the participatory process, which guides the development of musical themes, the composition of songs and the production of the final album. This process gives forest communities the opportunity to discuss sensitive issues such as corruption, and conflictual relationships with loggers and some agents of the government administration without fear. Music opens the door to this exchange, and the final product, a musical album, ensures that discussions can continue, because once a project is over, the music continues to be heard on the radio and in bars, on cell phone ring tones and in “DJ kiosks” along the roads to the villages where these people live. After a first CD with the title La voix du peuple, the FLEGT project was able to produce a CD presented in this paper, entitled Nos voix comptent.

Awareness raising and information in the VPA-FLEGT context

This CD, produced under the ACP-FLEGT Support Programme, contains 11 tracks, three of which are songs that speak about FLEGT and the importance of involving local populations in the project. These songs are Bantilolo, Nos voix comptent, and Ebambo. The eight other tracks were developed to allow the populations to express themselves, and represent direct messages from the communities themselves, who also contributed to producing this album. Some examples include: La voix de Ndjibou, La voix de Nkoldja, La voix de Myemb, La voix de Maatta, La Voix de Mveng, and La voix de Mokas. Some of the messages that were conveyed are explained below:

- “FLEGT does not replace the forest law in Cameroon, but rather is a framework in which the law can be effectively applied”; many people thought that FLEGT was another law; it was therefore necessary to make a distinction and resolve the ambiguity.
- Touche pas ma chose: the forest exploiters should be aware that the forest also belongs to the communities; indeed, it is “their thing” and they should be consulted. There must be a stop to exploiting the forest like a “hawk” does, tearing the trees and flying away. This is a message to the economic operators to treat the communities with more respect.
- Bantilolo speaks about the poverty of the communities and the need to consider this. The community asked the operators stop bribing the authorities for their own self-interest but to talk directly to them in order to find solutions to their problems, because asking for help from the authorities to intimidate communities will only postpone the problem and exacerbate the grudge that could be harmful for both sides in the future.
These three pieces of music were supplemented by comments from members of the community in order to allow them the opportunity to voice their ideas through this tool and send articulated messages that will not be drowned out from the music. The idea here is to encourage whoever is listening to the CD to listen to the communities who are speaking out. It is a forum given to those who have no voice. The CD as a music medium hence becomes "the voice of the speechless".

The concept and production of the music CDs with the local communities

As part of this project, a budding artist was contracted to work on the themes and the orientation of the rhythms to use, according to the types of messages that should be conveyed. The messages are based on a prior analysis of priority issues concerning illegal exploitation of forestry resources of eight targeted communities in the west and south of the Biosphere Reserve of Dja. The collection of information was carried out in a participatory manner through Focus Group Discussions. The concerns were then converted into messages to be addressed to different target audiences (the loggers, the government administration, the communities and even development partners). The key messages include, in addition, a call for a better management of the annual forest revenues (AFR) and its re-assessment; putting a stop to operators’ various abuses upon local communities; providing access to forest concessions (otherwise how can they participate in the FLEGT Action Plan and above all, in forest monitoring?).

An on-field study made it possible to record various songs originating from local rhythms, which were then arranged in a studio and then recorded on CDs. The CD was first previewed by communities prior to dissemination. The comments from the communities were integrated into the final version to retain authenticity of the messages and rhythms of the region, in spite of the introduction of modern musical instruments. Once produced in large quantities, a distribution and listening strategy was developed to make the information available for everyone.

Strategies for disseminating the content of the music media

The distribution first began in the field with members of the community who took part in the development of the messages, although there was a problem concerning inadequate equipment for playing the CD, which was raised by several individuals. This was not a major problem since the product was mainly addressed to decision makers and other actors who did have the adequate equipment to use. The distribution continued through the information, training and advocacy workshop as part of this project, as well as in other activities of the Fondation, which brought its staff together with the decision-makers and development partners during formal and informal meetings in Cameroon and outside of the country. It should be noted that the CDs are distributed free of charge in order to promote its distribution and listening.

For a greater impact, the project launched the distribution of the CD through thematic radio stations such as Radio Environnement of the International Union for Conservation of Nature (IUCN) and many other radio stations such as Tom Broadcasting Corporation (TBC). During the debates on FLEGT, organized through different radio stations, select tracks were broadcast, some of which were relayed to other community radios networks which reach communities in the rural areas, who are often excited to hear their work on the radio. Also used for the dissemination of music was the website of the project http://flegtcameroon.com/page/musique-1, and social networks such as YouTube. A concert was given during an advocacy workshop in which the forest administration officials and agencies in charge of forest management in Cameroon and the Congo basin were present. Over 1 200 copies of CDs were distributed in Cameroon and beyond its borders.

Lessons learned and perspectives

Once this album was produced, the Fondation understood that it was not only necessary to produce the music, but to supplement audio with video. The resulting product (a DVD) is more dynamic and attractive than an audio CD alone. This lesson inspired the future projects of the Fondation which produced a DVD on the rights of Baka communities. The DVD was distributed in Cameroon via television channels (CRTV and CANAL 2) and the audio CD through several radio stations. Following the intensive promotion through the media, particularly visual media, music pirates have already taken some songs of this new album, which can now be found sold in the streets. This is very positive in terms of awareness raising among the wider public. Travelling caravans of video clip projection (from the music DVDs) followed by discussions were organized as part of the second album.
on the rights of native populations in all the suburbs of the Reserve. As a result of this activity, rhythms are recited by heart by the residents of these communities, which contributes to the dissemination of the messages and information.

The communities felt proud of the music that gave voice to their concerns, and showed this pride by using various tracks as ring tones on their cell phones and during demonstrations at the local level. However, does the mind understand and retain the message by listening and dancing? In the Bengbis and Djoum (south Cameroon) where the CD was produced and distributed, every time the communities see the Fondation’s service vehicle, which they recognize very well, they often tell us to chase away these “human hawks”, which is mentioned in the CD. This is proof that something was retained after having listened to this music. Work is currently underway to understand the impact of this tool on awareness raising, information and advocacy. Our current objective is to respond to the question of whether music can have a real impact on behavioural and/or policy change.

Just like all new approaches, the difficulty lies in making it accepted as an effective means of awareness raising and advocacy. The greatest challenge here is to be able to measure the impact of this tool and the sense of empowerment that it inspires within the communities taking into consideration that music has its constraints in terms of production, distribution and marketing. An internal survey was conducted in order to understand if the communities, in addition to the music, assimilated some of the messages. It emerged that the messages were assimilated and could be cited by the people, above all, with respect to the DVDs. Recently, the Fondation and its partners have commissioned a case study in order to measure the impact of this tool in awareness raising, information and advocacy. The results are pending.

Conclusion

The issues of forest governance, like all other concerns within the communities, can be brought to the attention of the wider public through music. This is a tool that allows those we called “the poor cousin of forest management” i.e. local communities to be heard beyond their small village and thus communicate with the rest of the country and even the international community without the need to travel. Music can be used for purposes other than dance or to modify social behaviour: it educates, raises awareness, informs and advocates for communities.

7.3 Community Participation in VPAs: The role of community radio stations

Ernest Asare ABENEY (PhD)
Samuel Appiah ADANE

Abstract

Under the implementation of the Action Plan on Forest Law Enforcement Governance and Trade (FLEGT), Ghana has embarked on sensitization and awareness creation campaigns on the requirements of forest governance under the European Union (EU) action plan. However, the mode of disseminating information by both state and non-state actors in forest fringe communities poses challenges which require immediate attention. Field observations indicate that basic knowledge on VPA, forest laws and policies remains poor among many forest fringe communities. As a result, stakeholders’ understanding of their roles and responsibilities in forest governance is low. Dissemination of information through community radios have been identified as effective tools for awareness creation on forest governance in rural communities. This paper draws on field experiences from the ACP-FLEGT project which was carried out in four forest districts in the Ashanti Region in Ghana.

Introduction

Community radio programs have contributed to marked improvements in community awareness on a variety of issues in many parts of the world. An assessment of the impact of community radios in Indonesia concluded that effective radio campaigns can make significant changes in a community’s life. Community radios have also been identified as avenues for participatory communication in rural areas. By increasing awareness, community radio stations have contributed to building vibrant communities, empowering citizens, giving voice to marginalized groups and bringing community needs to the attention of local and even national governments. Community radios also provide opportunities for the rural masses to establish their right to information, development, communication, governance, decision making, and freedom of expression, education and security.

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In Ghana, there are several vibrant community radio stations reaching rural areas which serve as important channels for mass communication on a variety of socio-economic and political issues. By broadcasting innovative programmes which target rural peoples, community radio stations are able to educate and share information on local, national and global issues. Examples of issues discussed include: child rights, disease prevention, child care, as well as forestry issues.

Unlike commercial radio stations popular in cities, community radio presenters use local language, proverbs, symbols and acronyms to communicate effectively during favorable times of the day when most people can be reached. This medium has been found to be effective in improving exchange of information in remote rural farming communities. In addition, community radio stations provide a platform for monitoring rural perceptions and the acceptance of national policies.

In Ghana, community radio stations reach rural communities with an average population size of 800 to 2,000 people. These radio stations are owned by communities and managed by local committees. Community radios are generally non-profit entities and serve in the rural areas as platforms for discussing local issues and events to enhance the welfare of the community.

Characteristics of audiences of Community Radio Stations

In Ghana, the targeted audiences of community radio stations are forest fringe communities located near forest reserves and off-reserve areas. Often times these communities are inhabited predominantly by indigenous peoples and other minority ethnic and migrant groups. Most of the targeted audiences include farmers, hunters, loggers, wood carvers, chainsaw operators and people who depend on forests for their livelihood. Even though some of these communities have schools, generally, most of the inhabitants have little formal education and have difficulties reading, writing and understanding technical jargon. Community radio stations therefore package their programmes using diverse local languages, acronyms and lyrics to enhance effective communication and participation of listeners.

VPA and awareness creation

The VPA/FLEGT process recognizes the role of forest fringe communities in forest governance and in turn emphasizes the need for sensitization and awareness creation in forest communities on the requirements of VPA to ensure compliance. In addition, the VPA mandates timber companies to acknowledge traditions and cultures of communities and also contribute to their development, with the signing of a social responsibility agreement (SRA). In exchange, under the VPA, forest fringe communities are expected to stop practices leading to deforestation, soil erosion and pollution, and cooperate with the Forestry Commission and NGOs to support sustainable forest management. Community members are also expected to assist in monitoring and reporting forest offences.

As a result, community radio stations were identified as key partners in the dissemination of information on the VPA process in the project areas. In order to equip radio presenters adequately for their identified roles, Working Group and RUDEYA organized a one-day “trainer of trainers” workshop for media personnel (e.g. journalists, radio-hosts) to train and educate them on the VPA process and sensitize them on their expected roles in information sharing on VPA. The following topics were covered during the sessions: (1) What is VPA? (2) Background on why Ghana signed the Agreement; (3) roles, responsibilities and rights of stakeholders under the VPA; (4) social responsibility agreement (SRA); and (5) Ghana forest policy and laws on timber harvesting. After the training sessions, trainees were provided with learning materials including brochures and posters on VPA for further dissemination among communities.

Description of community radio stations in the project area

The research showcased below was compiled following field visits to radio stations at Adwafu, Kubease, Abofour and Konongo, in southern Ghana. All of the stations are located in the centre of towns near market places and shopping centres, and the radio programmes were presented in local languages. Radio coverage in the area surrounding the stations was about 80-90 percent in communities with populations between 800-1,000 people.

Communication and information sharing by community radio stations

Choice of Topics

For sensitization and awareness creation on VPA, radio presenters’ selected simple topics like “Ghana and EU agree to stop illegal logging”. Resident forest officers were often invited to discuss the topic with the community. The programme was usually preceded by traditional lyrics on forests to harness listeners’ attention. Radio hosts question guest speakers on topics in simple language to arouse interest and promote further dialogue with listeners.

Use of local language

Since Asante Twi is the major language spoken in the areas where radio coverage exists, the presenters used Asante Twi to explain the purpose of the topic and related forest issues. Concepts such as the “EU’s Voluntary Partnership Agreement”, which cannot be directly translated into Asante Twi, were simply described as “an important agreement with EU” with “serious implications for foreign and domestic timber trade” and “threats of boycott and loss of revenue for Ghana” if the agreement was not respected.

Proverbial language and adages

The heart of a language arguably lies in its proverbs. Since the use of proverbial language is highly appreciated in rural communities in Ghana, community radio presenters frequently use proverbs or folk metaphors to reinforce their messages on VPA. Metaphors such as “when the last tree dies the last man dies” are commonly used to bring home the message of the consequences of irresponsible logging activities.

Use of community specific scenarios

Sharing information on VPA using local scenarios is not uncommon among community radio presenters. For instance, in explaining the importance of forest protection, one community radio at Abofour (Amass Radio Centre) reminded listeners of the recent incidence of severe winds which caused serious damage to farms and houses. Such local and specific scenarios made it easier for community members to appreciate the message on illegal timber harvesting and deforestation.

Time of broadcast

Community radio stations broadcast programmes on VPA between 8 pm and 10 pm in the evening when community members tend to be resting and listening. This makes it possible to reach many listeners. Morning sessions are usually devoted to religious programmes, funeral announcements and advertisements.

Panel discussions

“Oman Nkoso”, literally meaning “community welfare”, is a major programme held on community radio stations at Abofour. This programme is usually held on Sunday evenings. During this segment, current issues related to forestry, SRA and the environment are discussed by a panel. Community members are also given the opportunity to phone-in and ask questions for clarifications.

Community radio's role in promoting good forest governance and participation

Democratic governance and monitoring

At Adwafo, one of the communities studied, recommendations provided by the authors prompted the community radio to announce the entry and commencement of operations of timber companies. In this way the community was able to monitor the operations of timber companies and their responsibilities regarding SRA compliance.

Community mobilization

Mobilization of communities for consultation and discussions on VPA has to a large extent been one of the key successes of community radio station involvement. Community radio stations have been useful for mobilizing the public for outreach programmes on VPA in all of the project communities.
Decision making

Participatory communication approaches place decision-making in the hands of ordinary people. Community engagement through radios has made it possible for ordinary people to participate in discussions and decision making on management and protection of forest resources.

Challenges of Community Radio stations and Recommendations for the future

As non-profit entities, community radio stations lack adequate funds to expand their environmental outreach programmes. Additionally, community radio presenters are also not always abreast with current developments on the VPA process.

The authors recommended that the capacity of community radio presenters be strengthened through frequent training programmes in forest governance and the VPA process to enhance their roles in information sharing with the communities. Finally, the Forestry Commission should engage community radio stations as partners and sponsor programmes on VPA implementation.

Concluding remarks

The essence of a community radio in any society is to engender community development. In all of the project areas, community radio stations were useful in mobilizing the public on VPA outreach programmes. Measures should be put in place to use existing communication networks in rural areas to sensitize the public on VPA. Above all, community roles under the VPA should be emphasized.

7.4 Labelling FLEGT-Cameroon timber products: what is the added value?

Desire LOUMOU1

Abstract

As part of its commitment to the sustainable management of its forest resources, Cameroon signed a Voluntary Partnership Agreement (VPA) with the European Union (EU). The implementation of this agreement is carried out through a number of activities directed at making a distinction between legal timber from Cameroon and legal timber coming from any other country that is also committed to applying FLEGT. In order to achieve this, Cameroon will distinguish its timber by applying a FLEGT-Cameroon label, which, in addition to the commercial benefits that it will provide to operators in the sector, will also enhance the visibility of the government policy that promotes the sustainable management of its forestry resources by strengthening its credibility in the eyes of the consumer and of its partners, and conveying throughout its territory the image of a secured and attractive area for investment in the forestry sector.

Introduction

On 10 October 2010, Cameroon signed a Voluntary Partnership Agreement (VPA) with the European Union (EU) which came into force on 16 December 2011, in an aim to ultimately export timber with an authorized FLEGT license. The aim of the Cameroon-EU VPA is to permit only timber recognized as legal to be exported from Cameroon to the EU market. This Agreement strengthens the continuous efforts of the Cameroon Government to organize and fight against illegal logging of their forest resources in order to honor its national and international commitments with respect to the sustainable management of its forest resources.

In order to ensure the credibility of this legality, the Agreement is based on a Legality Assurance System (LAS). One of its tools, the Traceability System, allows for the control of all timber entering and leaving Cameroon, including timber in transit that cannot, however, benefit from the issuance of a FLEGT license due to its non-Cameroonian origin.

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Therefore, only legal timber from Cameroon can benefit from a FLEGT license issued by the Cameroon issuing authorities. To obtain this authorization, the origin of the timber for which this authorization is requested can be based on establishing the way it was acquired, or on its harvesting source.

The resource can be acquired through the domestic market. It can also be timber that is imported, whose processing mechanism in Cameroon will allow it to be labelled as Cameroonian timber. Harvesting is carried out in forests located in Cameroon’s national territory as per the scope of application defined by Annex I of the VPA, which excludes from this scope all timber mentioned in Annex IB that are the illegal species. All of these requirements are part of the prescriptions that must be observed for the issuance of a FLEGT license for timber whose legality was established for its release for free circulation in the EU market.

And yet, although this FLEGT license is a guarantee of the legality of Cameroon timber that benefits from it, it is not always certain that once on the market, the consumer can recognize it on the basis of its appearance and easily distinguish it from any other legal timber originating elsewhere.

Indeed, the visibility of legal Cameroonian timber on the market should be clearly apparent at a glance in order to facilitate the choice of consumers looking for legal Cameroonian timber. This implies that it is necessary to facilitate its distinction from all other similar timbers from other countries. Accordingly, the need emerged for Cameroon to highlight this distinction by labelling its timber with any sign likely to facilitate its visibility on the market.

This sign, or label, reassures the consumer that the timber to which it is applied comes from a legal source and thus contributes to giving even more credibility to the FLEGT license. Indeed, it is this very credibility that allows the consumer to consider the greater value generated by the FLEGT-Cameroon label in terms of commercial and policy impact.

The commercial impact of the FLEGT label for timber products

The commercial impact created by applying the FLEGT label on timber products is reflected both on the visibility of these products and on the subsequent commercial benefits.
Impact on the consumer

Clear identification of the label by a consumer would make it easier for him or her to distinguish legal FLEGT-labelled Cameroon timber from any other legal timber originating elsewhere. Consequently, this will prompt it to be related to and possibly associated with a product that stands out by a label perceived as a sure guarantee of a set of related characteristics linked both to the origin and the quality of timber thus labelled.

However, to achieve this guarantee in the minds of the consumers, first, the selected label must be subject to a standard that will guarantee the consumer some protection. Also, the label must be fully promoted on the markets where the legal timber that carries this label is sold in order to make it popular and easily assimilated by consumers.

Indeed, the absence or weak promotion of the FLEGT label prevents it from conveying to the consumer the image of legal Cameroon timber, which is the outcome of a holistic political, social and economic process deployed to promote the logging and trade of the country’s legal timber products. Should this label fail to convey its message, it is almost certain that it will indeed have problems generating commercial benefits that are expected from applying it on the marketplace.

Expected commercial benefits of introducing the FLEGT label

Some of the consequences likely to occur as a result of introducing the FLEGT-Cameroon labelled timber include the guarantee of a return on investment for operators having integrated the legality approach, as well as the improvement of the competitiveness of the Cameroon legal timber.

Outlook on the return on investment

The analysis of statistics on export of timber originating from Cameroon for 2011 shows that 80 percent of log exports went to Asia and 20 percent to Europe. This trend is reversed when considering lumber exports, of which 80 percent were destined for the European market, while only 20 percent went for Asia. Therefore, by taking into consideration this data, it is possible to observe that the application of a FLEGT-Cameroon label sold as lumber on the European market makes for greater traceability of this trade and thus improves the visibility of the collection of revenue that this trade generates, which remains most profitable for the forest operators.

Indeed, providing consumers with legal timber bearing the FLEGT label allows operators to more clearly trace the distribution circuit of their product, which also facilitates monitoring of the financial resources that their trade generates. It is this improvement in monitoring of the distribution of production and profit that it generates that allows the forest operator to be able to have an overview of the prospects of a return or non-return on investment. This allows him/her to align his/her method of production to the requirements of the legality process caused by the implementation of the VPA.

The impact of the FLEGt label on the competitiveness of labelled legal timber

In addition to improving the financial prospects of the legal timber trade, the label also influences the competitiveness of this timber.

Indeed, several types of timber are proposed to the consumer on the market, notably, ordinary timber, legal timber, FLEGT-labelled legal timber, and any other type of labelled timber as a result of certification, etc. However, as a result of the credibility granted to the FLEGT process through the market and the European legal framework, FLEGT-labelled legal timber traded on the EU market is likely to draw greater interest since it follows the requirements of a process rightly initiated by the EU in order to promote the exploitation and trade of legal timber on its market. Now, the FLEGT label will indeed reinforce this dynamic, which consequently will clearly increase the credibility of the FLEGT-labelled timber on the European Community market and among consumers, provided that the promotion of this label has been carried out.

Thus, at this point, it can be highlighted that the commercial impact of the FLEGT label is guaranteed and will also have an impact at the policy level.
The policy impact of labelling

In addition to the commercial effect that it produces, the introduction of the FLEGT label in the trade of legal timber will also have an impact on the national forest governance framework, with some degree of visibility. This value added to policy can be observed through the strengthening of the credibility of forest governance for a sustainable management of the timber resource, and of the national legal framework of the forest sector.

The strengthening of the credibility of the forest governance

By committing itself to a process of sustainable management of its forest resource, Cameroon also committed itself to create a set of legal and institutional instruments whose implementation will have to improve the performance of its governance in the forest sector. Based on this viewpoint it can be stated that the introduction of the FLEGT label reflects the effectiveness of Cameroon's application of the agreements, laws and regulations in force in the forest sector inasmuch as the FLEGT process aims to promote this application. This also reassures the effectiveness of the forest governance in force.

The effectiveness of the application of legal instruments in force

By relying on the principle that forest governance is based on various legal and institutional legislation that countries must draft in order to organize this sector, it should be highlighted that only an optimal implementation of such laws and institutions will allow the sector to benefit from all the ensuing effects.

By introducing a FLEGT-Cameroon label for the trade of its legal timber, Cameroon is stating in advance that its legislation is effectively applied and allows the verification of the legality of the timber bearing this label. Similarly, through the introduction of this label, Cameroon not only confirms the effectiveness of the entry into force of the VPA signed with the EU, but also the effectiveness of the application of the international laws to which it is party, as well as its relevant national laws. Consequently, it is only within this framework of the implementation of all of these instruments that the set-up of a procedure for labelling its timber products as part of the VPA takes on its full meaning. This has the advantage of improving the credibility of the legal framework in force, as well as increasing the visibility of the national policy applied to the forest sector.

The FLEGT label: a sign of good forest governance

Through a set of laws, Cameroon has in place a policy for a sustainable management of its forests. Indeed, in 1993, Cameroon adopted a new forest policy, codified by the Forest Law of 1994. This policy formalizes the innovative and ambitious principles such as: the sustainable management of product forests; the conservation of biodiversity; the participation of the local populations; and improvement in governance. This policy is perfectly in line with the international guidelines (Rio Earth Summit, Yaoundé Heads of State Summit), and the Growth and Employment Strategy Paper (GESP), which should render Cameroon an emerging country by 2035.

To support the implementation of this policy, a set of institutions, including the Ministry of Forests and Fauna (MINFOF), technical administrations such as the National Forestry Development Agency (ANAFOR) and educational institutions modelled after Ecole nationale des eaux et forêts (ENEF) of Mbalamya, each contribute towards implementing this policy. In this context, the participatory approach selected as a pillar in this implementation involved all of the state and non-state actors of the forestry sector to establish a common vision of the objective of sustainable management of the Cameroon forests; this shall be achieved through the support from development partners that substantially intervene in various programmes, notably the Forest Environment Sector Programme (PSFE).

Through this framework, thus structured, the process of issuing the FLEGT license through the legality assurance system (LAS) is perceived as a tool that allows to guarantee, through the Cameroon's timber traceability system, that the timber originating from Cameroon with the FLEGT-Cameroon label is, effectively, timber whose legality has been clearly established throughout the production chain.

Therefore, the FLEGT label in itself constitutes a sign of credibility of the forestry policy in force in Cameroon since it is only applied on legal timber produced within a structured, clear policy environment, inspiring a certain
level of confidence in the objectivity of the authorities in charge of issuing the FLEGT-Cameroon license and the label. The label also conveys an image of assurance and credibility with respect to Cameroon’s policy on forests. In addition, the label conveys a better image and credibility of Cameroon and its forest operators to their respective partners.

**Credibility of the national legal framework of the forestry sector**

As underlined in the above paragraphs, the FLEGT label not only gives visibility, but also credibility to the national forestry policy. This credibility thus represented presents the framework for Cameroon forestry as a legally secure sector, within which the label is an incentive for investment.

**The Cameroon forest sector: a legally secure sector**

In order to identify the image of the national legal framework of the forest sector given by the label, the basic constituents of this framework must be re-examined. In this regard, it should be noted that this framework is constituted not only of laws and institutions specifically dedicated to the forestry sector, but also laws and institutions are not specific to it. The latter have a broader scope and concern, notably, trade, legal organizations to protect its rights, environmental protection, the setting up of companies, investment, and employment, among others. However, all contribute to the structuring of the national forestry sector, which puts the sector in the position of legally exploiting and producing timber in Cameroon.

Thus, since the label represents the whole process of legal production in this framework, it guarantees that the timber bearing this label has been legally obtained at the end of a legal process reflected by a FLEGT license obtained following a procedure whose various steps also involve legal, fiscal, and financial compliance for the company and its activity and/or its promoter. The FLEGT label alone sums up the rigorous national legal framework that created it, and thus allows Cameroon’s partners to believe that it is an ideal place for investment given the legal security it provides forest exploiters.

**The FLEGT label: an incentive for investment in the forestry sector**

As a commercial tool that benefits from the guarantee of the State that sets it up, the FLEGT-Cameroon label is also presented as an incentive to investment in the Cameroon forestry sector. Indeed, although the Cameroon Government is not itself a forest operator, it has nevertheless taken the initiative of setting up a label to which it conveys the full legal enforcement of its actions during its State missions. The State thus provides operators of the forestry sector with a commercial instrument that allows them to more easily sell their legal timber production on the EU market. Moreover, the support from which the labelling process benefits in terms of legal security can in itself be an incentive for any persons wishing to invest in the Cameroon forest sector.

Indeed, since the Government is committed to ensuring the legality of timber products coming from its forests and placed on the market, its initiative in favor of setting up a FLEGT label for timber products is perceived as an institutional guarantee of the legality of the activity of its forest sector operators. Thus presented, this incentive must be considered as a support provided by the Government to facilitate the visibility of Cameroon’s legal timber on the market. This is also supported by a series of promotion actions and activities of this label both nationally and internationally.

Seen from this angle, the FLEGT Cameroon label effectively presents itself as an incentive offered by the Government to guarantee both credibility and security to investors aimed at encouraging them to set up business on its territory and mainly in the forestry sector.

**Conclusion**

The analysis of the impact of the FLEGT-Cameroon label on the trade of Cameroon’s legal timber to the EU highlights the added value that it generates, commercially and at a policy-level. As a result, these added values are now perceived as incentives for investment in this sector seeing the Government’s involvement in the process of setting up, protecting and promoting this label. It is in this regard that the label, through its visibility, improves the image of forest governance in Cameroon with respect to sustainable management as well as the competitiveness of the Cameroonian timber label.
THEME SIX

RESPONDING TO THE NEW EUROPEAN MARKET REQUIREMENTS
8 THEME SIX: RESPONDING TO THE NEW EUROPEAN MARKET REQUIREMENTS

8.1 Making laws work: Implementing VPAs and the EU Timber Regulation
Emily UNWIN

Abstract

The negotiation of the EU Timber Regulation and its non-legislative acts, and initial steps towards its implementation, have forced consideration of and responses to a number of issues that are also relevant to how Voluntary Partnership Agreements (VPAs) operate. For VPAs and the Timber Regulation to achieve their objectives, attention must be paid to technical aspects of their implementation, including the rights, responsibilities and procedures of how each will work in practice. The similarities between different elements of these two legal frameworks mean that there is an opportunity for the lessons learned in the implementation of each to inform similar steps also required by the other. Drawing in particular on the steps taken to date to implement the Timber Regulation, this paper considers how the lessons and challenges encountered so far may usefully inform future implementation steps for each legal framework.

Introduction

Voluntary Partnership Agreements (VPAs) have been negotiated and agreed upon between the European Union (EU) and timber-producing countries, including those in West and Central Africa. At the same time the EU Timber Regulation has been agreed and developed. VPAs and the Timber Regulation adopt different, yet related approaches to respond to the problem of illegal logging and the need to strengthen forest governance.

For these two legal instruments to achieve their objectives, attention must be paid to technical aspects of their implementation, including the rights, responsibilities and procedures of how both will work in practice. These procedural details must be in place for questions of legality of harvest and governance reforms to be addressed in a clear and accountable way. The similarities between elements of these two legal frameworks mean that there is an opportunity for the lessons learned in the implementation of each to inform similar steps also required by the other.

Under the Timber Regulation, which takes full effect on 3 March 2013, it will become illegal to place illegally harvested timber on the EU market. VPAs meanwhile are bilateral agreements between the EU and partner countries that link trade in timber to evidenced legality of timber harvest and legal reform processes. As such, there are mechanisms that seek to change the underlying terms according to which timber is traded.

The introduction of VPAs and the Timber Regulation marks a shift in the EU: both create a legal requirement that timber in the EU market is harvested legally. This is a change from the current situation where any steps to evidence that timber has been harvested legally are adopted voluntarily, in some cases in response to market-led demands. The EU is not alone among consumer markets in taking action to respond to the problem of illegal harvesting of timber. The USA has already introduced legislation to prevent illegally harvested timber from being traded, and Australia is in the process of developing similar legislation. As such, in establishing the detail of how VPAs and the Timber Regulation operate, there is an opportunity to contribute to international approaches of how to make legal harvest a condition of trade.

The Timber Regulation and the six VPAs that have thus far been agreed are in the process of being implemented. None are yet fully effective, but steps need to be taken to prepare for when they are. This paper examines five key elements that are relevant to the implementation of both, with the purpose of identifying lessons learned in the implementation of one which can usefully inform the implementation of the other.

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1 Lawyer, Climate and Forest Programme, ClientEarth; E-mail: eunwin@clientearth.org
3 Article 7(1)(a) of the Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan
4 Article 6(1) of the Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan
Assessing legality of harvest

Both the Timber Regulation and VPAs are concerned with the question of whether timber has been harvested legally in accordance with the laws of the country of harvest. To do so in practice, each must establish the boundaries of what constitutes legality or illegality by defining the law that is deemed relevant, indicating how compliance (or non-compliance) should be evidenced, and establishing the degree of risk of unknown factors that is deemed acceptable.

The Timber Regulation is concerned with legality in two ways. First, it prohibits operators from placing illegally harvested timber on the EU market. Second, it demands that due diligence is exercised to assess whether timber has been harvested illegally.

Applicable law

The Timber Regulation outlines the categories of law that are “applicable” to whether timber has been harvested legally, but does not detail the exact laws that fall within these categories. This is arguably an appropriate approach given that these criteria must be applied for all countries of harvest. The drawback is that those impacted by the Timber Regulation must identify the exact laws to be complied with at national level, which increases the burden on individual actors and raises a question of coherence, given that there is room for interpretation and different actors might determine different laws relevant.

As a bilateral agreement, a VPA is specific about relevant national laws. It does so by developing a legal matrix, incorporated into the Legality Assurance System (LAS), which identifies the national laws that must be complied with and outlines indicators of compliance.

The experience of countries that have negotiated VPAs may inform the process of identifying relevant laws for the Timber Regulation. In VPA countries where the legality grid is prepared but FLEGT licenses are not yet issued, the grid may be used to inform an analysis of the national laws that are relevant to compliance with the Timber Regulation. Equally, even in countries that are not negotiating VPAs, existing VPA legal grids may be of use to give an indication of laws that are relevant. However, it should be noted that it does not necessarily follow that all laws set out in a VPA legality matrix are automatically relevant to the Timber Regulation. For a VPA, the scope of applicable legislation is determined by the two parties and may go beyond the categories of applicable law established by the Timber Regulation. Nonetheless, legality grids provide a degree of specificity that can usefully inform an assessment of relevant national laws for the Timber Regulation.

An additional concern that VPAs must address is how the legality of timber imports to a VPA country will be assessed. Effective means to ensure the legality of imports will have to be put in place; it is vital that the legality of any imports is established to a standard that does not threaten or weaken the coherence of a FLEGT licensing system. In some VPAs, for example, the one between the EU and Ghana, the introduction of law reforms and requirements to comply with new law is a two-stage process. In these cases there must be clarity as to when law reforms must be in place and the implications for the issue of FLEGT licenses if dates change or are not met.

Risk and indicators of compliance

In the Timber Regulation, the exercise of due diligence is a means for operators to assess the risk that timber has been harvested illegally. The Timber Regulation establishes a framework that must be followed: particular information about the timber and its origin must be known and this information must be assessed against, at a minimum, stated risk criterion. If the risk of illegality is greater than “negligible”, operators must take steps to mitigate that risk until it is no longer so.

The details of the Timber Regulation have been fleshed out by a European Commission implementing regulation (ECIR), recently adopted at the EU level, which has helped to establish more precisely what information about timber is required when exercising due diligence. In particular, it has established that:

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6 Operators are the commercial actors that first place timber on the EU market and are subject to the Timber Regulation's main provisions. These categories include rights to harvest as well as trade and customs law in so far as the forest sector is concerned; see Article 2(h), Timber Regulation.

7 These categories include rights to harvest as well as trade and customs law in so far as the forest sector is concerned, see Article 2(h), Timber Regulation.

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The ECIR also clarified the form of written records that must be maintained by operators and public authorities and for how long. Clarity regarding these practical details is necessary as it pertains to how compliance checks can be carried out and as such will also be relevant to the operation of the LAS.

There are two elements to this approach that could usefully inform how VPA LASs are developed. Firstly, the recognition that there must be clarity as to the level of information required. Secondly, the requirement that more information be available when there is greater risk (either of illegality directly, or of being able to correctly identify the timber).

Greater clarity as to the criteria and indicators to be met, relevant timescales, and how records must be maintained, will all make it simpler for the timber industry to comply, for civil society to engage meaningfully in enforcement and for public authorities to apply the system. Stated indicators of compliance must be sufficiently specific to create clarity as to what is required. The details elaborated in the ECIR seek do this by setting out what level of information is required in each circumstance.

Voluntary certification frameworks

The question of how and to what extent voluntary certification schemes may be used in the practical operation of the Timber Regulation has received considerable attention.11 This relates to a broader question of what role voluntary schemes may have in the operation of formal legal obligations and how to ensure that, if used in this context, the credibility and function of the legal system is preserved.

The Timber Regulation deals with this in a number of ways. First, it is clear that ultimate legal responsibility for complying with its main requirements rests with the operator and that this responsibility cannot be outsourced to a third party (e.g. a voluntary certification system). There is no obligation to use voluntary certification schemes. Each operator may decide whether or not it does. Second, the Timber Regulation defines what it means by “legality of harvest” and the “exercise of due diligence” and in doing so requires that to be of any use, voluntary certification schemes must meet these definitions. Third, it clarifies that, to be of possible use, voluntary certification schemes must meet four stated criteria.12 Using schemes that meet these criteria does not automatically indicate legal compliance. Instead, meeting the criteria is a necessary minimum. Operators must still assess how useful they are in each particular case. How operators will assess compliance with the four criteria in practice remains a question, in part because they retain some discretion in their assessment and in addition because the details each particular case are important. However, having clearly stated criteria provides a useful starting and reference point.

Voluntary certification schemes may also be used in the operation of VPA LASs. The EU Regulation governing the negotiation of VPAs establishes that existing schemes that “guarantee legality” may form the basis of a FLEGT license on condition that those schemes have been assessed and approved in accordance with the procedure stated.13 No further conditions are applied. At present, no such scheme has been formally incorporated into the operation of a LAS, largely because three related questions must first be addressed. First, while the question of who has authority to make a decision to incorporate a scheme on behalf of the EU is established, a procedure for how the non-EU party to the VPA will decide to incorporate a scheme must also be clarified.14 As an example, in the VPA with the Republic of Congo, it has been agreed that the General Forest Economy Inspectorate will decide whether a private certification fulfils

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[11] See Annex A, ECIR. In brief, these are that (i) schemes have a publically available system of requirements that, at a minimum, demand compliance with the definition of legality established by the Timber Regulation; (ii) They specify that appropriate checks, including monthly field visits made by a third party at regular intervals no longer than 12 months apart, to verify compliance with the Timber Regulator's legality requirements; (iii) That they include the means, verified by a third party, to trace timber harvested in accordance with the Timber Regulator’s definition of legality and timber products derived from that timber, from the point of origin of the forest until it leaves the territory of the forest; and, (iv) That they include the means, verified by a third party, to ensure that timber or timber products of unknown origin or which have not been harvested in accordance with the definition of legality established by the Timber Regulation, do not enter the supply chain.


[13] The procedures for the EU to set out at Articles 4 & 5 of Council Decision of 20 June 1999 laying down the procedures for the execution of implementing present confirmed on the Community’s FLEGT, requires a representative of the Commission to participate in the process of incorporating schemes into the FLEGT. Where an authorizing Member States are represented, the proposal is voted on and a majority vote is required to pass the proposal.
the requirements of the legality grid. Each VPA agreement should clearly identify who has the authority to take and formalize such decisions on behalf of the non-EU party.

Second, the decision to incorporate an existing scheme into the operation of a LAS is not one that can be taken unilaterally. Even when both parties to a VPA have their own clear provisions for how to agree to incorporate an existing scheme to the operation of the VPA, there must also be a clear mechanism for the two parties to decide, bilaterally, to incorporate that scheme. This mechanism should include sufficient controls to ensure the scheme continues to meet its stated purpose and measures in the event that it does not.

Third, an existing scheme must respond to the specific requirements of that LAS if it is to be incorporated. There must be clear criteria for incorporating a scheme, so that any decision to do so is transparent, and the parties involved may be held accountable.

The criteria established by the Timber Regulation provide a useful starting point for key elements to be addressed: a scheme must have a publically available system of requirements, ensure compliance with all laws that have been identified as applicable and have sufficient checks and controls, including the involvement of an independent third party, to ensure that it works as intended.

Clear indicators should also be created, against which compliance with the criteria created can be assessed. This is a step that the Timber Regulation has not yet taken, which may lead to problems when applying the criteria in practice.

**Role of public authorities to ensure correct implementation and enforcement**

Public authorities have a key role to play in the proper implementation and enforcement of both Timber Regulation and VPAs. The procedural, administrative and oversight roles that public authorities must play are central to the ultimate impact that each framework will have in practice. Of particular relevance are: the way in which compliance checks are carried out; the detail of penalty regimes and the corresponding enforcement approach adopted; the need to be clear where responsibility and authority for different roles lies; the need to ensure transparency requirements are correctly applied; and the need to ensure that resources are available that correspond to the demands of the role. Clear, transparent and timely implementation is necessary, both to ensure the legal provisions are correctly applied and to ensure that all stakeholders understand the legal frameworks within which they must operate.

For the Timber Regulation, implementation and enforcement are primarily the responsibility of EU Member States. Progress on implementation differs across the EU but a recent study of the practical steps taken by Member States to date indicates that there is much to be done by all Member States before 3 March 2013. Accurate implementation demands that the technical and procedural details outlined above are addressed, so that they can form a foundation upon which more detailed provisions can be based. As an example, Member States’ Competent Authorities must cooperate with each other and with the administrative authorities of third countries when implementing and enforcing the Timber Regulation. To do so, competent authorities must be designated and afforded the necessary powers and resources to fulfill their roles. Next, clear routes for information to flow, and designated points of contact and responsibility must be established. These and other key implementation steps have, in many cases, not yet been addressed. Until they are, industry organizations will not be able to clearly understand the system according to which it will be regulated and civil society organizations will not be able to engage actively to support its effective enforcement. The majority of VPA implementation steps will occur in the non-EU partner country, with a focus on the design and operation of the LAS. That said, there is also a need for steps to be taken in EU Member States, so that systems to check FLEGT licenses and appropriate penalty regimes can be put in place.

For both parties to the VPA, key questions mirror those arising from implementation of the Timber Regulation. Responsibility and authority for carrying out specific roles must be clearly assigned; procedures according to

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15 Congo VPA, chap. 2, 3.3. In this case, a company using this scheme would be granted a legality certificate to harvest.

16 This is the case both in the EU and in non-EU VPA partner countries, although in non-EU VPA partner countries, civil society also has an important role in implementation and enforcement. This section focuses on the role of public authorities.

17 Article 12(1), Timber Regulation.

18 http://www.barometer.wwf.org.uk/what_we_do/government_barometer/. The slow progress made at the time of the study can in part be attributed to the fact that there were still issues of detail yet to be agreed at the EU level.
which decisions are made must be sufficiently detailed and clear; there must be clear provisions on how to carry out checks, with adequate records kept; and penalty regimes and enforcement approaches must also be established. As with the Timber Regulation, the level of detail is critical. As an example, in the non-EU country, if timber does not meet the requirements of a LAS, will the penalty be that a FLEGT license will not be granted, nor will penalties associated with the underlying fault also be applied? Equally, in the EU, Member State authorities may request further information from partner country authorities where there is doubt as to validity of a FLEGT license. Member State authorities would benefit from an indication of the factors that should be taken into account when considering whether more information should be requested and provisions must be developed to indicate what would happen to timber if a FLEGT license was found to be invalid.

The role of the private sector

Underlying the Timber Regulation and VPAs is the trade of timber, and as such the role of the private sector. The primary point of interaction with the private sector is clear: those parties that are directly regulated must take steps to ensure that they comply with the new legal obligations created by the Timber Regulation and VPAs respectively. However, the impacts of the Timber Regulation and VPAs will extend further to those in the timber supply chain and those seeking to provide solutions or tools to aid compliance.

The Timber Regulation and VPAs both require information about the type, origin and legality of harvest of the timber in question. At a result, those involved in the different stages of timber production, including harvest, transport and processing, may expect to be called on to provide relevant information, either to the operator in the context of the Timber Regulation, or for the operation of the LAS in the context of a VPA. In addition, both the Timber Regulation and VPAs create opportunities for private sector actors to provide solutions or tools, to aid compliance with these new legal frameworks. These include existing voluntary legality certification schemes and those providing due diligence systems for the timber trade.

For those who are regulated directly, this is necessary for appropriate compliance and the compliance checks they will be subject to, matters which operators should be able to identify the possible penalties they face for non-compliance and the compliance checks they will be subject to, matters which are under the jurisdiction of public authorities, as outlined above.

For VPAs, very similar issues are relevant and may require attention. There must be a clear understanding of who must apply for, and is authorized to be issued with, a FLEGT license in all scenarios. In addition, private sector organizations seeking FLEGT licenses and those otherwise involved in the timber supply chain or developing tools to aid compliance must understand these details so that they are able to supply relevant information and develop appropriate tools.

During the implementation of the Timber Regulation, these issues have emerged in a number of different ways. One key issue has been the question of identifying the organizations that will be operators. It is vital that this is clear as operators are subject to the main obligations of the Timber Regulation. The Timber Regulation defines an operator as “any natural or legal person that places timber or timber products on the market”. However, because of questions about what constitutes “placing on the market” and given the range of possible contractual arrangements, room for different interpretations arguably remains. In a move to create greater clarity, the EC is addressing this point in guidance documents. While this guidance is not legally binding, it will be influential and help address the issue fully to reach a common understanding.

The questions of precisely what information is required about timber when exercising due diligence, and the role of voluntary certification frameworks (addressed above) are also relevant to private sector organizations. Equally, operators should be able to identify the possible penalties they face for non-compliance and the compliance checks they will be subject to, matters which are under the jurisdiction of public authorities, as outlined above.

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chain must clearly understand the information about timber that will be required and the steps they are expected to take. In addition, private sector actors must be able to clearly understand the penalty regimes they would face if they breach the VPA requirements, which are also related to the role of public authorities.

The role of civil society

Both Timber Regulation and VPAs recognize the value and importance of engagement by civil society in their implementation and enforcement, both as a source of relevant information and as stakeholders whose voices should be heard. While VPAs are arguably stronger in this regard, by creating a framework that seeks to enable civil society participation from the outset, the Timber Regulation creates a right for civil society engagement by establishing that third parties (which would include civil society) may present relevant information of substantiated concerns to public authorities.23

For civil society engagement within either Timber Regulation or VPAs to be effective, there must be a clear framework of rights and responsibilities, which establish the roles of civil society representatives and relevant procedures. To enable civil society engagement in the Timber Regulation there must be clear criteria and indicators of compliance so that civil society stakeholders can meaningfully assess whether information they have access to about the harvest of timber indicates a possible breach of requirements. In addition, so that civil society stakeholders have confidence that information will be acted upon, there should be a transparent process according to which information presented will be acted upon. The Timber Regulation responds to the first of these points in part by specifying information that operators must have about timber being placed on the EU market and risk criteria that must be applied. It responds to the latter by making clear that if in possession of relevant information, a competent authority should carry out checks.24

In VPAs very similar issues are relevant. The role and authority of civil society stakeholders must be clear, whether as independent monitors within the framework of the LAS, or as a concerned third party with access to pertinent information. To be able to provide relevant inputs to the operation of the

LAS, the criteria and indicators of compliance must be publically available, so that it becomes clear when information indicates a problem with compliance. In addition, clear provisions must be set out to outline what happens when information suggesting a problem with compliance is presented; this could include the suspension of the right to export that timber until the matter is resolved.

Conclusion

The proper and effective implementation and enforcement of the Timber Regulation and VPAs both require a degree of clarity regarding the very basic questions of who must (and may) do what and when. Procedures, powers, rights and responsibilities of all stakeholders must be established and made public from the outset. Both the Timber Regulation and VPAs need existing organizations to take on new roles and responsibilities and new structures and processes to be created. As things stand, there are clear opportunities to be gained for the lessons learned and challenges encountered by each framework to inform the approaches of the other.

The procedural details referred to in this article provide the foundation for the proper functioning of these legal frameworks and are necessary building blocks for similar legal frameworks internationally. If these are put in place properly, it becomes possible to focus on the more substantive questions of what constitutes the legal (or illegal) harvesting of timber and whether governance reforms have been achieved. However, if the procedural frameworks are not in place, neither Timber Regulation nor VPAs will be sufficiently robust approaches to respond to the problem of the illegal harvest of timber and broader forest governance issues.

23 Articles 8(4) & 10(2), Timber Regulation.
24 Articles 8(4) & 10(2), Timber Regulation.