



# COMPENDIUM ON EXPERIENCES FROM THE VOLUNTARY PARTNERSHIP AGREEMENTS (VPAs) PROCESS IN WEST AND CENTRAL AFRICAN COUNTRIES

Accra (Ghana), 23-25 October 2012



FOREST GOVERNANCE FORUM  
STRENGTHENING AFRICAN FOREST GOVERNANCE



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## 1. 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 countries 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. In addition, the *EU Timber Regulation* has recently been adopted to complement the VPAs. From 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, among others.

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<sup>1</sup>.

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.

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1 S. Ozinga, *Voluntary Partnership Agreements, tools to empower civil society to take part in forest governance improvements*, 2012

## 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.





# THEME ONE

## LEGALITY ASSURANCE SYSTEM

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### 3. THEME ONE: LEGALITY ASSURANCE SYSTEM

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

Sophia CARODENUTO<sup>1</sup>

##### 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. Interviewees also disclose 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.<sup>2</sup> 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 (VPA). These bilateral trade agreements propose Legality Assurance Systems (LAS) and governance reforms in timber producing countries in order to ensure the legality of all wood products destined for the EU market as well as those circulating domestically and regionally. The objective of this exploratory research is to explore the expectations of private sector actors regard-

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<sup>2</sup> Scholars point out the fraudulent behavior and collusion of government officials also contribute to the problem of illegal logging. A. Contreras-Hermosilla et al., "The Economics of Illegal Logging and Associated Trade," Round Table on Sustainable Development (2007).

ing future VPA implementation. A better understanding of these expectations can provide insights on how to ensure a *successful* implementation of the VPA. A successful VPA not only verifies the legality of timber exports to Europe, but also meets the governance and development objectives that have been negotiated and ratified by VPA parties.

## Background

### *Cameroon's VPA*

The principle objective of Cameroon's VPA, ratified in October 2010,<sup>3</sup> is “to provide a legal framework aimed at ensuring that all imports of timber and derived products into the [European] Union from Cameroon covered by this Agreement have been legally produced or acquired.”<sup>4</sup> Cameroon's VPA also clearly states that the agreement aims to provide socio-economic development for the country's forestry sector. The VPA's objectives include promoting Cameroon's forestry industries, creating and encouraging economic opportunities for resident local communities and local enterprises, strengthening their capacities and encouraging the creation of a favourable investment climate for sustainable forest management (SFM).

Additionally, the Agreement details how the creation of a LAS will ensure only legal timber is circulating in the country at all times. Cameroon's future LAS is meant to cover all pertinent timber and derived products produced, acquired and/or in circulation in Cameroon (not only that destined for European markets) and legality criteria must be verified for all forestry entities.<sup>5</sup> The LAS also aims to ensure coherency with the numerous internal timber tracing or voluntary legality verification systems forestry enterprises already have in place.<sup>6</sup>

<sup>3</sup> Decree N° 2011/238 of 09 August 2011 To ratify the voluntary partnership agreement between the Republic of Cameroon and the European Union on forest law enforcement, governance and trade in timber and its by-products with the European Union (FLEGT/VPA), signed in Brussels, Belgium, on 6 October 2010. Cameroon Tribune, p.4.

<sup>4</sup> Republic of Cameroon (ROC) & EU, Voluntary Partnership Agreement between the EU and ROC on FLEGT, (2010), Article 2, at 9.

<sup>5</sup> “Forestry entity”: natural or legal person, community, commune with a legal source for the production, acquisition or processing timber and derived products” (no.4 above, at 68).

<sup>6</sup> N.4 above, at 67.

### *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.<sup>7</sup> 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, transformers 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 strict regulatory frameworks imposed on the sector cause further expansion and power concentration of the already dominant large concession groupings, and simultaneous marginalization and fragmentation of smaller forestry enterprises.<sup>8</sup>

Concession-based industrial timber production plays an important role in Cameroon's forestry activities.<sup>9</sup> The industrial forestry sector is mainly composed of concession-owners that integrate timber harvesting, processing and transport in their export-oriented activities.<sup>10</sup> Due in part to increasing awareness of international consumers, companies often exceed legal requirements by obtaining voluntary sustainability certifications or independent legality verifications for their managed forests and value chains.<sup>11</sup> The most stringent of these certifications in the Central African region is the Forest Stewardship Council (FSC) Sustainable Forestry Management certification, which requires companies to make significant investments in order to meet numerous environmental and social sustainability criteria. Since February 2011, Cameroon counts a remarkable ten FSC-certified concessions.

<sup>7</sup> P. Cerutti *et al.*, "Forests, Illegality, and Livelihoods: the case of Cameroon," 21:9 *Society and Natural Resources* (2008), at 845-853.

<sup>8</sup> A. Karsenty, "Overview of Industrial Forest Concessions and Concession-based Industry in Central and West Africa: And Considerations of Alternatives," CIRAD (2007); K. Schreckengerg *et al.*, "Developmental Impacts of Forest Sector Verification Systems," in *Legal Timber: Verification and Governance in the Forest Sector*, Edited by D. Brown *et al.* (ODI, 2009) at 246-253.

<sup>9</sup> N. Bayol *et al.*, "La Gestion des Forêts et la Filière Bois en Afrique Centrale," in *État des Forêts* (Office des Publications de l'Union Européenne, 2010) at 43-61.

<sup>10</sup> T. Fomété *et al.*, "Verification in the Forest Sector in Cameroon," in *Legal Timber: Verification and Governance in the Forest Sector*, edited by D. Brown *et al.* (ODI, 2009) at 135-146.

<sup>11</sup> R. Eba'a Atyi, "Study on Development and Progress in Timber Procurement Policies: Country Case Study: Cameroon," ITTO (2009).

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.<sup>12</sup> CSM includes the felling and on-site conversion of trees into lumber.<sup>13</sup> 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.<sup>14</sup> CSM and related activities contribute significantly to Cameroon's informal economy, providing many jobs in rural and urban areas.<sup>15</sup> 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.<sup>16</sup> Nonetheless, operators in this sector pay a significant amount taxes, albeit informally.<sup>17</sup> 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."<sup>18</sup>

## 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.

12 When calculated in RWE, both industrial (year 2007) and artisanal timber (year 2008) production equalled roughly 2.1 million cubic meters; P. Cerutti *et al.* "The Domestic Market for Chainsaw Milling in Cameroon: Present Situation, Opportunities and Challenges." OP 61 CIFOR (2011) at vii.

13 M. Wit *et al.* "Chainsaw Milling: Supplier to Local Markets – A Synthesis," Preface: 52 *European Tropical Forest Research Network News* (2010), vii.

14 P. Cerutti *et al.*, n.7 above.

15 C. Pye-Smith, "Cameroon's Hidden Harvest," CIFOR (2010).

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 activities "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.* n. 7 above at 25).

18 S. Lawson *et al.*, *Illegal Logging and Related Trade. Indicators of the Global Response* (Chatham House, 2010) at 117.



The researcher conducted 24 semi-structured interviews.<sup>19</sup> 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<sup>20</sup> 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.

<sup>19</sup> The interview guideline was based on four themes: (1) involvement with FLEGT, (2) understanding of FLEGT, (3) motivation for involvement and (4) attitude toward FLEGT objectives and finalized after two field tests. If interview partners were not aware of the FLEGT initiative, interviews were continued replacing FLEGT with ideas such as a reduction of illegal activities in the forest sector and formalization of the domestic forest sector depending on the interviewee's comprehension.

<sup>20</sup> Two of the interviews were not recorded due to insecure circumstances; these interviews were not used during data analysis.

*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 FLEGT 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 differ-



ent 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.<sup>21</sup> The VPA

<sup>21</sup> Certain comments dispute the belief that timber prices will rise as a result of VPA implementation. Companies with voluntary legality verifications explain that consumers in the past have not been willing to pay higher prices for wood whose legal origin has been verified and they do not expect this to change with FLEGT.

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 matrixes. One actor exclaims 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. 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 to 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<sup>22</sup> 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 FLEGT/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.

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22 A. Karsenty and K. Schreckenberg, n. 8 above.

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 be clarified in order to mitigate potential conflicts i.e. will industrial saw mills 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 FLEGT/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<sup>1</sup>

#### 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 ( $\approx 12$  USD per  $m^3$ ) 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 FLEGT/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 FLEGT/

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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<sup>2</sup>.

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"<sup>3</sup>.

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 isotopic 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, electron-

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<sup>2</sup> Forestry Commission, *Wood Tracking System of the Ghana VPA-Legality Assurance System- A pilot test report*, FC (2011), at 1-19.

<sup>3</sup> F. Seidel *et al.*, *Timber Tracking Technologies: Review of Electronic and Semi-Electronic Timber Tracking Technologies and Case Studies*. A prepared draft report (for ITTO and CITES, 2012), at 13.

ic 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 (Seidel *et al* 2012)<sup>4</sup>. 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 weakness<sup>5</sup>.

Label Type	Strengths	Weakness
Conventional paint and chisel labels	<ul style="list-style-type: none"> <li>- Paint and chisel marks are easy to apply</li> <li>- Painting and chiseling cost very little and require no special training or maintenance programs</li> <li>- These labels can be robust and survive road and water transport very well</li> <li>- Materials are usually readily available locally</li> <li>- These labels can be integrated into forest management, logistics, stock inventory functions</li> </ul>	<ul style="list-style-type: none"> <li>- Painting or chiseling labels is time consuming; this has cost implications in high-labor-cost environments</li> <li>- Hand painted labels that use up a lot of space are suitable only for application on large log surfaces</li> <li>- Painted and chiseled labels are prone to errors during applications and when being read</li> <li>- Unscrupulous persons can easily replicate paint and chisel labels</li> </ul>

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

<sup>4</sup> F. Seidel et al., n.3 above, at 13.

<sup>5</sup> D.P. Dykstra *et al.*, 2002. *Technologies for wood tracking: verifying and monitoring chain of custody and legal compliance in the timber industry*. *Environment and Social Development East Asia and Pacific Region Discussion Paper* (World Bank, 2002), at 26-29.



**Compendium on experiences from the Voluntary Partnership  
Agreements (VPAs) Process in West and Central African countries**

Label Type	Strengths	Weakness
Branding hammers	<p>Show similar strengths to that of conventional paint and chisel labels mentioned above. Additional advantages include:</p> <ul style="list-style-type: none"> <li>- Hammer marks do not use up a lot of space and are suitable for a range of log sizes and large-dimension sawn timber</li> <li>- Hammer marks can be used in conjunction with serial-coded numbers that are not easy to copy</li> </ul>	<ul style="list-style-type: none"> <li>- Marks left by hammers often are difficult to read</li> <li>- Hammer marks can be easily replicated and distributed to unauthorized persons</li> <li>- 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</li> <li>- Information on the hammer mark cannot be used to identify individual logs</li> </ul>

**Theme One:**  
**Legality Assurance System**

Label Type	Strengths	Weakness
Conventional labels (barcoded tags)	<ul style="list-style-type: none"> <li>- Attaching is relatively quick-slower than using hammers but quicker than paint or chisel labeling</li> <li>- Conventional labels are relatively inexpensive. Usually easier to read than other marking technologies</li> <li>- 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</li> <li>- Large amounts of data can be stored and labels can be coded to support a wide range of application</li> <li>- Barcoded data can be instantly scanned into electronic format and captured in external monitoring and stock inventory systems</li> <li>- Large quantities of labels can be produced/printed cheaply</li> <li>- These labels not only support chain of custody systems but can also enhance forest management and stock inventory functions</li> </ul>	<ul style="list-style-type: none"> <li>- Conventional labels can be easy to duplicate or counterfeit unless suitable security mechanisms are integrated into the design of the labels</li> <li>- Barcoded labels can be difficult to read/scan in dusty, dirty or wet conditions</li> <li>- They can easily be removed or fall off</li> <li>- Conventional labels cannot usually be manufactured in the forest and therefore have to be pre-printed for log tracking purposes.</li> <li>- Barcoded labels require relatively expensive and sensitive electronic scanners, although the cost of these scanners is dropping continuously</li> </ul>

**Compendium on experiences from the Voluntary Partnership  
Agreements (VPAs) Process in West and Central African countries**

Label Type	Strengths	Weakness
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.
Chemical identification methods (DNA and isotopic sampling)	<p>DNA and isotopic sampling unlike other product identification methods does not require direct physical tagging of the timber product.</p> <ul style="list-style-type: none"> <li>- For example, in DNA sampling, samples can be taken at any stage in the supply chain. The DNA is compared with a genographic map to establish the material area of origin.</li> <li>- Similarly for isotopic sampling, samples taken from timber product can be traced to a location by analyzing the isotope profile of the soil</li> <li>- Techniques used are very resistant to forgery and not affected by inherent problems associated with tagging</li> </ul>	<ul style="list-style-type: none"> <li>- Chemical identification methods (e.g. DNA sampling is relatively expensive and data intensive, requiring more samples to be taken of the product in order to build established genographic maps and data bases for all species of interest</li> </ul>

## 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.



Figure 1. Schematic representation of Supply chain used in Ghana's WTS pilot.

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. Adopting an electronic data management for this stage of the supply chain has the potential to be cost-effective and efficient.
- **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.

Figure 2. Tracking devices used for stock enumeration and harvesting procedures



- **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 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.



*Figure 3: Log measurement and transport documentation checks at FC designated points*

- 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 includes 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. In some cases, when FC is made aware of this logs trading, TIDD issues log transfer certificates to cover such log transactions. A rule of thumb that could be adopted is that any log that is not labeled and/or without an LMCC should be excluded from the supply chain and kept separately.

- **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.

### Key considerations for Ghana's WTS as a way forward

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 US\$5 /m<sup>36</sup>.

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F. Seidel et al., n.3 above, at 18.

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/m<sup>3</sup><sup>7</sup>. In developed countries — with good infrastructure and skilled staff — the figures ranged between US\$2 and US\$3/m<sup>3</sup>. However, the figure calculated per m<sup>3</sup> 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 m<sup>3</sup> but either charge monthly connection fees or require an annual license fee for their software. In Ghana, officially captured timber (roundwood) production figures in the past five or so years have averaged between 0.70-0.8 million m<sup>3</sup>/annum, far below the expected national annual allowable cut of 2.0 million m<sup>3</sup>. 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.

2. 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.);

<sup>7</sup> Estimated value obtained by dividing WTS cost of USD 1,384,823 (investment which include WTS software developer license fees, maintenance and support services fees, professional services fees for installation, hardware hosting and leasing fees, hardware supplies, etc. + operational costs) by estimated timber volume of 119,600 m<sup>3</sup> inventoried during the WTS pilot. The total inventoried timber volume represents the maximum traceable roundwood volume. However, during the pilot WTS less than 1% of this volume was captured in product form. Thus when investment + operational cost are reduced and wood volume tracked increased, the cost of WTS will be kept low.

- 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 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 FLEGT/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 FLEGT/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 FLEGT/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

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#### 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 how key lessons from past FLEGT actions 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

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local community engagement in FLEGT/VPA 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<sup>5</sup>. 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 Osumba<sup>6</sup>, 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.<sup>7</sup> These grouping 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)<sup>8</sup> define participation as involvement of citizens and stakeholders in decision-making, either directly or through legitimate intermediaries representing their interests. Pateman<sup>9</sup> suggests that suitable definitions of participation must include four elements: participation by someone, participation with someone, participation in something and participation for some purpose. Participation excludes the following situations: where an individual merely takes part in a group activity; where an individual is merely given information on a decision affecting him/her before it is executed; or, where an individual is present at a meeting but has no influence.

<sup>5</sup> Friends of the Earth-Ghana and FAO. *Project Letter of Agreement*, (FoE-Gh, 2011), at 2.

<sup>6</sup> P. A. Osumba, *Pay back anticipation: a driving force in communities participation in forest management*, (IASC, 2011), at 5.

<sup>7</sup> <[http://www.aifo.it/english/resources/online/apdrj/selread100/comm\\_participation\\_boyce\\_lysack.pdf](http://www.aifo.it/english/resources/online/apdrj/selread100/comm_participation_boyce_lysack.pdf)>

<sup>8</sup> FAO and PROFOR (The Program on Forests). *Framework for Assessing and Monitoring Forest Governance*, (FAO and PROFOR, 2011), at 31.

<sup>9</sup> n. 7 at 45 above.



### 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<sup>10</sup>, 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<sup>11</sup>. 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<sup>12</sup>. 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 sys-

<sup>10</sup> S. Ozynga and I. Leal, *Forest Watch Special Report-Update Report on FLEGT Voluntary Partnership Agreements*. (European Forest Watch, 2010). Fern at 1.

<sup>11</sup> Counter-brief Loggingoff, *A civil society counter-brief on the Cameroon-EU VPA*, (2010), at 4.

<sup>12</sup> < [http://www.fcghana.org/library\\_info.php?doc=43&publications:Forest&WildlifePolicy&id=15](http://www.fcghana.org/library_info.php?doc=43&publications:Forest&WildlifePolicy&id=15) >

terms 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 of array of organizations: community groups, NGOs, labor unions, indigenous groups, charitable organizations, faith-based organizations, professional associations, and foundations<sup>13</sup>. 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*<sup>14</sup>, involving forest dependent communities has been a very 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 "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.

<sup>13</sup> <<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/CSO/0,,contentMDK:20101499~menuPK:244752~pagePK:220503~piPK:220476~theSitePK:228717,00.html>>

<sup>14</sup> M. Othman *et al*, "FLEGT Voluntary Partnership Agreements", 53 *ETFRN NEWS* (2012), 1, at 114.

The Liberian VPA process is expected to aim at maximizing the consultation of civil society and the involvement of community representatives. According to Lomax<sup>15</sup>, 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 an EU-funded African, Caribbean and Pacific FLEGT Project 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 African, Caribbean and Pacific Countries (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 weakness stems from the fact that they

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15 T. Lomax, *Forest Governance in Liberia: An NGO Perspective*, (FERN, 2008), at 27.

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<sup>16</sup>. 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 and skills acquired by communities will help them to exhibit readiness to resist illegal logging because it is deemed a moral duty<sup>17</sup>. Fortunately, legislation in Ghana is already designed to promote sustainable forest management and in

<sup>16</sup> <http://www.illegal-logging.info/uploads/CHIIllegalLoggingConsumerCountryMeasuresWEB.pdf>

<sup>17</sup> Lartey E., *Know Your Forest Laws: Community Pocket Guide*. (Friends of the Earth-Ghana, 2012).

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<sup>18</sup>. 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<sup>19</sup>. Independent monitors or auditors could link up with trained communities to tap credible information to monitor the VPA process.

Figure 1. Andrews Mensah, Asankran Nyamennae. A participant expressing the value of knowledge gained in one of the field demonstrations carried out in Totua Forest Reserve under FoE-Gb ACP-FLEGT Pilot Project.



*“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.”<sup>20</sup>*

18 K.A Oduro and K. Gyan. *Draft Document on definition of legal timber in Ghana*. (FC, 2007), at 17.  
19 <http://loggingoff.info/themes/independent-monitoring>  
20 Lartey *et al.*, n.17 above, at 38.

*Addressing Tenure Security through Implementation of Community Based Land Agreements (CBLAs)*

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<sup>21</sup>. 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 hampers 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<sup>22</sup>. 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<sup>23</sup>, 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<sup>24</sup>. Insecurity of land and tree 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

21 Friends of the Earth-Ghana, *Baseline Report: Improving Forest Governance through Community Level Participation and Community Based Forest Management Systems*, (FoE-Gh, 2012), at 23.

22 FAO. *Improving forest Governance in Africa, the Caribbean and Pacific*, (FAO, 2011), at 18.

23 T. Lomax, n.15 above, at 10.

24 Friends of the Earth-Ghana, *Baseline Report: Improving Forest Governance through Community Level Participation and Community Based Forest Management Systems*, (FoE-Gh, 2012), at 23.

trees<sup>25</sup>. 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-FLEG T 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.

#### *Communication 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.

Figure 2. ACP-FLEG T  
Pilot Project staff, Michael  
Okai disseminating VPA  
information via Community  
Information Center at  
Agona Amenfi



25 n.16 above, at 23.



## 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<sup>26</sup>. The implementation of the ACP-FLEGT Support 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<sup>27</sup>, 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 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.

<sup>26</sup> Wiersum *et al.*, *Implementing FLEGT: impacts on local people*. (Wageningen University and Research Centre, 2012), at 6.

<sup>27</sup> E. Lartey, "Forest Fringe Communities' Perspective on the Socio-economic and Land Use Impacts of Granting Timber Rights", 2:2 *International Journal of Social Forestry* (2009), 167, at 182.



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<sup>28</sup>, four main areas have been identified with specific roles outlined in the timber legality verification protocols at the community level<sup>29</sup> (see Table 1).

Table 1. Proposed framework for community participation in monitoring of timber legality

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

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

<sup>28</sup> Beeko C. and R. Gyimah. *Forest governance forum west Africa* Accra, (June 7&8, 2011) at 10.

<sup>29</sup> Friends of the Earth-Ghana, *Progress Report 2, FAO ACP-FLEGT Support Pilot Project* (2012), at 12.

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.

## 4.2 Over-centralization and over-concentration of the Voluntary Partnership Agreement Process in Ghana

Kwame MENSAH<sup>1</sup>

### 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.”<sup>2</sup> 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 nation-

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<sup>1</sup> National Coordinator, Western Region Development Network of NGOs (WERENGO); Email: ekam2000gh@gmail.com  
<sup>2</sup> B. A. Kingsley, *A civil society counter-brief on the Republic of Ghana-EU VPA*. (2010) at 1.

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als 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 consultation or policy review within the Forestry Commission. Although 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<sup>3</sup> and a number of indirect public sector stakeholders which ensured<sup>4</sup> 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

<sup>3</sup> In Ghana: Forestry Research institute of Ghana, Parliamentary Select Committee, Timber Industry Development Division (TIDD), Forest Services Division (FSD), Wildlife Division (WD), Ministry of Land, Forest and Natural Resource (MLFNR).

<sup>4</sup> Chris Beeko has been with the FC for over twenty years and coordinated the VPA negotiation process. He is now the Director of Timber Validation Department of the FC.

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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 (2010) 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<sup>5</sup> was invited by the Forestry Commission of Ghana (FC) to participate in the Steering Committee. The international NGO FERN<sup>6</sup> 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 and civil society organizations (*see Table 1*). According to Chris Beeko,<sup>7</sup>

<sup>5</sup> A local grouping of NGOs – The NGO Coalition for Liberia – that fostered relations with local communities and successfully lobbied for their inclusion at the talks.

<sup>6</sup> <[www.fern.org/sites/fern.org/files/07-2012%20FLEGT%20briefing%20note\\_0.pdf](http://www.fern.org/sites/fern.org/files/07-2012%20FLEGT%20briefing%20note_0.pdf)>

<sup>7</sup> O. Bossman. *The dynamics of multi-stakeholder processes in the negotiation of voluntary partnership agreement in Ghana*. (2009).

*“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 Breakdown of participants on the VPA Steering Committees and negotiation teams of the two West African Countries.

STAKEHOLDERS	NO. OF REPRESENTATIVES			
	VPA SC		VPA Negotiation Team	
	GHANA	LIBERIA	GHANA	LIBERIA
Related Government Ministries and MLFNR and forest sector agencies	10	9	Ministry of Finance Ministry of Economic Planning	Ministries of Commerce and Finance
Timber Industry	2	3	Ministry of Lands, Forestry & Mines (including the Forestry Commission);	Ministry of Agriculture – Chair Forestry Development Authority
NGOs (CSOs, Academia)	3	4	Ministry of Trade, Industry, PSI & PSD;	National Investment Commission
Community Representatives		7	Justice & Attorney General's Office	Ministry of Justice
			The timber trade association	Private Sector (Industry)
			Civil Society	Liberia Coalition of NGOs
	15	23		11

(Wageningen University, MSC Thesis 2009), at 59.

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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 coalition<sup>1</sup> 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<sup>8</sup>. 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.

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<sup>8</sup> Domestic Market Regulation working group was Chaired by Mr. Kwabena Nketiah and Dr. Abeney also chaired Legal Standards working group.



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 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

## Theme Two:

### Participation mechanisms in negotiation and implementation of VPAs

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)<sup>9</sup> 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. How-

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<sup>9</sup> Organized by Forest Watch Ghana, Care International, and Forest Commission, TBI Ghana.

ever, the two countries did very well in providing web sites with the intention of providing links to reports. In the Ghanaian web site,<sup>10</sup> 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<sup>11</sup>.

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 SC for discussion. Within the FWG there were adequate reporting and feedback mechanisms: “information trickled down to all members of this stakeholder group”<sup>12</sup>

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.”<sup>13</sup>

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.

10 <[www.fcghana.com/VPA\\_2/](http://www.fcghana.com/VPA_2/)>

11 <<http://vpaliberia.com/memorie.htm>>

12 O.Bossman, n. 7 above, at 72.

13 Abeney in O.Bossman, n.7 above, at 75.

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<sup>14</sup>”.

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.

*“Sharing of documents (reports) from meetings in which we have participated were delayed or did not come at all. We do not have a copy of the VPA final document which was initialed. We don’t even know what the final document looks like. If we are 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 know get to know what was written down afterward. There is little transparency.”<sup>15</sup>*

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”<sup>16</sup>.

14 Sadah in O.Bossman, n.7 above, at 75.

15 Teiko in O.Bossman, n. 7 above, at 76.

16 Adeleke in O.Bossman, n.7 above, at 76.

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 agreement. 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 OZINGA<sup>1</sup>

#### 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.<sup>2</sup> 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<sup>3</sup> 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.

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<sup>2</sup> D. Kaimowitz. "Making the Law of the Jungle: The Reform of Forest Legislation in Bolivia, Cameroon, Costa Rica, and Indonesia." *Global Environmental Politics* 2(3) at 63-97.

<sup>3</sup> Commission Communication FLEGT, *Proposal for an EU Action Plan*, 21.5. 2003, Brussels. COM (2003) at 251.



What is more, these successes are essential building-blocks for future governance improvements.

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.”<sup>4</sup> 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 the following October, 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.”<sup>5</sup>

<sup>4</sup> Ministerial Declaration; FLEG East Asia Ministerial Conference, Bali Indonesia, 11-13 September 2001, <[http://www.illegal-logging.info/uploads/Bali\\_ministerial\\_declaration.pdf](http://www.illegal-logging.info/uploads/Bali_ministerial_declaration.pdf)>

<sup>5</sup> Council Conclusions, Forest Law Enforcement, Governance and Trade (FLEGT); 2003/C 268/01.

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.<sup>6</sup> 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.

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<sup>6</sup> M. Colchester, *Justice in the forest*, (CIFOR, 2006).

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 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 licenses 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”.*<sup>7</sup>

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

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F. Pearce, *Forest Stands* (FERN, 2012), at 7.

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"<sup>8</sup>. 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.

Cameroon, 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 Ngonzo, 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 reform."<sup>9</sup>

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".<sup>10</sup>

8 F. Pearce, no.7 above, at 10.

9 F. Pearce, no.7 above, at 10.

10 S. Ozinga, R. Kohnert, *Negotiations of VPAs* (EFI, 2011).

Pearce continues in his report:

*“In the Central African Republic, civil stakeholders felt weak and unsupported, but also failed initially to share information or coordinate action among themselves. They had no prior experience of such cooperation. Now there is a functioning network of civil society organizations effectively working on the implementation of the VPA.”<sup>11</sup>*

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.”<sup>12</sup> 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 and forest governance, the inclusive decision-making process in the forestry sector

<sup>11</sup> F. Pearce, no.7 above, at 11.

<sup>12</sup> F. Pearce, no.7 above, at 12.

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).<sup>13</sup> 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:

*“In the Republic of Congo, a new law giving new rights to indigenous peoples was adopted in 2011. After a tortuous seven-year passage, it only succeeded because its adoption was made conditional for the continued involvement of civil society organizations in VPA negotiations. The law, once implemented, will grant equal access to schools and medical help to the 10 per cent of the country’s population categorized as indigenous peoples. The law itself is an annex to the VPA, thanks to which its implementation will directly involve civil society”.*<sup>14</sup>

Ghana’s new forest and wildlife policy, approved by the cabinet this year, began with the VPA and the surrounding process of stakeholder consultation about forest law. After originally excluding civil society in the development of this new law, the NGO coalition Forest Watch Ghana managed to open up this debate and followed “VPA procedures” to provide extensive input into the policy. The current policy has the full support of civil society actors and aims to push Ghana up to international standards on issues such as sustainable management. The VPA text itself, as well as Ghana’s Readiness Preparation Proposal (R-PP), note the need for (tree) tenure reform, suggesting that “sustainable development of forest and wildlife resources” requires accepting the “importance of appropriate and efficient land use and security of land tenure”.

<sup>13</sup> L. Alden Wily, *So who owns the forest, an investigation into forest ownership and customary land rights in Liberia* (FERN and SDI, 2007); L. Alden Wily, *Whose land is it, the status of customary land tenure in Cameroon* (CED and FERN, 2011); L. Alden Wily, *Facing up to the past and present, land rights in Gabon* (FERN, 2012)

<sup>14</sup> F. Pearce, no.7 above, at 8.

## 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.”<sup>15</sup> Although all national 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.<sup>16</sup>

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.<sup>17</sup>

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.<sup>18</sup> The legality of most PUPs

15 F. Pearce, no.7 above, at 7.

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 welcome advance in Cameroon in particular, where there was limited recognition of transparency in existing legislation. Nonetheless, the lesson 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 met. Implementation of the VPA will rely on EU support to keep it on track, and on active civil society to both demand information and to make use of it. In the case of Ghana, the lack of any freedom of information legislation or VPA annex means the obligation on the authorities to publish forest sector information is more diffuse. Although the Forestry Commission may make information available on request, this still leaves information sharing at its discretion. There is a need to develop broad stakeholder agreement in Ghana on exactly what forest sector data and documents should be routinely published in Ghana, notwithstanding any progress on a FOI Act.” Available at Global Witness *et al.*, *VPA Transparency Gap Assessment 2012*, <[www.foresttransparency.info/report-card/updates/750/vpa-gap-2012/](http://www.foresttransparency.info/report-card/updates/750/vpa-gap-2012/)>

17 F. Pearce, no.7 above, at 8.

18 J. Yiah, *Private Use Permits (PUPs) and the Voluntary Partnership Agreement (VPA): Do They Demonstrate Legality?* Presentation



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

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at Chatham House is available at [www.loggingoff.info](http://www.loggingoff.info).

the VPA, including the necessary forest and policy reforms, and also include the engagement of non-state actors in the implementation and monitoring of 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,<sup>19</sup> 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

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19 < <http://www.bilaterals.org/spip.php?rubrique17> >

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.

#### 4.4 Les Collèges d'acteurs creuset d'un véritable processus multi acteurs et de gouvernance : Cas de la République Centrafricaine

Jean Jacques Urbain MATHAMALE<sup>1</sup>

##### Résumé

*Il n'y a pas de formule consacrée classique que devait emprunter tous les Etats voulant s'engager dans le processus Forest Law Enforcement Governance and Trade (FLEGT). Cependant, des lignes directrices devront guider les Etats à se préparer pour engager la négociation avec la partie Européenne. La République Centrafricaine, au moment où elle allait s'engager dans ce processus, va bénéficier de l'expérience du Cameroun et de la République du Congo, et dans une mesure celle du Ghana pour bâtir sa propre stratégie en vue de s'engager dans le FLEGT. Car ces pays ont été les précurseurs dans le processus. L'expérience que nous mettons en exergue, c'est-à-dire le collège d'acteurs, est une qui mérite d'être dupliquée, renforcée et améliorée pour d'autres processus tel que la REDD. Comme stratégie, elle a certes connu ses problèmes, mais la volonté des parties prenantes d'aller de l'avant a permis de réduire les difficultés et de renforcer la participation des collèges. Comme défi, on pourra citer le cas de la société civile où une plate forme a été vite mise place avec des organisations qui ne sont pas de même domaine. C'est dire que cela s'est construit par une volonté réelle des uns et des autres.*

##### Introduction

Le processus Forest Law Enforcement, Governance and Trade (FLEGT) est une réponse de l'Union Européenne au fléau grandissant de l'exploitation forestière illégale et au commerce du bois qui lui est associé.

Le plan d'action de l'Union Européenne définit un processus et propose une gamme de mesures pour limiter l'exploitation illégale du bois et le commerce qui lui est associé. Les stratégies clés de la communauté internationale consistent à apporter un appui à l'amélioration de la gouvernance dans les pays producteurs qui puissent permettre aux seuls bois légaux d'être exportés vers les marchés européens.

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En République centrafricaine, le processus FLEGT a démarré par la nomination d'un Point Focal en avril 2007, par le ministre des Eaux, Forêts, Chasses et Pêches chargé de l'Environnement au sein de son administration pour suivre ce processus avec la contrepartie européenne afin d'assurer la coordination et l'administration du processus marquant ainsi la volonté du gouvernement à aller vers la signature d'un accord avec l'Union Européenne. Un Comité National de Coordination (CNC) installé en 2008 par décision du ministère des Eaux et Forêts, composé de treize membres. La société civile a deux représentants aux côtés des représentants du secteur privé et de l'administration. Le Comité a pour rôle de préparer l'information des acteurs centrafricains sur le processus et les étapes préparatoires à l'éventuelle ouverture de négociation qui aboutirait à la signature d'un Accord de Partenariat Volontaire entre la République Centrafricaine et l'Union Européenne.

Selon la méthodologie, trois groupes d'acteurs ont été identifiés à savoir : Administration, secteur privé et société civile pour s'impliquer dans le processus. Chaque groupe sera un ensemble appelé « Collège ».

La méthodologie de travail proposée par le Point Focal National pour préparer le document national en vue des négociations avec la partie européenne se présente de la manière suivante :

1. Consultation par Collège d'acteurs
2. L'atelier de synthèse ou les Collèges réunis.

La facilitation de ces rencontres a été donnée à une organisation internationale ; en l'espèce le World Wide Fund For Nature (WWF) a été désigné et accepté par les parties.

La facilitation a pour tâche de préparer les consultations, en mettant la logistique nécessaire et de faciliter la rédaction des comptes-rendus de session par collège. Elle arrête de commun accord avec les collèges la date et le lieu de la session et distribue les invitations.

Une fois la consultation par Collège sanctionnée par un rapport dans lequel l'intérêt de la partie est librement exprimé, l'étape suivante est la grande réunion des trois Collèges en vue de confronter les trois avis et d'en faire un document national. Document pour lequel, le Comité National de négociation devrait utiliser pour négocier avec la partie Européenne. Ce mécanisme a fonctionné jusqu'au paraphe et à la mise en œuvre de l'Accord. A l'heure actuelle les consultations sur des questions impor-

tantes, par exemple les désignations des représentants dans les différents organes de mise en œuvre et de suivi se font directement au niveau des parties prenantes, notamment, la société civile, le secteur privé et le secteur public.

Pour la société civile, la Plate Forme Gestion Durable des Ressources Naturelles et de l'Environnement (GDRNE) est l'interlocuteur officiel. En dépit de ces mécanismes de participation, des succès et des faiblesses ont été enregistrés.

### **Les succès**

Les Collèges ont permis aux parties prenantes de donner directement leurs points de vue et de les défendre lors de la rencontre en atelier de synthèse. Les documents finaux sont plus ou moins le reflet des intérêts et de la position des parties prenantes.

La feuille de route de la société civile élaborée consensuellement par les organisations, comme étape de sa participation a été largement suivie par les organisations pour travailler dans le processus. La Déclaration de position signée par toutes les ONG pour fixer les conditions de sa participation ; la constitution du collège de la société civile comprenant trente membres issus des différentes organisations ; sa disponibilité, son sens d'engagement et de proposition et sa pro activité durant les négociations jusqu'au paraphe lui ont valu le respect et le mérite par les autres parties prenantes qui vont lui consacrer dans l'accord : l'observation indépendante des activités forestières en complément d'un auditeur indépendant. A la suite de ce travail, la société civile centrafricaine a vu la nécessité de continuer à travailler dans un réseau en vue de réussir son travail de monitoring et de plaidoyer. A cet effet, la plate forme a été redynamisée en intégrant dans sa charte sa participation aux différents processus nationaux prenant en compte les droits des communautés et la gestion des ressources naturelles et la protection de l'environnement.

La plate forme Gestion Durable des Ressources Naturelles et de l'Environnement (GDRNE) intervient depuis lors pour accompagner le gouvernement dans plusieurs processus, tels que REDD, ITIE, Convention 169 de l'OIT et la révision des textes juridiques à savoir : le code domanial et foncier, le code foncier agro pastoral, et les textes d'application du code de l'environnement.

Cette plate forme dispose à ce jour d'une expertise en termes de gouvernance, gestion participative et une expérience en matière de processus multi acteurs. La société civile a développé la pro activité et cela a été suivi par les autres collègues, en vue de faire avancer la négociation en s'assurant qu'aucun détail n'a été oublié. Cela devrait se traduire dans l'échange documentaire, le partage d'information et la rapidité dans les rencontres et échanges. Cette pratique a eu l'avantage de voir vite circuler les informations et de permettre aux différents acteurs de recevoir l'argumentaire des uns et des autres. Elle a permis d'avoir une contribution globale et de comprendre les préoccupations divergentes.

Aujourd'hui, l'accord consacre à la société civile le rôle spécifique d'Observation Indépendante. Son Collège désigne en toute indépendance ses représentants dans les différents organes et intervient dans toutes les activités. Les préoccupations sur la promotion et la protection des droits des communautés locales et autochtones et les aspects environnementaux sont intégrés dans l'accord, même si l'on pense que ces communautés locales et autochtones n'ont pas pris part effectivement au processus, mais leurs intérêts ont été du moins soutenus et défendus par la société civile qui s'est rapprochée d'autres OSC de la sous région, notamment du Congo et du Cameroun pour avoir de la documentation et partager leurs expériences sur plusieurs thématiques.

Ainsi, de manière tolérante, la société civile a participé à toutes les phases de négociation au côté des autres parties prenantes, jusqu'au paraphe de l'accord, et enfin avec la mise en œuvre. La société civile n'a jamais été écartée du processus.

### **Les Obstacles**

Des obstacles majeurs sont apparus durant le processus de négociations. On note entre autre :

- Le non respect des délais de convocation des sessions de consultation de collège d'acteurs,
- La remise tardive des supports et documentations la veille des consultations, voire séance tenante,
- La remise partielle des supports et documentations,



- La faiblesse et/ou l'insuffisance d'échanges d'informations entre les acteurs et collègues,
- L'absence d'appui financier et technique.

C'est aussi vrai pour la société civile que l'administration qui ne disposait d'appui technique et financier. Cette situation avait le désavantage de ne pas permettre une bonne contribution axée sur des capacités réelles.

La société civile pour son implication a fait parvenir au Point focal National et les autres collègues un document sur les conditions de sa participation durant les consultations. On constate que plusieurs de ces points n'ont pas été pris en compte, notamment le délai de convocation et la remise des supports et documentation fixé à 15 jours, en vue de favoriser une bonne appropriation et une bonne contribution.

Des divergences sont apparues plusieurs fois à l'intérieur de la plate forme, notamment par son caractère mixte : les ONG de défense des droits de l'homme ont menacé à plusieurs reprise de rompre la participation.

Certains des obstacles ont été relevés par d'autres collègues surtout l'échange d'information entre les parties prenantes et la communication des informations en temps utile et réel.

Le FLEGT comme *processus* d'abord, ensuite *thématique*, et enfin *accord*, a favorisé une plus grande implication et une prise de conscience et de la responsabilisation des parties prenantes.

Le cadre institutionnel dans lequel ont fonctionné les sessions et les stratégies de travail ont favorisé la prise de conscience des parties prenantes.

La société civile s'est retrouvée dans tout le mécanisme même si par moment elle a formulé des critiques dans telles ou telles activités, par exemple : la mise à disposition de la documentation qui n'était effectif que la veille ou le jour, séance tenante, ce qui ne permettait pas de formuler des bonnes recommandations.

La durée des sessions de consultation entre acteurs était très courte, l'absence et l'accès aux informations viables de part et d'autres, l'allure dans les négociations n'ont pas altérés la bonne marche du processus.

La société civile s'est comportée en responsable compte tenu des enjeux, elle a favorisé les débats en privilégiant les discussions aux revendications qui normalement sont de nature à freiner ou déclencher le retrait. La tendance qui a prévalu est de faire toujours des concessions pourvu qu'on accepte les positions des uns et des autres.

## **Conclusion**

Les collèges d'acteurs ont été de véritable creuset d'un processus multi acteurs. Cadre de réflexion, d'analyse et de proposition. Les propositions par collèges et échanges de documents ont permis d'avoir un éventail très large de propositions. La société civile a surpris par la production d'une définition de la grille de légalité, de traçabilité et a fait des recommandations très positives allant dans le sens de la prise en compte des aspects sociaux et environnementaux. Le processus FLEGT reste le processus multi acteurs ayant travaillé de bout en bout avec les différents acteurs réunis en collèges déterminés à présenter et défendre leurs préoccupations divergentes et les intégrer dans le dispositif de la négociation. Les droits des communautés locales et autochtones ont été soutenus et défendus par la société civile qui s'est rapprochée d'autres OSC de la sous région, notamment du Congo et du Cameroun pour avoir de la documentation et partager leurs expériences sur plusieurs thématiques.

## **Recommandations**

Le processus FLEGT reste à ce jour solide en Centrafrique. Les expériences tirées doivent être alimentées d'autres pays à venir, c'est en cela que nous recommandons le partage d'expériences avec d'autres acteurs. La gouvernance à travers un cadre multi acteur est facteur de transparence, nous recommandons que d'autres processus nationaux et internationaux puissent prendre la forme de collège en vue de créer un cadre propice à la transparence et à la gouvernance.

La société civile centrafricaine qui a joué un rôle majeur dans ce processus peut faire bénéficier et partager ses expériences aux autres sociétés civiles. La société civile voire les autres parties prenantes doivent disposer d'appui financier pour se mettre au même niveau d'information et créer un cadre véritable d'échanges.



## THEME THREE

### FLEGT IMPLEMENTATION APPROACHES

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## 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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Feja LESNIEWSKA<sup>2</sup>

#### 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 im-

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provement 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<sup>3</sup> 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.

#### *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 fol-

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<sup>3</sup> We will refer throughout the paper to the “pre-implementation” stage of the VPA as the phase following signature and prior to the entry into force of the agreement. At this stage, rules are developed to support the agreed VPA, including through the development of the Legality Assurance System and law reforms.



lowing key elements: access to information, accountability, participatory rules and control and verification mechanisms.<sup>4</sup>

First and foremost, *access to information* is fundamental. This needs to be secured from the start of the VPA process through to the enforcement stage. The type of information to disclose should be clearly defined, as well as how information 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.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

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

<sup>4</sup> We do not intend here to present an exhaustive list of elements relevant to stakeholder participation but rather the essential ones.

<sup>5</sup> VPA between the European Union and the Republic of Congo on forest law enforcement, governance and trade in timber products into the Community (Congo VPA), OJ L92 of 06.04.2011 and VPA between the European Union and the Republic of Ghana on forest law enforcement, governance and trade in timber products into the Community (Ghana VPA), OJ L70/3 of 13.03.2010.

<sup>6</sup> Congo VPA, Annex X on Published information, covers a wide range of issues, from timber-related technical information such as the number and issuance of harvesting certificates to information relating to forest management, monitoring and trade.

<sup>7</sup> Congo VPA, Annex X, Published information, 4: information is to be made available on the website of the Ministry for the Forest Economy, at the VPA monitoring committee office, in the annual reports of the Forestry Authority at the ministry and in departmental offices, and through the international and national written press.



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,<sup>8</sup> 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 licensing 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 issues 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.

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

<sup>8</sup> The term "implementation" is not *per se* 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 agreement suggests that implementation covers all stages within the VPA process. See Congo VPA, article 16 and Ghana VPA, Annex V/III and, article 14 and Annex V/III.

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.<sup>9</sup>

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<sup>10</sup> 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.<sup>11</sup> 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.

In addition to the elements mentioned above, an enabling environment for participation also requires political will, favourable legislation, long-term support and resources as well as a space for real dialogue between civil society and public authorities.

<sup>9</sup> 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.

<sup>10</sup> 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 sectoral laws on water, mining, land and human rights, amongst others.

<sup>11</sup> For information on forest policy, see: FAO, *Developing effective forest policy - A guide*, FAO Forestry Paper 161, (FAO, 2010).

## Experiences from civil society's engagement at different stages in the VPA process

*Theory: "participation" as expressed in the VPA agreements*

Both Congo and Ghana recognize the importance of securing the *involvement of all stakeholders* in the implementation of their respective VPAs. The Congo VPA affirms the importance of "involving the stakeholders in the implementation of the agreement,"<sup>12</sup> while the Ghana VPA "promote(s) appropriate strategies, modalities and programmes in consultation with relevant stakeholders in the implementation of this Agreement".<sup>13</sup> This commitment reflects existing international and regional commitments that have been adhered to by the VPA parties. The Congolese VPA specifically refers the UN Convention on Biological Diversity and the Treaty establishing the Central African Forests Commission (COMIFAC). The European Union's commitments under the UNECE Aarhus Convention on access to information, public participation in the decision-making process and access to justice in environmental matters are also reflected in both agreements.<sup>14</sup>

The Congolese VPA contains many specific references to the participation of civil society throughout the agreement. In particular, the involvement of civil society is envisaged at various levels: negotiating the legality grid, intervening as an independent monitor, monitoring the VPA through its participation in the Joint Implementation Committee (JIC) and the Technical Secretariat, participating in law reforms and finally, implementing the VPA communication plan.<sup>15</sup> As to law reforms, the Congolese VPA provides for all draft regulations to be approved by civil society and clearly outlines the principle of participation as an element to be integrated in new supplementary regulations.<sup>16</sup> 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.<sup>17</sup> However, procedures to monitor and ensure rules are

12 Congo VPA, article 16.

13 Ghana VPA, article 16.

14 Congo VPA, article 16; Ghana VPA, article 16.

15 Congo VPA. On participation in the legality grid definition: Annex II. On independent monitoring: Annex III, chap 1, chap 3.2.b, chap 4.1, Annex VI, IV.2. On participation to monitor the VPA: Annex IX, 5, 5.2. On participation in law reforms: Annex IX, 3, 3.2. On participation in the implementation of the communication plan: Annex IX, 4.4. Additionally, references are made in the VPA to increasing the capacity of civil society (article 15, Annex IX, 2) and its participation in forest management (Annex II, legality grid, principles 3 on involvement in concession management).

16 Congo VPA, Annex IX, 3.1.

17 Congo VPA, Annex IX, 3.2.

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.<sup>18</sup> It rather refers to the aspiration to carry out extensive consultation of stakeholders, mentioning strategies, modalities and programmes in the implementation of the VPA.<sup>19</sup> Although there is no direct mention of civil society actors in contributing to law reforms, they must be considered a stakeholder and expect 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”<sup>20</sup> 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.

<sup>18</sup> Ghana VPA. Two direct references: participation to overseeing the functioning of the Timber Validation Department: Annex V, 5.2 and capacity building requirements for civil society: Annex IX.

<sup>19</sup> Ghana VPA, article 16 and annex II, 6.

<sup>20</sup> Ghana VPA, Annex II, 5.

- 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),<sup>21</sup> 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 (*Plateforme congolaise pour la gestion durable des forêts*)<sup>22</sup> 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.<sup>23</sup> 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 provided.<sup>24</sup> 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.

<sup>21</sup> The process extended from June 2008 until 9 May 2009, the fastest negotiated VPA so far.

<sup>22</sup> 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.

<sup>23</sup> That includes amongst 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.

<sup>24</sup> See *A civil society counter-brief on the Republic of Congo-EU VPA*, (FERN, March 2010).

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 civil society actors to be included in the debates, as their participation was not initially foreseen in the VPA Steering Committee.<sup>25</sup> A VPA contact group was created and facilitated by a coalition of NGOs (Forest Watch Ghana<sup>26</sup>), which allowed civil society representatives to contribute to the process, even though time allocated was not always sufficient to make participation meaningful.

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 VPA 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

<sup>25</sup> See *A civil society counter-brief on the Republic of Ghana-EU VPA*, (FERN, June 2010).

<sup>26</sup> Forest Watch Ghana includes about 35 NGOs and individuals advocating for forest-related issues, such as a fair access to resources and participatory governance for local communities.

reviewed in light of progress made to update the timelines for law reforms and VPA 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 VPA 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<sup>27</sup> 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.<sup>28</sup>

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

<sup>27</sup> Congo VPA, Annex IX: Regulations laying down conditions for the assignment of State plantations to third parties, Order defining principles for the traceability of timber, Framework decree laying down conditions for joint and participative forest management, Implementing regulations specifying three different aspects of community forests, Decree laying down the terms of involvement of local communities, indigenous populations and civil society in making decisions relating to the drafting of terms and conditions, Order relating to procedures for the monitoring of timber for import and for export and timber in transit, Implementing regulations laying down terms for the involvement of civil society and/or the appointment of civil society representatives to various committees.

<sup>28</sup> Congo VPA, Annex IX. This committee was going to be composed of experts, including national and sub regional civil society actors, which were going to facilitate the consultation and participation of civil society, indigenous people and local communities with respect to draft legislation.



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 in to law in June 2012.<sup>29</sup> 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.<sup>30</sup> 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.

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<sup>29</sup> Timber resources (Legality Licensing) Regulations, L.I 2184, 20 June 2012.

<sup>30</sup> Ghana VPA, Annex V (Legality Assurance System), 5. The VPA sets a list of the different stakeholders who will be part of the Committee, including civil society. The LI Regulations list differs from this in that civil society as such does not appear. Other groups instead are represented, such as trade unions and traditional authorities.

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 im-

proved. 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

Chris BEEKO

Rhoda KWARTENG<sup>1</sup>

### 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<sup>2345</sup>. 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.

The development and delivery of legality licenses are meant to be derivatives of legality assurance systems (LAS). The framework of the LAS which is pre-

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<sup>2</sup> CAMEROON/ EUROPEAN COMMISSION Voluntary Partnership Agreement, 2010. Official Journal of the European Union, Volume 54, 6 April, 2011- Council Decision of 28 February, 2011.

<sup>3</sup> REPUBLIC OF CONGO/EUROPEAN COMMISSION Voluntary Partnership Agreement, 2010. Official Journal of the European Union, Volume 54, 6 April, 2011- Council Decision of 28 February, 2011.

<sup>4</sup> LIBERIA/ EUROPEAN COMMISSION Voluntary Partnership Agreement, 2011. Official Journal of the European Union, Volume 55, 19 July, 2012- Council Decision of 14 May, 2012.

<sup>5</sup> CENTRAL AFRICAN REPUBLIC/ EUROPEAN COMMISSION Voluntary Partnership Agreement, 2011, Official Journal of the European Union, Volume 55, 19 July, 2012- Council Decision of 14 May, 2012.

defined by the EU is a central part 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 development/implementation 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<sup>67</sup> 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 VPA and therefore does not consider the preceding phases. In the context of this paper, implementation is loosely used to embrace activities that fall more in the domain of systems and process development — the development phase. Typically, the actual implementation phase should be considered to be the stage when the developed systems are operating and delivering their intended outputs making it reasonable for impacts of the VPA to be assessed. Until this stage is reached, it may be reasonable to confine all post negotiation and ratification activities to the development phase.

<sup>6</sup> C. Beeko, 2009. Ghana's Engagement in the VPA and the Management of the Process. Presentation delivered at European Commission FLEGT Training Programme, Brussels. November 2009.

<sup>7</sup> C. Beeko & B. Arts. "The Ghana-EU VPA: A comprehensive policy analysis of its design," (2010), *International Forestry Review* 12(3), at 221 – 230.

## **The VPA Development and Implementation: The Environment**

The envisaged time frame for the delivery of the entirety of negotiated elements under the Ghana VPA<sup>8</sup> 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 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 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

<sup>8</sup> GHANA/EUROPEAN COMMISSION Voluntary Partnership Agreement, 2009. Official Journal of the European Union, Volume 53, 19 March 2010 – Council Decision of 16 November 2009.

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 organiza-



tions (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 confidence 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 researchers<sup>9,10</sup> 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

9 Christian Hansen, 2009: The FLEGT process in Ghana: creating a dichotomy between legal export timber and illegal timber for local markets? Presentation at workshop on illegal or incompatible project. Wageningen UR. 8 June, 2009. <[http://www.vpa-livelihoods.org/workshops\\_and\\_policy\\_debates.aspx](http://www.vpa-livelihoods.org/workshops_and_policy_debates.aspx)>.

10 C. Beeko & B. Arts, N. 221 – 230.

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 case. 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-issuance-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.

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<sup>11</sup> 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<sup>12</sup>. 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

11 C. P. Hansen; T. Treue. "Assessing illegal logging in Ghana", *International Forest Review* (2008), 10 (4): 573 -590.

12 FAO. *State of the World's Forests*, (FAO, 2011) at 111.

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 updatable 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. 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 within an agency had three main bureaucratic barriers to go through to access funds, first within the agency where the initiative was taking place, second from agency to sector Ministry and finally from the sector Ministry to the Ministry of Finance, assuming the government and the development partners had made 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 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.*<sup>13</sup> 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 counter-productive 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

<sup>13</sup> P. Mitchell, E. Santi, Z. Lichtenberg. *The role of socio-political risk analysis in developing communications strategies for controversial project: the case of the West African gas pipeline project*. Paper presented at the CommNet Forum, World Bank, Washington, May 9-11, 2005.



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

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## 6 THEME FOUR: MONITORING FOREST GOVERNANCE

### 6.1 L'observation indépendante par la société civile et les communautés (OI-SCC) : concept, enjeux et défis

Christiane ZEBAZE

Rodrigue NGONZO<sup>1</sup>

#### Résumé

*L'amélioration de la gouvernance forestière s'est avérée être un processus plus complexe que prévu et éminemment consommateur en temps et en ressources, d'où la question de l'efficacité et de la durabilité des modèles classiques d'Observation Indépendante (OI). Il est nécessaire d'étendre le champ d'action de l'OI aux processus dynamiques de gouvernance forestière<sup>2</sup>. Au regard de l'expérience de l'association Forêts et Développement Rural (FODER)<sup>3</sup>, l'Observation Indépendante par le Société Civile (OI-SCC) est un mécanisme d'OI simple, efficace, indépendant, impliquant de manière responsable la société civile et les communautés. La prise en compte des pistes de développement renforcerait l'objectivité, la crédibilité et la durabilité.*

#### Introduction

L'Observation Indépendante des forêts (OIF) développé par GLOBAL WITNESS<sup>4</sup> et l'Observation Indépendante de l'Application de la Législation Forestière (OI-FLEG) mis en œuvre par Resource Extraction Monitoring (REM), Forest Monitor (FM)<sup>5</sup> et AGRECO-CEW<sup>6</sup> sont deux concepts d'observation indépendante très réputés au sein de la communauté forestière internationale. Pourtant, nous constatons que plus de dix années d'OIF et OI-FLEG n'ont suffi à éradiquer l'exploitation illégale des forêts ou à la contenir en dessous d'un seuil tolérable. L'on admet aujourd'hui que l'abattage illégal d'arbres et le commerce qui s'y associe ne sont qu'une facette de la partie visible du désastreux iceberg qu'est la faible gouvernance dans le secteur forestier. En s'appuyant sur l'expérience développée au Cameroun

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2 Le champ d'action des modèles classiques d'OI est actuellement restreint soit à l'attribution des titres, à la conformité des opérations forestières ou au suivi des aspects sociaux.

3 FODER est une association camerounaise spécialisée dans l'observation indépendante et le suivi de la gouvernance forestière et environnementale.

4 <<http://www.globalwitness.org/campaigns/environment/forests/independent-monitoring>>

5 <<http://www.observation-cameroun.info/>>, <<http://www.observation-rdc.info/clarification.html>>, <<http://www.observation-congo.info/clarification.html>>, <[http://www.forestmonitor.org/en/capacity\\_building\\_congo\\_ii](http://www.forestmonitor.org/en/capacity_building_congo_ii)>

6 <<http://www.oicameroun.org/index.php>>



par FODER et en cours de reproduction en RCA, cet article essaie de répondre aux questions : Comment l'Observation Indépendante par la Société Civile (OI-SCC) peut constituer un mécanisme simple d'OI en impliquant de manière responsable les acteurs nationaux ? Comment garantir l'objectivité, l'indépendance, la crédibilité et la durabilité d'une OI conduite par la société civile et les communautés ?

### **Problématique de l'exploitation illégale des forêts**

La forêt contribue non seulement au produit intérieur brut à travers les recettes fiscales, mais elle sert aussi de cadre de vie aux populations autochtones, de moyens de subsistance aux communautés locales et contribue de manière appréciable à la conservation de la biodiversité et au maintien des équilibres climatiques. L'exploitation forestière illégale a lieu lorsque le bois (en tant que produit rentable à commercialiser) est récolté, transporté, acheté ou vendu en contravention des lois nationales régissant les activités d'exploitation forestière<sup>7</sup>. Malgré les efforts louables entrepris par le gouvernement camerounais depuis près de deux décennies pour assainir le secteur forestier et en faire l'un des piliers du développement économique et social, l'exploitation illégale des forêts et le commerce illicite qui lui est associé alimentent la corruption et détournent d'importantes masses financières du trésor public. L'exploitation forestière illégale fragilise la capacité des communautés forestières très pauvres à satisfaire durablement leurs besoins de subsistance et dégrade dangereusement la qualité de l'environnement avec des conséquences graves sur le tissu social, l'écosystème et le climat. Selon le CIFOR, l'exploitation illégale des forêts est à l'origine d'une perte de 30 milliards de francs CFA par an au Cameroun.

### **Modèles classiques de l'observation indépendante**

Il existe deux modèles classiques d'OI officielle qui se font sur la base d'un contrat formel sous forme d'un protocole d'accord entre le gouvernement et une Organisation non gouvernementale internationale (ONGI).

### **Définitions et champs d'action**

- *L'Observation Indépendante (OI)* est une stratégie de collecte d'informations pouvant servir de base pour le contrôle forestier, de moyen de pression sur

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7 BULLETIN 98 du WRM, Septembre 2005 - Édition française.

les acteurs du secteur forestier et à renforcer les capacités des populations locales dans la défense de leurs intérêts. Elle identifie les manquements à la loi ou à la réglementation en vigueur.

- *L'Observation Indépendante des forêts (OIF)* : Ce type d'OI a été développé pour la première fois par GLOBAL WITNESS (GW). L'OIF a pour principe la coopération entre le gouvernement, la société civile et le secteur privé du pays producteurs de bois (GW a travaillé pendant plus de 10 ans dans quatre pays : Cambodge, Cameroun, Honduras et Nicaragua). L'OIF implique l'utilisation d'une tierce partie indépendante qui, d'un commun accord avec les autorités étatiques, fournit une évaluation de la conformité légale.

- *L'Observation Indépendante de l'Application de la Législation Forestière (OI-FLEG)* : Mise en œuvre par REM (2005 - 2009), Forest Monitor et AGRECO-CEW (2010 – 2013), l'OI-FLEG est un moyen d'action externe au gouvernement, qui vient en appui à l'application de la législation forestière et la gouvernance. Elle évalue le respect des dispositions légales et réglementaires, observe et conseille sur le système officiel d'application de la réglementation forestière, renforce les bases pour le contrôle, influence les acteurs du secteur forestier, renforce les capacités des populations locales dans la défense de leurs droits et de leurs intérêts dans la gestion forestière.

Leur champs d'action se limite au contrôle forestier et au suivi des infractions forestières dans le but de promouvoir la gestion durable des ressources forestières et de lutter contre l'exploitation illégale des forêts.

### ***Méthodologie et outils***

L'OIF et l'OI-FLEG ont une méthodologie similaire basée sur la recherche de l'information et la collecte des données.

*Recherche des informations* : Elle consiste en la recherche et la collecte des informations fiables et vérifiables sur l'exploitation illégale. Lorsque l'observateur reçoit une information sur un cas d'infraction, il se rapproche de la Brigade nationale de contrôle (BNC), y collecte les informations sur la validité du titre d'exploitation, la régularité du transport et de la transformation ; cas échéant. Toutes les informations collectées sont analysées par rapport aux dispositions de la loi forestière et des arrêtés en vigueur.



*Collecte des données* : Elle se fait grâce au matériel suivant:

- Un véhicule pour les descentes sur le terrain ;
- Une carte de zone ou les faits sont observés ;
- Un dictaphone et un bloc note pour les interviews ;
- Un appareil photo numérique pour la prise d'image appréciable pas tous ;
- Un GPS pour la prise de coordonnées géographiques permettant de repérer le point exacte de l'infraction et nécessaires pour la cartographie ;
- Un dictaphone pour les interviews ;
- Une paire de bottes, un casque, une chasuble pour la protection corporelle ;
- Un mètre ruban pour la prise de mesures tel que le diamètre de bille de bois ;
- Un téléphone TURAYA pour la communication en forêt.

*Rédaction du rapport* : Celui-ci présente succinctement les faits, les analyses, les conclusions et les recommandations.

*Validation du rapport* : le rapport est soumis à la validation par un comité de lecture du ministère avant la diffusion.

### ***Forces et faiblesses des modèles classiques***

Les modèles classiques ont des avantages et de inconvénients pris comme forces et faiblesses :

#### *Forces*

Les avantages de l'OI sont notamment liés a sont statut formel et contractuel avec l'administration. Son contrat lui donne droit à un accès aux informations autres que celles mises à la disposition du public. Il reçoit en temps utiles des copies de toutes les notes de services et d'autres informations portant sur les missions de contrôle du Ministère de l'Environnement et des Forêts et sur les contentieux liés à l'exploitation forestière. Par ailleurs, il concoure à l'amélioration des opérations de contrôle

par les services compétents du ministère en charge des forêts et de la faune et les constats de contrôle sont rapidement pris en compte par l'administration en charge des forêts et un suivi du contentieux est mis en œuvre en de brefs délais.

### **L'observateur indépendant (OI) a des inconvénients non négligeables.**

#### *Faiblesses*

Un ordre de mission du ministère en charge de forêts conditionne les descentes sur le terrain de l'observateur indépendant. Etant donné que l'OI descend sur le terrain après avoir reçu l'information sur une potentielle infraction, l'attente de la délivrance de l'ordre de mission, laisse le temps au responsable de l'infraction de dissimuler les preuves évidentes de son infraction, ou d'utiliser des moyens rusés tel que le barrage de voies d'accès par une bille de bois par exemple. Cet état de chose limite par ailleurs la fréquence des missions d'observation. Les missions d'observation peuvent être indépendantes ou conjointes avec l'administration en charge des forêts ; à qui l'OI présente ses observations et ses recommandations pour validation avant publication lors d'un comité de lecture des rapports de mission (comité de validation multi partite gouvernement - bailleur de fonds - société civile). Donc la diffusion des informations de l'OI relatives à l'exploitation forestière est conditionnée par la validation du comité de lecture.

### **L'observation indépendante par la société civile et les communautés**

#### ***Définition et champs d'action***

L'observation indépendante par la société civile et les communautés (OI-SCC), qualifiée d'observation externe (OE), est une activité non régaliennne d'observation des activités forestières qui peut être effectuée par une organisation non gouvernementale (ONG) ou une communauté locale ou autochtone. Les missions d'observation peuvent être individuelle ou mixte (l'OI et tout autre acteur pouvant être une communauté ou le gouvernement). L'OI-SCC n'a aucune responsabilité officielle envers le gouvernement, la diffusion des rapports d'observation est totalement indépendante, avec la possibilité de faire du plaidoyer et du lobbying.

Le champ d'action de l'OI-SCC ne se limite pas à l'observation des activités forestières, au contrôle forestier et au suivi des infractions forestières dans le but de

promouvoir la gestion durable des ressources forestières et de lutter contre l'exploitation illégale des forêts. Il peut s'étendre en plus à l'observation : des processus de gouvernance, de l'implication des acteurs dans ces processus, de la transparence, des cahiers de charge, de l'utilisation des recettes forestières, du braconnage, du travail mené par l'OI, du secteur minier, de la gestion du budget d'investissement publique.

### **Méthodologie et outils**

La méthodologie de l'OI-SCC est basée sur l'information et la sensibilisation, le renforcement des capacités (formation et équipement) des communautés riveraines des forêts, l'observation par les communautés et la vérification des cas relevés et pertinents par FODER.

#### *Méthodologie*

La méthodologie s'appuie sur :

*L'information et la sensibilisation* : la méthode consiste à identifier les besoins en informations, à collecter ces informations et les disséminer dans les zones riveraines des forêts.

*Le renforcement des capacités (formation et équipement)* : Il s'agit de former les membres des communautés<sup>8</sup> riveraines de la forêt ou vivant dans celle-ci, aux techniques d'observation indépendante des activités forestières (maîtrise des outils de collecte d'informations : GPS, appareil photo, cartes, fiches de collecte etc.) et de les doter des équipements nécessaires au bon exercice de cette tâche.

*L'action (visites de surveillance, accompagnement et vérification)* : Formés et équipés, les surveillants forestiers communautaires (SFC) en contact permanent avec la forêt effectuent aisément des visites en forêt, pour observer les activités d'exploitation forestière et collecter des données sur des activités potentiellement illégales. Chaque SFC a le mandat de transférer les connaissances acquises au sein de sa communauté. Les données sont reportées sur une fiche de collecte des données. Après réception et dépouillement des fiches, une mission sur le terrain est effectuée par FODER pour accompagner la



*Surveillants forestiers de la région du Sud Cameroun encadrés par l'équipe FODER. FODER, Mai 2011*

*Un surveillant forestier  
communautaire mesurant  
le diamètre d'une bille de  
bois dans la région de l'Est.  
FODER, Mars 2011*



communauté, vérifier la véracité des informations et préparer une fiche d'observation pertinente à transmettre aux structures en charge du contrôle forestier et du suivi des opérations d'exploitation forestière (dénonciation). Cette vérification s'accompagne d'une nouvelle collecte de donnée et permet d'apprécier la qualité du travail effectué par les SFC. Ce qui contribue à la crédibilité des observations faites sans

préjugés ni implication personnelle.

*Analyse* : Les informations et les données collectées (coordonnées GPS, photos, mesure de diamètres des billes de bois ou des souches, interviews ou vidéos) sont croisées avec les observations faites sur le terrain lors des missions. Cette analyse est importante pour la fiabilité des informations et la crédibilité de l'OI-SCC.

*Le networking-lobbying* : cette méthode consiste à travailler en réseau pour promouvoir la place des communautés locales et autochtones au sein des structures en charge de la mise en œuvre de l'APV-FLEGT.

#### *Outils*

Plusieurs outils sont mis à contribution en vue de la recherche des informations, de la collecte des données et de l'analyse.

*La recherche des informations* : La documentation sur l'exploitation (rapport de réunion d'information, arrêté d'attribution et carte du titre, attestation de matérialisation des limites, certificat annuel d'assiette de coupe, permis annuel d'opération, rapport de missions de contrôle et d'observation antérieures) et sur les textes réglementaires en vigueur.

*La collecte des données* : La plupart du matériel utilisé est le même que celui des modèles classiques :

- Un véhicule pour les descentes sur le terrain ;
- Une carte de zone ou les faits sont observés ;
- Un dictaphone et un bloc note pour les interviews ;
- Un appareil photo numérique pour la prise d'image appréciable pas tous ;

- Un GPS pour la prise de coordonnées géographiques permettant de repérer le point exacte de l'infraction et nécessaires pour la cartographie ;
- Un dictaphone pour les interviews ;
- Un matériel de protection constitué d'une paire de bottes, un casque, une chasuble ;
- Un mètre ruban pour la prise de mesures tel que le diamètre de bille de bois ;
- Deux paires de piles dont une pour l'appareil photo numérique et l'autre pour le GPS ;
- Une machette pour se frayer un chemin dans la forêt ;
- Des fiches de collecte des données.

*L'analyse :* Toutes les informations et les données collectées sont analysées.



*Kit octroyé aux SFC, contenant le matériel d'OI-SCC. FODER, juillet 2011*

### *Contraintes et défis*

L'OI-SCC connaît un certain nombre de contraintes et de défis notamment liés à l'accès à l'information. L'information officielle est difficile à obtenir malgré les dispositions de l'annexe VII de l'APV-FLEGT qui donne une liste de toutes les informations à rendre publique. Les retards dans la transmission des fiches de collectes d'information dus à l'absence d'un service de courrier postal fonctionnel au niveau local, la perte par les intermédiaires, l'absence ou la mauvaise performance des technologies de l'information dans les zones de forêts. Les communautés peuvent dénoncer les activités présumées illégales aux services les plus proches du Ministère des forêts et de garder les fiches jusqu'au passage d'une équipe de FODER ; ce qui permet de pallier au retard de transmission et à la perte des fiches de collecte des données par SFC. Par ailleurs, le manque de reconnaissance formelle de l'OI-SCC par les acteurs étatiques et internationaux comme un outil contribuant au suivi de l'exploitation du bois amène l'administration à réagir tardivement après la

dénonciation. Le faible nombre de missions de suivi-vérification est surtout lié à la ressource humaine limitée.

### *Succès de l'OI-SCC*

Les succès de l'OI-SCC sont principalement de deux ordres. La maîtrise de l'utilisation des outils de l'observation indépendante des activités forestières par SFC (proches des forêts) est un succès indéniable de l'OI-SCC. Les SFC ont contribué à l'augmentation du nombre de dénonciation des cas d'infraction dans les activités forestières.

### **Leçons apprises de l'expérience actuelle d'observation indépendante par la société civile et les communautés**

L'expérience actuelle de l'observation indépendante par la société civile et les communautés a permis de dégager des leçons. L'information, la sensibilisation, l'éthique et la coopération (entre les administrations, entre le MINFOF et les autres acteurs) dans la lutte contre l'exploitation forestière illégale est nécessaire. Ces notions font intervenir la transparence et permettent dans une certaine mesure de lutter contre la corruption. Par conséquent, il faut une connexité entre le respect de l'éthique et l'efficacité du contrôle forestier ; la combinaison des approches préventives (transparence et intégrité) aux approches répressives (dénonciation et contrôle). Le renseignement de sources fiables dans la détection et la répression des infractions forestières est donc important.

L'insécurité en forêt justifie par ailleurs la nécessité d'introduire des techniques d'analyse des risques dans la détection des vecteurs de l'illégalité en foresterie. Cela implique non seulement la reconnaissance par les populations du rôle des SFC, ce qui concourt au renforcement de leur mandat ; mais également la sensibilisation et l'implication des autres administrations, des forces de police et de défense dans la lutte contre la recrudescence de l'exploitation illégale des forêts et du commerce illicite des bois. L'utilisation des conférences de presse et des médias nationaux et locaux comme outils de lobbying permet également de lutter contre la recrudescence des infractions dans le secteur forestier.

*Un surveillant forestier  
communautaire mesurant  
le diamètre d'une bille de  
bois dans la région de l'Est.  
FODER, Mars 2011*



## Conclusion : Perspectives et pistes de développement

Pour relever les contraintes et défis rencontrés par l'OI-SCC et ainsi renforcer l'objectivité, la crédibilité et la durabilité, l'OI-SCC peut être renforcée par :

- Le renforcement de la collaboration entre les structures en charge du contrôle forestier et du suivi des opérations d'exploitation forestière, l'observateur indépendant officiel (Agreco-CEW au Cameroun) et la société civile pourrait améliorer le renseignement et la vérification des dénonciations provenant des tiers. Cette approche pourrait également améliorer, de façon significative, la planification des missions de contrôle.
- Le transfert des connaissances et des capacités au sein d'une même communauté et entre les membres de deux communautés voisines est nécessaire à la durabilité de l'action communautaire. Ce transfert de connaissances doit être renforcé.
- La mise en place d'un numéro vert afin de communiquer, de manière permanente, sur les observations.
- La création d'une base de données simple et accessible en ligne pour la transmission directe des informations sur les illégalités forestières à la Brigade Nationale de Contrôle (BNC), l'OI, la Commission Nationale de lutte contre la Corruption (CONAC) et la société civile.
- L'augmentation de la fréquence des visites de suivi-vérification, soit une plus forte présence sur le terrain, est également nécessaire à l'amélioration continue de la qualité des dénonciations et à l'efficacité de l'observation externe.
- L'institution d'une observation indépendante au niveau régional et départemental et d'un pacte d'intégrité forestière pourraient significativement contribuer à réduire la corruption et à améliorer la lutte contre l'illégalité dans le secteur forestier.
- L'utilisation d'un téléphone TURAYA pour la communication en forêt permettrait de suivre en temps réel les SFC lorsqu'ils sont face à un cas d'illégalité.



## 6.2 Why aren't governments more open? Civil society oversight tools to improve transparency and accountability in the forest sector

David YOUNG

Silas SIAKOR

Samuel NGUIFFO<sup>1</sup>

### 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 being consultative and inclusive. These binding commitments to 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 texts 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 sixteenth 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<sup>2</sup>. 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

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<sup>2</sup> C. Hood and D. Heald (eds.), *Transparency: the Key to Better Governance?* (Oxford University Press, 2006).

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*”<sup>3</sup>.

**Good governance requires three things: capability, accountability and responsiveness<sup>4</sup>**

- 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 Report<sup>5</sup>, 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 governance, through “*the use of an independent third*

<sup>3</sup> C. Hood and D. Heald (eds.). No. 2 above.

<sup>4</sup> DFID, Governance, Development and Democratic Politics, DFID’s work in building more effective states, (DFID, 2006), <<http://www.gsdrc.org/go/display&type=Document&id=2964&source=rss>>.

<sup>5</sup> Global Witness *et al.*, *Annual Transparency Report 2009*, (Global Witness, 2010). <<http://www.foresttransparency.info/cms/file/231>>.

*party that, by agreement with state authorities, provides an assessment of legal compliance, and observation of and guidance on official forest law enforcement systems*<sup>6</sup>.

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<sup>7</sup>. 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<sup>8</sup> 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*”<sup>9</sup>. Although neither country was represented at the first annual OGP meeting in Brasilia, both are reportedly in the process of developing commitments<sup>10</sup>.

#### Open Government Declaration<sup>11</sup>

- 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*

6 Global Witness *et al*, no.5 above.

7 Open Government Partnership (OGP) press release, *Revealed: top ten commitments to open government as representatives from 73 countries gather in Brasilia*, OGP, 2012, <<http://www.opengovpartnership.org/news/revealed-top-ten-commitments-open-government-representatives-73-countries-gather-brasilia>>.

8 Letter from the Embassy of Ghana to the US Department of State, 13 September 2011, <<http://www.opengovpartnership.org/countries/ghana>>.

9 Letter from President Johnson Sirleaf to Secretary of State Clinton, 7 September 2011 <<http://www.opengovpartnership.org/countries/liberia>>.

10 OGP, Open Government Declaration, <<http://www.opengovpartnership.org/open-government-declaration>>.

11 OGP, Open Government Declaration, <<http://www.opengovpartnership.org/open-government-declaration>>.

*ensure that enforcement actions do not have adverse impacts on vulnerable communities*<sup>12</sup>. Subsequent revisions of this Briefing Note included “*improved transparency and information exchange between producing and consuming countries, including support for independent forest monitoring*”<sup>13</sup>.

All VPA texts create some form of monitoring committee, a multi-stakeholder reference group that works with the formal EU-country parties to the agreement, typically called the Joint Implementation Committee (JIC). The reference group often has only a handful of civil society representatives. All VPAs also include an Independent Auditor, who makes periodic assessments of the Legality Assurance System (LAS). Beyond this any explicit role for civil society in monitoring any aspect of the VPA varies from country to country. Nonetheless, civil society has been active to use what opportunities do exist in the text and beyond, and donor funds earmarked for civil society have supported initiatives. The next sections summarize three such initiatives: VPA transparency assessments in Liberia, Cameroon and Ghana, and civil-society initiated independent forest monitoring in Liberia and Cameroon.

### 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<sup>14</sup>. 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 criteria is met or not.

12 European Commission, *What is FLEGT? European Commission FLEGT Briefing Note 1*, 2004; <[http://loggingoff.info/sites/loggingoff.info/files/FLEGT%20Briefing%20Note%20\(2004\)%201%20What%20is%20Flegt.pdf](http://loggingoff.info/sites/loggingoff.info/files/FLEGT%20Briefing%20Note%20(2004)%201%20What%20is%20Flegt.pdf)>.

13 European Commission, *FLEGT Briefing Note 1 European Commission FLEGT Briefing Note 1*, 2007 <[http://www.euflegt.efi.int/files/attachments/euflegt/efi\\_briefing\\_note\\_01\\_eng\\_221110.pdf](http://www.euflegt.efi.int/files/attachments/euflegt/efi_briefing_note_01_eng_221110.pdf)>.

14 CED, CIKOD and SDI, *Making the Forest Sector Transparent* web site, Global Witness, 2012 <[www.foresttransparency.info](http://www.foresttransparency.info)>.

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<sup>15</sup>. 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,

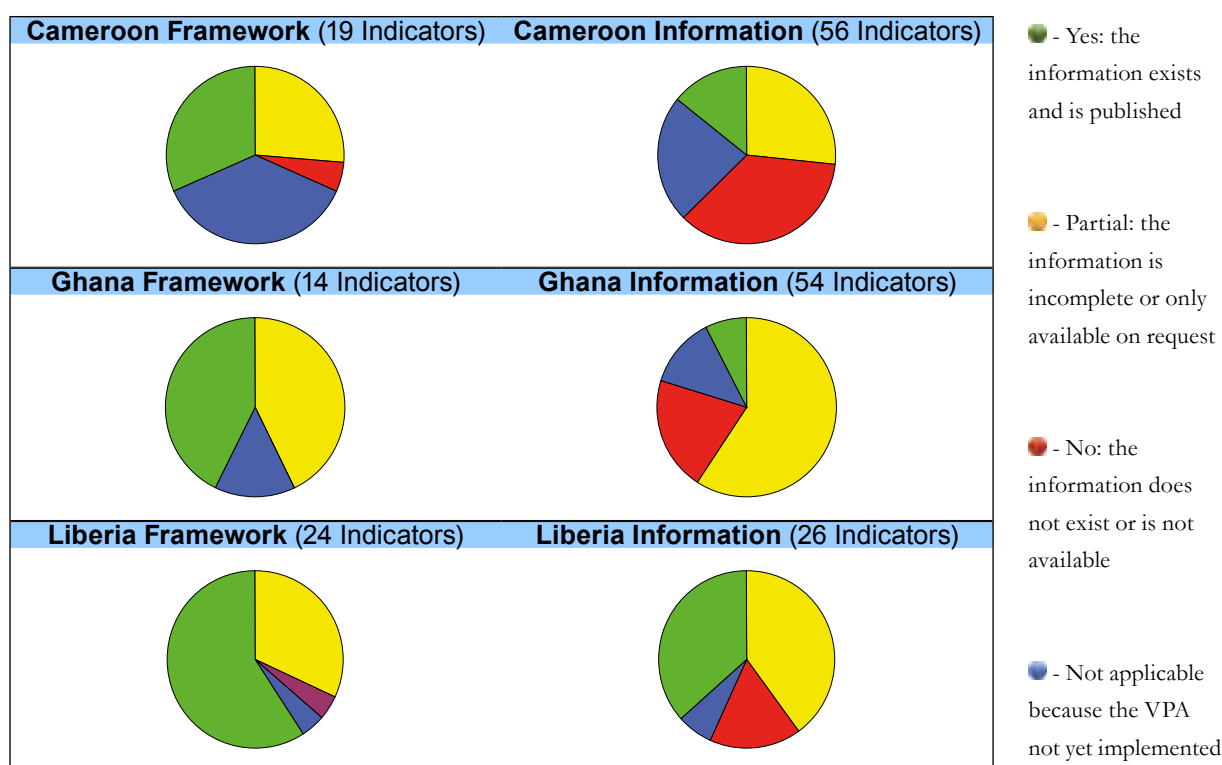
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15 Global Witness *et al.*, no. 5 above.

and contacting key informants. CED conducted the assessment in Cameroon, having piloted the methodology one year earlier<sup>16</sup>. 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.

*Findings 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.



<sup>16</sup> CED, *Transparence dans le secteur forestier au Cameroun - Rapport Annuel*, 2010, CED, 2011 <<http://www.transparenceforestiere.info/cms/file/150>>.

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<sup>17</sup>, 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*"<sup>18</sup>. Regulation 108-07 also envisaged a "*move over time toward a formal system of Independent Forest Monitoring*."<sup>19</sup>

The Liberian civil society monitoring programme started in March 2012, with the goal of actually improving forest governance, thus going beyond merely curtailing 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.

17 Forestry Development Authority, *Regulation 108-07 Establishing a Chain of Custody System, Sec. 71*, FDA, 2007) <<http://www.fda.gov.lr/doc/FDATENCOREREGULATIONS.pdf>>.

18 European Union and Government of Liberia, *Voluntary Partnership Agreement (EU-GoL, 2011), Annex VIII, Supporting measures, Section 9, Monitoring implementation of the VPA*.

19 Forestry Development Authority, *Regulation 108-07 Establishing a Chain of Custody System, Sec. 72*, FDA, 2007 <<http://www.fda.gov.lr/doc/FDATENCOREREGULATIONS.pdf>>.

*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 the 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 were 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 slow 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 charges* 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 indépendante* 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 sustainabil-

ity. Furthermore, there is no justifiable reason why these activities should await the completion of a VPA negotiation 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 be sufficient to provide the required accountability and governance systems to 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 Bilan et perspectives de l'observation indépendante des forêts dans le contexte de mise en œuvre de l'APV FLEGT en République du Congo

Alfred NKODIA <sup>1</sup>

#### Résumé

*Le massif forestier des pays du Bassin du Congo constitue le second bloc continu des forêts denses humides de la planète après le massif amazonien. En République du Congo, la forêt est la deuxième ressource naturelle et contribue à environ 5% du PIB. Cependant, bien que des améliorations soient enregistrées, le secteur forestier congolais connaît encore de sérieux problèmes de gouvernance forestière. En signant avec l'Union Européenne l'Accord de Partenariat Volontaire (APV), le Congo a réaffirmé son engagement à promouvoir une gestion des forêts impliquant toutes les parties prenantes. C'est dans ce cadre que la société civile entend mener l'observation indépendante des forêts (OIFLEG), pour le suivi du système de vérification de la légalité du bois. Mais, quels sont les acquis et les écueils enregistrés par l'OIFLEG de 2008 à 2012, dont la société civile congolaise voudrait s'inspirer ? Quelle pourrait être la forme de l'OIFLEG (T) pour être crédible ?*

#### Introduction

Le massif forestier des pays<sup>2</sup> du Bassin du Congo constitue le second bloc continu des forêts denses humides de la planète après le massif amazonien. Pour la République du Congo (RC), la forêt est la deuxième ressource naturelle et contribue à environ 5% du PIB. Le secteur forestier congolais rapporte environ 250 millions d'Euro par an. La production forestière génère environ 7.400 emplois directs et 14.800 emplois indirects<sup>3</sup>. L'Union Européenne (UE) est l'un des principaux marchés d'exportation des produits forestiers du Congo. Depuis l'an 2000, avec l'adoption du Code Forestier et ses textes subséquents, la RC s'est engagée à promouvoir une gestion pluri-acteurs de ses forêts par la concertation et la participation de tous les acteurs intéressés appartenant au secteur public et privé et à la société civile. Cette volonté politique s'est traduite par l'implication des populations locales et autochtones ainsi que de la société civile à la gestion des concessions forestières aménagées<sup>4</sup> et des aires protégées. La signature, le 17

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<sup>2</sup> Le Cameroun, la République du Congo, la République démocratique du Congo, la République Centrafricaine, le Gabon et la Guinée Équatoriale.

<sup>3</sup> MEF-FORAF *Les forêts du Bassin du Congo/Etats des forêts* 2008, 102.

<sup>4</sup> Au total la République du Congo dispose de six (06) concessions forestières sous aménagement (KABO, NGOMBE et POKOLA dans la Sangha ; UFA MOKABI DZANGA, LOPOLA et LOUNDOUNGOU TOUKOULAKA dans la Likouala).

mai 2010, de l'Accord de Partenariat Volontaire (APV) avec l'UE a rendu cette implication plus évidente et plus élargie. Cependant, malgré des améliorations constatées, le secteur forestier, en RC, connaît encore des problèmes de gouvernance. Ceux-ci se caractérisent, entre autres, par l'épanouissement de l'exploitation forestière et le commerce illégal, le manque de procédures efficaces d'attribution de titres et permis d'exploitation et/ou de procédures de contrôle ; la mauvaise redistribution des revenus issus de l'exploitation des forêts ; des pénalités qui ne sont pas assez sévères ou très peu dissuasives et le faible niveau de contrôle, etc.

C'est dans ce contexte de promotion de la bonne gouvernance et de la transparence de la gestion des ressources forestières, que se mène, depuis 2006, une observation indépendante de la mise en application de la loi forestière et de la gouvernance (OI-FLEG). Cette activité a été mise en œuvre dans le cadre d'un projet exécuté en 2 phases (phase 1: Décembre 2007 – Septembre 2010, phase 2 : Décembre 2010 – juin 2013) avec le concours financiers de plusieurs bailleurs de fonds (EU, DFID, WB, NC-UICN Pays Bas) et une 3<sup>e</sup> est en cours de préparation. Initialement mise en œuvre par deux ONGs internationales, Resource Extraction Monitoring (REM) et Forests Monitor (FM), et une organisation de la société civile (OSC) nationale, le Cercle d'Appui à la Gestion durable des Forêts (CAGDF) a été intégrée comme partenaire au cours de la 2<sup>e</sup> phase. Au regard du rôle important que l'OI-FLEG a joué dans le suivi de l'application de la loi forestière et auprès de la société civile pendant la phase de négociation de l'accord, celle-ci, regroupée au sein de la plate forme pour la gestion durable des forêts, a retenu la mise en œuvre de l'observation indépendante des forêts, comme instrument de son implication effective dans le suivi de la mise en œuvre de l'accord en général et du système de vérification de la légalité du bois en particulier. C'est ainsi que le mécanisme a été retenu comme l'une des sources d'information que devra consulter l'auditeur indépendant qui sera établi dans le cadre de l'APV.

Mais, quels sont les points positifs enregistrés et les leçons tirées par l'OI-FLEG de 2006 à 2012 ? Quelle forme peut ou doit prendre cette OI-FLEG et qui peut la diriger au regard des enjeux considérables de l'APV/FLEGT afin de crédibiliser davantage l'action de la société civile? Ce regard rétro et prospectif constitue l'essentiel de cette communication, qui se veut aussi un modèle pouvant être capitalisé et amélioré par les autres pays engagés ou en voie de s'engager dans le processus.

## Bilan de l'Observation indépendante de l'application de la loi forestière et gouvernance (OI-FLEG) en République du Congo

De 2006 à 2012, l'OI-FLEG a enregistré plusieurs résultats positifs et a été confrontée à bien des difficultés, dont il serait difficile de tout énumérer dans cet article ; nous en présenterons les plus importants.

Mais, avant de les passer en revue, il sied de rappeler que l'atteinte de ces résultats et la crédibilité qui leur sont reconnus ont été rendus possibles par un certain nombre de dispositions favorables au niveau national et qui se sont révélés être de vrais atouts dans la mise en œuvre de l'OI-FLEG. Parmi ces atouts, on peut citer :

- **L'engagement du gouvernement de la RC à travers le Ministère en charge de l'Economie Forestière**<sup>5</sup>, qui s'est traduit par une invitation formelle de REM et FM pour développer l'OI-FLEG en RC et qui s'est soldée par la signature d'un protocole d'accord entre les trois parties initiales, rejoint au cours de la phase 2, par le CAGDF. Ce cadre institutionnel a permis à l'OI-FLEG d'avoir **accès à une quantité importante d'informations** relevant du Ministère de l'Economie Forestière (exemples: rapports de mission d'inspection et de contrôle de chantiers forestiers, rapports d'activités des différents services, preuves de paiement des taxes et transactions forestières, lettres de transfert de fonds, participation aux commissions forestières...). **Un ordre de mission permanent**, valable une année, a été régulièrement délivré à l'OI-FLEG par le Ministère. Ce document qui officialise les activités de l'OI-FLEG auprès des tiers, lui permet de mener ses activités dans le secteur pendant une année sans être astreint à le demander chaque fois qu'une mission doit s'effectuer. Dans le même ordre d'idées, une fois le rapport de mission de l'OI-FLEG publié, la crédibilité de ces révélations ne peut être contesté, car après le compte rendu fait aux structures privées et/ou gouvernementales, objet de la mission, le rapport final, avant sa publication, est examiné puis validé par le **Comité de lecture**, qui est un organe multipartite composé des représentants de l'OI-FLEG, l'Administration forestière, la société civile et les bailleurs de fonds intéressés.

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Actuellement Ministère du Développement Durable, de l'Economie Forestière et de l'Environnement (MDDEFE).



- **L'autonomie financière**<sup>6</sup> vis-à-vis de l'Etat congolais et du secteur privé, a permis à l'OI-FLEG d'être à l'abri des conflits d'intérêts ou des trafics d'influence et d'avoir une capacité opérationnelle suffisante pour mener ses missions selon sa planification et **en toute indépendance. Cette autonomie est l'un des gages de son indépendance vis à vis de ces deux entités.**
- **La diffusion sur internet des rapports de mission, annuels et d'autres notes de synthèse** a été un moyen d'atteindre le plus grand nombre de personnes à travers le monde.
- **L'implication de la Commission européenne**, à travers sa Délégation, a permis à l'OI-FLEG de disposer non seulement de fonds suffisants pour son action mais aussi, en tant que bailleur de fonds et partenaire de la RC, de peser de son poids pour la bonne exécution de son plan d'action.
- **La signature de l'APV/FLEGT**, qui consacre l'Observation Indépendante des Forêts comme un maillon du **système de vérification** de la légalité de bois produit au Congo, a davantage crédibilisé l'action menée par l'OI-FLEG au Congo.

## Résultats obtenus

Au cours de ces six années de mise en œuvre du projet OI-FLEG, l'action a porté sur le suivi de l'application de la loi forestière et de la gouvernance et sur le renforcement des capacités de la société civile. C'est à ce titre que la présentation des résultats majeurs enregistrés s'articulera autour de trois cibles, à savoir la société civile, l'administration et les sociétés forestières.

## Dans le renforcement des capacités de la société civile axé sur la formation

L'observation indépendante des forêts est une pratique assez récente dans le Bassin du Congo en général. L'OI-FLEG a permis à un grand nombre d'acteurs de la société civile (nationale et de la sous région du bassin du Congo) de

<sup>6</sup> La Commission européenne, le Ministère Britannique chargé du développement International (DFID), le Comité Néerlandais de l'Union Internationale pour la Conservation de la Nature (CN-UICN) et la Banque mondiale au travers le projet Renforcement des Capacités de transparence et de Gouvernance (PRCTG), ont été les bailleurs de fonds de l'OIFLEG.

s'impregnent des textes législatifs et réglementaires nécessaires pour le suivi de la régularité des activités menées dans le secteur forestier au regard de cette législation. Parmi les actions menées à l'endroit des organisations de la société civile (OSC), on peut citer :

- La formation des experts nationaux (homologues Ingénieur forestier, Chef d'équipe et Juriste) pendant deux ans, sélectionnés parmi les acteurs de la société civile, dans la perspective d'appropriation et de pérennisation de l'observation indépendante. A la fin de leur formation, ces experts congolais ont créé leur OSC, dénommée Cercle d'Appui à la Gestion Durable des Forêts (CAGDF)<sup>7</sup>, qui est devenu partenaire de REM et FM dans la mise en œuvre de l'OI-FLEG phase 2.
- Des OSC de neuf (09) départements forestiers ont été initiées au suivi des activités forestières à travers l'identification et la détection des infractions facilement repérables ainsi qu'au suivi du respect des obligations conventionnelles, au cours de trois (03) ateliers tenus en mai et juin 2009 et en août 2010.
- La formation de 17 OSC départementales<sup>8</sup>, celles qui sont installées et travaillant à l'intérieur du pays, au suivi du respect des indicateurs et vérificateurs (socio-économiques) de la grille de légalité des forêts naturelles de l'APV/FLEGT dans les 9 départements forestiers. A l'issue de la formation, avec l'appui méthodologique de l'OI-FLEG (CAGDF, FM et REM), ces OSC ont bénéficié, après approbation de leurs plan d'enquête, des subventions à hauteur de 3 à 4 millions FCFA (6097euro)<sup>9</sup>, afin de leur permettre une prise en main du travail de terrain, en s'appuyant sur les indicateurs de la légalité tels que consignés dans l'APV/FLEGT. Au regard du cadre de collaboration qu'elle a contribué à mettre en place entre les OSC départementales et les représentants locaux de l'administration, cette action a permis de décriper les relations souvent tendues entre ces 2 catégories d'acteurs. En effet, au cours de la mise en œuvre de cette activité, les OSC sont enfin entrées en contact formel, pour des demandes précises, avec les administrations forestières locales et des so-

<sup>7</sup> Récépissé de déclaration d'association n°011/010/MID/DGAT/DER/SAG du 29 janvier 2010. PADOR : Euro paid ID : CG-2009-GME-2909968668.

<sup>8</sup> Rapport de formation technique des Organisations de la Société Civile du Congo : une étape vers l'établissement d'un réseau national d'OI-FLEG du 7 au 9 juin 2011.

<sup>9</sup> Signatures des contrats de prestation le 01 septembre 2011 entre Forests Monitor, CAGDF et les OSC locales.

ciétés. Certes, certains responsables de ces administrations n'ont pas toujours été coopératifs, mais dans d'autres départements, les OSC ont pu obtenir les informations auxquelles elles n'avaient pas facilement accès, à l'instar des conventions, des preuves de réalisation des obligations de cahier de charges particulier et accéder aux sites d'exploitation, ainsi que dans les zones où les sociétés étaient censées contribuer au développement socio-économique du département.

- Au niveau de la Sous région du Bassin du Congo, au cours de quatre ateliers sous régionaux, l'OI-FLEG a renforcé les capacités d'une dizaine d'OSC du Bassin du Congo impliquées dans le processus FLEGT en matière d'utilisation des techniques de l'observation indépendante et sur l'analyse des mécanismes prévus de gestion concertée et participative des concessions forestières dans le Bassin du Congo.

#### **Dans le cadre du suivi de l'application de la législation et de la réglementation forestières et des mesures prises par l'administration forestière**

De 2007 à 2012, l'OI-FLEG a publié 33 rapports<sup>10</sup> pour des missions effectuées dans les 9 départements forestiers<sup>11</sup> et la ville de Pointe-Noire. La présente communication récapitule les observations majeures que l'OI-FLEG a faites au niveau de l'administration forestière en ce qui concerne sa capacité de respecter et appliquer les dispositions des lois et réglementations en vigueur, ainsi que les mesures prises pour y remédier. La persistance des causes et conséquences des manquements observés est de nature à nuire gravement au respect des engagements pris dans le cadre de l'APV/FLEGT.

#### **Dans le cadre du suivi de l'application de la législation et de la réglementation forestières par l'administration forestière**

Le suivi de l'application de la loi forestière a révélé à l'OI-FLEG que principalement l'administration forestière est confrontée aux problèmes structurels, d'absence de cohérence au niveau national du système de répression des infractions et du laxisme dans le recouvrement des sommes dues au trésor public.

<sup>10</sup> <[www.rem.org.uk/Reports2.html](http://www.rem.org.uk/Reports2.html) et <http://www.rem.org.uk/Database.html>>

<sup>11</sup> Sangha, Likouala, Cuvette-Ouest, Cuvette, Plateaux, Bouenza, Niari, Lékoumou et Kouilou.

Du point de vu structurel, les directions départementales manquent cruellement de personnel technique qualifié et de moyens matériels et financiers suffisants pour faire le contrôle régulier des chantiers. Dans toutes les Directions départementales de l'Economie forestière (DDEF), en moyenne le nombre de personnel forestier ne dépasse pas 20 pour des milliers d'hectares à contrôler, alors que les fonds annuellement reçus avoisinent à peine 35% du budget alloué. Le Directeur départemental de l'économie forestière de Pointe-Noire a même révélé que « depuis son ouverture en 2006, notre direction n'a jamais émergé au budget de l'Etat<sup>12</sup>. » Quant aux moyens roulants opérationnels (véhicules, moto, moteurs hors bord), devant servir aux agents de contrôler efficacement les grandes superficies forestières dont ils ont la charge, ils sont soit en nombre insuffisant soit complètement amortis. Cet état de fait a pour conséquence la non réalisation des 4 missions de contrôle et d'inspection annuelles par concession, tel que prévu par la législation forestière et donc le manque de suivi régulier de l'exploitation forestière. De même, l'OI-FLEG a relevé un mauvais emplacement des bureaux des brigades devant quotidiennement suivre les activités forestières dans leur zone de compétence. En effet, par exemple, les brigades de Souanké (Sangha), Mossendjo (Niari), Ollombo (Plateaux) sont si excentrés des voies principales, parfois placées à des dizaines de km, qu'il est difficile pour les agents qui y travaillent de surveiller la circulation des produits forestiers.

Outre ces contraintes structurelles, l'administration forestière (AF) est aussi confrontée au problème lancinant de la répression des illégalités. Si la loi a décrit les différentes sanctions applicables aux contrevenants, dans la pratique l'OI-FLEG a relevé que l'interprétation et l'application subjectives des pénalités prévues par le code forestier en vigueur entachent sérieusement les effets escomptés par le législateur. Très souvent, le montant maximum des sanctions pécuniaires prévues par les textes de loi se trouve assez largement en dessous du bénéfice que peut tirer une société de certaines activités illégales. Par exemple, à la suite d'un contentieux ouvert contre la société Asia Congo Industries (ACI) pour un montant total de 493 640 000 FCFA (752 549 €), une transaction est intervenue entre l'AF et ACI à l'issue de laquelle les pénalités retenues s'élevaient à 123 410 000 FCFA (188 137 €) seulement, soit un taux de réduction de 75%<sup>13</sup>. De même, en comparant les rapports de mission et les registres des

12 Alfred NDZERE, Directeur départemental de l'économie forestière de Pointe-Noire au journal Les Dépêches de Brazzaville, n°1579, du 19 septembre 2012, a 5.

13 OIFLEG, République du Congo, Synthèse 2007-2010 (2011), page 7.

PV, il est apparu que bon nombre d'infractions qui auraient abouti à des PV, n'ont pas été sanctionnées. Par exemple, en 2012, l'OI-FLEG a observé qu'au cours de ses missions de contrôle et d'inspection des chantiers, la Direction départementale de l'économie forestière du Niari (DDEF-N) n'a pas sanctionné les sociétés contrevenantes pour des infractions flagrantes, du genre mauvaise tenue des documents de chantier (pour les sociétés :CIBN, ADL, ACI)<sup>14</sup>, des manœuvres frauduleuses pour se soustraire au paiement des taxes dues (CIBN et ACI), coupes sous diamètres (CIBN et ADL) et coupes en sus des quotas autorisés (SOFIL). Alors que l'OI-FLEG a estimé que « les pieds coupés en sus (coupes illégales) des quotas autorisés pour toutes les sociétés, entre 2007 et 2010, représentaient une valeur marchande de 11 263 347 € ». Dans le Kouilou, la Direction départementale de l'économie forestière du Kouilou (DDEF-K) a sous-estimé les montants de certaines transactions dont la pénalité a été celle prévue par l'article 147 de la loi 16-2000 portant code forestier. L'article prévoit que le contrevenant soit puni par 100 000 FCFA le mètre cube d'arbre coupé et de la saisie des bois exploités. Cette sous-estimation a causé une perte de 1 300 000 FCFA et le bois n'a pas été saisi. Dans la Lékoumou, par contre, en 2011, la société Sino-Congo forêt (SICOFOR) dans l'UFE Gouongo<sup>15</sup> a coupé plus de 8 067 pieds d'Okoumé, mais seuls 3 018 sont pris en compte dans le PV établi par la Direction départementale de l'économie forestière de la Lékoumou (DDEF-Lék). Il en est de même, pour la même société mais dans la concession de Létili<sup>16</sup> où elle a coupé plus de 7 340 Okoumés, mais n'a été sanctionnée que pour 652 pieds. La DDEF-Lék a expliqué à l'OI-FLEG que cette diminution considérable dans le PV se justifiait par le fait que la « société pouvait substituer les autres essences demandées mais non exploitées par les Okoumés<sup>17</sup> ». La mauvaise ou non application de la loi forestière est parfois liée aux dysfonctionnements du système. Par exemple, contrairement aux ordres donnés par le Directeur départemental de la Likouala, à la société Congolaise industrielle de Bois (CIB), d'ouvrir et matérialisé le layon limitrophe qui sépare les UFA Loundoungou - Toukoulaka dans la Likouala et Kabo dans la Sangha, comme l'exige la réglementation forestière à l'article 83 du Décret 2002-437, rien n'a été fait. Car CIB<sup>18</sup> avait demandé et obtenu du Directeur Général de l'économie forestière (DGEF) « une dérogation spéciale à l'application de la disposition

14 CIBN=Congolaise industrielle des bois du Niari ; ADL=Atelier de la Louessé ; ACI=Asia Congo Industries ; SOFIL=Société forestière industrielle de Léboulou.

15 Rapport de Mission suivant ordre de mission n°444/MDDEF/DGEF/DDEF-LEK du 05/12/2011.

16 Idem.

17 Rapport 006, OI-FLEG, 2012.

18 CIB/DG/CS/ 14-11 du 31 mars 2011, du DG de la CIB à M. le DGEF.

réglementaire relative à l'ouverture des limites entre les concessions forestières attribuées en tenant compte de l'évolution de l'exploitation forestière dans ses concessions limitrophes<sup>19</sup> ». Autrement dit, le DGEF a permis à la CIB d'ouvrir le layon à sa guise et non conformément aux exigences légales et réglementaires.

Le faible niveau de recouvrement des taxes et transactions régulièrement documenté par l'OI-FLEG est aussi caractéristique de la faiblesse de sanctions prises à l'endroit des sociétés débitrices à l'Etat. En 2011, l'OI-FLEG a révélé que 7 1991 368 € de taxes et transaction n'étaient pas encore recouvrés par l'AF<sup>20</sup>, alors qu'aucune société forestière n'a fait l'objet d'une quelconque mesure coercitive. Même les 3% de majoration de la taxe pour retard de paiement de trois mois ne sont plus appliquées

### **Dans le cadre du respect de la législation et de la réglementation forestière par les sociétés privées**

Dans le même ordre d'idées, l'OI-FLEG, au cours de ces six années d'investigation de terrain, a pu faire des observations relatives au respect de la législation forestière par les sociétés. Les observations majeures les plus récurrentes faites par l'OI-FLEG et portées à la connaissance de l'AF, sont de 3 catégories à savoir : les fraudes, les coupes illégales et la mauvaise tenue des documents de chantier.

En 2011, deux infractions ont été constatées dans 14 des 15 concessions visitées par l'OI-FLEG :

- L'emploi de manœuvres frauduleuses pour se soustraire au paiement du prix de vente des bois et des taxes dues, qui consiste à maquiller la production réelle (sous estimation des volumes, essence déclarée à faible taxe autre que celle produite, nombre de pieds déclarés inférieur à celui réellement coupé) afin de réduire la valeur de la taxe à payer.
- L'exploitation non autorisée ou coupes illégales au cours de laquelle les sociétés, pour des raisons de marché et de disponibilité du bois, vont se

<sup>19</sup> Lettre n°0561/MDDEF/DGEF-DF, du 03 mai 2011, du DGEF à M. le DG de la CIB.

<sup>20</sup> OIFLEG, Rapport annuel, 2011 : Etat des lieux de l'application et du respect de la loi forestière dans la perspective de la délivrance des premières autorisations FLEGT fin 2012, a 9.

permettre de couper les bois dans les périmètres non autorisés ou couper les essences sous diamètre ou non autorisées.

En 2011, deux infractions ont été constatées dans 11 des 15 concessions visitées par l'OI-FLEG<sup>21</sup> :

- La mauvaise tenue des documents de chantier et le défaut de marquage sur les souches, culées et billes, régulièrement constatés, peuvent être dus à la négligence des agents commis à cette tâche, mais aussi peuvent traduire la volonté manifeste de la société de brouiller la traçabilité du bois et manipuler les statistiques de production.

En 2011, cette infraction a été constatée dans 5 des 15 concessions visitées par l'OIFLEG<sup>22</sup> :

- L'exploitation d'un nombre de pieds supérieur à celui indiqué dans la coupe annuelle, consiste à exploiter, pour une essence ou sur la totalité, un nombre au-delà des quantités régulièrement octroyées.

### **Les mesures prises par l'administration et les sociétés forestières par rapport aux observations de l'OI-FLEG**

Les quelques exemples cités ci-dessus illustrent le travail fouillé qui a été accompli par l'OI-FLEG et qui a permis à l'administration et aux sociétés forestières de prendre, pour certains cas, des mesures correctives. De ce fait, il est devenu un partenaire important pour l'AF dans la mise en application de la loi. Un haut fonctionnaire du Ministère en charge des forêts, a résumé à l'évaluateur de l'OI-FLEG le sentiment général que ce département en avait. Pour lui « les interventions de l'OI-FLEG :

- permettent une application rigoureuse en progrès de la loi forestière; aident à combler beaucoup de lacunes que l'Administration Forestière croyait avoir déjà résolues et permettent de mettre à jour les documents techniques et d'amener les exploitants forestiers à une meilleure conformité à l'application de la loi forestière;

21 OIFLEG, n14 ci-dessus, a 7.

22 OIFLEG, n14 ci-dessus, a 7.



- exercent en réalité une pression psychologique sur les acteurs forestiers (exploitants et Administration Forestière), ce qui les amène à faire désormais plus attention à l'application de la loi forestière;
- incitent à une augmentation du budget accordé aux DDEF - il est envisagé d'allouer 1 milliard de FCFA (1 524 000 €) aux 9 DDEF, ce qui équivaut à 100 millions FCFA (152 450 €) par DDEF, contre 8 millions de FCFA (12 000 €) en moyenne les années passées »<sup>23</sup>.

Dans le même ordre d'idées, les recommandations formulées par l'OI-FLEG, suite aux missions effectuées dans les concessions forestières des départements du Niari, Kouilou et de la Likouala, ont été suivies d'effet. Les 6 constats faits dans la Likouala ont abouti à des PV établis par la DDEF et dans le Niari ; sur les 36 constats 12 ont été confirmés, alors qu'au Kouilou l'AF a « confirmé les observations de l'OI-FLEG<sup>24</sup> ».

Dans le Niari, en 2011, l'OI-FLEG avait déploré le fait que la DDEF calculait la valeur des dommages et intérêts relatifs aux coupes en sus des quotas autorisés en multipliant la plus petite valeur FOB au volume total illégalement produit. Ceci sous-estimait considérablement la valeur marchande du bois et donc celle de l'amende. Finalement, en 2012, il a été constaté, comme l'avait suggéré l'OI-FLEG, que la valeur des dommages et intérêts de l'infraction ci-dessus mentionnée est maintenant fonction de l'essence, du volume et de sa valeur FOB<sup>25</sup>. Les documents de l'administration forestière sont désormais bien tenus dans quasiment toutes les directions départementales, après de nombreuses critiques que l'OI-FLEG avait formulées à ce propos. Par ailleurs, l'alerte longtemps donnée par l'OI-FLEG sur le non respect du quota d'exportation de bois en grumes de 15% de la production totale, commence à produire ses effets. En effet, en date du 10 mai 2012, la Direction Générale de l'Economie Forestière a suspendu l'exportation en grumes de 13 sociétés<sup>26</sup>.

Quant aux sociétés, les résultats sont en demi-teinte. Les sociétés où les asiatiques gèrent les chantiers et celles à capitaux congolais, majoritairement ins-

23 OI-FLEG, n14 ci-dessus, a 8.

24 OI-FLEG, rapports de mission 001, 002 et 003.

25 DDEF Niari, Propositions de transaction n°1,2,3 et 4.

26 CIBN, Asia Congo, SFIB, SOFIL, BNC, GET/YZ, ADL, SICOFOR, SPIEX, TAMAN Industries, SADEF, Congo Dejea Wood, SEFYD.

tallées au Sud du pays, sont celles qui font le moins d'efforts pour améliorer leurs pratiques illicites. Les principales infractions relevées plus haut y sont fréquemment observées. La raison souvent avancée pour les Asiatiques « est qu'ils ne lisent et ni ne parlent pas le français. Il leur est donc difficile de respecter la loi. » Et pour les Congolais, « ils recrutent souvent des analphabètes ». Pour les autres, les résultats sont satisfaisants. En 2009, la société Nouvelle TRABEC alignait les infractions, mais en 2012 le respect de la loi est acceptable. Quant aux grandes sociétés du Nord du pays, à l'instar de CIB, IFO, MOKABI SA..., étant donné que leurs concessions sont aménagées et certifiées pour certaines, l'enjeu est grand de ne pas tenir compte des observations de l'OI-FLEG.

### Points faibles ou leçons tirées

Les résultats positifs engrangés par l'OI-FLEG témoignent clairement de son engagement à œuvrer en toute indépendance dans la veille de l'application de la législation forestière et à l'émergence d'une bonne gouvernance. Cependant, cela ne doit pas occulter les difficultés ou les insuffisances que l'OI-FLEG a rencontrées dans sa mise en œuvre. Parmi ces points faibles, on peut citer :

- le retard administratif qui a été le plus gros handicap de l'OI-FLEG. En effet, d'après les différents protocoles d'accord que l'OI-FLEG a signé avec le Ministère en charge des forêts, celui-ci lui délivre un ordre de mission permanent, valable pour une année, le comité de lecture examine et valide le rapport de mission de l'OI-FLEG et son président, après intégration des amendements, donne son avis pour la publication. Ces dispositions, quoique favorable à l'officialisation et à la crédibilité de l'OI-FLEG, n'ont pas été appliquées dans les temps nécessaires. Par exemple, pour la phase 2011-2013, l'OI-FLEG avait commencé en janvier 2011, mais son ordre de mission permanent – document signé du ministre, afin de mener ses missions- ne lui a été délivré qu'en avril 2011 et son renouvellement en fin juin 2012. De même, les rapports soumis en comité de lecture entre juin et juillet 2012 ne sont pas encore validés, donc ne peuvent être publiés, alors que les missions ont eu lieu entre avril et juin. Et, pour les rapports de mission validés en comité de lecture, en avril 2012, jusqu'en juin l'AF ne donnait pas encore son quitus pour leur publication. Ces retards administratifs risquent d'être nuisibles à la prise en compte des observations faites par l'OI-FLEG relatives au suivi de la légalité du bois.

- La faible mobilisation des OSC dans le relais d'informations publiées par l'OI-FLEG. Celle-ci ne fait pas de lobbying, mais lorsqu'elle publie ses rapports, les informations peuvent utilement être récupérées par les OSC, afin de mieux asseoir leur stratégie de lobbying. Malheureusement, après plusieurs séances de renforcement des capacités des OSC, le retour de remarques, observations ou capitalisation de ce que fait l'OI-FLEG n'est aucunement assuré. Ce manquement risque fort de fragiliser l'action de l'Observation indépendante des forêts si l'OSC nationale qui va la piloter ne bénéficie pas du soutien des autres OSC. Au cours de ces années de pratique, l'OI-FLEG n'a pas intensément fait le suivi de la réalisation des obligations de cahier de charge particulier, en ce qui concerne la contribution des sociétés forestières au développement socio-économique des départements où elles opèrent. Il convient de relever que cela fait parti des dispositions de l'APV/FLEGT que les sociétés devront respectées pour l'octroi des autorisations. En effet, l'OI-FLEG s'est le plus souvent contentée, au cours de ses missions, de demander aux sociétés les preuves de la réalisation de ces obligations. Or, il n'était pas courant pour ces sociétés de faire établir un PV de réception d'un ouvrage ou d'un bien. L'affirmation ou la négation de la société suffisait. Mais l'OI-FLEG n'a pas cherché à vérifier l'effectivité de l'œuvre ou de l'ouvrage et voir comment les bénéficiaires l'appréciaient. L'essentiel des missions effectuées se sont plus focalisées à la forêt. Du faible de la faible sensibilisation de l'administration forestière, surtout auprès des opérateurs forestiers asiatiques, des missions de l'OI-FLEG avaient généré une confusion de rôle entre les deux "contrôleurs". Mais la fréquence des missions dans ces concessions, les explications et la manière de travailler de l'OI-FLEG ont permis de lever les équivoques. Le contrôle indépendant n'est pas une chose aisée pour le contrôlé, surtout s'il a des reproches à se faire, et cela a engendré parfois des incompréhensions avec certains animateurs de l'AF et gestionnaire des sociétés, qui ont abouti au refus de collaborer. Mais, ces points faibles ou des leçons à tirer de l'expérience de six années de pratique, loin d'être des éléments insurmontables, sont plutôt des leviers devant permettre de développer des stratégies idoines pour les prochaines phases, afin de rendre l'OI-FLEG plus performante.

## Perspectives

L'Observation indépendante des forêts (OIF) est une exigence de l'APV/FLEGT. Si cela a été reconnu comme tel, c'est que les parties prenantes à la mise en œuvre de l'Accord ont été convaincues par la qualité de travail accompli par l'OI-FLEG au cours de ces années. Par ailleurs, le travail immense qui reste à accomplir, surtout dans le contexte de mise en œuvre effective de l'Accord, avec l'émission des différentes autorisations, la présence d'une OI-FLEG s'avère autant qu'utile qu'indispensable. Les goulots d'étranglement ou les points faibles des phases précédentes étant cernées, l'action de cette OI-FLEG serait mieux canalisée.

A ce jour, l'OI-FLEG bénéficie de l'expertise de REM et FM. Mais leur retrait, en juin 2013, pour permettre aux OSC nationales de la prendre en main et la pérenniser, place celles-ci devant de lourdes responsabilités, face aux enjeux de l'APV/FLEGT. L'atout majeur dont dispose cette société civile est l'existence d'une expertise locale en observation indépendante des forêts, regroupée au sein de CAGDF. Mais, si techniquement le CAGDF dispose de compétence avérée, il n'en demeure pas moins que bien de préalables nécessitent d'être remplis, pour la prise en main effective de l'OI-FLEG(T). Parmi ceux-ci se trouvent en bonne place la reconnaissance et l'appui par la société civile de la structure qui sera appelée à conduire cette OI-FLEG(T). En effet, la discordance entre les différentes structures sur cet aspect affaiblirait considérablement l'action de l'OI-FLEG(T). Aussi, par exemple, le CAGDF qui a des prétentions de conduire cette OI-FLEG(T) aura-t-elle la charge de fédérer la Société Civile autour de cette action. De la sorte, elle va acquérir une certaine «légitimité» de ses pairs. Car, l'Accord ne spécifie pas l'OSC en mesure de conduire l'OIF, mais parle de la société civile, qui implicitement ou explicitement devra donner une espèce de «quitus» aux meneurs de la future action. Au regard des enjeux, cet appui de la société civile est indispensable, étant donné que les pressions seront fortes, en l'absence d'une présence physique d'ONG internationales. En plus, la bonne appropriation de cette activité par les OSC, surtout celles qui ont déjà bénéficié des formations de l'OI-FLEG et celles qui vont constituer le réseau d'observateurs indépendants des forêts que le CEDEV<sup>27</sup> voudrait mettre en place, permettra à coup sûr à la structure en charge de l'OI-FLEG de se nourrir des

27 CEDEV= Congo environnement et développement (OSC).

informations venues de la société civile, de les vérifier, si possible, et de les transmettre aux organes en charge de la délivrance des autorisations. Par ailleurs, les observations de l'OI-FLEG étant nécessaires dans le système de vérification de la légalité (SVL), notamment sur l'octroi des certificats et autorisations, il serait important de revoir le mode de validation et de diffusion de l'information, car celui utilisé actuellement, avec le comité de lecture et le quitus de l'AF pour la publication des rapports, ne pourrait répondre à l'urgence de la délivrance des autorisations. De ce fait, il faut établir un cadre formel de communication rapide des observations avec les organes en charge de la mise en œuvre de l'APV, particulièrement la Cellule de la légalité forestière et traçabilité (CLFT), afin que l'OI-FLEG(T) joue effectivement son rôle d'alerte bénéfique pour le SVL et toutes les parties prenantes.

## Conclusion

L'avènement de l'APV/FLEGT donne une dimension nouvelle dans l'implication de toutes les parties prenantes (administration, société civile, sociétés forestières, populations locales et autochtones). La responsabilité de conduire l'observation indépendante des forêts dévolue à la société civile nationale, comme instrument du suivi de la légalité du bois, fait d'elle un maillon indispensable dans le système de vérification de la légalité. La RC a eu l'avantage d'avoir anticipé la venue de l'APV, en autorisant une OI-FLEG, avec entre autres résultats attendus, la formation des experts nationaux en la matière issus de la société civile. Ainsi, aujourd'hui REM et FM doivent transmettre le témoin à la société civile nationale, afin qu'elle joue pleinement son rôle dans le système de vérification de la légalité. A travers l'observation indépendante des forêts, la société civile congolaise dispose déjà des acquis majeurs : les experts opérationnels expérimentés formés par REM et FM, une base de données disponible sur l'exploitation forestière, une plateforme de la société civile pour la gestion durable des forêts, regroupant une vingtaine d'OSC sensibilisées aux enjeux de l'APV/FLEG et de l'OI-FLEG(T). Cependant, si la disponibilité de l'expertise nationale est résolue, il importe, pour la société civile, de bâtir de nouvelles stratégies et de se renforcer dans les mécanismes de gestion de ce type d'activité, au regard de la nouvelle donne qu'implique le retrait de REM et FM et de son rôle dans le suivi de la légalité du bois et par conséquent dans la délivrance des autorisations FLEGT.





## THEME FIVE

### COMMUNICATION ON THE FLEGT/VPA PROCESS

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## 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<sup>1</sup>

#### 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

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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 World Wide Fund for Nature 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 Netherlands' 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 EU-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. The delegation was especially interested in learning about Ghana's plantation development potential.

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 m<sup>3</sup> of logs yearly, most of which is exported to China. It also produces about 30 000 m<sup>3</sup> of sawn-wood and 20 000 m<sup>3</sup> 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 3<sup>rd</sup> 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 EFF’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 La musique, un outil de sensibilisation et d'information sur l'APV-FLEGT : Exemple du CD intitulé "Nos voix comptent"

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### Résumé

*Le Compact Disc (CD) Nos voix comptent est composé de onze pistes dont trois sont les chansons sur FLEGT et l'importance d'y faire impliquer les populations locales. Huit autres pistes ont été développées pour permettre aux populations de s'exprimer et ces titres représentent les messages des communautés elles-mêmes. Le CD est dans la continuité des orientations de sensibilisation de la FCTV qui utilise la musique comme un nouvel outil de sensibilisation et de diffusion des informations. L'on danse mais aussi l'on écoute des messages sur la gouvernance forestière et précisément sur l'APV-FLEGT.*

*Il aborde les explications sur le FLEGT et l'APV. Cet outil est aussi utilisé pour les actions de plaidoyer car plusieurs messages sont adressés à l'administration. On y retrouve des informations, messages et plaintes. Plus de 1200 exemplaires de cet album ont été distribués gratuitement et la reproduction est autorisée pour permettre de toucher le maximum de personnes.*

### Introduction

L'information et la sensibilisation sont à la base de la compréhension et la mise en application de tout processus, programme ou projet. Les acteurs à la base sont un maillon important de la chaîne à considérer dans la transmission des informations. Ils sont les destinataires finaux qui font généralement le succès ou l'échec des initiatives. Il est donc nécessaire de bien les informer et de les sensibiliser pour un changement de comportement en faveur des attentes des actions entreprises par les tiers. De la même façon que les informations sont relayées à

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<sup>5</sup> Living Earth Foundation (LEF)

<sup>6</sup> APIFED

la base, elles le sont aussi en direction des autorités locales ou centrales afin de les renseigner sur les préoccupations à la base et leur permettre d'orienter les décisions en prenant en compte les réalités de terrain. Cette approche est importante et rentre dans le cadre des actions de plaidoyer dans le secteur forestier en pleine et constante émulation. Ce changement est témoigné par les multiples programmes et processus de gestion et de gouvernance forestière comme la Réduction des Emissions liées à la Déforestation et à la Dégradation de la forêt (REDD+), les Changements Climatiques, le plan d'action FLEGT, la foresterie communautaire et la fiscalité forestière.

Pour atteindre les objectifs de véhicule des informations, plusieurs approches sont adoptées par différents acteurs de terrain. Les outils comme les dépliants, posters, brochures ou toute autre approche sont communément utilisés. D'autres supports sont utilisés dans les questions de plaidoyer. La musique aussi est de plus en plus utilisée et des artistes avérés sont souvent impliqués dans la production des spots de musique publicitaire réalisés pour des fins de sensibilisation ou de conscientisation sur des questions et faits qui minent le vécu quotidien des populations tels que VIH/SIDA, Paludisme, Education et bien d'autres.

L'esthéticien allemand Heinrich Lützeler voulant comparer la musique à d'autres arts, ne l'a-t-il pas défini comme la « force magique généralement reconnue, qui touche l'homme et l'atteint jusque dans les fibres les plus fondamentales de son esprit et de son cœur »<sup>2</sup> ? C'est suite à cette définition que la FCTV s'est lancée dans cette approche de l'utilisation de l'outil musique comme moyen pour véhiculer les informations entre la base et le sommet et vice-versa. Depuis plus de trois années, FCTV et ses partenaires *Living Earth Foundation* et *Bristol Zoo Garden* expérimentent cet outil et l'ont fait dans le cadre du projet d'information des communautés dans la mise en œuvre du plan d'action FLEGT-APV. En quoi consiste cette approche et quelles sont les leçons apprises ainsi que les perspectives réservées à ce fascinant outil ?

### **Revue sur les outils de sensibilisation et d'information et la place de la musique**

La sensibilisation et l'information sont des éléments de communication pour le développement car axées sur les changements de comportements, le chan-

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2 <[http://www.musique-franco.com/generalites/histoire\\_de\\_la\\_musique](http://www.musique-franco.com/generalites/histoire_de_la_musique)>.

gement social et la promotion de certaines idées. Une étude a examiné cette approche au sein des Organisations des Nations Unies<sup>3</sup>. Pour communiquer afin de transmettre les informations au grand public et aux autres groupes cibles, plusieurs moyens sont utilisés par les acteurs que sont les Organisations Non Gouvernementales (ONG), Associations, Administration et bien d'autres organisations ou structures. Dans le secteur forestier, des dépliants, affiches, brochures et bandes dessinées sont généralement produits. Le constat est qu'une fois lus les dépliants et autres brochures sont rangés et les affiches qui résistent aux intempéries restent aussi longtemps que possible dans le champ visuel des communautés cibles avec pour seul défaut qu'elles ne sont pas déplaçables. De nouvelles approches comme l'utilisation des documentaires qui sont d'actualité dans ce secteur, participent à l'effort de recherche d'options plus captivantes pour influencer sur les comportements et provoquer le changement. La musique est aussi une piste explorée comme support pour véhiculer l'information compte tenu de sa large audience. Fame Ndongo dans son ouvrage *Medias et enjeux de pouvoirs* mentionne que la musique est le troisième pouvoir socio-culturel au Cameroun<sup>4</sup>.

Des recherches dans le domaine culturel et musical camerounais ont étudié le rythme au-delà des considérations que l'on lui connaît vulgairement, avec son sens déviant et impudique. Nous notons les cas de « Bikutsi engagé » qui est constitué des textes, d'invectives politique faisant « bouger le corps et penser les têtes »<sup>5</sup>. Les musiques aujourd'hui sont basées sur des faits de société. Des artistes comme André-Marie TALA, Alpha Blondy, Manu Dibango et bien d'autres relatent des faits de société. La musique a en fait une valeur de sensibilisation qui est reconnue par les auteurs comme Nana Guillaume<sup>6</sup> et Dibango & Rouad<sup>7</sup>. Dans les cultures traditionnelles, la musique est vécue de façon active et possède en premier lieu une fonction de liaison sociale. A travers celle-ci, l'individu peut affirmer sa place spécifique dans le groupe<sup>8</sup>. Compte tenu de ce qui précède et avec Nana Guillaume, l'on peut poser la question : peut-on imaginer une société sans musique ? En d'autres termes la musique est en quelque sorte un lien important entre les hommes, les sociétés et ne connaît pas de frontière d'où son caractère universel qui fait d'elle un véhicule de message important

3 E. Mc Call, *La communication pour le développement Accroître l'efficacité des Nations Unies* (2010), a 134

4 J. F. NDONGO, *Medias et enjeux des pouvoirs*, (Presse Universitaire de Yaoundé, 2006), a 146.

5 J. M. NOAH, *Le Bikutsi du Cameroun : Ethnomusicologie des « Seigneurs de la forêt »*, (Carrefour/Erika, 2004), a 49.

6 G. Nana, *André-Marie Tala: le verbe et la guitare*, (Association Proximité, 2005), a 146.

7 M. Dibango et D. Rouard, *Trois Kilos de café*, (Lieu Commun, 1989), a 221.

8 <[http://www.musique-franco.com/généralités/histoire\\_de\\_la\\_musique#sociale](http://www.musique-franco.com/généralités/histoire_de_la_musique#sociale)>.

sans limite dans l'espace et le temps. La musique est donc un outil important pour les questions de plaidoyer car elle fait ressortir avec force les idées et messages, puis interpelle les décideurs sur les préoccupations et faits qui minent les sociétés et qui sont parfois restés longtemps latents au sein des communautés. C'est un instrument de communication sociale qui peut conduire à des changements à la fois de politique et de comportement des personnes. C'est donc un instrument de plaidoyer par excellence étant donné qu'aussitôt qu'il devient difficile de mettre en discours une pensée ou les raisons d'un combat, l'on a recours à la musique, pourvu qu'il soit destiné à un public large.

### **La musique comme nouvelle approche de la FCTV et ses partenaires dans la sensibilisation, l'information et le plaidoyer en matière de gouvernance forestière**

#### ***Approche de la FCTV et ses partenaires***

L'éducation environnementale est l'activité par excellence de la Fondation et de ses partenaires. La devise de l'organisation étant « transformer les idées en actions », la FCTV travaille avec les communautés au quotidien pour faire sortir les idées qui naissent au niveau local vers les décideurs. Le constat fait, après plusieurs années de travail sur le terrain, est la routine dans les outils utilisés pour véhiculer les messages. Or, nous savons que l'éducation et les stratégies médiatiques contribuent à mobiliser l'opinion publique et peuvent influencer les décideurs<sup>9</sup>. Travaillant avec les populations Baka qui s'expriment mieux à travers les chansons, nous avons observé lors des ateliers et réunions, qu'elles sont souvent amorphes et prennent rarement la parole devant d'autres groupes ethniques avec qui elles cohabitent. La FCTV a trouvé en la musique un moyen effectif pour réduire les freins et barrières à l'expression de ces groupes de personnes et par là aussi, une possibilité pour les communautés locales de s'exprimer plus librement. La musique est une partie fondamentale de la culture Baka. Ils chantent pour accompagner leurs activités quotidiennes, pour fêter les mariages et deuils, accueillir et adorer leur dieu « Edzengui » et surtout pour faire passer des messages. Nous savons que la musique joue un rôle important dans la socialisation des individus, contribue à façonner les comportements sociaux et participe à

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International Land coalition: la boîte à outil du plaidoyer, (2010), a 31.

l'évolution sociale d'une manière générale<sup>10</sup>. Comme les chansons, les vidéos, les affiches et les manifestes, la musique fait partie des supports créatifs permettant de faire passer un message.

Cette idée a été utilisée pour la première fois dans le projet *Dja Periphery Community Engagement Project* (DPCEP) en 2006 où l'on a constaté qu'en développant les musiques thématiques relatives à la conservation, l'on pouvait vite éveiller les consciences. L'innovation n'est pas simplement le fait de produire une musique, mais l'accent est mis sur le processus participatif qui a guidé l'élaboration des thèmes de musique, la composition des chansons, et la production de l'album final. Ce processus donne aux communautés forestières l'occasion d'échanger sur les questions sensibles comme la corruption, les relations conflictuelles avec les exploitants et certains agents de l'administration sans crainte. La musique ouvre la porte à cet échange, et le produit final – un album musical – assure que le débat peut continuer, car même après la fin d'un projet, la musique continue à être jouée sur les ondes et dans les bars, dans les téléphones portables (servant déjà de sonnerie de réception d'appel) et dans les Kiosques des « DJ » situés dans les gares routières à destination des villages où résident ces communautés. Après le premier CD qui avait pour titre : « *La voix du peuple* », le projet FLEGT a permis de produire le CD présenté dans cet article et intitulé « *Nos voix comptent* ».

### **Sensibilisation et information dans le contexte de l'APV FLEGT**

Dans le cadre du projet FLEGT, le CD produit contient onze pistes dont trois sont des chansons qui parlent de FLEGT et l'importance de faire impliquer les populations locales dans le FLEGT. Ces chansons sont : '*Bantilolo*', '*Nos voix comptent !*' et '*Ebandolo*'. Les huit autres pistes ont été développées pour permettre aux populations de s'exprimer et ces titres représentent les messages directs des communautés elles-mêmes. Nous aurons ainsi, '*la voix de Ndjibot*', '*la voix de Nkoldja*', '*la voix de Mfem*', '*la voix de Miatta*', '*la Voix de Mveng*', '*la voix de Mekas*'. Ces villages sont ceux qui ont contribué à la production de cet album. Quelques messages formulés peuvent être expliqués à l'exemple des messages suivants :

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10 E.C. KIAMBA , *Le renouveau musical post conflits au Congo-Brazzaville : une catégorie analytique des logiques de survie et des mécanismes de reconversion des jeunes*, (inédit, 2009) , a 1.



- « Le FLEGT ne vient pas remplacer la loi forestière au Cameroun, mais c'est plutôt un cadre dans lequel la loi peut être effectivement appliquée » : beaucoup de personnes pensaient que le FLEGT est une autre loi ; il était donc nécessaire de faire la différence et lever l'équivoque.
- « Touche pas ma chose » : les exploitants devraient savoir que la forêt appartient aussi aux communautés en fait c'est « leur choses » et elles devraient être consultées. Il ne faudra pas continuer à exploiter la forêt comme un « épervier » qui vient arracher les arbres et s'en aller. C'est ici un message à l'endroit des opérateurs économiques afin qu'ils traitent les communautés avec plus de respect.
- « Bantilolo » parle de la misère des communautés et la nécessité de prendre en compte cela. La communauté demande aux exploitants de ne plus soudoyer les autorités pour faire passer leurs seuls intérêts mais de discuter directement avec elle afin de trouver des solutions à leurs problèmes car demander l'aide des autorités pour intimider les communautés n'est que remettre le problème à plus tard et animer la rancune qui pourra dans l'avenir être néfaste pour les deux parties.

Ces trois morceaux de musique ont été complétés par les témoignages des membres de la communauté afin de leur permettre de trouver dans cet outil un espace pour parler et envoyer des messages structurés qui ne seront pas noyés dans les sons de musique. Il est question ici de pousser celui qui écoute ce CD à écouter les communautés qui s'expriment. C'est une tribune qui est donnée à ceux qui n'ont pas de voix. Le support musical que constitue le CD est alors, « la voix des sans voix ».

### ***La conception et production des CD de musique avec les communautés locales***

*Une séance de Focus Group*



Dans le cadre de ce projet, un artiste en herbe, a été contracté pour travailler sur les thèmes et l'orientation des rythmes à utiliser en fonction des types de messages qui devront être véhiculés. Les messages reposent sur une analyse préalable des questions prioritaires des communautés concernant l'exploitation illégale des ressources forestières au sein de

huit communautés cibles à l'ouest et au sud de la Réserve de Biosphère du Dja. La collecte de ces informations s'est faite de manière participative à travers des *Focus Group Discussion*. Les préoccupations sont par la suite transformées en messages à adresser aux différentes cibles (exploitants, administration, communautés et même partenaires au développement). Les messages clés sont entre autres : l'appel à une meilleure gestion de la Redevance Forestière Annuelle (RFA) et sa réévaluation ; l'arrêt des divers abus dont sont victimes les communautés locales de la part des exploitants forestiers ; que l'on donne le droit d'accès dans les concessions forestières sinon comment peuvent-elles participer au plan d'action FLEGT surtout en matière de veille forestière?

Un travail sur le terrain a permis d'enregistrer les différentes chansons découlant des rythmes locaux et qui ont été par la suite arrangées en studio et presser sous forme de CD. Le produit ainsi sorti du studio a été mis à la disposition des communautés pour appréciation avant multiplication de la version finale. Les remarques des communautés ont été intégrées dans la version finale ceci afin de ne pas perdre l'authenticité des messages et des rythmes du terroir malgré l'introduction des instruments de la musique moderne. Une fois produit en grande quantité, une stratégie de distribution et d'écoute a été développée afin de rendre l'information disponible pour tous.



séance d'enregistrement  
sur site

### Stratégies de diffusion du contenu de ces supports de musique

La distribution a d'abord commencé sur le terrain avec les membres de la communauté qui ont pris part au développement des messages bien que le problème lié à l'équipement adéquat pour faire jouer le CD se soit posé pour beaucoup de personnes. Cette dernière préoccupation ne constituait pas pour autant un réel problème puisque le produit était destiné aux décideurs et d'autres acteurs qui eux, disposent du matériel adéquat pour utiliser l'outil en question. La distribution a continué à travers les ateliers d'information, de formation et de plaidoyer dans le cadre de ce projet ainsi que dans d'autres activités de la Fondation mettant le personnel de la Fondation avec les décideurs et partenaires au développement (lors des rencontres formelles et informelles au Cameroun



Le CD de musique produit

et hors du pays). Il faut noter que les CD sont distribués gratuitement afin de favoriser l'acquisition et l'écoute de ce nouveau produit.

Pour plus d'échos, le projet a lancé la diffusion du CD à travers les radios thématiques comme « Radio Environnement » de l'UICN et autres stations de radio diffusion comme *Tom Broadcasting Corporation* (TBC) et bien d'autres. Lors des débats sur le FLEGT organisés à travers ces différentes radios, les extraits de ce CD ont été diffusés sur ces antennes qui pour certaines passent le relais aux Radios communautaires de leur réseaux. Ces radios communautaires permettent d'atteindre les communautés en zone rurale. Celles-ci se sentent ragaillardies en suivant le produit de leurs œuvres sur les antennes. Nous avons aussi utilisé le site web du projet <<http://flegtcameroon.ning.com/page/musique-1>>, des réseaux sociaux tels que You tube pour mettre en ligne des extraits de cette musique. Un concert a été fait lors d'un atelier de plaidoyer qui a vu la présence des responsables de l'administration forestière et organismes en charge de la gestion forestière au Cameroun et dans le Bassin du Congo. Plus de 1200 exemplaires de CD ont été distribués au Cameroun et au-delà des frontières.

### Leçons apprises et perspectives

La Fondation, suite à la production de cet album, a compris qu'il est nécessaire non seulement de produire la musique mais qu'il faille coupler à l'audio, la version vidéo qui permet de superposer au son, les images en mouvement. Le produit (Digital Vidéo Disc, DVD) est ainsi plus vivant et attractif que lorsqu'il est constitué de son uniquement. Cette leçon a renseigné les projets futurs de la Fondation qui a allié son et image dans son projet sur les droits de communautés Baka. Ce dernier album a fait le tour du Cameroun à travers les chaînes de télévision (CRTV et CANAL 2) et à travers plusieurs chaînes de radio. Suite à la promotion intensive à travers les media et surtout visuels, les pirates musicaux ont déjà repris certaines chansons de ce nouvel album qui se vend dans les rues. Ce qui est un atout sur le plan de la sensibilisation d'un large public. Des caravanes itinérantes de projection des clips vidéos (issus du DVD musical) et des débats ont été organisées dans le cadre du deuxième album sur les droits des populations autochtones dans toute la périphérie de la Réserve. Suite à cette activité, des messages et extraits de musique sont aujourd'hui repris en cœur par les résidents de ces localités ; ce qui participe à la diffusion des messages et informations.

Les communautés se trouvant valorisées par la musique qui fait sortir leur voix, le manifestent en utilisant les extraits de ces musiques comme sonnerie de téléphone et lors des manifestations au niveau local. Mais la question reste celle de savoir si en écoutant et en dansant, la tête comprend et retient les messages. Dans la zone de Bengbis et Djoum (Sud Cameroun) où le CD a été produit et distribué, les communautés une fois face à notre véhicule de service qu'ils reconnaissent bien, disent souvent de les aider à chasser ces « éperviers humain » dont parle le CD. Ceci est une preuve que quelque chose est retenu après avoir écouté cette musique. Nous travaillons actuellement dans le but de comprendre l'impact de cet outil sur la sensibilisation, l'information et le plaidoyer. Notre objectif actuellement est de répondre à la question de savoir si la musique peut avoir un réel impact sur le changement de comportement et/ou politique.

Comme toute nouvelle approche, la difficulté réside dans le fait de faire accepter cet outil comme un moyen efficace de sensibilisation et de plaidoyer. Le plus grand défi ici est de pouvoir mesurer l'impact de cet outil et le contrôle du vedettariat que cela suscite au sein des communautés sachant que la musique a ses contraintes de production, de diffusion et de commercialisation. En interne, une enquête a été menée afin de comprendre si les communautés au-delà de la musique retiennent quelques messages. Il ressort que des messages sont retenus et peuvent être cités par des personnes surtout dans le cadre du DVD. Actuellement, la Fondation et ses partenaires ont commandité une étude de cas afin de mesurer l'impact de cet outil dans la sensibilisation, l'information et le plaidoyer. Les résultats sont encore attendus.

## Conclusion

Les questions de gouvernance forestière comme bien d'autres préoccupations au sein des communautés peuvent être portées à la connaissance d'un public plus large à travers la musique. C'est un outil qui permet à ceux que nous avons appelé « enfant pauvre de la gestion forestière », c'est-à-dire les communautés de se faire entendre au-delà de leur localité et communiquer ainsi avec le reste du pays et même la communauté internationale sans avoir besoin de se déplacer. La musique peut bien être utilisée pour d'autres fins que celle d'adoucir les mœurs et la danse : une musique qui éduque, sensibilise, informe et plaide pour les communautés.

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

Ernest Asare ABENEY, PhD

Samuel Appiah ADANE<sup>1</sup>

#### Abstract

*Under the implementation of the Voluntary Partnership Agreement (VPA) 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 African Caribbean and Pacific (ACP) FLEGT support Programme 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.<sup>2</sup> 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.<sup>3</sup>

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<sup>2</sup> D. Waters *et al.*, Health promoting community radio in rural Bali: an impact evaluation (James Cook University, February, 2011), at 8.

<sup>3</sup> B.K Singh *et al.*, "Social impact of community radio in Karnataka". *Indian Res. J. Ext. Edu.* (2010) 10 (2), at 1.

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.<sup>4</sup> 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.

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<sup>4</sup> R. Chapman *et al.*, Rural radio in agricultural extension: the example of vernacular radio programmes on soil and water conservation in Ghana (AgREN, January, 2003), at 16.

## **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 Adwafo, 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.<sup>5</sup> 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.

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P. Kaur, *Community radio in Bangalore: a case study on radio active community radio*, (Christ University, 2012), at 11.

## 7.4 La labellisation des produits bois FLEGT-Cameroun: quelle plus-value?

Désiré LOUMOU<sup>1</sup>

### Résumé

*Dans le cadre de l'opérationnalisation de son engagement dans la gestion durable de ses ressources forestières, le Cameroun a signé avec l'Union Européenne un Accord de Partenariat Volontaire (APV/FLEGT) dont la mise en œuvre est conduite à travers un ensemble d'actions destinées à favoriser la distinction du bois légal d'origine camerounaise de tout bois légal en provenance de tout autre pays également engagé dans le processus d'application des réglementations forestières, Gouvernance et Echanges commerciaux mieux connu sous son acronyme anglais FLEGT.*

*Pour ce faire, le Cameroun s'emploie à matérialiser cette distinction de son bois par la mise en place d'un label FLEGT-Cameroun qui, outre les retombées commerciales qu'il procurera aux opérateurs de la filière, permettra également de donner une meilleure visibilité à la politique gouvernementale en faveur d'une gestion durable de sa ressource forestière, en renforçant par ailleurs la crédibilité de celle-ci aux yeux du consommateur et de ses partenaires, et en véhiculant l'image d'un espace sécurisé et attractif à l'investissement dans le secteur forestier.*

### Introduction

Le Cameroun a signé avec l'Union Européenne (UE) un Accord de Partenariat Volontaire (APV/FLEGT) le 10 octobre 2010, lequel est entré en vigueur le 16 décembre 2011 dans l'optique de voir les premières autorisations du processus d'application des réglementations forestières, Gouvernance et Echanges commerciaux connu sous son acronyme anglais : FLEGT, émises au 1<sup>er</sup> janvier 2013. L'APV Cameroun-UE vise à permettre que seuls les bois ayant été reconnus légaux puissent être exportés du Cameroun vers le marché de l'UE. Cet Accord consacre les efforts constants du gouvernement camerounais à organiser et lutter contre l'exploitation illégale de la ressource forestière, afin d'honorer ses engagements aux plans interne et externe sur la gestion durable des ses ressources forestières.

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Pour assurer la crédibilité de cette légalité, l'Accord s'appuie sur le Système de Vérification de la Légalité (SVL) dont un des outils qu'est le Système de Traçabilité, permet de capter tout bois entrant et sortant du territoire camerounais, y compris les bois en transit qui ne peuvent cependant bénéficier de la délivrance d'une autorisation FLEGT du fait de leur origine non camerounaise.

Ainsi donc, seuls les bois légaux d'origine camerounaise peuvent bénéficier d'une autorisation FLEGT délivrée par les autorités de délivrance camerounaises. Pour obtenir cette autorisation, l'origine camerounaise du bois pour lequel cette autorisation est sollicitée peut être établie en s'appuyant sur le moyen de son acquisition, ou sur la source de son prélèvement.

L'acquisition peut être l'accès à la ressource à partir du marché intérieur. Il peut s'agir également d'un bois importé dont le processus de transformation au Cameroun lui aura conféré la nationalité camerounaise. Le prélèvement est fait sur les forêts du territoire du Cameroun conformément au champ d'application défini par l'Annexe I.A de l'APV, ce qui exclut de ce champ, tous les bois figurant dans l'Annexe I.B qui sont des espèces interdites. Toutes ces exigences font parties des prescriptions à observer pour la délivrance de l'autorisation FLEGT au bois dont la légalité a été établie pour sa mise en libre pratique sur le marché de l'UE.

Or, bien que cette autorisation FLEGT soit une garantie de la légalité pour le bois camerounais qui en bénéficie, il n'est pas toujours certain qu'une fois sur le marché, le consommateur puisse le reconnaître à l'apparence et le distinguer aisément de tout autre bois légal d'un autre pays.

En effet, la visibilité du bois légal camerounais sur le marché mérite d'être apparente à première vue, afin de faciliter le choix du consommateur recherchant à s'approvisionner en bois légal d'origine camerounaise. Ce qui implique qu'il est nécessaire de faciliter sa distinction d'avec tout autre bois semblable d'un autre pays. A ce titre, il se dégage une nécessité pour le Cameroun de matérialiser cette distinction par l'apposition sur son bois légal de tout signe susceptible d'en faciliter la visibilité sur le marché.

Ce signe, désigné label rassure le consommateur que le bois sur lequel il est appliqué provient d'une source légale, et contribue ainsi à crédibiliser davantage

l'autorisation FLEGT. C'est du reste cette crédibilité qui permet d'apprécier la plus value générée par le label FLEGT-Cameroun en termes d'impact commercial (I) et d'impact politique (II).

### **L'impact commercial du label FLEGT pour les produits bois**

L'impact commercial créé par la mise en place d'un label FLEGT pour les produits bois se reflète tant sur la visibilité desdits produits que sur les retombées commerciales subséquentes.

### ***L'impact du label FLEGT sur la visibilité commerciale des produits***

La visibilité commerciale qu'apporte l'institution d'un label FLEGT-Cameroun pour les produits bois camerounais à exporter sur le marché de l'UE est fondée sur le caractère distinctif du signe qui constitue le label. Le caractère distinctif de ce signe va de ce fait influencer l'attitude du consommateur.

#### *Le label : un signe distinctif par essence*

En tant que signe, le label FLEGT-Cameroun, doit pouvoir constituer une '*identité remarquable*' qui permet d'identifier le bois légal camerounais et de faciliter sa distinction du bois provenant des forêts de tout autre pays<sup>2</sup> qui aurait également signé un APV avec l'UE.

A ce titre, en tant que signe distinctif par nature, le label peut se présenter sous la forme d'une marque<sup>3</sup> que l'on peut définir comme étant : « *tout signe visible utilisé ou que l'on se propose d'utiliser et qui est propre à distinguer les produits ou services d'une entreprise quelconque et notamment, les noms patronymiques pris en eux-mêmes ou sous une forme distinctive, les dénominations particulières, arbitraires ou de fantaisie, la forme caractéristique du produit ou de son conditionnement, les étiquettes, enveloppes, emblèmes, empreintes, timbres, cachets, vignettes, liserés, combinaisons ou dispositions de couleurs, dessins, reliefs, lettres, chiffres, devises, pseudonymes* ».

<sup>2</sup> A ce jour, 05 pays africains ont également signé un APV/Flegt avec l'UE: Ghana, Côte d'Ivoire, Centrafrique, Congo, Libéria.

<sup>3</sup> Cf. Art. 2, Annexe 3, Accord de Bangui révisé de 1999.

Le label en tant que signe peut également se présenter sous forme ou dessin ou modèle industriel<sup>4</sup>, qui peut se définir comme étant : « *tout assemblage de lignes ou de couleurs, et comme modèle toute forme plastique associée ou non, des lignes ou des couleurs, pourvu que cet assemblage ou forme donne une apparence spéciale un produit industriel ou artisanal et puisse servir de type pour la fabrication d'un produit industriel ou artisanal* ».

Au regard de ces deux types de signes bien connus dans le domaine de la propriété intellectuelle, il est important de relever que le signe retenu comme label doit pouvoir être représenté visuellement pour pouvoir être vu sur le marché. Cette visibilité est en effet fonction de la forme, des couleurs ou du modèle de signe qui est choisi comme label; ce qui ne va pas sans impact sur l'attitude du consommateur dont l'attention est attirée par tout signe susceptible lui permettant de différencier des produits similaires et de faire aisément son choix.

#### *L'impact sur le consommateur*

L'identification apparente du label par le consommateur facilite la distinction qu'il peut faire du bois légal camerounais labellisé FLEGT avec tout autre bois légal d'autre origine. Ceci a pour conséquence de susciter de le rapprocher et éventuellement de le rattacher à un produit qui se démarque par un label regardé comme l'assurance d'une garantie d'un ensemble de caractéristiques liées à la fois à l'origine et à la qualité du bois ainsi labellisé.

Toutefois, pour arriver à créer cette assurance dans l'esprit du consommateur, il est nécessaire qu'au préalable, le label choisi fasse l'objet d'une protection qui lui garantit une certaine protection. Il est également nécessaire que ce label fasse l'objet d'une intense activité de promotion sur les marchés d'écoulement du bois légal qu'il accompagne afin de le vulgariser faciliter son intégration par les consommateurs.

En effet, l'absence ou la faible promotion du label FLEGT ne permet pas de véhiculer auprès des consommateurs l'image d'un bois légal camerounais qui est l'aboutissement de tout un processus à la fois politique, social et économique déployé pour favoriser l'exploitation et le commerce légal des produits bois du pays. Faute de communication sur ce label, il est quasi certain que celui-ci aura effectivement bien du mal à générer des retombées commerciales qui sont sensées découler de la mise en œuvre du label dans le commerce.

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Cf. Art. 1.1, Annexe 4, Accord de Bangui révisé de 1999.

### ***Les retombées commerciales escomptées de l'institution du label FLEGT***

Parmi les retombées susceptibles d'intervenir à la suite de l'institution dans le commerce du bois légal camerounais d'un label FLEGT-Cameroun, on peut citer l'assurance d'un retour sur investissement pour les opérateurs ayant intégré la démarche de la légalité d'une part, et l'amélioration de la compétitivité du bois légal camerounais d'autre part.

#### *La perspective d'un retour sur investissement*

Au regard de l'analyse des statistiques d'exportation des bois d'origine camerounaise pour l'année 2011, il ressort que 80% des exportations en grumes vont sur l'Asie et 20% sur l'Europe. Cette tendance s'inverse lorsqu'on considère les exportations des débités dont 80% vont dans la direction de l'Europe tandis que seuls 20% vont vers l'Asie. Dès lors, la prise en compte de ces données permet de relever que l'apposition d'un label FLEGT-Cameroun sur le bois écoulé en débités sur le marché européen est susceptible de favoriser une traçabilité plus accrue de ce commerce et partant, amélioré la visibilité du circuit des recettes que génère ce commerce qui reste le plus rentable pour les opérateurs forestiers. En effet, l'approvisionnement des consommateurs en bois légal arborant le label FLEGT permet à l'opérateur de tracer plus clairement le circuit de distribution de son produit, ce qui facilite également le suivi des ressources financières que génère son commerce. C'est cette amélioration du suivi du circuit commercial de sa production et des rentrées qu'elle génère qui permet à l'exploitant d'avoir une lisibilité sur les perspectives d'un retour ou non sur l'investissement qu'il a consenti pour arrimer sa méthode de production aux exigences du processus de légalité induit par la mise en œuvre de l'APV.

En outre, pour l'Etat, cette meilleure lisibilité est une condition pour faciliter l'évaluation de l'impact du label sur l'état et les perspectives du commerce du bois légal camerounais, ce qui permet par ricochet de faciliter la définition de politiques et mesures adéquates pour soutenir les opérateurs forestiers aussi bien pour arriver à un retour sur investissement, que pour améliorer la compétitivité des productions du secteur forestier national.

### *L'impact du label FLEGT sur la compétitivité du bois légal labellisé*

En dehors de l'amélioration des perspectives financières du commerce du bois légal, le label influence également la compétitivité de ce bois.

En effet, sur le marché, plusieurs types de bois sont proposés au consommateur, notamment : le bois ordinaire, le bois légal, le bois légal labellisé FLEGT, tout autre bois labellisé du fait de la certification etc. Mais en vertu de la crédibilité accordée au processus FLEGT par le marché et le cadre juridique européen, le bois légal labellisé FLEGT mis dans le commerce sur le marché de l'UE va susciter un plus grand intérêt du fait qu'il épouse les exigences d'un processus initié justement par l'UE pour favoriser l'exploitation et le commerce du bois légal sur son marché. Or, le label FLEGT vient justement conforter cette dynamique, ce qui par conséquent va nettement accroître la crédibilité de ce bois labellisé FLEGT sur le marché communautaire et auprès des consommateurs, pour peu que la promotion de ce label ait été engagée.

Ainsi, présenté, on peut à ce stade souligner que l'impact commercial du label FLEGT est certain et se répercute également au plan politique.

### **L'impact politique de la labellisation**

A côté de l'effet commercial qu'il produit, l'institution du label FLEGT dans le commerce du bois légal va également se refléter sur le cadre national de la gouvernance forestière avec plus ou moins de visibilité. Cette plus value politique peut se manifester en deux points que sont : le renforcement de la crédibilité de la gouvernance forestière pour une gestion durable de la ressource bois, et le renforcement du cadre juridique national du secteur forestier.

### ***Le renforcement de la crédibilité de la gouvernance forestière***

En s'engageant dans un processus de gestion durable de sa ressource forestière, le Cameroun s'est également engagé à se doter d'un ensemble d'instruments juridiques et institutionnels dont la mise en œuvre doit améliorer sa gouvernance dans le secteur forestier. De ce point de vue, on peut dire que l'institution d'un label FLEGT pour le commerce du bois légal camerounais traduit l'effectivité de l'application par le Cameroun des conventions, lois et règlements en vigueur dans le secteur forestier, en tant que le processus FLEGT a pour objectif de



favoriser cette application. Ce qui rassure également sur l'effectivité d'une gouvernance forestière en vigueur.

*Effectivité de l'application des instruments juridiques en vigueur*

En s'appuyant sur le principe que la gouvernance forestière est fondée sur les différents textes juridiques et institutions dont se dote le pays pour organiser ce secteur, on peut souligner que seule une mise en œuvre optimale desdits textes et institutions va permettre au secteur de jouir de tous les effets qui pourraient en résulter.

Ainsi, il n'est pas superflu de rappeler qu'en signant un APV avec l'UE, le Cameroun a entendu rassurer son partenaire sur son engagement effectif de veiller à ce que seuls les bois reconnus légaux par les autorités camerounaises puissent bénéficier par leur exportation, d'une mise en libre pratique sur le marché de l'UE. Cette assurance implique de la part du Cameroun que les différents instruments, à savoir les conventions, lois et règlements en vigueur dans le secteur forestier, soient effectivement appliqués, pour garantir la légalité du bois auquel le label FLEGT est appliqué.

Autrement dit, en instituant un label FLEGT-Cameroun pour le commerce de son bois légal, le Cameroun traduit qu'au préalable, les textes juridiques dont il s'est doté sont effectivement appliqués et permettent d'établir la légalité du bois arborant ce label. De même, par l'institution de ce label, le Cameroun confirme non seulement l'effectivité de l'entrée en vigueur de l'APV signé avec l'UE, mais également l'effectivité de l'application des textes internationaux auxquels il est partie, ainsi que celle de ses textes nationaux pertinents. En conséquence, ce n'est qu'au vu de la mise en œuvre de tout cet arsenal que la mise en place d'une procédure de labellisation des ses produits bois dans le cadre de l'APV prend tout son sens. Ce qui a l'avantage d'améliorer la crédibilité du cadre juridique en vigueur, ainsi que la visibilité de la politique nationale appliquée dans le secteur forestier.

*Le label FLEGT : un indice d'une bonne gouvernance forestière*

Au moyen d'un ensemble de textes juridiques, le Cameroun applique une politique forestière orientée vers la gestion durable de ses forêts. En effet, le Ca-

meroun a adopté en 1993 une nouvelle politique forestière, codifiée par la Loi forestière en 1994. Cette politique consacre les principes novateurs et ambitieux tels que : l'aménagement durable des forêts de production, la conservation de la biodiversité, la participation des populations locales et l'amélioration de la gouvernance. Cette politique est en parfaite cohérence avec les orientations internationales (Sommet de Rio, Sommet des Chefs d'Etats de Yaoundé) et le Document de stratégie pour la croissance et l'emploi (DSCE) sensé faire de lui un pays émergent à l'horizon 2035.

Pour accompagner la mise en œuvre de cette politique, un ensemble d'institutions dont le ministère des forêts et de la faune (MINFOF), d'administrations techniques telles que l'agence nationale d'appui au développement forestier (ANAFOR), et d'enseignement à l'exemple de l'école nationale des eaux et forêts (ENEF) de Mbalmayo, contribuent chacune à la matérialisation de cette politique. Dans ce contexte, l'approche participative retenue comme pilier de cette mise en œuvre tend à impliquer tous les acteurs étatiques et non étatiques du secteur forestier, pour asseoir une vision commune de l'objectif de gestion durable des forêts camerounaises ; cela, avec le concours des partenaires au développement qui interviennent substantiellement dans divers programmes dont notamment le Programme sectoriel forêt environnement (PSFE).

A travers ce cadre ainsi structuré, le processus de délivrance de l'autorisation FLEGT par le biais du système de vérification de la légalité (SVL), apparaît comme un outil qui permet de rassurer au moyen du système de traçabilité du bois camerounais (STBC), que les bois d'origine camerounaise marqués d'un label FLEGT-Cameroun sont effectivement des bois dont la légalité a été clairement établie tout au long de la chaîne de production.

Ainsi donc, le label FLEGT constitue par lui tout seul, un indice de crédibilité de la politique forestière en vigueur au Cameroun au vu du fait qu'il n'est apposé que sur du bois légal produit dans un environnement politique structuré, éclairé et inspirant une confiance certaine quant à l'objectivité dont font montre les autorités en charge de délivrance tant de l'autorisation que du label FLEGT-Cameroun. Le label véhicule ainsi une image d'assurance et de crédibilité vis-à-vis de la politique camerounaise en matière des forêts, ce qui contribue à améliorer l'image et la crédibilité du Cameroun, des opérateurs forestiers qui y sont implantés au yeux de leurs partenaires respectifs.

### ***Crédibilité du cadre juridique national du secteur forestier***

Comme souligné dans les paragraphes précédents, le label FLEGT donne non seulement de la visibilité mais également de la crédibilité à la politique forestière nationale. Cette crédibilité ainsi représentée présente le cadre camerounais des forêts comme étant un secteur juridiquement sécurisé, au sein duquel le label apparaît comme une mesure incitative à l'investissement.

#### *Le secteur forestier camerounais : un secteur juridiquement sécurisé*

Pour bien cerner l'image que donne le label du cadre juridique national du secteur forestier, il faut revenir sur les éléments constitutifs de ce cadre. A ce propos, il est à noter que ce cadre est constitué non seulement des textes et institutions spécifiquement dédiés au secteur forestier, mais aussi des textes et institutions qui ne sont pas spécifiques au secteur forestier. Ceux-ci sont d'une portée plus large et touchent notamment au commerce, à l'organisation judiciaire pour faire valoir ses droits, à la protection de l'environnement, à la création de société, à l'investissement, à l'emploi etc. Mais tous concourent à la structuration du secteur forestier national qui peut alors offrir d'exploiter et produire légalement du bois sur le territoire camerounais.

Dès lors, parce que le label est une représentation de tout le processus de production légale dans ce cadre là, il rassure sur le fait que le bois qu'il accompagne a été légalement obtenu au terme d'un processus de légalité sous-tendu par une autorisation FLEGT obtenue en vertu d'une procédure dont les différentes composantes touches aussi bien à la conformité juridique, fiscale et financière tant de l'entreprise que de son activité ou de son promoteur. Le label FLEGT résume à lui tout seul, la rigueur du cadre juridique national dont il est issu, et permet ainsi aux partenaires du Cameroun de croire qu'il est un espace propice à l'investissement au vu de la sécurité juridique qu'il offre aux exploitants forestiers.

#### *Le label FLEGT : une mesure incitative à l'investissement dans le secteur forestier*

En tant qu'outil commercial qui bénéficie du cautionnement de l'Etat qui le met en place, le label FLEGT-Cameroun se présente également comme une mesure d'incitation à l'investissement dans le secteur forestier camerounais.

En effet, bien que l'Etat camerounais ne soit pas en lui-même un opérateur forestier, il a néanmoins pris l'initiative de mettre en place un label auquel il attache toute la force juridique des actes qu'il prend dans l'exécution de ses missions régaliennes. L'Etat met ainsi à la disposition des opérateurs du secteur forestier, un instrument commercial qui leur permet d'écouler plus facilement leur production de bois légal sur le marché de l'UE. Par ailleurs, l'encadrement dont bénéficie le processus de labellisation en termes de sécurité juridique, peut être regardé en soi comme une mesure incitative à l'égard de toute personne voulant s'investir dans le secteur forestier camerounais.

En effet, parce que le gouvernement s'est engagé à veiller à la légalité des produits bois issus de ses forêts et mis sur le marché, son initiative en faveur de l'institution d'un label FLEGT pour les produits bois apparaît comme un cautionnement institutionnel de la légalité de l'activité des opérateurs de son secteur forestier. Ainsi présentée, cette mesure incitative doit être regardée comme un accompagnement fourni par le gouvernement pour faciliter la visibilité du bois légal camerounais sur le marché. Ceci s'accompagne d'une série d'actions et activités de promotion de ce label aussi bien au plan national qu'international.

Vu sous cet angle, le label FLEGT-Cameroun s'affiche effectivement comme une mesure incitative offerte par le gouvernement pour donner un gage à la fois de crédibilité et de sécurité aux investisseurs dans le but de favoriser leur établissement sur son territoire et principalement dans le secteur forestier.

## Conclusion

L'analyse de l'impact du label FLEGT-Cameroun sur le commerce du bois légal camerounais vers l'UE met en évidence la plus value commerciale et politique qu'il génère. Ces plus value apparaissent dès lors comme des incitations à l'investissement dans ce secteur, au regard de l'implication du gouvernement dans le processus de mise en place, de protection et de promotion de ce label. C'est à ce titre que le label améliore par sa visibilité, l'image de la gouvernance forestière au Cameroun pour une gestion durable, ainsi que de la compétitivité du bois légal camerounais.



## THEME SIX

### RESPONDING TO THE NEW EUROPEAN MARKET REQUIREMENTS

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

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

Emily UNWIN<sup>1</sup>

#### 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.<sup>2</sup> 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.<sup>3</sup>

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 re-

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<sup>2</sup> Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market, OJ L295, 12.11.2010, at 23 (hereinafter “Timber Regulation”).

<sup>3</sup> N.B. the policy origins of both lie in the Forest Law Enforcement Governance and Trade (FLEGT) Action Plan Brussels, 21.5.2003, COM (2003) 251 final.

forms 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 non-EU 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 the 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.<sup>4</sup> 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.<sup>5</sup> 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.

<sup>4</sup> Section 8204 of the Food, Conservation, and Energy Act of 2008, amended the Lacey Act (16 U.S.C. 3371 – 3378) by expanding its protection to a broader range of plants and plant products, including trees, with effect from May 22, 2008; The Australian Parliament House of Representatives passed the Illegal Logging Prohibition Bill 2012 (the Bill) on 20 August 2012. The Bill must be approved by the Senate and receive Royal Assent before becoming law.

<sup>5</sup> VPA between the European Union and the Republic of Congo on forest law enforcement, governance and trade in timber products into the Community, OJ L92, 06.04.2011 (Congo VPA); VPA between the European Union and the Republic of Ghana on forest law enforcement, governance and trade in timber products into the Community, OJ L70/3, 19.03.2010; VPA between the European Union and the Republic of Cameroon on forest law enforcement, governance and trade in timber products into the Community, OJ L92, 06.04.2011; VPA between the European Union and the Central African Republic on forest law enforcement, governance and trade in timber products into the Community, OJ L191, 19.07.2012; VPA between the European Union and the Republic of Liberia on forest law enforcement, governance and trade in timber products into the Community, OJ L191, 19.07.2012; VPA between the European Union and the Republic of Indonesia, agreed on 4 May 2011.



## 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.<sup>6</sup> 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.<sup>7</sup> 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 VPA licenses are not yet issued, the grid may be used to inform an analysis of the national laws that are relevant to compliance

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<sup>6</sup> Operators are the commercial actors that first place timber on the EU market and are subject to the Timber Regulation's main provisions.

<sup>7</sup> 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.

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 VPA 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 VPA 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.<sup>8</sup>

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

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<sup>8</sup> See Article 6, Timber Regulation and ClientEarth legal briefings *What does the Exercise of Due Diligence Under the Timber Regulation Require*, October 2011, <<http://www.clientearth.org/reports/what-exercise-due-diligence-timber-regulation-require.pdf>> and *Risk Assessment Under the EU Timber Regulation and VPAs*, June 2012, <<http://www.clientearth.org/reports/risk-assessment-under-the-eu-timber-regulation-and-vpas.pdf>>

required when exercising due diligence.<sup>9</sup> In particular, it has established that:

- Information on the sub-national area and/or concession of harvest must be provided when the *risk of illegal harvesting between sub-national regions, and concessions respectively, varies*;
- The full scientific name of the tree species must be provided when *ambiguity in the use of the common name exists*.<sup>10</sup>

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 to 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.<sup>11</sup> This relates to a broader question of what role voluntary schemes

<sup>9</sup> Commission Implementing Regulation (EU) No 607/2012 of 6 July 2012 on the detailed rules concerning the due diligence system and the frequency and nature of the checks on monitoring organisations as provided for in Regulation (EU) No 995/2010 of the European Parliament and of the Council laying down the obligations of operators who place timber and timber products on the market Text with EEA relevance (hereinafter 'ECIR').

<sup>10</sup> Article 3, ECIR (emphasis added).

<sup>11</sup> The term 'voluntary certification schemes' is used in this article as an umbrella term to refer to schemes that seek to evidence the legality of timber, which may also be called certification or third party verification 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.<sup>12</sup> 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 (VPA) license on condition that those schemes have been assessed and approved in accordance with the procedure stated.<sup>13</sup> 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.<sup>14</sup> As an

<sup>12</sup> See Article 4, 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) That 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 Regulation’s legality requirement; (iii) That they include the means, verified by a third party, to trace timber harvested in accordance with the Timber Regulation’s definition of legality and timber products derived from that timber, at any point in the supply chain before that timber or those products are placed on the market; and (iv) That they include controls, 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.

<sup>13</sup> Council Regulation (EC) No 2173/2005 of 20 December 2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community, OJ L347, 30.12.2005, p.1.

<sup>14</sup> The procedure for the EU is as set out at Articles 4 & 7 of Council Decision of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (1999/468/EC). Broadly, a representative of the Commission

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 the requirements of the legality grid.<sup>15</sup> 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.<sup>16</sup> The procedural, administra-

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would submit a proposal to a committee (in this case the FLEGT Committee) where all 27 Member States are represented. The proposal is voted on and a majority vote in favour would pass the proposal.

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

<sup>16</sup> This is the case both in the EU and in non-EU VPA partner countries, although in non-EU VPA partner countries,

tive 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.<sup>17</sup> 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.<sup>18</sup> 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 VPA licenses and appropriate penalty regimes can be put in place.

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civil society also has an important role in implementation and enforcement. This section focuses on the role of public authorities.

<sup>17</sup> <[http://barometer.wwf.org.uk/what\\_we\\_do/government\\_barometer/](http://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.

<sup>18</sup> Article 12(1), Timber Regulation.

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 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 VPA 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 VPA license.<sup>19</sup> 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 VPA 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.<sup>20</sup> 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. As 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

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<sup>19</sup> Article 9, Regulation (EC) No 1024/2008 laying down detailed measures for the implementation of Council Regulation (EC) No 2173/2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community, O.J. L277, 17.10.2008, p23.

<sup>20</sup> For the Timber Regulation, operators are subject to the main obligations, so are most directly regulated. For VPAs, the stakeholders seeking to obtain a VPA certificate for their timber are the most directly regulated party.

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 Regulation, as well as those developing the technical mechanism of the LAS for VPAs.

These private sector actors have a common need for a clear understanding of what the Timber Regulation and VPA's requirements mean for them in practice. For those who are regulated directly, this is necessary for appropriate compliance steps to be taken. Equally, private sector organizations 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”.<sup>21</sup> 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.<sup>22</sup> 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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<sup>21</sup> Article 2(c), Timber Regulation

<sup>22</sup> Article 2(b), Timber Regulation. For example, questions have been raised as to how the involvement of a shipping agent, or alternatively an agent who sources products for buyers, will impact the determination of who the operator is in a given scenario.



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 VPA license in all scenarios. In addition, private sector organizations seeking VPA licenses and those otherwise involved in the timber supply 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 VPAs requirements, which is 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.<sup>23</sup>

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.<sup>24</sup>

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<sup>23</sup> Articles 8(4) & 10(2), Timber Regulation.  
<sup>24</sup> Articles 8(4) & 10(2), Timber Regulation.

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.

