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# IMPROVING FOREST GOVERNANCE

## A Comparison of FLEGT VPAs and their Impact

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Photo cover: Man holding a moabi fruit in Cameroon. VPAs are not only about timber but provide the possibility to highlight the need for respect for local peoples' tenure rights. © Greenpeace/Filip Verbelen.

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# Contents

Photo Fred Pearce

Chainsaw milling in Ghana is illegal but brings more benefits to local communities than logging for export.

# Executive summary

Voluntary Partnership Agreements – VPAs – are an innovative tool for improving forest governance. They are the central plank of the EU's Action Plan to control illegal logging, adopted in 2003. Since then VPA negotiations have been concluded with six timber-producing countries: in chronological order, Ghana, the Republic of Congo, Cameroon, the Central African Republic, Indonesia and Liberia. Six more VPAs are currently being negotiated.

The idea behind VPAs is fairly simple, but the VPA documents themselves are not an easy read. By describing the key elements of a VPA, and comparing the texts of the six agreements concluded to date, this report aims to clarify what VPAs are, how they work, and what the differences between them are.

The report begins by describing what prompted the development of the EU FLEGT Action Plan. International NGOs pushed for the design and process of VPAs to include a number of principles, and these have been largely respected (as shown in Table 1).

By examining the content of the six existing VPAs, the report moves on to identify differences and similarities between them. Analysis focuses on six key issues that NGOs in Europe and in VPA countries have identified as essential for improving governance in the forestry sector (see Table 2).

Every VPA concluded so far covers all exports (not just those to the EU), and all timber products that the country concerned currently exports. With the exception of the Central African Republic, all concluded VPAs also include the domestic market. This could have a large impact on local communities in these timber-producing countries.

All VPAs require substantive legal reforms. Reforms are required for the VPA to be implemented effectively, but most VPAs also include more far reaching reforms concerning recognition of customary rights, community forests and the domestic market.

These reforms, along with an annex specifying which documents need to be made publicly available, and the required involvement of an independent auditor, could poten-

tially make the VPA an effective tool for addressing the underlying causes of forest loss. Each concluded VPA also contains a mechanism for resolving disputes, and most of the agreements provide a clear role for civil society organisations in monitoring the implementation.

All the VPAs concluded to date have been negotiated in a multi-stakeholder process involving representatives from local human rights and environmental organisations, the private sector and government. This is the first time that legally binding trade agreements have been negotiated and agreed in such an inclusive, consensus-based process. The process has therefore been perceived as empowering local civil society actors.

The agreements are not identical. Each VPA is a tailor-made bilateral trade agreement, reflecting the particular challenges that each country faces and the priorities of the different stakeholder groups involved in the negotiation process. Although VPAs are trade agreements, both the negotiation process and the content of the agreement focus as much on issues of environment and development as on trade issues.

The final section of the report deals with challenges, particularly the question of effective implementation. (See Table 3). Legality assurance systems (LAS) are not yet up and running for any of the concluded VPAs. In March 2013 the European Union Timber Regulation (EUTR) will come in to effect, making it a criminal offence to put illegally sourced timber on the EU market. If this legislation is not effective in reducing illegal timber imports, producer countries may lose interest in a VPA.

Another challenge comes from the way that the forestry sector is being marginalised by a growth of agriculture and mining activities. This will diminish the potential impact that VPAs can have on improving governance. This report therefore recommends researching the extent to which the VPA model can be used in other sectors. It also recommends research into whether the VPA multi-stakeholder consultation process can be used as an example for national discussions about land-use planning.

The paper ends with recommendations for all those involved in the VPA process, including the need to focus on effective implementation and to expand the inclusive multi-stakeholder process to other commodities and processes.


Photo FERN

Formal and informal forest monitoring is crucial for an effective implementation of the VPA.

# Section 1
# How did it start and where are we now?

## The FLEGT Action Plan

Illegal logging is a pervasive problem, causing enormous damage to forests, local communities and the economies of producer countries. Since the EU is one of the largest importers of timber and forest products, the consumption of the Member States may encourage illegal logging and related criminal activities.

To address this problem, in May 2003 the EU presented its FLEGT Action Plan (FLEGT stands for Forest Law Enforcement, Governance and Trade)[1] The Action Plan recognises the seriousness and complexity of the issue, as well as the EU's responsibility to contribute to solutions. The Commission also recognises that law enforcement on its own can make the situation worse for local communities, when unjust laws are not changed.

The central activity of the FLEGT Action Plan is to develop bilateral partnership agreements, with the aim of creating a caucus of the main wood-producing and importing countries. The basis of these Voluntary Partnership Agreements (VPAs) is that they should verify that timber imports from partner countries were harvested in conformity with their legislation. In order to implement these partnership agreements the Commission adopted two regulations that form the legal basis for a voluntary licensing scheme.[2]

As of February 2013, six VPAs have been concluded, and six more are under negotiation. This report assesses the six VPAs concluded to date with Ghana (2008), Republic of Congo (2009), Cameroon (2010), Central African Republic (2010), Indonesia (2011) and Liberia

1 http://www.euflegt.efi.int/files/attachments/euflegt/01flegtactionplanenfinalen.pdf
2 See FLEGT Regulation 2005. Available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:347:0001:0006:EN:PDF and FLEGT Implementing Regulation at http://ec.europa.eu/development/icenter/repository/Com_Reg_1024-08_en.pdf

(2011).[3] The six VPAs agreed cover a forest area of 168 million hectares, and once implemented could impact the lives of 100 million forest peoples.[4]

The FLEGT Action Plan does not only mention the need for bilateral partnership agreements. It also points out the need for legislation to control imports of illegally harvested timber into the EU.[5] This has led to the adoption of the EU Timber Regulation (EUTR) which will come into effect on 3 March 2013. It also mentions encouraging private and public banks and financial institutions to assess the risks of investing in activities that could exacerbate illegal practices; to pay due attention to the EU Money Laundering Directive; to tighten up CITES; to use the OECD Convention on Bribery; and to adopt green procurement policies. Unfortunately little action has been taken on any of these points so far.

The Council adopted the Action Plan in October 2003. In its conclusions, the Council urged the European Community and its Member States inter alia to:[6]

- *strengthen land tenure and access rights, especially for marginalised 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 in association with forest exploitation operations, including through the introduction of independent monitoring;*
- *reduce corruption in association with the award of forest concessions and the harvesting and trade of timber;*
- *engage the private sector of the timber-producing countries in efforts to combat illegal logging.*

## The context

Discussions on illegal and destructive logging have taken place in a number of fora, as concern over the extent of illegal logging has increased. This chapter provides the context for the development of the FLEGT Action Plan.

3 Formal signing of the VPA in Indonesia is planned for 2013, after which ratification will take place in both EU and Indonesia. Liberia's VPA has been ratified in the EU and is expected to be ratified in Liberia in 2013'.

4 The total area covered by the concluded VPAs is as follows: Ghana, 5 million ha; Indonesia, 94 million ha; Cameroon, 20 million ha; Republic of Congo, 22 million ha; Liberia, 4 million ha; and Central African Republic 23 million ha (see FAO, Forest Resources Assessment 2010. Available at: http://www.fao.org/forestry/fra/fra2010/en/). People directly dependent on forest resources include about 12 million people in Ghana, 2.5 million people in Liberia, 4 million in Cameroon, 3.7 million in Congo, and 80 million in Indonesia.

5 Article 4.2.4. 'Additional legislative options in the EU FLEGT Action Plan: . . . In the EU there is currently no Community legislation prohibiting the import and marketing of timber or timber products produced in breach of the laws of the country of origin. For a variety of reasons, some important wood-producing countries may choose not to enter into FLEGT partnership agreements with the EU, despite the advantages outlined above in 4.2.3. The Commission will therefore review options for, and the impact of, further measures, including in the absence of multilateral progress, the feasibility of legislation to control imports of illegally harvested timber into the EU, and report back to the Council on this work during 2004. Member States should also examine how the trafficking of illegally harvested timber is addressed under national laws.' Available at: http://ec.europa.eu/development/icenter/repository/Com_Reg_1024-08_en.pdf

6 Council of the European Union (2003) *Communication from the Commission to the Council and the European Parliament on Forest Law Enforcement, Governance and Trade (FLEGT): Proposal for an EU Action Plan – Council Conclusions.* p.3 Available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2003:0251:FIN:EN:PDF

The failure of the **Earth Summit in Rio in 1992** to deliver a global forest convention is widely seen by experts as the starting point of various bilateral activities, and the increase in private sector initiatives like forest certification.[7] Illegal logging was barely on the agenda in the early 1990s, with several countries denying that the problem even existed. This began to change over the course of the decade.

**G8 (1998).** An Action Plan on Illegal Logging[8] was adopted at the Birmingham G8 Summit in 1998. It stated that *"illegal logging robs governments, forest owners and local communities of significant revenues and benefits, damages forest ecosystems, distorts timber markets and forest resource assessments and acts as a disincentive to sustainable forest management. International trade in illegal harvested timber including transfer pricing, under invoicing and other illegal practices, exacerbates the problem of illegal logging. Better information on the extent of the problem is a prerequisite to developing practical and effective counter measures."* This Action Plan was brought to completion in 2002 when the report was submitted to ministers. In the final report, the G8 members committed to keep forest-related issues high on the political agenda and to combat illegal logging.[9]

**The Bali Declaration (2001).** The 13 September 2001 declaration by ministers of East Asian Nations, at a meeting in Bali hosted by the World Bank and Indonesia, is seen by many as a catalyst that changed attitudes and turned illegal logging in an issue that could no longer be ignored.[10] The declaration speaks of the need to *"explore ways in which the export and import of illegally harvested timber can be eliminated, including the possibility of a prior notification system for commercially traded timber". It also says it is important to 'improve forest-related governance in our countries in order to enforce forest law, inter alia to better enforce property rights and promote the independence of the judiciary"* and *"involve stakeholders, including local communities, in decision-making in the forestry sector, thereby promoting transparency, reducing the potential for corruption, ensuring greater equity, and minimizing the undue influence of privileged groups".* The declaration also came with an annex containing an indicative list of actions.

**The Convention on Biological Diversity and the World Summit on Sustainable Development (2002).** The Convention on Biological Diversity (CBD) provides some guidance on the measures that need to be developed and implemented to promote responsible forest management and eliminate illegal logging and related trade. All EU Member States, as well as the European Union itself, are signatories to the CBD and are legally bound by its decisions. In 2002, at the meeting of the 6th Conference of the Parties, the CBD adopted a work programme on forests. The parties to the CBD agreed to promote forest law enforcement and address related trade, notably by supporting the evaluation and reform of legislation to include clear definition of illegal activities and to establish effective deterrents;

7 Overdevest, Christine and Zeitlin, Jonathan (2012). 'Forest Law Enforcement Governance and Trade (FLEGT): Transnational Dynamics of an EU Experimentalist Regime', Presentation at conference, University of Copenhagen, *Illegal logging and legality verification – the FLEGT/VPA as new modes of governance* Dec 6-7, 2012. See: http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=36686347

8 The G8 Action Plan on Forests is outlined in *Text: Joint G8 statement on forest management* (11 May 1998). Available at: http://www.usembassy-israel.org.il/publish/press/trade/archive/1998/may/et3512.htm

9 The G8 Action Plan on Forests (2002) *Final Report* is available at: http://www.illegal-logging.info/uploads/G8_Action_Programme_on_Forests.doc

10 Declaration available at: http://www.illegal-logging.info/uploads/Bali_ministerial_declaration.pdf

Photo Nathalia Dukhan

Consultation with local communities in design and implementation of the VPA is key.

the development of methods and capacity-building for effective law enforcement; and regional cooperation and assistance to develop tracking and chain-of-custody systems for forest products to ensure that these products are legally harvested.[11] The state parties to the CBD also agreed to *"apply the ecosystem approach to the management of all types of forests; promote the sustainable use of forest biological diversity; enhance the institutional enabling environment; address socio–economic failures; and increase public education, participation and awareness."*[12]

In February 2004, at the COP 7 meeting in Malaysia, the state parties to the CBD renewed their commitments and agreed to *"take further steps in curbing the illegal exploitation and trade of resources, particularly from existing protected areas and from areas of ecological importance for biodiversity conservation"*.[13] They also committed themselves[14] to contribute to achieving the 2010 targets contained in the Plan of Implementation of the World Summit on Sustainable Development,[15] and in particular the attainment of the Millennium Development Goals.[16] The Plan of Implementation adopted at the World Summit on Sustainable Development in September 2002 also states that *"Governments should take action on law enforcement and the illegal international trade in forest products. The international community should provide human and institutional capacity building related to the enforcement of national legislation in those areas."* [17]

11 UNEP/CBD/COP/6/L.27 - 19 April 2002 (Programme element 2. Goal 1. Objective 4)
12 UNEP/CBD/COP/6/L.27. 19 April 2002
13 Final draft decision UNEP/CBD/COP/7/L.32: Protected areas (Article 8 (a) to (e)).
14 I*bid.*
15 http://www.johannesburgsummit.org/html/documents/summit_docs/2309_planfinal.htm
16 http://www.un.org/millenniumgoals/
17 Plan of implementation adopted at the World Summit on Sustainable Development (WSSD) in September 2002, paragraph 45c. Available at: http://ec.europa.eu/environment/archives/wssd/documents/wssd_impl_plan.pdf

**Regional FLEG initiatives**. The World Bank further stimulated this debate by various publications on Forest Law Enforcement and Governance, notably Strengthening Forest Law Enforcement and Governance, addressing a systemic constraint to sustainable development (2006), and by joining the EU and other donors in financing a variety of regional FLEG initiatives, starting with the Asia FLEG initiatives in 2001 (which produced the Bali Declaration), followed by an Africa FLEG initiative in 2003, and an Europe and North Asia FLEG initiative in 2005.

**Controlling Imports of Illegal Timber: Options for Europe (2002).**[18] NGOs in Europe started discussing various options for the EU to take action against illegal logging at the end of the 1990s. It was widely understood that the EU's efforts to curb illegal logging could unwittingly encourage national governments to water down their existing environmental laws rather than strengthening them. Existing forest laws could be weakened, and practices that had been illegal could even be legalised, in order to conform to the requirements of the EU and other international markets. Therefore the challenge was to ensure that the debate on illegal logging was focused not on legality, which might encourage destructive logging practices, but instead on improving governance in the sector. It was also felt that the laws that needed to be enforced had to be just laws. Activities by local communities and indigenous peoples, often criminalised under existing forestry legislation, would have to be protected. Hence, the focus on improving governance, possibly linked with required legal reforms was key.

It was therefore seen as essential to start a political dialogue with producer countries focusing on forest sector reform, increasing transparency, strengthening land tenure and access rights, and reducing corruption.[19] This, so the thinking went, would not only address the illegal forestry practices but also lead to forest sector reform which, in many cases, was desperately needed to halt destructive logging and protect rights of local communities as well. Against this background, FERN and Chatham House started looking into the possibility of addressing illegal logging in Europe in ways which would not strengthen illegitimate regimes in timber-producing countries. This resulted in their 2003 report 'Controlling Imports of Illegal Timber: Options for Europe'.

**The FLEGT Action Plan (2003).** The European Commission developed its EU FLEGT Action Plan in the context of these initiatives. From the outset, what distinguished the EU FLEGT Action Plan from other FLEG initiatives was the link between demand-side measures at EU level (controlling imports of illegally sourced timber) and supporting tropical timber-exporting countries to improve governance in the forestry sector. Although the VPAs are legally binding trade agreements, they have clear goals for development and the environment, in particular by improving forest governance and working towards sustainable forest management. Hence the VPAs are the product of a deliberative multi-stakeholder review process requiring reconciliation and consolidation of conflicting laws in defining 'legality' as well as a process of review, verification and independent monitoring.

18 http://www.fern.org/publications/reports/controlling-imports-illegal-timber-options-europe-0
19 http://www.greenpeace.org/international/Global/international/planet-2/report/2004/12/principles-for-flegt-partnersh.pdf

## NGO recommendations for the Action Plan

European NGOs were cautiously optimistic when the Action Plan was produced, but they also expressed concerns, and in 2005 they developed a clear set of recommendations for the FLEGT regulation.[20] The concerns and recommendations centred on three key areas:

1. To prevent the laundering of illegally sourced timber, the statement called for mandatory licensing of all exports to all destinations as a precondition of a VPA.
2. To prevent legalising illegitimate and unjust practices, it called for an inclusive, participatory and transparent process of defining legality, which included human rights and customary laws. It also called for the adoption of the partnership agreement to be made conditional on the support of a representative range of non-state actors.
3. To prevent the Action Plan becoming another 'talking shop', it called for the process to include a time-bound action programme that would lead to sustainable forest management and include independent monitoring and verification.

Even though the EU could not enforce some of the demands because of international trade law, in practice most concerns have been addressed (Table 1).

The concerns around laundering of illegally sourced timber have all been addressed in all VPAs signed to date. All VPAs include all timber-related exports, and all but the Central African Republic – which intends to include it after the start of the issuing of licenses – include the domestic market as well. Furthermore all VPAs have strict requirements for imports before they can enter the Legality Assurance System.

The concerns around legalising 'unjust' practices have been addressed, as all VPAs have been adopted through an inclusive process, including a wide coalition of NGOs – and in some cases community representatives - and the private sector. All VPAs are based on an extensive examination of existing laws that impact on forests, including labour laws and human rights law. Where gaps were identified or laws were contradictory, this has been pointed out in the VPA, requiring legal reform.

The concerns around the process just becoming a 'talking shop' have also been addressed: first because the VPAs are legally binding trade agreements, and second because all VPAs include a timeline, and the subsequent implementation is based on detailed time-bound work plans.

20 Greenpeace, FERN, WWF, (2005). *Principles for FLEGT partnership agreements* Available at http://bit.ly/WmD0H5WWF

Table 1 **From a wish list in 2005 to the reality in 2012**

| | Principles requested by NGOs (2005) | Reality 2012 |
|---|---|---|
| KEY PRINCIPLES | VPAs must include a time-bound action programme. | **Achieved.** Road-maps with timelines indicating activities and milestones exist for VPA negotiation and implementation phase. |
| | VPAs must be based on participatory review of all forest-related laws (including human rights and customary law) to identify weaknesses and injustice. | **Achieved.** Review of all forest-related laws considered relevant by national stakeholders completed, but excluding customary law. |
| | VPAs must include independent verification and monitoring procedures. | **Achieved.** All VPAs include a verification process and an independent auditor. Most VPAs also include independent forest monitoring and/or civil society monitoring. |
| | Adoption of a VPA must be made conditional on the support of a representative range of non-state actors. | **Achieved.** All VPAs have been negotiated with, and are supported by, a large range of non-state actors including local social and environmental NGOs and community-based organisations. |
| | All exports must be licensed, not only those to the EU. | **Achieved.** All VPAs cover all exports and the domestic market, except CAR. |
| FOREST MANAGEMENT | A VPA should be a component of national forestry programme. | **Partially achieved.** This is the case for Cameroon (PSFE) and Ghana (NREG). However local and international NGOs no longer regard this as very relevant. |
| | A VPA must include time-bound programme of activities and milestones towards sustainable forest management. | **Achieved.** |
| | Existing laws must be reviewed in transparent and participatory processes. | **Achieved.** |
| | Legality definition must be based on key principles of responsible forest management. | **Achieved.** |
| LICENSING SCHEME | Mandatory licensing of all exports to all destinations (precondition of the VPA to avoid circumvention of trade). | **Achieved.** All VPAs include all exports to all destinations. For all countries except CAR domestic trade is also included. Imported timber needs to have proof of legality before it can enter the LAS. |
| | EU's acceptance of licenses conditional on satisfactory progress with action programme. | **Unclear.** Acceptance of licenses conditional on effective working LAS, subject to JIC review. An independent assessment of the system will be conducted prior to issuing and accepting licenses. |
| | Prescribed chain of custody system procedures. | **Achieved.** |
| | Licenses to be issued by a separate body, removed from the influence of government forestry authority. | **Achieved.** Verification of timber legality and issuing of FLEGT licenses are carried out by two separate bodies. In all cases except Indonesia, these bodies sit within the forest ministry. Safeguards are in place to prevent any wrongdoing. |
| | Verification by independent body. | **Achieved.** A traceability system is detailed in all VPAs, with a separate body identified as a licensing authority. The licensing authority, in combination with other departments, will check compliance as indicated in the VPA. An independent third-party auditor will verify whether the system works. |
| | Customs to do final paper and physical check. Verification body and customs to count actual shipments. | **Achieved.** EU competent authorities (but not necessarily customs) are able to check legality documentation and have the power to carry out physical inspections of goods if deemed suspicious |
| | Civil society needs to have access to data and premises to monitor VPA implementation. | **Achieved.** In all countries, civil society's role in monitoring is described in various places in the VPA. All VPAs include an annex on information that must be made public. For Ghana there is no such annex, but a generic commitment to same is included in an article. |

Photo Nathalia Dukhan

Measuring and labelling timber is a key element of the Legality Assurance System.

# Section 2
# A closer look at the VPAs

## Comparing the VPAs

The six countries which have concluded VPAs to date are the Central African Republic, Cameroon, Ghana, Indonesia, Liberia and the Republic of Congo. In this section we highlight the differences and similarities between the six VPAs to date, their approaches and their levels of ambition.

### Box 1 State of play

**Of the six finalised VPAs to date (Cameroon, Central African Republic, Ghana, Indonesia, Liberia and Republic of Congo) four (Central African Republic, Cameroon, Ghana and Republic of Congo) have been ratified. In Cameroon, Central African Republic and Ghana, Joint Implementation Committees (JICs),[21] consisting of the EU and the government of each country in question, have been formed to guide implementation through a process of reviewing and monitoring. Official VPA negotiations are ongoing in the Democratic Republic of Congo (DRC), Gabon, Guyana, Honduras, Malaysia and Vietnam, and are expected to start soon in Ivory Coast and Laos. Several other countries across Africa, Asia and Latin America have also expressed interest.**

21 The Joint Implementing Committee is composed of two bodies named the Joint Implementation Council (the 'Council') and the Joint Monitoring Committee (JMC) in Cameroon, and called the JMRM (Joint Monitoring and Reporting Mechanism) in Ghana.

The VPA documents are between 100 and 200 pages long. They consist of the actual VPA text (12–15 pages), and between nine and twelve annexes. The VPA text consists of 30 or 31 articles (25 for Indonesia) that are very similar across all VPAs. The specific details of the VPAs are contained in the annexes, which include a list of timber products included, legality definition and grid, legality assurance system (LAS), FLEGT licensing system, import/reception of FLEGT-licenced timber in the EU, terms of reference for the independent auditor, information to be made public, criteria for assessment of the VPA, accompanying measures (including legal reform as well as capacity-building), a schedule, and details on the Joint Implementation Committee. Annexes are an integral part of the agreement and legally binding.

As the VPAs are lengthy and detailed, we decided to focus on six key areas which reflect the priorities of NGOs, relating to governance:

1. the different products covered by the VPA,
2. whether or not the VPA includes all export and domestic markets,
3. a closer look into the social dimensions covered by the VPAs,
4. whether the VPA requires legal reform and, if so, which reforms,
5. the transparency requirements, and
6. the monitoring requirements.

Within the VPA, several elements can be seen as building-blocks for good forest governance, such as the legality definition, the verification procedures, control of the supply chain, the independent audit, the complaint mechanisms and a structure for monitoring the implementation. Arguably the most important aspect of the VPA's ability to improve forest governance is the inclusive multi-stakeholder process. This aspect of the VPA has, however, already been covered in a number of publications and is therefore not covered here.[22] But see Box 2 for an overview.

Table 2 (pages 20-21) summarises the six key topics as addressed within the different VPA texts, which are discussed below, along with some general findings.

22 For full publications, see http://www.fern.org/sites/fern.org/files/07-2012%20FLEGT%20briefing%20note.pdf and http://www.fern.org/sites/fern.org/files/fern_foreststands_internet.pdf

## Box 2 **The unprecedented multi-stakeholder nature of the VPA negotiation process**[23]

**FLEGT VPAs have radically altered the negotiating and policy-making landscape. For the first time it was national and local organisations in the countries concerned that had a say in decisions which vitally affect the environment and livelihoods and future. National civil society was at the forefront of all VPA negotiations. It has been said that never before has there been such an inclusive process.**

**Before the VPA process began, Ghana already had in place an extensive coalition of NGOs focused on the forestry sector: Forest Watch Ghana. Initially the government had no real intention to create an inclusive process: but civil society groups, by threatening legal action and by using the media, were able to participate effectively in talks which proved highly successful. According to civil society the VPA provides a reasonable platform for strengthening community rights, sustaining biodiversity, supporting rural livelihoods, fighting official corruption, and fulfilling national revenue objectives.**

**In the Republic of Congo, there was no history of civil society participation in forestry matters, and relations between it, the government and timber industry had previously been tense. The VPA text was concluded in early 2009 after only 11 months of negotiations, during which a strong and independent civil society platform was created that participated effectively in negotiations and managed to get all their issues integrated in the VPA text. It is felt that the experience of the VPA process has helped civil society organisations gain greater confidence and enable their voice to be heard. The VPA allowed a framework to be established that has the potential to give local communities unprecedented influence over what happens to the forest, critical to their survival and their culture.**

**VPA negotiations in Cameroon took two and a half years, and relations between government, the forestry industry and civil society were initially not good. Eventually civil society groups were allowed one seat at the negotiating table, and civil society representatives expressed satisfaction with the VPA process. They said that their involvement had been unprecedented and that the VPA negotiations had enabled a constructive and continuous consultative process with stakeholders.**

23 For full publication see http://www.fern.org/sites/fern.org/files/07-2012%20FLEGT%20briefing%20note.pdf

**In the Central African Republic negotiations were completed relatively quickly (14 months), and concerns remain about the level and quality of civil society participation. Overall civil society capacity was low, which resulted in it not fully participating in negotiations, nor proactively occupying the space opened to it. A major handicap was a general lack of involvement from the forestry sector NGOs. Talks were rushed, allowing little time to ensure wider participation and community consultation. Despite these problems, progress was made and trust between the groups involved increased, with civil society representatives developing important parts of the VPA.**

**In Indonesia the process of defining timber legality and its verification standards started as long ago as 2003, following an MoU between Indonesia and the UK to address Illegal logging. This process for the first time involved all relevant stakeholders, government, private sector, academic, civil society groups and indigenous peoples' organisations. The consultation process resulted in a draft of Timber Legality Verification Standards (SVLK) in 2007 and Timber Legality Verification System in 2008. Indonesia voiced its interest in entering VPA negotiations in 2007. A network of 45 CSOs is involved in the VPA process and coordinated by Telapak, which has organised seven annual multi-stakeholder workshops. Telapak is mandated by the network to voice civil society concerns during the VPA process. Representatives from WWF, Titian, TNC and Telapak represented civil society during negotiations; others refrained from participating.**

**Liberia is an exceptional case in that these VPA negotiations included representatives not only from civil society organisations but also local forest community groups. Discussions went well, despite mistrust between the government and forestry industry on the one side, and NGOs and community groups on the other. The VPA process helped NGOs and communities become more organised. The NGO coalition, which included local communities affected by logging, expressed satisfaction over the open and participatory manner in which the VPA process was developed.**

## Key findings

### VPAs are tailor-made agreements

VPAs are tailor-made agreements, negotiated by different stakeholders in each country and adapted to the national context, taking account of local needs and priorities. This approach allows for flexibility, which is clearly reflected in the different VPAs. While there are general principles describing the licensing scheme, format and process of the VPA, the

details are left to each country to negotiate and refine. Therefore there is no VPA blueprint, nor a manual or checklist to elaborate a VPA, nor is there a universally accepted definition of legality from the EU. Instead each VPA includes what is considered a priority in each country, and stakeholders agreed jointly on a country-specific definition of how to define legal timber. The stakeholders decide among themselves what has to be part of the negotiations, and so VPAs can be customised. In principle everything can be put on the agenda for discussion, including land tenure rights, dealing with corruption, and land uses that impact on forests. This results in different levels of detail and focus in the various VPAs. Because different countries have different laws, Legality Assurance Systems differ from country to country as well. Similarly, some Legality Assurance Systems highlight certain social aspects more explicitly than others. This reflects either differences in the laws, or the priorities of stakeholders, who may insist on including references to issues that they feel strongly about.

**Unique design process**

VPAs are trade agreements, the content of which has been agreed through a multi-stakeholder process. In each case there have been seats for representatives from the government, civil society and the private sector, around the same negotiating table, to design and agree on the text. While different stakeholders may be working towards a common goal, they have different incentives, and sometimes opposing views, powerful interests and separate political agendas. Bringing these stakeholders and interests together is difficult and time-consuming. Nevertheless the existing VPAs are the result of an often long and intense negotiation process, and the end result has been accepted by all who were part of the negotiations. This is a revolutionary approach to trade agreements. The quality of the VPA is therefore only as good as the quality of the negotiations and the input of the participants. At the same time, where necessary legal reform was identified during negotiations, most of this reform is still ongoing during the VPA implementation phase, and thus providing additional opportunities for change.

## The importance of national context when comparing VPAs

When comparing VPAs, it is crucial to take the national context into consideration. The size of the country, the structure and complexity of the forestry sector, the institutional framework, the complexity of the supply chains, the volume of the timber trade, the capacity of different stakeholders (including the government) and the historical background are all factors that will influence the VPA. For example, Ghana has known long-term political stability and democracy which has led to a strong civil society, built up over many years. By contrast, in the Central African Republic the concept of civil society is relatively new and thus competences and skills are less well developed. In Liberia several forestry reforms and community rights programmes had already been put in place to prevent another natural resource-driven civil war, and the VPA process was able to build on these foundations. Indonesia, has 4500 timber exporters, where the Central African Republic has only 11 exporting timber companies, and this obviously has an impact on the relative complexity of the traceability systems.

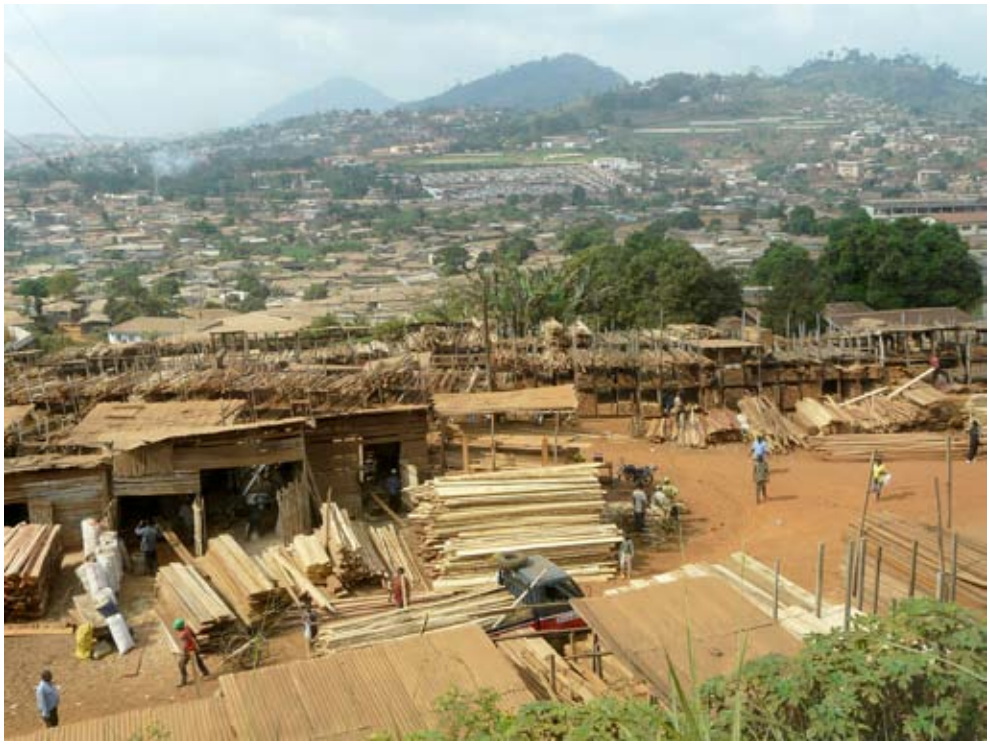

Photo Paolo Cerutti (CIFOR)

Local timber markets are essential in supplying the domestic market in countries like Cameroon (photo), Ghana and Liberia, and hence need to be included in the VPA.

In addition, VPAs have evolved over time. The latest VPA, Liberia's, is much more detailed than the first one, Ghana's. At first glance, Ghana's and Indonesia's VPAs stand out as being different from the other four. To some extent the Ghanaian VPA established the framework for the subsequent VPAs, not just by what it included but also by what it did not. The next VPAs were much more elaborate, as lessons had been learned. With hindsight there was a sense that some elements should have been included, such as a transparency annex and a road-map for implementation. The Congo Basin VPAs (Cameroon, the Republic of Congo and the Central African Republic), which followed Ghana's, have many similarities among themselves, due to the fact that their legal systems are similar (based on French law), and because sub-regional structures such as COMIFAC had allowed for much discussion on relevant topics between these countries.

There are differences as well, however. The VPA of the Republic of Congo, despite being negotiated in only 11 months, includes a substantive focus on social benefits within proposed law reform, such as implementation decrees for an Indigenous Peoples Law (2011), and recognition of community rights and community forests. In Cameroon, civil society was effective in getting an elaborate transparency annex approved. In the Central African Republic, a young civil society with limited capacity was able to ensure that civil society's role in independent monitoring was explicitly mentioned in VPA. The

Liberian VPA, the last one to have been initialled,[24] includes several innovative approaches including the inclusion of civil society organisations and communities in the monitoring of the impact of the VPA.

The Indonesian VPA is quite different from the other five VPAs. While all other VPAs are consignment-based, the Indonesia's is operator-based[25]. In the African VPA countries the government and related ministries play the main role in implementation, whereas in Indonesia this role is outsourced to independent private verification bodies, called the Conformity Assessment Bodies, which have been accredited by the National Accreditation Body, and which are appointed by the Ministry of Forestry to verify and assess the Legality Assurance System. This VPA set-up is influenced strongly by the concept of certification, except that it is mandatory, not voluntary, on all timber-producing forestry and associated industries. While legal reforms are more or less central to all VPAs, this is much less the case for the Indonesian VPA, also because much legal reform has happened as a result of the VPA negotiation and early experience with implementation. The approach to independent monitoring of the VPA in Indonesia is also original, as it is conducted by a network of national and local NGOs, while in Cameroon this is done by a single body (an international commercial organisation), and in the Republic of Congo by a national NGO, after initial support from an international NGO. It is the first VPA completed in Asia, and the largest so far (covering a trade worth US $10 billion per year). It clearly has to take into consideration the complex geographical situation of multiple islands and a large timber trade (with many different timber companies and ports), which also may explain the different approach.

**VPAs mean different things to different stakeholders**

For governments, the main incentives for engaging in a VPA process are probably trade, image control and EU market access, whereas civil society is generally more interested in improving governance in the forestry sector, including strengthening local peoples' tenure rights, and pressing for legal reforms and better law enforcement. For the EU, the VPA provides assurance of the legality of timber imports, and for the private sector it is a tool that provides easy access to the EU market and a level playing-field. As such, VPAs can be seen as a process for addressing corruption and improving forest governance in timber-exporting countries. Unlike other trade agreements,[26] there is no direct economic advantage for the EU. Hence VPAs, although they are legally binding trade agreements, are partnership agreements, linking demand-side measures at EU level with supply-side measures in VPA countries.

24 For clarity on the process of initiating, signing and ratifying, see http://www.fern.org/sites/fern.org/files/process%20of%20ratification%20timber%20trade%20agreements_0.pdf

25 http://www.efi.int/files/attachments/euflegt/briefing_note_indonesia___en_.pdf

26 Notably the Economic Partnership Agreements. See Glossary for more detail

Table 2 **An overview of some key elements of the six VPAs, including references to relevant VPA texts.** VPAs are presented in chronological order.

| | Ghana | Republic of Congo | Cameroon |
|---|---|---|---|
| **Products included in the VPA.** *All VPAs must include logs, sawn wood, veneers, plywood, railway sleepers.* | Also furniture (no wood in the rough as it is prohibited by law, except for teak). *Annex I.* | Also furniture, fuel wood, wooden tools and wooden packing material and charcoal. *Annex I.* | Also furniture, fuel wood and wooden tools. Species that are forbidden for export are mentioned explicitly. *Annex I-A.* |
| **VPA coverage of export nd domestic market.** *All VPAs apply to all timber and derived products produced, processed, imported and in transit. Applies to all exports (Preamble).* | Includes domestic market. *Art 13.* | Includes domestic market. *Art 9.* | Includes domestic market. *Art 9.* |
| **Legality grid makes explicit mention of recognition of customary rights.** | "Yes. Reference to Logging Manual Section 3" "code of conduct (on-reserve) that recognises the rights of other users and show respect for cultural norms such as taboo days, etc; and code of conduct - (off-reserve) that recognises the rights of other users and show respect for farming operation etc."" (Social responsibility assessment) *Annex V, Principle 3, Criterion 3.6."* | Yes. "The company respects the rights, customs and practices of local and indigenous populations in accordance with national legislation and regulations and international conventions." *Annex II, Matrix 1,2, Principle 3, Criterion 3.2.* | Yes."Respect for other parties' legal tenure or rights of use of land and resources that may be affected by timber harvesting rights, where such other rights exist." *Annex VIII, Section I.* |
| **Legal framework spells out need for Free, Prior and Informed Consent or need for consultation with communities in the allocation of concessions.** | Yes, requirement for "written consent of concerned individual, group or owners". Consultation with communities. *Annex V, Principle 1, Criterion 1.1, 1.2.* | No, but development of clear procedures for participation of local communities in concession allocation are foreseen as part of legal reform process. | No consultation required. Populations have however in principle a pre-emptive right to claim their rights and refuse allocation for two types of logging permits (concessions and cut timber sale). |
| **Legality grid spells out the need for mapping of concession area and/or joint management with communities.** | No for mapping, but implicit in procedure to delineate TUC by field inspection team, including land owner and farmer to assess suitability of area. No joint management. | Yes, "the company involves civil society and local and indigenous populations in the management of its forestry concession." *Annex II, Matrix 1,2 Principle 3, Criterion 3.1.* No mention of mapping | No mention, however procedures for management plans of concessions, do include mapping as part of required socio-economic studies and includes mapping of access and user rights of local communities. No mention of joint management. |
| **Legality grid refers to the need to conduct socio-economic studies.** | No mention, but framed by forest management plans. | No mention, but framed by forest management plans. | Yes. *Annex II, Grid 1, Indicator, 4.2. Verifier 4.2.5, 4.2.6.* |
| **Legality grid includes mention of an Environmental Impact Assessment before logging operations.** | Yes. *Annex V, Principle 3, Criterion 3.2.* | Yes. *Annex II, Matrix 1, Principle 3, Criterion 3.2.3.* | Yes. *Annex II, Grid 1,2,5, Indicator 5.2, Grid 8, Indicator 4.1.* |
| **Legalit grid spells out compensation for damaged property.** | Yes. Compensation paid to affected farmers in respect of crop damage. *Annex V, Principle 3, Criterion 3.7.* | Yes. *Annex II, Matrix 1, 2 Principle 4, Criterion 4.1.1, 4.1.2.* | No mention. |
| **Legality grid refers to social contracts, projects or benefit-sharing (money).** | Yes. Social Responsibility Agreement. *Annex V, Principle 3, Criterion 3.6.* | Yes. *Annex II, Matrix 1, Principle 4, Criterion 4.9.* | Yes. *Annex II, Grid 1, 2,3,5, Indicator, 4.2. Verifier 4.2.1, 4.2.2.* |
| **VPA includes conflict resolution or complaint mechanism (as part of IA, JIC, LAS or other).** | Yes, complaints on operation of TVD to be received by TVC. *Annex V-5.* Complaints mechanism established to handle complaints that arise from IA. Annex VII, 5.1.4. IA shall refer complaints from its work to JMRM. *Art 10.* | Yes. VPA stipulates: "The company, civil society and local populations have put mechanisms in place for monitoring and settling disputes." *Annex II, Indicator 3.3.1.* Also complaint settlement mechanism set up by IA, approved by JIC. *Annex VI, Section III.* JIC will look into complaints regarding the functioning of FLEGT licenses scheme. *Annex XI.* | Yes. IA sets up complaint settlement system. *Annex VI.* The JIC will examine complaints by third party on FLEGT licensing scheme and functioning of IA. *Annex XI.* |
| **Scope of legal reform spelled out in the VPA.** | 11 areas of policy and legal reforms identified. *Annex II, Section 5.* | Non-exhaustive list (supplemented as new concerns are identified) including work on 18 legal texts by five ministries and to include five principles in supplementary legislation. Description of methodology of participatory legal reform. *Annex IX, Section 2.* | Nine areas of policy and legal reforms identified. *Annex X, IIm, Annex IX, 5.* |
| **Legal reform processes seen as priority by local NGOs.** | Review and consolidation of forestry laws, workers health and safety. Affirmation and strengthening of local forest and tree tenure and farmers rights, benefit sharing agreements and legalising chainsaw logging. | Forest Code revisions, 'arrêté' on EIA, framework decree for participatory forest management, implementing regulation community forests. Implementation decrees of the IP-law (2011). To make legality grid conform to Forest Code, the following principles will be defined more clearly: recognition of community rights, community forests, independent monitoring, transparency and effective participation. | Forest Code reform. Improve legal framework for domestic market, community, communal and private forests, social and environmental aspects. Integration of relevant provisions of international legal instruments ratified. |
| **Timing of the reform (before or after issuing FLEGT licences).** | Two-tier approach: short reforms (1yr) prior – extensive reforms (3-5yrs after signing) after issuing licenses | Prior to issuing FLEGT licenses | Prior to issuing FLEGT licenses |
| **Information access.** | No annex but in LAS reference to 68 types of data. *Art.20-2:* JMRM records efforts towards transparency with reference to specific documents to be made public. Annex under development. | *Annex X* includes 49 types of data – four categories for dissemination. | *Annex VII* includes 75 types of data – ten categories for dissemination. |
| **Type of independent auditor and frequency of the audits (IA).** | IA is initially independent organisation (but called confusingly independent monitor). In long term it can be a CSO or consortium. Two audits in first year, annual audit in subsequent years. *Article 10, Annex VI.* | IA is independent organisation. Three audits in years 1 & 2, fewer in year 3. *Art 11, Annex VI.* | IA is independent organisation. Two audits in first year, annual audit in subsequent years. *Art 11, Annex III.* |
| **Independent monitoring is part of the VPA/ included in the LAS (formal recognition).** | No formal IM. | Yes, formal local structure for IM based on previous experience with IFM, to include local NGOs and one international NGO. Technical office responsible for monitoring the agreement includes civil society members. *Annex IX, section 2, 3, 5.* | Yes, reference to reports of independent observer with regards to forestry control. *Annex VII, Section 3, Annex III-A.* |
| **Independent civil society monitoring (informal, external to LAS).** *Note that all VPAs mention that the independent auditor (IA) should gather information from CSOs.* | No. Discussions on poverty impact monitoring of the VPA are currently taking place. *Annex VI Section 2.* | Yes, role of civil society structure to monitor activities of forest companies *Annex III. Annex VI, Section IV, 2, 6.* | Yes, reference is made to other forest monitoring mechanisms that can provide information on illegal activities as well as informations received from other organisations (specialised NGOs, etc...). *Annex VI, Section 4. Annex VI Section 5.* Discussion on civil society impact monitoring of the VPA are currently taking place. |
| **Involvement of civil society in the formal structures dealing with implementation of the VPA.** | Multi-stakeholder Implementation Committee up and running, includes two seats for CSOs. CSOs have also two seats on committee overseeing the Timber Validation Division but seats not allocated to NGOs but to representatives of the union and national house of chiefs. *Annex V, Section 5.2.* | The members of the Joint Implementation Committee have been appointed, including one civil society member. The existing National Secretariat, a multi-stakeholder committee, has one civil society seat. | The Joint Monitoring Committee has civil society representation, but there is no fixed list of members. A National Monitoring Committee (CNS) has been formed in which there is one seat each for NGOs, local communities, IP and communal forest representative. *Art 16, Annex IIIB, section II.* |

| | Central African Republic | Indonesia | Liberia |
|---|---|---|---|
| **Products included in the VPA.** *All VPAs must include logs, sawn wood, veneers, plywood, railway sleepers.* | Also furniture, fuel wood, wooden tools and wooden packing material. *Annex I.* | Also furniture, fuel wood, wooden tools and wooden packing material. Wood pulp, paper and paper products also included. (Export of logs, some types of sawn woods, railway sleepers prohibited by law.) *Annex I.* | Also furniture, fuel wood, wooden tools and wooden packing material. Rubber wood chips also included. Charcoal will be included in later stage. *Annex I.* |
| **VPA coverage of export nd domestic market.** *All VPAs apply to all timber and derived products produced, processed, imported and in transit. Applies to all exports (Preamble).* | Does not include domestic market. CAR intends to include the domestic market after starting the licensing. Law reform to regulate and monitor the domestic market is included in the VPA. *Annex V, Section I, 1.2.* | Includes domestic market. *Art 10.* | Includes domestic market. *Art 9.* Checks on products sold on domestic market will be 'phased in' following implementation of the Community Rights Law and Pit-sawing Regulation. *Annex II, Section 2.3, Annex VIII, Section 7.* |
| **Legality grid makes explicit mention of recognition of customary rights.** | Yes. "Local and indigenous communities' customary rights of access to and use of forest concessions are recognised and respected by the company." *Annex II, Principle 4, Criterion 4.3.1.* | No, but is part of the mandatory sustainable forest grid. | Yes. Reference to forest use rights and ownership rights under the National Forestry Reform Law and Community Rights Law, respectively. *Annex II, Principle 2.* "Respect for other parties' legal tenure or rights of use of land and resources that may be affected by timber harvesting rights, where such other rights exist." *Annex VI, Section 1.* |
| **Legal framework spells out need for Free, Prior and Informed Consent or need for consultation with communities in the allocation of concessions.** | No. "The company informs the local and indigenous communities, local authorities and all interested parties of the signing of the provisional agreement and the opening up of the provisional cutting area." *Annex V. Indicator 2.3.1.* According to Forest Code (2008) the government should inform communities prior to delivering PEA permit. | No, but FPIC before harvesting and gazetting is required in the mandatory sustainable forest management grid. | Yes, affected communities within 3 km radius must have been consulted and given consent. *Annex II, Indicator 2.1.* |
| **Legality grid spells out the need for mapping of concession area and/or joint management with communities.** | No mention. Procedures for management plans, however, require mapping of "terroirs villageois." No mention of joint management. | No mention. Delineation of indigenous territories is, however, included as part of the mandatory sustainable forest management grid. | Consultation is required for developing an integrated map by the FDA. *Annex II, Indicator 2.6.* No joint management requirement. |
| **Legality grid refers to the need to conduct socio-economic studies.** | Yes. *Annex II, Principle 4, Criterion 4.3.1. Verifier 4.3.1.1.* | Yes, as part of EIA. *Annex II, Principle 3, Indicator 3.1.* | Yes. *Annex II, Verifier 2.1.1, Indicator 2.6.* |
| **Legality grid includes mention of an Environmental Impact Assessment before logging operations.** | Yes. *Annex II, Principle 3, Criterion 3.1, 3.2.* | Yes. *Annex II, Indicator 3.1.* | Yes. *Annex II, Indicator 5.1.* |
| **Legalit grid spells out compensation for damaged property.** | Yes. *Annex II, Principle 4, Criterion 4.3.2.* | No mention. | No mention. |
| **Legality grid refers to social contracts, projects or benefit-sharing (money).** | Yes, payments and social actions. *Annex II, Principle 9, Criterion 9.1.* | No, but part of sustainable forest management grid | Yes. *Annex II, Indicator 3.1, 3.2, 3.3, 3.4, 3.5.* |
| **VPA includes conflict resolution or complaint mechanism (as part of IA, JIC, LAS or other).** | Yes. IA sets up complaint mechanism with regards to LAS implementation and activities IA. Complaints on FLEGT licenses can be addressed to JIC. *Annex V, Section 5, Annex VI Section II, V, Annex X.* | Yes. Civil society can file complaints about CAB operations to KAN with regards to IA actvities or legality verification. *Annex V. 4.1. & 5.2, Annex IX, Section 3, 9.* | Yes. The IA shall refer complaints arising from its work to JIC. *Art 11, Annex V, Section 4.3, 7.* Complaint mechanism related to legality verification, issuing licenses and disputes arising from IA. *Annex VI, Section 3.5, 4.4, 5.1.4.* Dispute resolution mechanism at FDA for affected communities with regards to non-compliance of operator on social obligations. *Annex II, Indicator 3.3.* |
| **Scope of legal reform spelled out in the VPA.** | Detailed list including work on 25 legal texts by seven ministries. *Annex IX, Section 1. Annex V, Section I 1.1c, 1.2. Annex VIII, 4.* | No details in VPA. | Nine areas of policy and legal reforms identified. *Annex II, Appendix A, Section 1, Annex VIII, Section 6.* |
| **Legal reform processes seen as priority by local NGOs.** | Regulations on plantations, land access and tenure rights. Improve legal framework to include domestic timber market. Text on participation and role of stakeholders in VPA implementation. Text on IM by civil society. Environment Code (2007) and Forest Code (2008), Implementation decrees on community forests and artisanal exploitation. | Procedures for putting into use transparency annex and guidance on independent monitoring to be developed. *Annex IX, Section 2, Annex V, Section 7.* | Guidelines for negotiations of social agreements, community forestry regulation, pit-sawing regulation, PUP regulation, abandoned logs and logs in transit, debarment list, regulation on third-party access and use rights in concession areas, strengthening regulations regarding safety and welfare of workers, improvement of EIA processes and environmental management. Community Rights Law regulations. |
| **Timing of the reform (before or after issuing FLEGT licences).** | Prior to issuing FLEGT licenses for Environment and Forest code – after issuing licenses: reforms in relation to domestic market, community forests, traditional production | No indication timeline | Text indicates completed by 2013 Prior to issuing FLEGT licenses |
| **Information access.** | *Annex XI* includes 68 types of data –13 categories for dissemination | *Annex IX:* Freedom of Information Act (2008) – four categories for info disclosure (information to be published immediately, on a regular basis, upon request and available at all times, restricted and confidential information) – 74 types of data (overall), 1 category for dissemination. | *Annex IX* includes reference to Freedom Information Act (2010), Extractive Industries Transparency Initiative – two categories for information disclosure (routine publications, on request) – 61 types of data – 7 categories for dissemination. Also described in LAS. *Annex II, Principle 11.* |
| **Type of independent auditor and frequency of the audits (IA).** | IA is independent organisation. Three audits in first year, twice in years 2 & 3, annually subsequent years. *Art 10, Annex VI.* | Called 'Periodic Evaluation' conducted by IA (third party evaluator) who will actively consult civil society for input. CAB to set up meetings with local people prior to audit. Audits done at intervals of maximum 12 months. *Art 15, Annex VI.* | IA can be individual or joint venture with a Liberian organisation. Two audits in first year, annual audit in subsequent years. *Art 11, Annex V.* |
| **Independent monitoring is part of the VPA/ included in the LAS (formal recognition).** | Yes, independent civil society monitoring formed of several national CSOs is foreseen as supporting role for departments involved in verification/LAS. However, skills and resources are currently limited and prevent it from undertaking IM. *Annex II Section 4, Annex V Section I 1.1c & 2.2 Annex IX, Section 1.3.* | Yes, two complementary systems through comprehensive evaluation (by ad-hoc multistakeholder monitoring working group) and independent monitoring by civil society networks (consisting of CSOs, IPOs and individuals). *Annex V, section 7, Annex VI, Annex VIII, section 5.* | No independent monitoring foreseen. |
| **Independent civil society monitoring (informal, external to LAS).** *Note that all VPAs mention that the independent auditor (IA) should gather information from CSOs.* | Yes, as part of legal reform process a text on participation and on independent observations by CSOs will be created *Annex IX, Section I.3. Annex VI, Section V.* | No. All CSO monitoring is part of SVLK and thus formal. Discussions on poverty impact monitoring of the VPA by civil society and academics are currently taking place. | Yes. Monitoring the social, environmental and market impact of the VPA, in general and with particular emphasis on forest-dependent communities is described in *Annex VII, Section 8 Annex V, Section 6.2.* The LAS itself (*Annex II*) describes the setting up of a communication channel for CSO to provide the LVD with monitoring data. |
| **Involvement of civil society in the formal structures dealing with implementation of the VPA.** | A National Implementation Committee is in place with two civil society representatives. | Civil society is part of Comprehensive Evaluation (multistakeholder monitoring Working Group) and civil society and other stakeholders will be part of the JIC to be established once the VPA is ratified. *Annex V, Section 7.* | Multi-stakeholder interim implementation committee has been formed with 5 community representatives and 2 NGO representatives. Once ratified this will likely turn into the national monitoring committee. *Art 16 & Annex VIII-8, 9a.* |

## Comparing six elements of relevance in all VPAs

### 1. List of products included under the VPA

All six VPAs include the five core categories of timber products, as set out by the 2005 EU FLEGT Regulation:

1. logs,
2. sawn wood,
3. veneers,
4. plywood, and
5. railway sleepers.

These five categories of products must be included in the VPAs if they are to be exported legally, but all VPAs signed to date go beyond these five core categories, and include all timber export products, including furniture; and all except Cameroon and Ghana include fuel wood.[27]

Rubber-wood chips and fuel wood from agricultural plantations are included in Liberia's VPA. This opens the door to reforms not just in the forestry sector, but in the agriculture sector too. Indonesia also includes pulp and paper products. This is logical, given that Indonesia is an important global exporter of pulp and paper.

The Cameroon VPA explicitly mentions the species that are illegal to export, and Ghana and Indonesia's state that it is illegal to export crude logs and unprocessed timber, respectively, as prohibited by Ghanaian and Indonesian laws.

### Conclusion

**All VPAs have been more ambitious in the list of timber products included in the VPA than the minimum number of products imposed by the EU FLEGT Regulation. All currently cover all timber products exported from the partner country, except for some minor products for Indonesia. As such, the variation in products shown in Table 1 is a reflection of the diversity of products exported by each country, rather than different levels of ambition.**

27 The types of fuel wood indicated differ slightly but cover mainly pellets, sawdust, briquettes and wood chips. In the case of Liberia and RoC they also refer to charcoal.

## 2. Extent of exports and inclusion of domestic market

All VPAs include all exports, including exports to non-EU markets, which are major recipients of timber from VPA countries such as China, India and the regional market in West Africa. All VPAs include the domestic market as well, or – as in the case of the Central African Republic – plan to apply the Legality Assurance System to the domestic market, once the licensing for export has commenced. However, while five of the six countries have the ambition of regulating the domestic market, implementation efforts have to date prioritised technical aspects related to traceability for export.

Designing an effective and just framework to regulate the domestic market is a huge challenge. In general the domestic market, which in Africa consists mainly of chainsaw loggers or pit sawyers, delivers more benefits for communities than formal large-scale timber operators that produce for the export market. In both Cameroon and Ghana the domestic market is larger than the export market, and includes both small- and large-scale operators. See Box 3 concerning Ghana. In Liberia a pit-sawing regulation has recently been adopted,[28] which was a VPA requirement, legalising the previous illegal practice of pit-sawing. In several other countries, proposals to regulate the domestic market are under discussion.

### Box 3 Ghana's domestic market[29]

**Since 1998, all production, transport and trade in chainsaw-milled lumber in Ghana has been illegal, even though it supplies a large part of all the timber used in the country. Around 100,000 villagers across the country are involved in this work, supporting perhaps a million people. This trade operates in parallel with another – legal – industry, which cuts up timber at sawmills, and which is dominated by large exporting companies. Both industries are of a similar size, but one is encouraged and the other banned. There is anecdotal evidence though that 'illegal' chainsaw logging does less environmental damage, while it certainly provides more social benefits; it contributes twice as much to Ghana's GDP as the legal sector. In order to comply with the VPA chainsaw logging needs to be legalised in some form. In an interview with journalist Fred Pearce, chainsaw loggers expressed their hope that the VPA will be the political catalyst to legalise the domestic market in a sustainable and just way, by recognising community ownership of the forests as well as the trees, so that the loggers will be allowed to harvest and profit from their own forests in a sustainable manner.**

28 http://faolex.fao.org/cgi-bin/faolex.exe?rec_id=046486&database=faolex&search_type=link&table=result&lang=eng&format_name=@ERALL

29 Fred Pearce (2012) 'Ghana, the good news about chain saws' in *Forest Stands, how new EU trade laws help countries protect both forests and peoples* Available at http://www.fern.org/foreststands

## Conclusion

**VPAs cover all timber exported to all countries, the domestic market, timber in transit, and timber being imported for processing and re-export, thereby closing potential loopholes for circumvention. Implementation of the VPA for the domestic market remains a challenge, however, as very little progress has been made towards ensuring a legal and sustainable supply of domestic lumber.**

## 3. Social dimension of the VPA

The majority of references to social aspects concerning the rights of local communities are covered by the principles of the legality grid, and can be grouped into the following categories:

- Recognition of customary rights (mainly limited to access and user rights).
- Consultative process with regard to allocation of forest concessions, including mapping of access rights of local communities and joint management of concession by operator and local communities.
- Socio–economic studies, Environmental Impact Assessments, including Article 17 on social safeguards to monitor the impact of the VPA on local communities.
- Social obligations including compensation for damaged goods, access and benefit-sharing schemes, social contracts or local development projects, fair and equitable timber benefit- or tax-sharing mechanisms, and conflict resolution mechanisms.

Workers rights are also included to a great extent in the legality grid but are not covered in this report.

### Recognition of customary tenure rights

In Cameroon, the Central African Republic and the Republic of Congo, all land and forests belong to the state, while communities often have access and user rights. In Liberia, communities can own forest land, including the trees; in Ghana all forest lands are owned by landowners but the government manages them for the landowners.[30] However, landowners do not own the trees on the land unless they have planted them themselves.[31] In Indonesia, land not registered as privately held is deemed to be owned by the state. Communities may be given usufruct rights under different instruments such as Community-Based Forests and Village Forests. Community Timber Plantations on state land are also possible, as well as customary forests, but these are hard to get formalised. Although Indonesia has many customary tenure systems operating at varying levels of function-

30 http://www.fao.org/forestry/12505-01d2e95c6b96016463fe58818c7e9c29d.pdf
31 http://www.fern.org/publications/reports/forest-governance-ghana-recommendations-vpa-0

ality, the centralised government has strongly resisted efforts to implement legislation that would recognise customary claims to forests as ownership rights.[32]

In both Cameroon and the Central African Republic, community forestry refers to communities managing forests. They do not own the forest land. In Cameroon there is a long history of community forestry, whereas in the Central African Republic it is foreseen in the law but does not yet exist. The Republic of Congo specifies the concept and procedures related to the creation and management of community forests as part of the planned legal reform. In Liberia, communities are recognised as owners and rightful managers of the forests within their customary lands. However, the definition of customary lands and public lands is unclear. A new land policy and land law (under discussion) gives priority to customary lands with only land not identified as customary land being public land.

## Box 4 **Defining tenure rights**

**The term 'tenure rights' includes verifying who has rights over land and resources. These rights range from access and user rights to absolute property rights. It includes both formal rights (as written in national law) and customary rights (as deriving from the community and expressed in customary norms ('customary law'). In international law, customary tenure has the same legal effect as full title issued by the state. It includes the right to demand and obtain regularisation, as clarified by the Convention for the Elimination of Racial Discrimination (CERD). The terminology is important: communities may have rights to the land but not the trees (as in Ghana) or minerals in the subsoil, or the rights may be seasonal (as in parts of Brazil). When clarifying rights, therefore, it is essential to clarify which rights are referred to.**

For Cameroon, the VPA text refers to *"respect for other parties' legal tenure or rights of use of land and resources that may be affected by timber harvesting rights, where such other rights exist"*.[33] In the Republic of Congo VPA, recognition of customary tenure rights is acknowledged for local communities as well as for indigenous peoples.[34] In the Republic of Congo, the Indigenous Peoples Law was adopted in 2011, which recognises indigenous peoples' traditional lands.

The VPA for the Central African Republic states *"local and indigenous communities with regard to access to and use of forest concessions are recognised and respected by the company*

32 Deliberation is ongoing in the Indonesian Parliament on the Bill of Recognition and Protection of Indigenous Rights. In addition, efforts to simplify legal procedures for communities to get permits to utilise timber in community-managed forests, see: http://usaidlandtenure.net/sites/default/files/USAID_Land_Tenure_Devolution_of_Forest_Rights_and_Sustainable_Forest_Management_Volume_1.pdf .

33 VPA EU-Cameroon Annex VIII, Section I

34 VPA EU-Republic of Congo Annex II, Matrix 1.2, Principle 3, Criterion 3.2.

*as provided by the Forest Code"*.[35] However, this is for subsistence use only, not commercial purposes. As part of the foreseen legal reform in relation to the VPA, there is a reference to the need for more clarity on user rights with regard to the land code. In April 2010, the Central African Republic became the first African country to sign ILO 169, the Indigenous and Tribal Peoples Convention.

Liberia's VPA includes respect for other parties' rights to legal tenure or rights of use of land and resources[36]. The existing law already provides for obtaining ownership of forest land, so no further reform is referred to. This law is likely to be amended once a new land rights law (under development) will be enacted. Ghana's VPA mentions recognition of the rights of other uses and respect for cultural norms as well as farming operations and refers to the written consent required from communities before timber rights can be issued.[37] As part of the longer-term legal reforms, it refers to *"affirmation of local forest tenure and of different stakeholder rights in different types of forests and clarification of the respective scope of local (including customary) and national institutions in forest management, including exploitation"*.[38] Within the Indonesian VPA no reference is made to customary rights but it is part of the mandatory sustainable forest management principles, which also include delineation of indigenous territories and concessions.

Hence there is explicit mention of recognition and respect of customary rights in all VPAs. However, this recognition is mostly limited to access or user rights, not (collective) property rights to land of local or indigenous communities. Recognition of elements of customary law is taken up explicitly in the legal reforms identified in the VPA annexes of Ghana, the Republic of Congo, the Central African Republic and Liberia.

## Conclusion

**The VPAs provide, at least on paper, a tool to strengthen local communities' tenure rights, specifically by formalising the customary practice during the planned legal reform process. In the case of the Republic of Congo and the Central African Republic, specific recognition for the rights of indigenous peoples was achieved and to a certain extent facilitated by the VPA negotiation process.**

### Consultation of local communities prior to concession allocations

Liberia's VPA mentions the Free, Prior and Informed Consent (FPIC) of all communities within a three kilometre radius of the concession, as foreseen in the law. In the Republic

35 VPA EU-Central African Republic Annex II, Principle 4, Criterion 4.3.1.
36 VPA EU-Liberia Annex VI, Section I
37 VPA EU-Ghana Annex V, Principle 3, Criterion 3.6. and Principle 1: timber originating from prescribed sources and the concerned individual, group and owners gave their written consent to the land being subjected to the grant of timber rights. As with criterion 1.2, local stakeholders (e.g. land owners, affected farmers) consented in writing to harvesting of the resource.
38 VPA EU-Ghana Annex II, Section 5

of Congo, the principle of allowing local people to participate in the concession allocation process is already foreseen in the law, but the VPA foresees as part of the legal reform the drafting of an implementing regulation that will clarify what this means in practice. Through the Indigenous Peoples Law, FPIC is foreseen for indigenous peoples only. In the Ghana VPA it is stipulated that communities need to provide written consent before harvesting resources, as communities do own the land in Ghana (although not the trees). In the Central African Republic VPA, the timber company is obliged to inform the local stakeholders but only **after** having received the provisional signature for concession. For Cameroon there is no specific mention of any information-sharing or consultation in the allocation of concessions in the VPA but as part of allocation procedures local communities have pre-emptive right to refuse allocation and claim their rights.

The Republic of Congo included amongst the necessary legal reforms identified in the VPA the need for a decree that determines conditions of co-management of forest concessions by company and communities as well as a clear procedure for participation of local populations in the concession allocation process. In Cameroon access and user rights are mapped as part of the procedures for management plans of concessions. For the Central African Republic, involvement of civil society and local and indigenous communities in managing the concession is included in the VPA. For Indonesia, delineation of indigenous territories and concessions is part of the sustainable forest management principles.

## Conclusion

**The VPA mostly represents what has been identified in national law, and hence will strengthen and hold government accountable to the consultation requirements they already contain. Where these requirements are missing or unclear, the VPA has in some cases identified this as a weakness and included it in the legal reform process.**

### Socio–economic studies and environmental impact assessments

The VPAs of Cameroon, the Central African Republic, Indonesia and Liberia explicitly mention the need for a socio–economic study prior to concession allocation in the legality grid, whereas for other countries this is included in the laws. If done well and independently, these surveys could serve as a baseline for future impact monitoring of the VPA's impact on livelihoods. The need for an EIA was mentioned explicitly in all VPAs. The VPA for Indonesia refers to the need to provide implementation reports of the EIA, indicating which actions are being undertaken to mitigate environmental impacts and provide social benefits. Given the dependence of local communities on natural resources for their livelihoods, these impact assessments are relevant and could provide a baseline to systematically evaluate poverty impact over time and allow for follow-up on the provision of compensation, sharing of benefits and mitigation of impact.

These studies and assessments could also provide information for NGOs and local communities, allowing them to better monitor the impact of VPAs over the long term, as they could provide a baseline for the situation prior to the VPA implementation.

There is one article in all VPA texts covering 'social safeguards' that makes a reference to impact monitoring of the VPAs: *"In order to minimise possible adverse impacts, the Parties agree to develop a better understanding of the livelihoods of potentially affected indigenous and local communities as well as the timber industry, including those engaged in illegal logging. The Parties will monitor the impacts of this Agreement on those communities and other actors identified in paragraph 1, while taking reasonable steps to mitigate any adverse impacts. The Parties may agree on additional measures to address adverse impacts."*[39]

## Conclusion

**Mentioning socio–economic impact assessments, EIAs and civil society impact monitoring strengthens the possibility that the VPA can become an instrument that enables its impact on forests, communities and forest governance to be measured. To make these instruments useful these studies should include a clear baseline on which future monitoring assessments can build.**

### Social obligations[40]

Social obligations mentioned include compensation for communities for damage, mutually negotiated social contracts between companies and communities, access and benefit-sharing, and on rare occasions a dispute resolution mechanism. Paying compensation for damaged property is part of the social obligations of companies in the Central African Republic, the Republic of Congo and Ghana, the latter referring exclusively to crop damage. Social contracts in the Central African Republic refer to money paid regularly to communities, as well as social projects. To manage these local contracts, in the Republic of Congo a local development fund is to be set up, and in Liberia a national Community Benefit Sharing Trust has been set up.[41] In the VPAs of Cameroon, Indonesia, Liberia and the Republic of Congo, there is also mention of local social development projects. Conflict and dispute resolution mechanisms in case of non-compliance of social obligations by timber companies are foreseen in the Republic of Congo and Liberia. For all VPAs, the independent auditor foresees a conflict or dispute resolution mechanism, but little detail is given, and local communities may have trouble accessing it. In the Indonesian VPA, social obligations are not referred to explicitly.

39 VPA EU-Ghana Article 17. This article is included in all VPAs but the way it is formulated may differ.
40 While worker rights are included in the LASs of all VPAs, this was beyond the scope of this paper and therefore not included.
41 FDA regulation 106-07 on Benefit Sharing (one of the FDA 10 Core Regulations) establishes National Community Benefit Sharing Trust mechanism which works with Community Forestry Development Committees that are defined in part six of Regulation 105-07 (another of the ten core regulations).

Photo Kate Davison (Greenpeace)

Indigenous peoples like the Baka fully depend on the forest. Their inclusion in the negotiation and implementation of the VPA is essential.

Both Liberia and the Republic of Congo indicate in the annex on legal reforms that clear procedures need to be formulated on the processes of involvement and decision-making powers of local communities with regard to social obligations, as this is currently missing. The Liberian VPA provides most detail indicating the timing of negotiations and payments, stating that transfers of funds to communities need to be precise and provisions for enforcement need to be determined.

### Conclusion

**Social obligations for benefit sharing in VPAs are in general based on what is mentioned in the national laws. Some VPAs, allow for working towards improved benefit sharing: Liberia's, for instance, includes renegotiation of social agreements in its requirements for legal reforms, and the Republic of Congo's VPA has clear procedures on social obligations and benefit-sharing mechanisms.**

## 4. Legal reforms

During VPA negotiations, a lot of time was allocated to defining legality. To agree a definition among different stakeholder groups, all relevant existing national and international laws relating to forests and peoples' rights as well as customs, trade, environment, labour, justice, and finance laws had to be scrutinised. The overall legal framework was revisited, also in light of the forest governance challenges that were identified prior to the launch of the negotiations. This allowed all stakeholders to familiarise themselves with the country's

legislation and identify inconsistencies, gaps and missing implementing decrees. This exercise allowed for the identification of necessary legal reforms, whether at the level of the law itself, or through implementing decrees. All VPAs refer to required legal reforms or revisions, except for Indonesia, which refers only to the need to develop guidelines for the implementation of particular aspects of the VPA. More detail is provided in Table 2.

The VPAs differ greatly in their levels of ambition, both in terms of content and timing of future reforms. Most countries make a distinction between those which are urgent – often directly related to VPA implementation – that must take place prior to FLEGT licensing, and more far-reaching reforms that could take place after licensing but within a two-year (Liberia) or three- to five-year time-frame (Ghana). Indonesia's VPA is the least ambitious with regard to law reform, as no explicit mention is made in the VPA. This is partly due to fact that extensive participatory legal reviews had to a certain extent already happened since 2001, and partly because Indonesia is more resistant than Africa to any interference or influence in its internal legal affairs. Both the Central African Republic and the Republic of Congo detail which reforms need to be addressed and by which ministry. This seems to indicate some coordination across sectors. In Cameroon, Ghana and Liberia, the areas of legal and policy reform are restricted to the forestry sector, and the lists for Cameroon and Ghana are intentionally not exhaustive. This approach would allow stakeholders to specify all areas where legal reform was necessary, and at the same time leave it open in case new topics were to appear later on.

The short-term legal reform is mostly related to legal changes to set up traceability and verification systems; more long-term reforms include reform of the domestic market, tree tenure reform (Ghana), clear procedures on social obligations and benefit-sharing mechanisms (Republic of Congo), and clarity on the recognition of customary rights ( Central African Republic, Republic of Congo). In the Republic of Congo the civil society platform insisted on passing the Indigenous Peoples Law as a condition of delivering FLEGT licenses. The law, which was finally adopted in 2011, ensures access to education, health and social services for indigenous peoples. It also includes access and benefit-sharing mechanisms, recognises indigenous peoples' cultural, spiritual and traditional lands, and has clear guidelines on socio–economic development projects, including FPIC.

As mentioned above, the VPAs have not been able to push for land code reforms which legally recognise customary tenure regimes, and hence are limited in addressing wider land conflicts that arise from competing and overlapping land uses. In most of the VPA countries, the economic importance of the forestry sector is much smaller than that of the agriculture or mining sectors, which contributes to the VPAs not being able to address wider land-use planning policy.

## Conclusion

**The VPAs have instigated a large number of legal reform processes, including the adoption of the Indigenous Peoples Law in the Republic of Congo, the signing of ILO Convention 169 in the Central African Republic, and a new pit-sawing regulation**

**in Liberia. The VPAs also include a list of long-term reform, related to issues as the domestic market and tenure reform, which are still pending in most countries. The impact of VPAs on wider land-use issues, however, is limited due to the limited power of the forestry sector. Nonetheless an argument could be made that the inclusive process leading to reform in the forestry sector could and should be replicated for other sectors, notably agriculture and mining.**

## 5. Transparency or 'information to be made public'

Transparency is fundamental for good governance. Making documents and reports publicly available and conducting discussions through multi-stakeholder committees are a means of holding all stakeholders accountable and ensuring there is less opportunity (for government officials or private sector actors) to abuse the system for their own interest. Prior to signing the VPA agreements, two countries had a Freedom of Information Law in place. In May 2010 the Freedom of Information Law came into force in Indonesia which guarantees access to information held by public bodies and requires public bodies to proactively publish information. In the same year Liberia enacted the Freedom of Information Law, with the aim of promoting effective, equitable and inexpensive exercise of the right of access to information, and establishing clear and concise procedures for requesting and providing information. Implementation of these laws has been challenging and, as such, progress towards increased transparency is slow. Nevertheless the baseline for 'de jure' government commitment to make information available and accessible sets the right stage to improve transparency overall, not just in the context of the VPA. In the other four countries, no such laws exist and requests for information are more likely to be ignored. Until a Freedom of Information Law has really changed the institutional culture of bureaucracies – which typically takes years – in most of these countries it is a challenge to get any response, and often it is not clear who to approach for which piece of information.[42]

Each VPA includes an annex listing the information which should be made public – except in Ghana, where such a list is still being developed[43]. Most annexes are quite elaborate and clearly stipulate which documents will be made available. This varies from 49 (Republic of Congo) to 75 (Cameroon) types of documents or data. In most VPAs the different channels for dissemination are also described, ranging from one (Indonesia) to 13 (Central African Republic), including for example press conferences, radio and television, dissemination through films, official reports, libraries, websites hosted by various actors, through multi-actor implementing platforms, and public meetings. Liberia and Indonesia have two and four levels of disclosure, respectively, which differentiate between information that is to

42 The Global Witness annual transparency report notes that in Liberia the Freedom of Information (FOI) law is not effective, but that in Peru and Ecuador where this law has existed over a decade, institutions have started to comply with it. However it is noted that the framing of the FOI Law in general is not sufficient to capture sufficient detail, so there is a need to develop interpretational guidelines on a per sector basis. See Global Witness et al. (2012) VPA Transparency Gap Assessment 2012, specifically for Cameroon, Ghana and Liberia. Available at http://www.foresttransparency.info/report-card/updates/750/african-timber-exporting-countries-failing-to-meet-access-to-information-commitments/

43 Personal Communication between Saskia Ozinga and Forest Watch Ghana.

be made public (immediately or on a regular basis in the case of Indonesia), and information that is only available upon written request. In addition, Indonesia also mentions that some information will remain restricted and confidential. In Liberia, there is additional reference to the Liberia Extractive Industries Transparency Initiative Act (2009), which allows for transparency on revenue collection, as Liberia is an EITI member and has included forestry as part of its EITI monitoring.

Key documents that some of these annexes commit governments to disclose (and which at present are extremely hard to obtain) include pre-qualification and bid evaluation reports showing how potential contract holders were assessed; logging contracts that show the rights and responsibilities of each party to the contract; management plans (long term and annual) that demonstrate a sincere effort to sustainable forest management; social agreements with affected communities and compliance monitoring reports; timely production and revenue reports that enable citizens to know what volume is leaving a nearby forest as well as what revenue it has generated; regular reports of infractions and offenders (this shows both that law enforcement is to some extent effective and warns potential parties to avoid poor performing or debarred operators); and incident reports and associated corrective actions generated by the chain of custody information system.

Important information that was not taken up in the annex but probably should have been included, is information about the shareholders of the timber companies. Several Congo Basin countries do not legally allow ministry personnel to be shareholders, though in reality they sometimes are. In addition there is also little on disclosure of revenue management or expenditure by local administrators, which is unfortunate, as increased community-level transparency is necessary. This also raises the question of the extent to which local administrations will provide information on compliance of the annex. Liberia is an exception to this as it will publish the amounts of money received by government and National Community Benefit Sharing Trust and money disbursed to Community Development Funds.

### Conclusion

**Increased transparency is a condition for improved governance. Progress on identifying the necessary information for public disclosure together with mechanisms for implementation is crucial and will also help to combat corruption. The VPA annexes on information to be made public provide a good tool to increase transparency, but would need to be complemented by a Freedom of Information Law.**

## 6. Monitoring

There are at least three formal levels of monitoring to ensure implementation of the VPAs: Joint Implementation Committees (JICs), independent auditors, and independent monitors (operational in Cameroon, Republic of Congo, and Indonesia). In addition,

forms of civil society-led independent monitoring are referred to in some VPA texts and are currently being piloted in Liberia and Cameroon. It is not yet clear if these will need greater formalisation and recognition, such as the authority to enter concessions, or a respected channel for validation and response to the reports. The JIC and independent auditor are mandatory for all VPAs. While the JIC is not an independent structure, the other types of audits and monitoring complement each other and aim to increase the effectiveness of the VPA. In all VPAs, the independent monitor and civil society-led monitoring are referred to as sources of information for the independent auditor (see also the section on independent auditors on page x).

**Joint Implementation Committee and associated national structures**

Each country will have a Joint Implementation Committee (JIC),[44] consisting of representatives of both the VPA country and the EU, to oversee, facilitate and monitor VPA implementation and to resolve any conflicts that may arise. This committee meets at least twice a year, and reviews reports of the independent auditor and any complaints that may have arisen; it promotes the participation of different stakeholders; it assesses the social, economic and environmental impact; and it publishes reports.

For the moment only Ghana, Cameroon and the Central African Republic have an operational JIC structure[45], while in Liberia there is a pre-JIC structure. In the Republic of Congo the members for the JIC have been appointed but the JIC is not yet officially in place. In Indonesia an ad-hoc Joint Preparatory Committee that includes multiple stakeholders is being developed. Some national governments (Cameroon, the Central African Republic and the Republic of Congo) allow civil society representatives as observers to the JIC, other do not and again others have not yet decided (Liberia).

In most VPA countries an informal committee or secretariat has been created that includes government, private sector and civil society representatives, and meets in between JIC meetings. This is explicitly mentioned in the VPA for Liberia (which will have a National Multi-stakeholder Monitoring Committee) and a VPA Support Unit, and it exists in Cameroon (National Monitoring Committee), Ghana (National Multi-stakeholder Implementation Committee), the Central African Republic (National Implementation Committee) and the Republic of Congo[46] (National Secretariat).

These 'VPA secretariats' and multi-stakeholder committees or 'associated structures' are of great importance as they prepare and exchange documents to be discussed before the JIC, and ensure continuation of the multi-stakeholder participatory process during the implementation phase.

44 Composed of the Joint Implementation Council ('the Council') and Joint Monitoring Committee (JMC) for Cameroon, and called Joint Monitoring and Review Mechanism (JMRM) for Ghana.

45 Members for the JIC have been nominated in RoC, but no JIC meeting has taken place yet.

46 The National Secretariat, a multi-stakeholder body, was set up in 2009 in order to follow up the VPA implementation on a continuous basis and prepare for the JIC meetings. The National Secretariat was not operational between late 2010 and 2012, and the work was taken over by a more informal multi-stakeholder 'Joint Working Group'.

Photo An Bollen

Training in independent monitoring is essential for an effective implementation of the VPA.

While not formally set out in the VPA, an issue of relevance for the VPA can be raised in writing by any stakeholder with the authorities and copied to EU. It is then discussed at the JIC meeting. Civil society organisations raised the issue of the government allocating illegal logging permits (salvage permits in Ghana and private-use permits in Liberia) which has since been addressed by the respective governments. In Liberia the issuing of large-scale agriculture concessions was also raised.

**Independent auditor**

All VPAs have an independent auditor (called 'independent monitor' in Ghana and 'periodic evaluation' in Indonesia), which is an integral part of the Legality Assurance System. The auditor is a third party appointed by the government to check the system, its compliances and failures. The auditor will conduct periodic audits – between one and three times a year, depending on the country – and reports its findings to the JIC, which will then publish an annual report. Terms of references for the independent auditor are included in the VPA and are similar among VPAs. So far, only Cameroon has an operational independent auditor. Table 2 provides more detail on the frequency of audits in each country.

All VPAs make explicit reference to a complaint, dispute or conflict resolution mechanism concerning system failures, and propose corrective actions as part of the independent auditor function, but operational details are lacking.

**Independent monitor**

The VPAs for the Republic of Congo, Cameroon and Indonesia include independent monitors as part of their Legality Assurance System, in addition to the required inde-

pendent auditor. In Cameroon and the Republic of Congo, independent monitors were operational before VPA negotiations started and their work has been incorporated to varying degrees into the VPA, giving them the role of contributing to transparency and accountability within the VPA. This role is fulfilled either by a company – in the case of Cameroon[47] – or an international NGO – in the case of the Republic of Congo.[48] The independent monitor in Cameroon (AGRECO and its predecessors) is appointed by, and reports to, the government. In the Republic of Congo, REM (an international NGO) and CAGDF (a national NGO) are not appointed by the government but have an authorisation to work and a memorandum of understanding with the government. The VPA in the Republic of Congo foresees that national civil society will in future fulfil this independent monitoring role.

In Indonesia there are two types of independent monitoring formally recognised by the Legality Assurance System: 'Comprehensive Evaluation' and civil society-led independent monitoring. The Comprehensive Evaluation is conducted by an ad-hoc multi-stakeholder monitoring working group established by the ministry to review the system and provide suggestions for system improvement based on the inputs given by all stakeholders. The civil society led independent monitoring gives responsibility to civil society groups and individuals to raise objections on non-compliance with the legality standards and/or procedures of audit. They can file complaints with the CAB, or directly with the Indonesian Accreditation Body (KAN) or the Ministry of Forestry. Indonesian civil society has formed two networks of NGOs[49] to take up the monitoring task, which allows them to share views, harmonise monitoring procedures, organise trainings and create templates for the reports. Any registered NGO can join the network, following agreed monitoring protocols. The independent monitoring concept is reinforced with a formal supervising structure within the network to make the monitoring methodologies systematic, and build up the capacity of individual NGOs and their staff to adhere to the relevant standards. The independent monitoring is a formal element of the Legality Assurance System (SVLK).

In addition another independent auditor will be contracted to periodically monitor the implementation of the SVLK. This body is expected to actively consult civil society organisations and collect inputs for the monitoring reports.

**Civil society self-mandated monitoring**

*"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 the state."*[50]

47 Prior to AGRECO's independent monitoring role in the VPA, NGOs undertook this type of work (Global Witness first and then REM)

48 REM, or Resource Extraction Monitoring, is fulfilling the role of independent monitor in RoC in collaboration with a national NGO (CAGDF). It is foreseen in the VPA that a national NGO will play this role in the future.

49 The establishment of monitoring networks are CSOs' way to be more organised and provide credibility and visibility to other stakeholders. The two existing monitoring networks are: JPIK or Independent Forestry Monitoring Network which consists of about 45 NGOs including IPOs and more than 200 individuals and the APIKS or Sumatra Independent Forestry Monitoring Network.

50 DfID (2006), *White Paper: Making Governance Work for the Poor* Available at: http://webarchive.nationalarchives.gov.uk/+/http://www.dfid.gov.uk/wp2006/whitepaper-printer-friendly.pdf

Finally, there is the informal civil society-led independent monitoring, without any formal mandate or MoU with the government. This can be conducted by local NGOs or local communities in collaboration with national NGOs. Whereas the VPAs for Cameroon, the Central African Republic, Indonesia, Liberia and the Republic of Congo mention that civil society observation could be one of the sources of information for the independent auditor, the VPA for Ghana mentions that the implementation of the Legality Assurance System is open to external monitoring.[51] Self-mandated monitoring is currently being piloted in Liberia[52] and Cameroon,[53] and is being set up in the Republic of Congo and the Central African Republic. In Liberia and Cameroon there is a strong desire that 'self-mandated' monitoring should not be limited to forest infractions but include other legal compliance such as that of social obligations by the companies, and respect for community rights. There is a real possibility in each country that the 'self-mandated' nature will progress into some form of agreement with the government to ensure (I) access to concessions and other facilities; (II) a validation and reporting mechanism so the reports are professional, legally robust, and acknowledged (by the JIC as well as the independent auditor); and, above all, (III) acted upon to make appropriate changes at relevant level to the VPA.

## Conclusion

**There are various types of monitoring in the VPAs to ensure there are sufficient checks and balances allowing for effective implementation. As no VPA has yet been implemented it remains to be seen how effective and complementary these systems are in reality in ensuring compliance of the VPA. Mechanisms on how information from different monitoring types will be integrated into centralised systems need to be clarified still. The greater role given to civil society organisations in monitoring will reinforce the implementation of the VPAs and improve their credibility.**

51 The VPA of Ghana is less precise in this regard and just mentions that legality assurance system is open to external monitoring. The Indonesian VPA says: "Seek the views of stakeholders and use information received from stakeholders either directly or indirectly involved in the implementation of the legality assurance system".

52 In Liberia, civil society-led monitoring started in March 2012. This monitoring documents improvements in the wellbeing of communities by tracking benefit flows to communities over time. As such their monitoring ensures compliance with legality assurance system and measures the impact the VPA has on communities through social audits.

53 In 2010, Cameroonian NGOs initiated local monitoring by community members on forest infractions as a contribution to improving the efficiency of the forest administration. These community monitors report information to the national NGO CED, which then organises a verification mission, compiles information and reports to either formal independent monitor of the ministry of forestry. This monitoring could extend to using other elements of the legality grid as well, such as social commitments and compliance with certification requirements.

Photo Jan van der Ploeg for CIFOR

The Indonesia VPA is different than the other five VPAs concluded; it has to deal with a large and diversified forestry sector.

# Section 3
# Looking forward

Section 1 of this report showed that most recommendations formulated by European NGOs have been integrated in the VPA process. Section 2 showed how different priorities for civil society have been dealt with in the specific countries. In this section we present the views of the local NGOs in the VPA countries on the VPAs' achievements and in particular the challenges ahead (Table 3, page 40). This is based on questionnaires completed in 2010 and 2012 and on analyses of the situation in the different countries, available at www.loggingoff.info.[54]

## Multi-stakeholder dialogue before, during and beyond signing VPAs

Local NGOs in VPA countries applaud the enabling environment that the VPA has created, which has allowed NGOs to engage, often for the first time, in an open dialogue with the government and the private sector. More importantly, by being part of the VPA negotiation committees and by playing a key role in the various working groups, NGOs and community representatives have not only been able to inform, but also to influence the process.

Nevertheless the transition from negotiation to implementation has not been smooth. In almost all cases the process slowed down or even stopped once the VPA was signed. It took time for all actors to find their new role in the implementation phase. To ensure implementation is as participatory as the negotiation phase, all actors and specifically local NGOs need to ensure this happens. The national multi-stakeholder implementation committees play a key role in implementation and need to remain inclusive. As for local NGOs and community representatives, remaining in the driving seat to drive the process forward by being proactive is a necessity – but a challenging one.

54 http://loggingoff.info/documents/results/taxonomy-50

## Box 5 **Views of the Community Rights Network (2012)**

**The Community Rights Network groups the civil society platforms involved in the VPA process in the different VPA countries in Africa, Asia and Latin America and is a broad coalition that meets regularly to exchange information, share experience and come up with joint positions to directly lobby the European Union. At the last meeting in October 2012 the following successes and challenges were presented by NGOs from VPA countries:**

**Successes**

- **Legal reforms initiated in all countries**
- **Improved transparency and accountability**
- **Improved relations and cooperation between different stakeholders (government, private sector, civil society)**
- **Stronger coherence within civil society (NGOs); voice and position have been strengthened and skills have increased**
- **Increased awareness by different stakeholders and mobilisation**
- **Increased partnership within civil society at national level as well as international level**
- **Government now listening to NGOs and allowing them to be engaged.**

**Challenges**

- **Slow implementation due to lack of political will and connivance between government and private sector**
- **Lack of law enforcement of existing laws listed in the VPA**
- **Different interests of different stakeholder groups and/or different interpretations**
- **Effective engagement with communities and ensuring their voice is heard in the VPA process**
- **FLEGT being undermined by negative developments in agriculture and mining sectors and by REDD.**

## Continuous capacity building as roles change

The VPA process has put a new civil society dynamic in motion, which has led to improved NGO coordination via national platforms, greater civil society coherence at national and regional level, and better working relationships with European NGOs. While NGOs have gained skills in advocacy, lobbying and strategic positioning during the negotiation phase, a new set of skills is needed for NGOs and community representatives to play an active role in the VPA implementation, in particular with regard to independent moni-

toring of forest infractions as well as social impacts. International NGOs play a key role in assisting local NGOs in this new role. South–south exchanges and increased networking play a crucial part in sharing information, and transferring skills and competencies.

## Empowering communities to become fully part of the VPA

Given the unique nature of the VPAs, it took some time for local NGOs to organise and to ensure that local NGOs selected their own representatives to have a seat in the negotiation committees and working groups. In several countries the seats were initially taken up by or handed out to representatives of international conservation NGOs, without any consultation with local NGO networks. However, this situation changed following pressure from local civil society, joint work between local groups and EU organisations such as FERN, and with support from EU. Liberia was the only country where there were elected representatives from local communities at the negotiation table. In all other countries local communities were not represented at all, or were represented indirectly by NGOs.

It is crucial for the implementing phase to ensure continuous input from local communities and make sure they play an active role in the implementation, notably with regard to monitoring in the field and the legal reform processes. In order to achieve this, community representatives need to be elected and an operational communication mechanism needs to be developed to ensure a continuous information flow from the ground to the national level, and back again. Only through their full involvement will VPAs be effective in ensuring communities' rights and benefits and improving overall forest governance and forest management.

## From legal reform to law enforcement, from words to action, from policy to practice

Revision of legal texts to address gaps, inconsistencies and omissions is one of the main achievements of the VPA process so far. While these analyses and suggestions for review were done in a transparent and inclusive manner in all VPA countries, the actual legal reform process does not always follow the same participatory and transparent process. This needs to change. Some key areas of reform, such as those with regard to the domestic market, have yet to be addressed. Changes in policies, laws and rules, however, are only the basis for civil society, local communities and indigenous peoples to take action. A lot depends on the willingness of the government to ensure that the law is enforced, and on the willingness of companies to abide by the rules. The independent auditor and independent monitors should look for irregularities and ensure they are being addressed, but the periodic nature of the independent auditor's involvement limits its effectiveness in this regard. This underlines the important additional role of local NGOs and communities in the monitoring of compliance of the LAS and other legal obligations.

Table 3 **The way forward**

| VPA Achievements | | Current VPA challenges | | Proposed solutions |
|---|---|---|---|---|
| VPAs are the first EU trade agreements to be developed through an inclusive stakeholder process. | → | Limited capacity of local NGOs to assume roles required for effective implementation. | → | Pressure from NGOs in the Global South and the EU for effective inclusive implementation processes, and to build capacity of local NGOs and communities to use space effectively and play strong role in application and monitoring of VPA. |
| VPAs have opened up space for dialogue on forest governance by requesting inclusive multi-stakeholder process. | → | Keeping the space open and expanding the multi-stakeholder dialogue to other processes that impact on forests and land use. | → | Research into how the VPA process can be expanded to other processes that impact on forests, e.g. the allocation of agricultural concessions. |
| VPAs have improved relations between different stakeholder groups (NGOs, industry and government). | → | To continue to build relationships between different stakeholder groups. | → | Donors and international NGOs facilitate building of relationships. It is important to recognise that different stakeholders are required to jointly craft solutions to identified problems, working in close cooperation with international NGOs and private sector. |
| VPAs have led to better NGO coordination within VPA countries, among VPA countries, and between VPA countries and European NGOs. | → | To continue the networking at national, regional, and international level, and to expand it to other processes. | → | Capacity-building (information sharing and organising joint activities, including south-south exchanges) and support for these activities. |
| VPAs have led to increased capacity of local NGOs, through EU and MS providing direct financial support, and direct or indirect (via international NGOs) organisational support. | → | Capacity of local NGOs remains limited and needs further strengthening. | → | Donors to conduct clear analysis of which NGOs to fund and how these work in various networks, to ensure support is delivered to NGOs that are active in existing networks and not to lone NGOs or international NGOs. |
| In some countries VPAs have empowered communities to have their voice heard. | → | Limited awareness and direct involvement from local and indigenous communities in negotiation and implementation of the VPA. | → | Enable direct community participation in negotiation and implementation where communities are organised. Include also artisanal and chainsaw loggers. Establish representational structures and communication mechanisms. Overall community empowerment, extensive consultations. |
| VPAs have led to legal reform or have started legal reform processes concerning forests, logging, and peoples' rights. | → | Legal reform process insufficiently inclusive. Limited progress concerning reforms related to domestic market and tenure. | → | Inclusive and participatory (pro-poor) legal reforms. Poverty Impact Assessments to precede proposals for domestic market reform (to ensure inclusive process, identify problems and develop solutions) |
| VPAs have led to (and are expected to continue to lead to) improvements in transparency, and access to information. | → | Widespread corruption undermines policy of publicly available documents. Limited progress in effective implementation of transparency annex. | → | Continued commitment to transparency and making funding conditional on clear improvements in this area. Address corruption through implementation of LAS and Annex on public information. Active role of NGOs in monitoring this. Assessing how VPAs can best address corruption |
| There is increased understanding around the role of NGOs and communities in improving forest governance. | → | Limited NGO capacity to assume some of implementation roles, or to broaden the process to other forest related processes. | → | Active role of NGOs and communities in VPA implementation (monitoring VPA, transparency annex, legal reforms). Donors, companies and international NGOs to request active participation of local NGOs and community representatives in decision making. |

| External Challenges | | Proposed solutions |
|---|---|---|
| Undermining role of REDD process (which was in most VPA countries not truly participatory, nor inclusive). | → | Effective and inclusive VPA approach should be used as a model for REDD and other forest processes. |
| EU countries not ready for EUTR implementation. There may be loopholes in the EUTR. | → | Rigorous implementation of EUTR. National or EU NGOs to bring cases on infractions focusing, to start with, on countries that are not engaged in or have not yet concluded a VPA. |
| Increased importance of Asian timber markets. | → | Agreements with other consumer markets (China, India, Japan, Australia, US) to develop and/or implement legislation to control illegally sourced timber. NGO coordination between EU NGOs, VPA country NGOs and NGOs in emerging consumer markets. |
| Land-grabbing and land-trafficking (specifically in Africa) will undermine improving forest governance. | → | Cross sectorial approaches and integrated national land use planning. Transpose lessons learned from VPA to other sectors and commodities. Develop regulation to halt EU (financial) companies from playing a role in land-grabbing. |

Photo Greenpeace

International NGOs can play an important role in training local NGOs and communities in independent monitoring.

## Transparency at the heart of good governance

The formulation of the annex on 'information to be made publicly available' in the VPA indicates a commitment to improve transparency in the forestry sector. This annex is also a tool for tackling corruption, as once all information (e.g. on concession allocation, contracts, stumpage fees, taxes etc.) is publicly available, it is more difficult for governments and companies to act in violation of the law. However, progress on implementation of the annex has been limited.[55] It is up to civil society to keep challenging the government by assessing which information listed in the annex is available and accessible. Effective implementation of the transparency annex is also a baseline for independent monitoring by civil society, and a necessary condition for improved law enforcement. This is therefore a priority.

55 Global Witness, CED, SDI and RECA (2012). *VPA Transparency Gap Assessment for Cameroon, Ghana and Liberia* Available at: http://www.foresttransparency.info/report-card/updates/750/african-timber-exporting-countries-failing-to-meet-access-to-information-commitments/

## Civil society as actors of change

Through the negotiation process, civil society has become aware of the role it can play in the long term to ensure that the VPA is effectively implemented and remains credible. It became clear early on that the role of the independent auditor would not be sufficient to demonstrate full compliance with the Legality Assurance System. Civil society and communities are therefore preparing for monitoring VPA implementation. Initially the focus will be on the legal framework, from permit allocation to benefit sharing. In future there is hope that the focus will broaden to monitor governance, and social and poverty impacts as well. There must be more capacity-building and training of civil society organisations in this new role, as well as sources of sustainable funding for the existing monitoring schemes.

Responsiveness to act upon the results of these monitoring efforts also remains a challenge that needs to be overcome in countries where law enforcement is not a given. So while these different monitors are implicitly or explicitly part of the VPA, it is important that they start or continue to play an active role to avoid a potential credibility gap.

In September 2012, the EU adopted a Communication, called *'The Roots of Democracy and Sustainable Development: Europe's Engagement with Civil Society in External Relations'.*[56] This communication outlines an enhanced and more strategic approach to the EU's engagement with civil society organisations: promotion of an environment conducive for local civil society, a meaningful and structured participation of CSOs in domestic policies of partner countries, as well as international processes and increasing local CSOs' capacity to perform their roles as independent development actors more effectively. This communication holds the promise of an overall stronger commitment by the EU to civil society through participatory and multi-stakeholder processes towards more inclusive and effective policies.

## Beyond VPAs

VPAs do not occur in isolation, but are part of a much larger context and thus cannot provide a solution to all challenges. Nevertheless, it is important to capitalise on the successes achieved and build on the lessons learned with regards to other processes such as REDD, which generally are less participatory, with less of a focus on social and governance improvements. The FLEGT VPAs and REDD are both processes for promoting good forest governance. Where FLEGT does not work, REDD will not work either, so it would seem logical to make FLEGT implementation a precondition for REDD. It is the responsibility of governments, donors and civil society organisations to ensure that the successes of the VPAs are integrated in REDD and other forest processes.

56 COM (2012) 492 at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0492:FIN:EN:PDF

The forestry sector is relatively small in most countries, with mining and agriculture often having a bigger impact on forests and forest peoples. Although the VPAs focus on the forestry sector, there is nothing to stop discussion of the impact of other commodities as part of the VPA process, e.g. Liberia's VPA includes rubber wood, which falls under the agriculture sector rather than the forestry sector. With the encroachment of large-scale concessions on peoples' land, notably in Africa,[57] the forestry sector and hence the VPA risk becoming marginalised, unless the FLEGT VPA-type consultation processes can be expanded to other commodities and other sectors.

Currently land-grabbing for speculation and large-scale plantations (mainly palm oil and rubber), and carbon or ecosystem credits offsetting schemes, are an increasing phenomenon in Africa that will have an impact on forest governance, especially in forested countries. While this is beyond the scope of the FLEGT Action Plan, it is important to broaden discussions to overall national land-use planning and cross-sectoral approaches to ensure consistency with what has been agreed in several separate parallel processes. If and when most countries strive towards sustainable and inclusive growth, community tenure rights must be at the heart of this process.

On 3 March 2013 the EU Timber Regulation (EUTR) enters into force. The EUTR is complementary to the VPAs in the EU, providing a demand-side measure. The EUTR aims to ensure that illegal timber is no longer placed on the EU market, making it a criminal offence. FLEGT-licensed timber will automatically comply with the EUTR. It remains to be seen if the competent bodies in the 27 EU Member States are ready to comply with the regulation, and are sufficiently ready to detect and act upon non-compliance. For the future of the VPAs, it is crucial that the EUTR is implemented effectively and rigorously so that operators are deterred from putting illegally sourced timber on the market. Failing that, there will be less of an incentive for timber-exporting countries to continue negotiating or implementing a VPA. This would then undermine the current opportunity that exists for actors in producer countries to improve forest governance and combat illegal logging.

Meanwhile, exports to Asia, especially India and China, are increasing.[58] Although VPAs include all exports, the EUTR only applies to the EU, in the same way the Lacey Act only applies to the US. As Australia has just adopted its Illegal Logging Prohibition Bill,[59] it would be helpful if China, Japan and India also developed laws to reduce illegal imports into these growing markets. The VPAs, the EUTR, the Australian Logging Bill and the US Lacey Act are all important steps towards reducing illegal logging, but it is increasingly important to get other economic powers on board, to reinforce the progress already made.

57 For more detail on land pressures in Africa, see The Land Coalition website, in particular a report, *The Commercial Pressures on Land in Africa*, available at: http://www.landcoalition.org/publications/commercial-pressures-land-africa

58 http://www.globaltimber.org.uk/

59 http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr4740%22

Photo Fred Pearce

Trucks with illegally logged timber, North of Buchanan, Liberia.

# Recommendations

## VPA implementation

- The implementation of the signed VPAs must be prioritised to ensure that FLEGT licenses become available, and the impact of the VPAs becomes clearly visible on the ground.
- VPA implementation must be based on active involvement of local civil society organisations and local communities, e.g. in monitoring implementation, and in monitoring the poverty or development impacts of the agreement.
- The EU and VPA country governments, as well as civil society and the private sector, should communicate the positive impacts of the VPAs to date in terms of improved governance, through strengthening the capacity of civil society actors and the private sector in policy-making, strengthening the capacity of governments to monitor and increase transparency and law reform.
- The EU and its Member States must provide adequate financial, political and technical support to local civil society organisations and governments for the implementation phase, including through the 11th European Development Fund (2014–2020) and thematic and country budget lines.
- Integration of the domestic market in the FLEGT VPAs must be based on a poverty impact assessment[60] to ensure that legal reforms are beneficial for forests and people.

## EU coherence

- To ensure the EU Timber Regulation and the FLEGT VPAs become mutually supportive, the EU and the Member States have to ensure a robust and effective implementation of the EUTR across all Member States. If illegal timber continues to be imported into the EU, the effectiveness of the VPAs will be undermined.

60 Poverty in relation to VPAs is discussed in Hobley, Mary and Buchy, Marlene (2012). FLEGT and poverty alleviation: the role of VPAs Forthcoming, European Forest Institute

- To meet its objective to halt deforestation by 2030,[61] and in line with the Commission Proposal for a 7th Environmental Action Programme,[62], the EU should research whether and to what extent the FLEGT VPA model can be expanded to other commodities to reduce the EU's forest footprint. If only the forestry sector is being tackled, deforestation will continue and VPAs will be marginalised.
- The EU should ensure that all its trade and development policies are based on recognition that strengthening land tenure of local communities has to be at the heart of any successful policy to reduce deforestation and improve forest governance, in line with EU policies on land rights.
- Following the EU policy on 'Engagement with Civil Society in External Relations',[63] the EU should ensure that all its trade and development interventions are based on multi-stakeholder participatory processes. The model of negotiating trade agreements in an inclusive manner with the full participation of local civil society actors, private sector and communities should become the model for all EU trade and development negotiations.

Guardians of the Forest. 10 years of EU Forest Law Enforcement, Governance and Trade. Community Rights Network presenting their views on VPA successes and challenges.

Photo An Bollen (FERN)

61 COM(2008) 645 final, page 6. "Addressing the challenges of deforestation and forest degradation to tackle climate change and biodiversity loss". Available at http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=197512

62 http://ec.europa.eu/environment/newprg/pdf/7EAP_Proposal/en.pdf.

63 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0492:FIN:EN:PDF

Photo Saskia Ozinga

NGOs educate themselves about the VPA Legality Assurance System (Liberia).

# Glossary

**APIKS** stands for Aliansi Pemantau Independen Kehutanan Sumatera and is the Sumatra Independent Forestry Monitoring Network.

**Australian Illegal Logging Prohibition Bill 2012:**[64] this bill prohibits the import and sale of all timber products containing illegally logged timber; prohibits the processing of illegally harvested domestically grown logs, and requires importers and processors of regulated timber products to comply with due diligence requirements. It also establishes enforcement powers and offences, imposes penalties, and requires all legally logged timber products for sale in Australia to be accurately described.

**CAGDF** stands for *Cercle d'Appui à la Gestion Durable des Forêts*. This is an NGO specialised in forest monitoring from the Republic of Congo.

**CED** stands for Centre for the Environment and Development and is a Cameroonian NGO with a long track record of campaigning for the rights of local communities and indigenous peoples and against large scale developments that have a negative impact on forests and peoples.

**Chainsaw logging and milling.** Chainsaw milling is the on-site conversion of logs into lumber using chainsaws. Significant and increasing amounts of timber in the tropics for local markets are produced using this simple technology. For many local and indigenous forest dependent communities, chainsaw milling is an important source of income. Despite this, in several countries chainsaw logging and milling is considered illegal.

**EPAs** stands for Economic Partnership Agreements. EPAs are trade agreements between the EU and the African, Caribbean and Pacific group of countries aimed at promoting trade between the two groupings. The EU claims that EPAs contribute through trade to development, sustainable growth and poverty reduction. EPAS have, however, come under considerable criticism from EU and local NGOs as well as some country governments. Critics argue that the EU uses EPAs to force through its own trade agenda. They claim the negotiation process is not inclusive and that ACP

64 http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr4740%22

countries do not have the time, expertise or money to follow the negotiations properly or analyse their potential impact. [65]

**EUTR** stands for European Union Timber Regulation. The Regulation which will come into effect in March 2013 and makes it a criminal offence to place illegally sourced timber on the EU market. Anyone handling wood or wooden products needs to assess the risk that those products may have come from an illegal source and act to mitigate that risk. This is known as due diligence. The FLEGT Action Plan mentioned the need for 'additional legislative options' and stated "For a variety of reasons, some important wood-producing countries may choose not to enter into FLEGT partnership agreements with the EU, despite the advantages outlined above in 4.2.3. The Commission will therefore review options for, and the impact of, further measures, including, in the absence of multilateral progress, the feasibility of legislation to control imports of illegally harvested timber into the EU, and report back to the Council on this work during 2004". In fact the Commission did not report to the Council in 2004 but presented the draft proposal for what became the EUTR in 2008, which was adopted in 2010.[66]

**FLEGT** stands for Forest Law Enforcement, Governance and Trade. It is the EU's response to the global problem of illegal logging and trade in timber products.[67] The FLEGT Action Plan, adopted in 2003 by the Commission, proposes measures to increase the capacity of developing and emerging-market countries to control illegal logging, while reducing trade in illegal timber products between these countries and the EU. It sets out a range of measures that aim to combat the problem of illegal logging. These include: support for improved governance and capacity building in timber-producing countries; development of Voluntary Partnership Agreements with timber-producing countries to prevent illegally produced timber from entering the EU market; efforts to reduce the EU's consumption of illegally harvested timber and discourage investments by EU institutions that may encourage illegal logging.

**JIC** stands for Joint Implementation Committee. This committee has representatives of both VPA country government and the EU to oversee, facilitate and monitor the VPA implementation and resolve any conflicts that may arise. The JIC meets at least twice a year, and reviews reports of the independent auditors and any complaints that may have arisen. It promotes the participation of different stakeholders; it assesses the social, economic and enviromental impact; and it publishes reports. Some governments allow civil society representatives as observers to the JIC.

**JMC** stands for Joint Monitoring Committee and forms part of the Joint Implementation Committee in Cameroon.

**JMRM** stands for Joint Monitoring and Reporting Mechanism in Ghana and is equivalent to what is called the JIC in most other countries.

65 For more information: http://epawatch.eu/ and http://ec.europa.eu/trade/wider-agenda/development/economic-partnerships/ and http://www.grain.org/

66 For more information: http://ec.europa.eu/environment/forests/timber_regulation.htm or http://www.fern.org/EUTR or http://www.clientearth.org/climate-and-forests/illegal-timber/european-timber-regulation-2074

67 COM (2003) 251 final

**JPIK** stands for Jaringan Pemantau Independen Kehutanan and is the Independent Forestry Monitoring Network in Indonesia.

**KAN** stands for Komite Akreditasi Nasional and is the Indonesian National Accrediting Body

**Lacey Act**[68] is a US conservation law from 1900 revised in 2008 to include illegal timber. The Act requires businesses to demonstrate that their purchasing policies and mechanisms effectively avoid sourcing timber from illegal sources and demonstrate due diligence. The Act prohibits the possession, transportation, and trafficking of timber and timber products into/in the US that is derived from illegally logged forests. In all cases, the defendants need not be the ones who violated foreign law; the fact that the timber was obtained illegally is the important point. The Act also requires that shipments be accurately marked and labelled on the shipping containers. The import declaration must specify the scientific name of the timber contained in the importation, as well as a description of the value of the importation, the quantity of material being imported, and the name of the country from which the timber originates. There has been one high profile case, 'the Gibson Guitar case.'

**Legality Assurance System (LAS)**[69] is the main tool for guaranteeing the legality of the timber and timber products covered by the VPA. It consists of a 'legality grid' or grids; a timber tracing system, which ensures only timber verified as legal will be exported or sold (i.e. verified and unverified timber should be kept separate); the verification of legal compliance (i.e. the way the government or a third party verifies that no illegally sourced timber enters the chain of custody); and the FLEGT licence, which is issued to timber verified as legal, and which allows it to be exported to the EU.

**Legality definition** outlines the set of laws that will be enforced and monitored in the context of the VPA agreement. 'Legality' is based on the laws and procedures of the timber producing country in question and must include laws addressing social, environmental and economic issues as well as be in compliance with international laws ratified by the VPA partner country. The legality definition must be developed through inclusive participative process including all stakeholders.

**Legality grid/matrices:** based on the definition of legality, a legality matrix or matrices are produced to verify the legality of the timber/timber products and that of the logging operation itself. The matrix outlines the laws, verifiers and indicators used to monitor the enforcement of laws. The legality definition is the result of participatory and ongoing work incorporating the concerns of the various stakeholders.

**SVLK** stands for Standard Verifikasi Legalitas Kayu and is the Timber Legality Assurance System (TLAS) in Indonesia.

**TLAS** stands for Timber Legality Assurance System and is the name of the Legality Assurance System in Indonesia and Malaysia.

68 http://www.eia-global.org/lacey/P6.EIA.LaceyReport.pdf
69 http://www.euflegt.efi.int/files/attachments/euflegt/efi_briefing_note_05_eng_221010.pdf

**PEA** stands for Permis d'exploitation et d'aménagement and is a forest title in the Central African Republic.

**Pit-sawing:** a type of logging where a handsaw is worked by two persons (pit-sawyers) one of whom stands on or above the log being sawed into planks, and the other below it (usually in a pit). This is a very common practice worldwide for logging at local level. The timber is nearly always intended for the domestic market. The term is, however also used for chainsaw logging or milling in country like Liberia where 'pit-sawing' includes sawing with circular saws, band saws and chainsaws.

**VPA** stands for Voluntary Partnership Agreement. VPAs are legally binding bilateral trade agreements which set out the commitments and action that the EU and timber-exporting countries (the VPA partner countries) will take to tackle illegal logging. VPAs are at the core of the EU FLEGT Action Plan. FERN publishes every six months a VPA update to monitor progress across the different VPA countries, available at www.fern.org.[70]

**VPA process, from negotiation to ratification.** Every VPA process starts with negotiation and ends, of concluded successfully with ratification. The process is as follows:
Negotiation. The negotiation period aims for the parties to achieve agreement on the key elements of the VPA, especially the legality definition and the Legality Assurance System (LAS).
*Initialling*. Once the VPA negotiation period ends, the agreement will be initialled, normally at a ceremony marking the end of negotiations.
*Signing*. Following initialling the agreement will be signed as part of the ratification process. The 'signing' period ends when the EU Council, Commission and partner country sign the agreement. In preparation for signing, the VPA is translated into the 21 official EU languages. The Commission then proposes that the Council agree to sign the VPA, the Council decides if the VPA meets its expectations and if the Council agrees, the VPA is signed by the Presidency of the Council, the Commission, and the Partner Government.
*Ratification*. The ratification period begins as soon as the agreement is initialled. The VPA only enters into force once both parties have ratified the agreement. This process varies depending on the law making process in the timber producing country. At EU level the ratification process starts with the signing of the agreement, after which the Commission proposes to the Council that the agreement is concluded. The Council sends the VPA to the European Parliament and if the Parliament assents to the agreement, the Council adopts the VPA. When this decision is published, it marks the end of the ratification process from the EU's side. The ratification process can take anything from several months to more than one year. The implementation can start without the agreement having been ratified, particularly concerning measures relating to building capacity.[71]

70 For a quick overview of what VPAs are also see: http://www.fern.org/sites/fern.org/files/What%20are%20FLEGT%20VPAs_0.pdf
71 For further details on all steps in the VPA process see http://www.fern.org/sites/fern.org/files/process%20of%20ratification%20timber%20trade%20agreements_0.pdf

# Acronyms

| | |
|---|---|
| APIKS | Aliansi Pemantau Independen Kehutanan Sumatera |
| CAB | Conformity Assessment Bodies |
| CAGDF | Cercle d'Appui à la Gestion Durable des Forêts |
| CAR | Central African Republic |
| CBD | Convention on Biological Diversity |
| CBO | Community Based Organisation |
| CED | Centre for the Environment and Development |
| CEEAC | Communauté Économique des États de l'Afrique Centrale |
| CERD | Convention for the Elimination of Racial Discrimination |
| CITES | Convention on International Trade in Endangered Species |
| COMIFAC | Commission des Forêts d'Afrique Centrale |
| CSO | Civil Society Organisations |
| CSR | Corporate Social Responsibility |
| DRC | Democratic Republic of Congo |
| EIA | Environmental Impact Assessment |
| EITI | Extractive Industries Transparency Initiative |
| EU | European Union |
| EUTR | European Union Timber Regulation |
| FDA | Forestry Development Authority |
| FLEGT | Forest Law Enforcement, Governance and Trade |
| FPIC | Free, Prior and Informed Consent |
| GDP | Gross Domestic Product |
| ILO | International Labour Organisation |
| IM | Independent Monitoring |
| IP | Indigenous Peoples |
| IOP | Indigenous Peoples Organisation |
| JIC | Joint Implementation Committee |
| JMC | Joint Monitoring Committee |
| JMRM | Joint Monitoring and Reporting Mechanism |
| JPIK | Jaringan Pemantau Independen Kehutanan |
| KAN | Komite Akreditasi Nasional |
| LAS | Legality Assurance System |
| LC | local communities |
| LVD | Liberia Verification Department |
| MoU | Memorandum of Understanding |
| MS | Member State |
| NGO | Non-Governmental Organisation |
| NREG | National Resources and Environmental Governance Programme |
| OECD | Organisation for Economic Co-Operation and Development |
| PEA | Plan d'exploitation et d'aménagement |
| PSFE | Programme Sectoriel Forêts et Environnement |
| RECA | Rural Environmental Care Association |
| REDD | Reducing Emissions of Deforestation and Degradation |
| REM | Resource Extraction Monitoring |
| RoC | Republic of Congo |
| SDI | Sustainable Development Institute |
| SFM | Sustainable Forest Management |
| SRA | Social Responsibility Agreement |
| SVLK | Standard Verifikasi Legalitas Kayu |
| TLAS | Timber Legality Assurance System |
| ToR | Terms of Reference |
| TUC | Timber Utilisation Contract |
| US | United States |
| VPA | Voluntary Partnership Agreements |

Photo Kate Davison (Greenpeace)

Indigenous peoples have not been properly consulted in the VPA process yet (Cameroon).

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