



Forest Law Enforcement, Governance (FLEG) and Voluntary Partnership Agreement (VPA) in Ghana

**Adewale Adeleke, IUCN
November 2008**

Introduction

Illegal logging is a major global issue, causing severe environmental damage and impoverishing forest-dependent communities. Moreover, it deprives national and local governments of much needed revenue, which limits resources available for development programmes. In response to these issues, the World Bank with other donors initiated the Africa Forest Law Enforcement and Governance (AFLEG) Ministerial Conference which was held in Yaounde, Cameroon in October 2003. Ghana participated at this conference. The European Union (EU), on its part, also launched the Forest Law Enforcement Governance and Trade (FLEGT) Action Plan in 2003 to combat illegal logging through trade mechanisms. One of the tools in the FLEGT action plan is the Voluntary Partnership Agreement (VPA). These agreements seek to control the trade in illegal timber between the EU and timber producing countries by supporting legal and policy reform, developing procedures to license the export of legally harvested timber and implementing timber tracking systems and other measures to verify timber legality. While the EU Action Plan is explicit about its emphasis on legality, the VPA process is committed to ensuring that applicable forest law in all partner countries is supportive of sustainable forest management principles. The VPA agreements are being negotiated bilaterally under a set of guidelines established by the EU.

The FLEG and VPA Process in Ghana

Excessive and illegal logging continued to be major headaches in Ghana's high forest zone. The demand for timber from sawmills, furniture makers, building constructors and others is far greater than the amount that forests can provide - the quantity of logs being taken from the forest reserves is estimated to be at least three times greater than should be harvested if the forests are to be conserved for the future. Some 70% of an estimated national timber harvest of 3.3 million m³ may be illegal. These issues are pressing for Ghana's timber export and domestic markets alike. The illegal logging and chainsaw lumber, encouraged by the over-capacity in the processing industry and high levels of domestic demand, feed both export and domestic markets. In efforts to 'legalise' the situation it makes little sense to try and develop systems for the export market alone. The Government of Ghana therefore came up with a suit of policy reforms that was designed to reduce if not totally eliminate illegal activities in the forestry sector - one of which was the 1994 Forestry and Wildlife Policy. The commencement of the AFLEG processes also served as an impetus for additional forest sector reforms at the national level.

Also, wood products are major export earners for Ghana, and many key export markets are in Europe - EU timber buyers account for about 60% of Ghana's wood exports and its most profitable contracts, and European markets are increasingly sensitive to the impact of trade on the state of tropical forests which was why the EU came out with the EU-FLEGT Action Plan and the possibility of signing VPAs with producer countries, especially when consumers in Europe are asking for proves of the sources of wood entering their markets. Therefore, negotiating and

signing a VPA between the Government of Ghana and the European Union became a very useful focus.

Ghana is one of the five African countries currently going through the processes of developing a VPA and it is actually the first country in the world to initial the agreement. The Ghana – EU VPA was initialled on Wednesday 3rd September, 2008 in Accra, Ghana after a lengthy consultation and negotiation period spanning close to three years. Under the VPA, legally produced timber exported to the EU would be identified by means of a license issued in Ghana. Timber originating in Ghana and arriving at an EU point of import without such a permit would be denied entry under a new EU regulation.

The government of Ghana was keen in ensuring that a credible and robust VPA would support the efforts being put in place to secure the sustainable management of Ghana's forest resources. The government therefore stressed that they would like to have a VPA that deals with timber both in the domestic and export markets – implying a VPA that is part of a broader process of improving forest governance. The government proposed the following goals for the process:

- ❑ **Participation** in policy-making and sector management that is inclusive of relevant stakeholders (communities, industry, NGOs, Government agencies) and that promotes equity and social justice
- ❑ **Resource access and use** that is transparent, equitable and sustainable - acknowledging multi-stakeholder rights in a responsible way
- ❑ **Benefits and costs** that are fairly shared – e.g. greater capture of economic rent from industry by the state; distribution of that rent in accordance with the constitution; and greater accountability of rent recipients

Institutional Structures and Consultations during negotiations.

There were a variety of structures and mechanisms that enabled multi-stakeholder dialogue to occur in the development of Ghana's VPA. It started with a multi-stakeholder Steering Committee (SC) set up by Government of Ghana Ministry of Lands, Forestry and Mines (MLFM) to oversee the VPA processes with the aims of ensuring that the VPA helps Ghana along the path to achieving the set goals. The SC was composed of the following members:

- Government agencies and ministries: eight representatives,
- Private sector: two representatives, both of whom were members of the Ghana Timber Millers Association¹ and
- Civil society: two representatives (one representing Forest Watch Ghana², the other representing broader civil society)

- A VPA Secretariat, located within the Forestry Commission and headed by a Coordinator was also created. The Secretariat was responsible for providing on-going leadership and coordination as well as technical support to the VPA process.

¹ The Ghana Timber Millers Organization is the voice of the larger technologically sophisticated milling companies operating in Ghana, including the foreign sector. There is also the Ghana Timber Association, which represents the small-medium scale logging and milling operations.

² Forest Watch Ghana is a consortium of thirty community-based organizations concerned about sustainable and just forest development and conservation.

The VPA SC established four technical working groups to provide recommendations on Ghana's VPA negotiation elements: the definition of legality, legality assurance system, industry restructuring and the domestic market situation. An additional working group, the policy subcommittee, was created to integrate the recommendations of the other groups into a coherent policy framework. Each of the working groups had at least one representative from each of the three stakeholder groups (government, the private sector and civil society).

The Negotiated Agreement

The agreement is comprised of five components:

- A definition of legal timber that will include rules about the source, allocation, harvesting, transportation, processing, trade and payment of timber;
- A system of verification of legality that will enable certificates to be issued to timber that has met the definition of legality;
- A wood tracking system to trace timber from the forest through to export;
- Independent monitoring to provide periodic checks on the operation of the entire wood tracking and verification systems; and
- An economic and social impacts assessment of the VPA and proposed mitigation measures for such impact

a) Definition of Legal Timber in Ghana

Any system for timber legality and monitoring process to succeed, there should be available standards that define legal timber, including criteria for assessment, covering key areas including whether the wood was harvested legally, whether harvesting rights were secured without corruption and whether royalties or taxes related to logging and export were duly paid. The standards, which should be credible and widely supported and accepted by stakeholders, would guide the operations of any monitoring and validation programme. Hence, there is the need for a clear working definition of legal timber.

Ghana's legislation is already designed to promote sustainable forest management and in some cases only minor modifications, are needed. Often the problem has not been with the law itself but in the lack of proper enforcement, detection of infringements and subsequent prosecution of offenders. Consequently, in Ghana, defining timber legality based on the application of all the existing legal criteria would be difficult to realize and would likely take some time

In all, seven areas of interventions were recognized for the definition of legal timber in Ghana. These are – i) timber origin; ii) timber rights allocation; iii) timber harvesting operations; iv) transportation; v) timber processing operations; vi) trade – markets and exports; and vii) statutory fiscal obligations. Any forest contract will have to satisfy most of not all of the criteria that goes along with these seven headings before qualifying as legal timber out of Ghana.

It is however important to note that Ghana does not expect an immediate conformity with the definition, which is why a stepwise approach towards the implementation is suggested in the agreement. Both parties recognized the importance of giving adequate time for digesting the necessary reforms that is needed to achieve the objectives. Accordingly, the need for development of a minimum standard for defining timber legality in order to begin the process of implementing any partnership agreement on trade in timber was also realised. The importance of on-going efforts to enforce the implementation of all other statutory laws and requirements so that

these could, with time and progress, be incorporated into the legality definition was also recognised.

The Government of Ghana recognises that the provisions in the existing law which provides grounds for the forgoing legality definition framework needs to undergo significant reforms to be able to address existing inadequacies as well respond to emerging issues in the sector that bothers on the principles of good governance. Ghana wishes therefore to indicate its intension to carry out legal and policy reforms in the spirit of good forest governance. It is expected that such legal reforms could be completed in the next five years.

b) Legality Assurance System

The primary objective of this second agreement point is to improve the Government of Ghana's capacity to control the national forest sector, especially in terms of the timber production flows and the associated financial flows (taxes, etc.), in line with the potential of the country's forests. The timber flows to be monitored/ verified are: from standing tree to logging, to processing, or from import to processing, and to local sales or export.

This implies the development of a centrally managed database system / web application, capable of receiving, processing and sending data from/to different agents, i.e. mainly from different Agency and other government units (statutory information like permits etc., field inspections etc.), and from individual forest companies (declarations of production, product movements and sales). The central database would receive data from these agents in the appropriate format (possibly after conversion into an agreed format) and send or generate documents (authorizations, reports) in return.

The Forestry Commission (FC) has been implementing its "Validation of Legal Timber Programme" (VLTP) since early 2005. The scope of the VLTP includes enumeration of trees in the forest, labelling of logs and other wood products (including any imports), and tracking them from the forest to the mill and onward to export or (later) the domestic market. The programme aims to enhance the FC's capacity to control legal and illegal activity, as well as to achieve a clearer definition of its role as forest manager and regulator.

A Timber Validation Entity (TVE) is being proposed to implement a reliable monitoring and verification system for both wood product and financial flows (i.e. the payment of related royalties, taxes and fees). The FC has contracted SGS as Technical Partner to assist in, among other activities, establishing the TVE and defining the scope of the VLTP. By linking the issuance of log conveyance forms and export permits with legal compliance, including the payment of stumpage fees ("royalties") and VAT obligations, the agency will support those businesses that are socially and environmentally responsible.

It is envisaged that the application of technology will help to reduce the effects of human error and fraud. Complete and accurate data capture in the field is of critical importance. This must be followed up by effective data communication, and the analysis and presentation of information relying on a comprehensive database system. An appropriate combination of labelling systems, hardware, software and communications technology needs to be specified. The system should be able to use a range of hardware for capturing data, depending on environmental and cost constraints. An effective system that identifies fraud reliably will deter malpractice by the threat of exposure.

This approach will call for a degree of commitment to see the measures through to a time when they yield concrete results. A technical solution such as a log tracking system will not solve all the problems of the timber sector, but if introduced and tightened up progressively over a number of years the system will increase the control of the authorities over a sector that is not yielding the returns to the government that it should. Equally importantly, exporters will be in a position to demonstrate that their products have been legitimately sourced - otherwise major markets will be lost to countries where such systems operate effectively. With time the domestic market will also be regulated reducing the threat posed by clandestine chainsaw operators degrading the resource.

c) Wood Tracking System

In order to gain recognition by all stakeholders, including export and domestic markets, an effective public Wood Tracking System (WTS) operating at national level is also included in the elements for the agreement. The WTS envisaged for Ghana is designed to have the following objectives:

1. The WTS that allows for the monitoring of wood flows and related (e.g. financial) flows through continuous collection, verification and processing of data on all products, product movements, payments and associated events throughout the production chain. The WTS should ensure that no timber is allowed to be transported without being registered in the system and authorised by it.
2. The WTS that allows for the tracking of any wood product from its point of export or retail, back through its processing stages and changes of ownership to a known forest source (ideally the tree stump itself). However, these requirements for product traceability do not have to be met by the system in 'real time'.
3. The WTS that enables compliance with tracking requirements to be easily and efficiently checked by inspectors, both by inspection of the products and their accompanying documentation and by reconciliation of relevant data in the computer system.
4. The system should generate reliable information on national timber flows to allow proper management and control of the forest sector, and to provide a basis upon which to issue reliable timber legality verification statements and permits (e.g. for export).
5. The WTS should aid good governance and law enforcement by strengthening staff capacity and promoting legal adherence by forest owners, regulators and the private sector.
6. The use of a computerised, and centralized, database system allows for the physical inspections, the verification and reconciliation of information and any sanctions (in case of infringements of regulations), to be carried out as three separate functions.
7. The WTS must be transparent and well-documented, allowing audits to be carried out by an independent body.

d) Independent Monitor

The EU-FLEGT recognized the importance of periodic independent monitor for the VPA for both parties. The agreement therefore includes the clause on the roles and responsibilities of independent monitors in providing third party assessment report. The main objective will be to provide assurance to all interested parties that the legality assurance system is working as planned and maintain its credibility.

In the incipient stages of the TVE, it is envisaged that there will be the need to for an independent third-party verifier, whose role will be to assist in entrenching the principles of independence of

verification statements on the basis of independently monitored, processed and verified information. Additionally, the verifier will be there to lend credibility to the operations of the Entity through its accreditation to reputable international standards. This will be necessary in introducing Ghana legal timber on the market. It would be preferable for the third-party verifier to be specifically accredited by a member of the International Accreditation Forum (IAF) to assess the legality of timber, perhaps as a component of compliance with sustainable forest management standards. In the medium to long term when the verification mechanism is fully rolled out and the credibility of Ghana's certificates are established on the market, the Government of Ghana will expect that third party verifier will then exit the system.

e) Economic and Socio Impact of the VPA on Ghana.

Ghana recognised the importance of servicing the domestic demands for timber when negotiating the VPA with the EU and therefore resolved not only to negotiate solely on timber exports, but also to include the domestic need. The GoG contracted IIED to carry out a study on the possible economic and socio impact of the VPA on Ghana's economy. The report of this study is available if needed.

The following are the basic issues that came out strongly during the negotiations for the VPA between Government of Ghana and the European Union, and on which additional resources and assistance will be needed:

- ❑ Development of a legality assurance system, based on enforcement of legal reforms and a legal definition agreed by key stakeholders, and involving a credible chain of custody for traded timber and wood products
- ❑ A VPA process that furthers progress on forest governance improvement goals and helps the forest sector to contribute positively to national GDP and to poverty reduction
- ❑ Institutionalisation of democratic mechanisms that allow resource-owning communities and other stakeholders to participate actively and effectively in sector policy-making
- ❑ A strong Forestry Commission that acts as regulator and ensures appropriate ceding of management functions of Timber Utilisation Contract areas to the private sector and is accountable to District Assemblies, the Ministry of Lands Forestry and Mines, and Parliament
- ❑ National and local level technical, research and commercial service providers that support responsible small-scale and community-based forest enterprises
- ❑ Facilitating adequate enabling environment for a corporate timber industry that will include of a small number of "high-value-low volume" oriented companies, especially those that will benefit from legal compliance under the VPA
- ❑ Improvement in the enabling environment for sustainable and responsible small-scale and community-based forest enterprises, linked where appropriate through partnership to the corporate sector

Forestry Commission's Role and Responsibilities in the Implementation

Since 1999, when the Government of Ghana passed the Forestry Commission Act (571), the FC has included the agencies implementing the functions of protection, development, management and regulation of forests and wildlife resources. It now consists of three divisions, of which two, the Forestry Services Division (FSD) and the Timber Industry Development Division (TIDD), are involved in forest industry control functions (see Fig. below). The Resource Management Support Centre (RMSC) and the Forestry Commission Headquarters (FC HQ) are also involved.

The revenue flow is monitored by FC HQ who control stumpage payments and TIDD who control export levies.

- The FSD District Forest Offices are the ‘front-line’ operating units of the FC. Their major management effort in the High Forest Zone includes pre-felling enumeration, control of logging, revenue collection, protection of the forest reserves and regulation of OFR logging activities. Other routine functions of the FSD include clearing boundary lines, prevention of illegal farm establishment, maintenance of firebreaks and monitoring of NTFP extraction in the forest reserves. This means that they have both managerial and regulatory roles. Guidelines on operations are provided by FSD HQ. However there is no central database for reporting and checking on field operations, and so no easily available information on companies which are in breach of their harvesting quotas or have payment arrears, lapsed contracts and so on.
- The RMSC is a technical institution based in Kumasi but does not form part of the FSD. It is mainly involved in management planning activities, with units concentrating on mensuration, production and mapping. It validates the data gathered by FSD for yield regulation purposes.
- The TIDD is responsible for wood monitoring and control at roadsides, mills and ports; inspection, measurement, grading and certification of wood products; and product pricing market intelligence and issuance of export permits.
- As a new element, the Timber Validation Entity (TVE) will be established as a separate unit within the FC to coordinate activities which will strengthen forest sector control: these will include collection of data from production companies, execution of field verifications, reconciliation of data across the entire process chain, monitoring and reporting of compliance of producers against the legal standard and the issuance of the system based FLEGT Licences, etc. (see Fig. below).

Proposed organisational chart (operational linkages) of a new forest control system

