Green Development Advocates
For a Green Congo Basin

Cameroon - European Union VPA-FLEGT at a Crossroads:

FLEGT-XIT or FLEGT+?

Photo SAILD

Briefing note

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In response to international concerns about the impacts of illegal logging and associated trade in tropical countries, the EU Commission adopted the FLEGT (Forest Law Enforcement, Governance and Trade) Action Plan in 2003. Among other measures adopted in the FLEGT Action Plan, there is in highlight the signature of bilateral trade agreements called Voluntary Partnership Agreements (VPAs).

The VPAs are concluded between the European Union (EU) and a timber producing and exporting country. Their objective is to contribute to improving forest governance in the signatory country and to ensure that timber and derived products imported into the EU meet all the regulatory requirements of the country of origin.

The VPAs set out commitments and actions for both sides to curb illegal logging and implement an approach to identifying legally produced timber through licenses/authorizations issued by the signatory countries and exported to the EU. The agreement, once concluded, legally obliges both parties to trade only timber and timber products whose legality is verified.

Cameroon, in its drive to combat illegal logging, entered into formal negotiations with the EU to sign a VPA in 2007[1]. The latter resulted in the signing in October 2010 of a VPA-FLEGT which entered into force in December 2011, following ratification[2] and notification by both parties.

This VPA will ultimately provide a legal framework to ensure that all timber and timber products from Cameroon to the EU have been legally produced or acquired[3]. It focuses on the establishment of a FLEGT licensing regime between the two parties which corresponds to the introduction of a set of requirements and procedures to verify and certify, by means of FLEGT authorization, that timber and products shipped to the European Union are produced and acquired legally[4].

[1]This period was preceded by a pre-negotiation phase (2005-2006) which was carried out informally.
[2]Cameroon, by a presidential decree signed on 9 august 2011, ratified the FLEGT-VPA
[3]See article 2 Cameroon-EU VPA
[4] Article 4, paragraph 1 of Cameroon-EU VPA

The FLEGT licensing scheme is based on the establishment of the Legality Verification System, which includes compliance checks to provide assurance that timber and timber products for export to the EU are legally produced or acquired and that FLEGT licenses have not been issued for shipments of timber that is not produced or acquired legally or is of unknown origin. This system also includes procedures to ensure that timber of illegal or unknown origin doesn't enter the supply chain[5].

Annex IX[6] of the Agreement lists a number of activities and sub-activities, as well as timelines, to facilitate the implementation of the VPA). The three-year preparatory phase (2010-2013) was to lead to the issuance of the first FLEGT Licenses/Authorizations[7]. But 4 years later after the issuing date initially fixed, no authorization has been issued yet.

Important questions are crossing the minds of the actors of the sector: should they stop Cameroon's VPA? Should it continue? Under which conditions? These topical issues deserve answers. According to Article 27 of the VPA, "the agreement shall remain in force for a period of seven years, renewable by tacit agreement of the parties for periods of the same duration, except a party waives it by notifying the other party, at least twelve months before the end of the current period". Article 28 states that: "Notwithstanding Article 27, either Party may denounce this Agreement by notifying the other Party. The Agreement shall then cease to apply twelve months after the date of such notification".

Faced with the difficulties encountered in the implementation and at the end of the "first phase of implementation" of the agreement, there is a risk, if no provision is made, of non-renewal or denunciation of Cameroon-EU VPA by one of the parties.

In this particular context, two Cameroon civil society organizations, Green Development Advocates (GDA) and the Service d'Appui aux Initiatives Locales de Développement (SAILD), have developed this note with a view to sound the alarm beam, to maintain and enrich discussions on the future of the Cameroon-EU VPA. This paper analyzes the challenges and stakes related to the continuation of the VPA while proposing possible solutions.

[5]Article 9, paragraph 1 of Cameroon-EU VPA

[6]This concerns: 1.Sensitization and information of stakeholders and public; 2.Promotion of "FLEGT-Cameroon" products on the Union market; 3.Institutional arrangements; 4.Capacity building; 5.Legal framework reform; 6.Improvement of the national control system; 7.Implementation of the traceability system; 8.Implementation of the legality verification system; 9.Establishment of the FLEGT licensing system; 10.System independent audits; 11.Follow-up on the wood internal market (WIM); 12.Industrialization and commercialization; 13.Follow-up of the impacts of the VPA; 14.Search for additional funding

[7]The parties to the agreement agreed that the first FLEGT authorizations would be issued as from March 2013

WHERE IS THE BLOCKAGE?

Forgetting the Main Objective of the Agreement

The EU's FLEGT action plan aims to improve forest governance and one of the instruments, the VPA, aims specifically to design systems to verify whether timber is harvested legally. Thus, the implementation of the VPA would give priority to the tools used to certify the legal origin of timber. However, the efforts made, promoted and celebrated by the parties during the six years of implementation focused mainly on transparency and participation, which are the secondary, and not the main objectives of the VPA, thus having nothing to do with the credibility of the legality verification system established. It should however be noted that, though secondary, they are also part and parcel of the Agreement.

Legality Verification System Stalls

The issuing of legal certificates is delaying because of the inapplicability of certain legality and application grid controllers "Computer system for second generation forestry management" (SIGIF 2) which is still not available one and a half years after the date when it should have been issued.
The conclusions of the evaluation of the conformity of logging titles allocation process carried out in 2013 by the "independent auditor of the system" recommended the revision of legality grids[8]. It was only two years later, at the 8th Joint Implementation Council of the Agreement held on 27 September 2016, that "the parties confirmed the need to revise the VPA legality grids for better applicability"[9]. Consequently, if legality certificates have been issued for TPUs (Timber Processing Units), it is still not the case with UFA and other forest exploitation titles.
SIGIF 2 is still not available. Following the failure of the first contractor (the HELVETA-SGS consortium) to implement a forest products traceability system in Cameroon in 2010, the development of the SIGIF 2 application by the AIS-BUREDIP consortium, responsible for developing SIGIF 2, is inexorably heading to a failure. In fact, the service contracts between the State of Cameroon and the consortium provides for fourteen (14) months for the development and support to the deployment of the application, i.e. six (06) months of development and eight (08) months of deployment support. Twenty-four (24) months after the notification to start the service in April 2015, about (1O) more months after the contract initial duration, only six application modules out of (18) have just been validated by the MINFOF on 30 April and by the contract validating commission on 24 May 2016.
At the end of the validation of its first six modules, calm seems to have been restored between the contracting parties who have their eyes fixed on the final delivery of SIGIF II scheduled for 30 October 2017.
SIGIF 2 is the backbone of the VPA; it is the unavoidable element of the issuance of FLEGT licenses. To this effect only a finalized SIGIF 2 validated by the two operational, functional VPA parties deployed in the field in enterprises and delegations of MINFOF and other Ministries concerned will guarantee the credibility of FLEGT authorizations beyond the credibility of Cameroonian timber. Obviously, SIGIF 2 should be accompanied by efficient, solid and credible field control - by the forestry administration - for the legitimacy of FLEG authorizations to be reliable and respected.

New Forestry Law on Hold

One of the accompanying measures[10]of the agreement was the reform of the legal framework applicable to the forest sector, with the aim of improving its consistency and complementing existing and insufficiently structured or regulated aspects.

[8]*See point 4.3 of the auditor's Report p.45.*
[9]*Final declaration of the 8th FLEG-VPA Joint Implementation Board*
[10]*See Annex X of Cameroon-EU VPA*

The revision of the forestry law and its implementing texts was initiated in 2008. Meanwhile till date, nine years after, it is still uncompleted. This situation is a real obstacle to the implementing process of the agreement, given that it has to reflect the already existing forestry law.
The existing legal framework includes major inconsistencies in aspects relating to certain forest titles, including community forests. By way of illustration, the legal and regulatory provisions relating to community forests conflict with certain contents of the Community Forest Allocation Procedure and Management Standards Manual, the "reference text" that governs the management of this category of forests[11]. This situation makes it difficult to translate texts in the development of SIGIF 2.

Poorly Operational Implementation Bodies

In Cameroon, the VPA is managed by three bodies: the National Monitoring Committee (CNS), which includes all Cameroonian stakeholders, the Joint Monitoring Committee (CCS) and the Joint Implementation Board (Conseil), which brings together the representatives of both parties. Despite the considerable delay in the implementation of the FLEGT-VPA, these bodies meet regularly; nine (09) and eight (8) meetings have been held by the CCS and the Council, respectively. What is the relevance of such meetings? What is the relevance of their agenda? What are the outcomes?
On reading the minutes of the CCS and the Council, it appears that the same topics are on the agenda and debated at meetings. However, there is no substantive resolution to move the process forward. Meanwhile, subject to some procedures, the Council has power to amend and adopt the provisions of the Appendices[12]. Indeed, since the VPA legality grids auditors were found to be non-applicable, the Council is still expected to take a resolution to revise legality grids.
Finally, on what basis are the follow up and evaluation of the Agreement implementation by the CCS done? Unlike in the early years of implementation of the Agreement, no more work plan is being developed by the Council to set clear timeframes for better planning of the implementation of the Agreement. Though Cameroon is developing a priority annual plan for the VPA implementation, this plan is unfortunately neither followed up nor evaluated by the Cameroonian party nor the CCS. This situation is the root of the feeling of confusion that reigns in the implementation of FLEGT-VPA.

[11]Article 29, for instance, which describes the documents contained in the file for the allocation of a community forest, is an example of contradiction whereby no provision is made for the management convention form, though it is cited in the community forest allocation procedure and management standard manual
[12]See articles 19 paragraph 2 (f) 29 paragraph 3 of Cameroon-EU VPA

FLEGT-XIT or FLEGT+?

WHAT FUTURE FOR THE FLEGT-VPA?

Considering what the situation of FLEGT progress in Cameroon, many questions arise on the future of Cameroon's VPA in Europe and in Cameroon. Should it stop? Should it continue? How should it continue? These are the type of questions awaiting answers.

Exit the FLEGT? The FLEGT-XIT scenario

VPA: an Innovation in the Legal Forestry Field

The FLEG action plan is the first innovative attempt of the EU to check illegal forest exploitation and its related trade[13]. Since the Rio Conference, a range of restrictive[14] and non restrictive[15] texts have emerged addressing the problem of non sustainable forest management, of which Cameroon is signatory. However, we notice the absence of formalization of the international legal system for specific forest controls. The FLEGT action plan of the EU is undoubtedly one of the specific answers to the pertinent global problems of illegal logging in tropical forests. The VPA which results from it is voluntary by nature. But once it is signed, it will be binding: It is obligatory for both contracting parties. Therefore, the signed and ratified VPA is in the legal forestry environment, the only international agreement (bilateral) which compels both contracting parties to fight against illegal logging. Stopping the Cameroon-EU VPA will deprive contracting parties of a binding legal reference to address illegal logging and would affect Cameroon's reputation, which will then be the only country to leave a VPA amongst the 15 other countries which have signed or are finalizing FLEGT negotiations all over the world (Central and West Africa, Asia, Central America).

VPA-FLEGT: an International « Marketing » Tool

FLEGT was created within the context of illegal logging expansion and exploitation and international commitment to tackle illegal logging. It comes to reassure the market on the sustainability of tropical forest exploitation, sustaining efforts by enterprises that tackle the problem of clandestine logging and its related trade[16].

[13]Tackling illegal logging, deforestation and forest degradation: EU agenda, briefing note of a group of non-governmental organizations
[14]We name, among others: The international agreement on Tropical Wood, the Convention on Biological Diversity, Conventions on Climate Change, the Convention on the Fight against Desertification, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Ramsar Convention on Humid Areas, the Convention on the Cultural and Natural World Heritage, ILO Convention 169 Concerning Indigenous and Tribal Peoples, the Maputo Convention of 11 July 2003, the Treaty establishing the COMIFAC and relating to forests ecosystems conservation and sustainable management and the Convergence Plan and its 10 Strategic points, the sub-regional agreement on forests control in Central Africa.
[15]The Declaration of principles of Rio 92 relating forests; the Rio Declaration and Chapter 11 of Agenda 21; the International Arrangement on Forests of 2000 and the Non-legally binding instrument on all types of forests of 2007; the UNFF Recommendations; Forestry Certification References, FAO Codes, ATIBT and ITTO Directives, the United Nations Declaration on the Rights of the Indigenous People, COMIFAC Directives: NTFPs, Participation of Populations and NGOs, Sustainable Forests Certification and Management References: FSC, OAB-OIBT, PAFC
[16]European Commission, 2003, FLEGT Action Plan

It is therefore a promotion tool for countries which have committed their efforts to tackle illegal forests exploitation. Since the seizure of Cameroonian timber in Holland in 2016[17] in application of the RBUE, there has been increased suspicion on the legitimacy of Cameroonian timber and the reputation of Cameroonian timber in the EU has been seriously affected.

The separation of the Cameroon-EU VPA-FLEGT or Cameroon's lack of assurance of having an operational VPA will further tarnish the image of its timber. As such, Cameroon will then reflect the image of a country that is unable implement its own texts. This will have serious repercussions on the national economy and its image abroad.

In fact, with more than 23 000 legal jobs, legal timber industry remains the greatest formal job provider in Cameroon, just after the public sector. This sector is also the second contributor to the national GDP, besides oil. The global production of industrial timber which is round timber equivalent (EBR) in 2014 was estimated at 2,700,000 m3, that is 780,000 m3 of logs and 634,000 m3 of lumber, mostly exported to the European Union[18]. This implies that the EU remains the number one buyer of Cameroonian timber. Therefore, only the pursuit of a functional VPA by Cameroon will enable the country to secure this market and reinforce the contribution of the forestry sector to national economy.

[17]http://www.greenpeace.org/africa/fr/Presse/PaysBas-imposent-sanctions-violation-reglement-europeen-commerce-bois/
http://www.jeuneafrique.com/394938/societe/abattage-illegal-de-bois-cameroun-premiere-societe-europeenne-a-ete-sanctionnee-contre-attaque
[18]See MINFOF, Cameroon forestry and wildlife sector: facts and figures. 2016 Edition

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Which VPA-FLEGT for Tomorrow: a FLEGT+?

The pursuit of a Cameroon-EU VPA has to maintain and strengthen guarantees to reduce the market supply of illegal timber from Cameroon, especially in terms of reinforcing the governance and operationalization of the FLEGT authorization regime. Some innovative initiatives (whence the acronym "FLEGT+" is derived) would make things move in this direction.

Integrating the timber sector into the Extractive Industries Transparency Initiative (EITI)

As concerns governance, if we realize sure progress in terms of the spread of information and implication of stakeholders in the process, efforts are still needed, especially as concerns the dissemination of financial information and the reduction of corruption. In fact, besides the current "illusive" transparency, one can notice the professionalization of illegal logging sustained by corruption[19], which the VPA unfortunately cannot pretend to address alone. The integration of wood into the Extractive Industries Transparency Initiative (ITIE) could without any doubt improve transparency in forestry income and help to reduce corruption.

Maintaining Architecture and Reinforcing the Steering of SIGIF 2 Development

The development of a FLEGT authorization system is one of main pillars of the EU support to timber producing countries[20]. A VPA which cannot guarantee the legal origin of timber from a producing country is bound to fail. SIGIF 2 integrates any timber produced in Cameroon no matter its destination. This is what makes the Cameroonian experience original. The "second life" of the Cameroon-EU VPA is supposed to maintain the architecture of SIGIF 2, and also reinforce the follow-up of its development by external actors involved in the process. In a context where Cameroonian timber is becoming more and more doubtful in the European market as regards to its legal origin[21], it is urgent to accelerate the process of issuing FLEGT authorizations which even so, should depend on the commissioning of a lagging SIGIF 2. Faced with repeated postponements of the issuing deadline of SIGIF 2 implementation, it

[19]See CFP platform position note published in May 2015.
[20]Final report of FLEGT action plan assessment. https://ec.europa.eu/europeaid/sites/devco/files/evaluation-volume-1-flegt-20160620_fr.pdf
[21]See the Greenpeace report, La Socamba: or how stolen wood from Cameroon is supplied on international markets. http://www.jeuneafrique.com/394938/societe/abattage-illegal-de-bois-cameroun-premiere-societe-europeenne-a-ete-sanctionnee-contre-attaque

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is imperative for Cameroon as a State to confirm its interest to finalize, with all the quality guarantees and also prove its goodwill to continue the VPA until the issuing of FLEGT authorizations. For, only a solid, effective, functional and inclusive SIGIF 2 will give credibility to Cameroonian Timber and Cameroon VPA.

Promulgating the New Forestry Code and Revising the Legal Framework for Certain Forest Titles

The delay in the promulgation of the Forest Code greatly affects the pace of implementation of the agreement. In fact, this delay could well justify the absence of a revision of legality grids, since, if the latter had already been revised, the revision work should be resumed for the 2nd time once the Forest Code has been promulgated, in order ensure consistency with the new Law. It is therefore urgent to adopt the new forestry code which, according to information from the CNS, seem to be ready to be presented to the Parliament.

Failure to revise the legal framework for certain forest titles is also a factor limiting the issuance of legality certificates. Inconsistencies are identified in the texts governing the management of community forests and other logging titles. To take just the example of community forests, there is no specific text governing the allocation and management of these forests. The distribution and management rules are enacted in a simple document which has no legal power. Moreover, they are not adapted to the technical and financial capacities of communities. Improving the legal framework for community forests and other forestry is therefore an important project to finalize.

Reinforcing the Steering Process

The implementation of the VPA is facing an intersectorial coordination problem at both central and local levels[22]. The bodies put in place to steer the VPA are all temporary. They do not therefore have the capacity of ensuring an effective follow up of activities. Independent facilitation, whose mandate would be to work on a permanent basis, involving all actors seems to be the appropriate proposal to contribute to the acceleration of Cameroon-EU VPA implementation.

Activating the Diplomatic Dimension for a Better Implementation of the VPA

The VPA being an international bilateral agreement, diplomacy may undoubtedly contribute to ensuring the respect of Cameroon's commitments. It is interesting to note that implementation has remained at a technical level with the Ministry of Forestry and Wildlife (MINFOF) being often the main and only interlocutor. Due to the international nature of the agreement, the Ministry of External Relations (MINREX) is therefore intended to be properly involved, and this will consequently help to unblock the progress of the VPA.

Establishing and Formalizing the Links between the Competent European Authorities and Field Actors in Producing Countries.

Since 2013, the EU Timber Regulation Union (RBUE) entered into force in the European Union. Since then, all the 27 European countries put their competent authorities in place to insure that European importers apply "reasonable diligence" as concerns timber from countries that do not yet issue FLEGT authorizations. In practice, the competent authorities insure that the importer has taken all the necessary measures to make sure imported timber is of legal origin. These competent authorities, often link to a national Ministry, have the information given by the importer which they often get from the producer and exporter. But, as long as they are not crossed with an independent local source, this information is insufficient and cannot be biased or inexact (eg. timber from a Cameroon-based company which was banned from en-

[22] *Position paper of the forest and community platform on the renewal of the VPA-FLEGT between Cameroon and the European Union*

tering Holland in March 2016 for alleged non-compliance with due diligence). Meanwhile, there is no link between these competent authorities and the independent actors in the field based in the countries from which timber is produced and exported. In order to remedy the situation and thus reduce the risk of importing illegally-gotten timber into the EU, it is absolutely necessary to establish formalized information distribution system between the competent authorities and the independent actors in the field based in the timber-producing countries. By so doing, the RBUE will not only become effective, but also, the reputation of Cameroonian timber will be enhanced and protected, given that it will reduce the risks of crimes and of sanctions on Cameroonian timber. These measures will also encourage parties to accelerate the implementation of a functional VPA.

WHAT WILL BE THE PRICE TO PAY FOR A "FLEGT-XIT" (EXIT FROM VPA-FLEGT)?

FOR CAMEROON

- Degradation of the competitiveness of Cameroonian timber on global market. Buyers prefer timber with established legitimacy rather than Cameroonian timber whose image will be further dilapidated, due to Cameroon's FLEGXIT.
- Increased illegal logging whose consequence would be a drop in State income, estimated at several tens of CFA billions.
- About 23,000 formal jobs threatened. The legal timber industry will then face increased unfair competition from illegal operators.
- Increase in the price of Cameroonian timber and thus significant drop in its global competitiveness due to the need of obtaining a private certificate (FSC, OLB, etc.) for enterprises wishing to maintain access to European markets.
- Serious degradation of the image of Cameroonian timber. In the advent of a Flegxit, Cameroon will become the first country to give up on efforts to fight against illegal logging. Due to this, its image will be considerably and significantly affected.

FOR THE EUROPEAN UNION

- Giving up in the fight against illegal logging. The VPA is the only legal control instrument in the fight against illegal use of forests. Abandoning the VPA will undoubtedly increase the urge to accelerate deforestation and unsustainable development, that is, it will not take the indispensable environmental precautions and other ecological protective measures.
- Loss of FLEGT credibility. FLEGT is the first procedure which directly tackles issues on illegal logging and timber trade. The failure of the VPA will highly affect the credibility of the process and consequently stop the FLEGT Action plan in Cameroon.

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GDA and SAILD are two Cameroonian civil society organizations, members of the Community and Forest Platform (CFP). CFP is the civil society platform that participates in Cameroon's VPA-FLEGT process since the negotiation of the agreement.
GDA and SAILD respectively work on legal issues and rights of local and indigenous communities, and spreading of forest information and recently the respect of legality by small forestry operators (in particular community forests).