



The VPA – Consolidating the Gains in Governance

As Ghana's preparatory process for signing the Voluntary Partnership Agreement (VPA) with the EU draws to a close, other angles to the process are emerging. These are the challenges and opportunities presented by the growing stakeholder cohesion and collaboration on the policy dialogue platform. A balance is required, in the process management, between these non-negotiation benefits and the actual VPA negotiation elements in order for the full benefits of the process to be realised. This briefing paper highlights the dynamics of the development of governance structures under the VPA process and also reports on the status of Ghana's preparation for reaching an agreement with the EU.

Introduction

Two formal engagements between Ghana and the European Union have taken place since the process of negotiation was formalised in December, 2006. In addition to the formal sessions, a review session was held in September, 2007 to assess the progress of preparation towards concluding the process. Challenging governance issues that did not previously enjoy sustained debate have climbed up the VPA process ladder to become the topical issues for stakeholder consultation and debate. A new but welcome dynamic of consensus-based policy formulation is emerging in the forest sector. It is becoming increasingly important to analyse this dynamic in order to create a sustained conducive environment to nurture it. A high premium has therefore been placed on the stakeholder participation under the VPA process. This has become imperative as pertinent governance issues that form the heartbeat of the sector are openly discussed with all identified stakeholders. Each stakeholder group in the process is beginning to learn new ways of accommodating and working one with the other in the policy formulation and decision making arena.

These off-shoot gains of the process are proving to be as important as the technical deliverables themselves. It is therefore emerging that the VPA can have two main categories of delivery, namely (a) the technical deliverables (CoC, Legal Definition etc.) that are being tabled for negotiation with the EU and (b) the non-negotiation benefits accruing from the process. These benefits consist of the creation of a new

form of stakeholder cohesion and collaboration and the consensus-based decision-making platform that is being taken to a new height in the forestry sub-sector of the Ghanaian economy. The active participation of non-governmental actors in the debate is providing further depth in the policy formulation process. Strong governance structures are therefore forming. The resultant introduction of a multi-stakeholder forestry dialogue platform at the national level is one such benefit that has become associated with the VPA process. The multi-stakeholder steering committee of the VPA has become the vehicle for releasing this benefit.



As recognition is increasingly given to these two outputs of the VPA process, it is becoming apparent that a speedy run through the technical deliverables will deny Ghana the benefit of harnessing the different lessons to be learned from this new form of stakeholder cohesion and collaboration. On the other hand, too slow a process can take the interest out of attaining the technical deliverables that the VPA process seeks to achieve, not least the slippage of negotiation

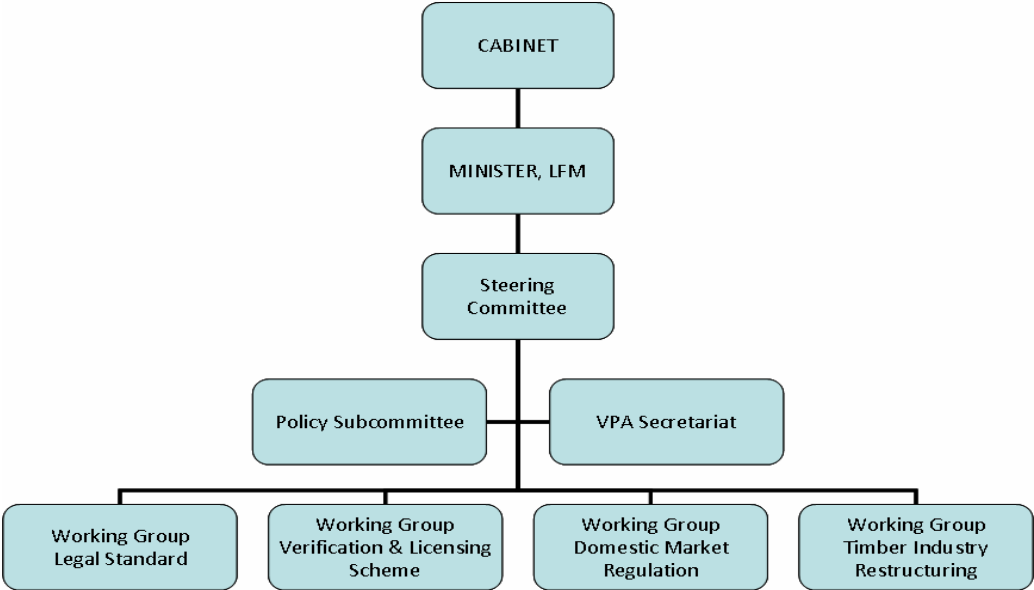
time lines. A delicate balance of these two lines of deliverables is therefore being pursued to ensure that they are able to reinforce each other.

Status of the initiative

Under the VPA process six major studies have been conducted. These are (i) the fiscal study that recommends options for accommodating the financing of a forest verification entity, (ii) the legal and institutional study that looked at the requirements for the introduction of a forest verification framework, (iii) the business process review of the control interventions in the sector, (iv) a background study on the definition of legality, (v) study to assess the potential impact of the VPA and (vi) the domestic market literature review. With the exception of the impact assessment, all the other studies have been completed. The recommendations from these

studies have been the subject of discussion at the various stakeholder fora. Towards deepening the consultation process and enabling informed decisions to be made, working groups have been formed round the technical elements. The membership of the working groups is drawn from research institutions, industry, civil society, the public sector and academia. The working groups are technical sub-committees of the VPA multi-stakeholder steering committee (VPA SC). Fig. 1. shows how the various tiers of activity and effort are organised to feed into the decision-making process of the VPA. The working groups have a deadline of early March to submit to the VPA SC their recommendations on what the country negotiation position should be on the various elements under their purview.

Fig. 1: VPA Process Structure



Definition of Legality: The first draft of the definition was circulated for the comments of selected experts, stakeholders and the relevant institutions. A meeting between the experts and the consultant was held to allow the consultant to appreciate the view point of the experts. A

second draft of the document was produced as a result of this first round of consultation. The second draft is being circulated to the broader stakeholder groups for further input. A third draft will be produced when the second round of consultations is done. This will be followed by a

multi-stakeholder workshop. Thereafter, a final document will be produced and submitted to the Ministry of Lands, Forestry and Mines for adoption as country definition of legal timber. The legal definition process is expected to be concluded by end of February, 2008.

Issues of Concern: *The conversion of leases to timber utilisation contracts (TUC) remains an outstanding issue in the process of defining legality. Civil Society continues to contend that the provision of the law requiring conversion of leases into TUCs should be respected. In their view leases cannot, under the current legal regime, be held as legal right to the resource. A second issue of concern is the mode of allocation and use of material from timber utilisation permits (TUPs). The issue that is however dictating the direction of the stakeholder debate on this deliverable is a provision in Parliamentary Act 617 (definitions) that appears to suggest the granting of discretionary powers to the Minister in the allocation of timber rights.*

Legality Assurance Scheme (LAS): European Forest Institute (EFI)/Proforest were commissioned by the EC on the request of the Ghana negotiating team to review the recommendations contained in the Systems Requirement Analysis (SRA – this includes the proposed Chain of Custody System and the Licensing Scheme) and the proposed institutional arrangements that will govern the verification and validation system. This comes after a number of in-country workshops that had discussed the recommendations. The results of the Proforest review have been received in the FC and circulated to the members of the VPA SC. A follow-up workshop was held in Takoradi where Proforest made presentations on the review exercise and interacted with selected members of the timber industry.

Issues of Concern: *A claim that products are made from trees grown in a well managed forest can give a marketing*

edge or help in public relations activities. Under the proposed legality licensing scheme, a potential challenge could be the need to establish claims on volumes coming from forest reserves as against off-reserves where no sustainable management practice is pursued. This is placed in a setting where material from the off-reserves is legally sourced by the producers. The type of Chain of Custody claim to be employed under the agreement has not featured in the negotiations. There are two types of claims namely, the mass balance approach and the 100% segregation approach. The 100% segregation approach may appear expensive as well as sophisticated for the majority of the producers in Ghana. The percentage based approach might be the way forward initially. In both types of claims the volumes of material coming from well managed reserves on one hand and those coming from off-reserves on the other hand may have to be quantified and reported. The capacity of the Ghanaian producer as well as the regulator to do this may initially pose a challenge should this become a requirement under the agreement.

The impact assessment: The need for the impact assessment stems for the realisation that a shift from the current governance regime to the one envisaged under a VPA would ultimately produce winners as well as losers and possibly different environmental, social and political effects. Additionally it is acknowledged that in the process of establishing a legality assurance scheme in the sector, it will be necessary to carefully consider certain policy options in order to make the best choices and thereby minimise potential negative impacts. The steering committee has therefore commissioned the International Institute for Environment and Development (IIED) to conduct an independent assessment of the potential impacts of the VPA. The IIED team is assisted by a team of Ghanaian

experts. The study is being conducted under a three point scenario namely:

- i. ***The business as usual scenario- current situation projected into the future:*** This scenario assumes that no VPA between the EU and Ghana is developed and there is no introduction of a legality assurance regime and that the sector continues to be governed along the today's trajectory. The scenario however takes cognisance of certain policy developments already underway. The elements of this scenario include the competitive allocation of timber rights, the ban on chainsaw lumbering, the ban on export of round logs and a consideration of certain policy and institutional trends
- ii. ***The legitimate timber scenario - legality assurance for export and domestic markets*** This is the scenario in which credible legal and administrative structures and technical systems to verify that timber is produced in accordance with national laws are installed, i.e. the essential elements of a VPA between Ghana and the EC. These structures and systems are designed ultimately to eliminate illegally-produced timber from Ghana's international and domestic trade.
- iii. ***Sector reform scenario – transition to improved forest governance*** This is the scenario in which a more complete package of reforms in the forest sector is concertedly pursued to achieve the shift to better forest governance long desired by a wide range of stakeholders. Wider fiscal, regulatory, trade and tenure improvements have been identified as constituting important policy or governance priorities for sustainable forest management in various analyses of the sector dating from the early 1990s. Elements of this scenario also

incorporate the elements in the 'legitimate timber' scenario.

The study is expected to be concluded by the end of February, 2008.

The Domestic Market: Chainsaw milling, a banned form of producing commercial timber, continues to be the major source of timber supply on the domestic market. A number of studies and policy interventions that pre-date the VPA have been undertaken to find a solution to the illegalities associated with the supply of timber on the domestic market. Under the VPA process, literature and policy reviews have been conducted on past efforts and a working group has been constituted to advise the steering committee on a country position on the way forward. Aspects of the work package on the domestic market will be undertaken by the IIED team conducting the impact assessment. Another potential contributor to domestic market knowledge is a five-year EU funded project on chainsaw lumbering. The project which focuses on Ghana and Guyana has as its specific objective "to reduce the level of conflict and illegality related to chainsaw lumbering by local communities".



Issues of Concern: Given the attempts in the past and their rather low level of success, two main schools of thought have emerged. One school holds that the ban on chainsaw lumbering must be removed and a means of legalising and regularising chainsaw milling pursued together with

some level of investments in the sector. Concerted improvements in the regulatory environment must be made as well. The other school believes that the ban must remain in force and a means found to eliminate the practice altogether.

Options for Negotiation and Implementation

Studies conducted under the VPA process and the ensuing multi-stakeholder dialogue have highlighted an array of implementation and governance issues. Given Ghana's chief aim of the VPA (an improvement in the overall governance regime in the sector), it is becoming apparent that not all issues can be resolved within the period available for in-country multi-stakeholder pre-VPA consultations. Some of the issues, for instance, can only be disposed of after a legal review has been undertaken. Other issues will require piloting over a period of time before firm choices are made and processes institutionalised.

A phased approach to attaining the governance aspirations under the VPA may therefore be an option. Discussion for this approach has been initiated. If consensus on the approach is achieved, there will then be the opportunity of signing off on some agreed issues in the first phase. Governance aspirations that cannot possibly be attained before the Agreement is signed can still be clearly defined, documented and signed off. These defined aspirations will be backed by political will. A well defined and agreed time frame will then be put in place to ensure that these stated governance aspirations pass through consequential policy and legislative amendments. The amendments process will then constitute the second phase. This approach will make it possible to take on and properly resolve the issues of conflicts, ambiguities and overly-demanding standards that remain on the statute books. The new processes that require piloting before institutionalisation can also be introduced in a phased and carefully monitored manner.

The mechanism through which donor support is delivered to the natural resource sector and the Government of Ghana (GoG) for that matter is taking a new turn. The support provided through the traditional means of project and direct agency support is giving way to sector budget support (SBS). In line with this, an environmental and natural resource governance programme (NREG) will be pursued within the next five years. This system of budget support has the potential of stimulating cross-sectoral collaboration as it could promote policy dialogue at the sectoral level rather than at project and agency levels. The VPA is a key component of this programme and will therefore be implemented within this new GoG-Donor collaborative environment.



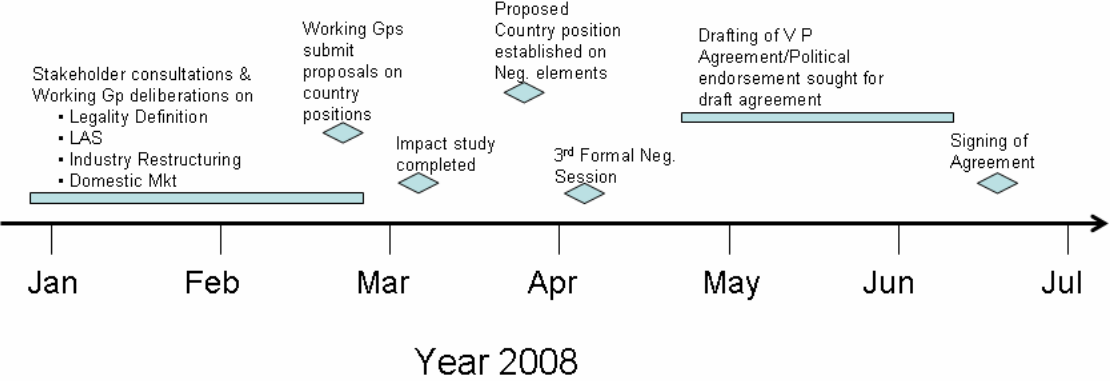
The Road Map to the Agreement

The end date for concluding the negotiation process still remains at June 2008. Timelines for the delivery of the technical elements have however been shifted to optimise the benefits of the consultation as well as the emerging stakeholder cohesion in policy formulation. As the platform for stakeholder debate continues to form, actors in the process are beginning to use the platform to negotiate positions and consolidate their bargaining power. The shape and character of this governance platform therefore continues to develop. While this has tended to slow down the process of delivering the outputs for negotiation, the sector has been the better for it as structures that support good governance are consolidated. Timelines on the roadmap are now determined by the dates of completion of tasks by the various working

groups when the submission of recommended negotiation positions on the various technical deliverables will be made to the Steering

Committee. Fig. 2 shows the road map to signing the agreement.

Fig. 2: Road Map to Signing VPA



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