

NEWS RELEASE

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For Immediate Release

GHANAIAN CIVIL SOCIETY JOINT STATEMENT ON INTERIM FINDINGS OF EUTR & FLEGT-VPA FITNESS CHECK

CONTEXT:

Ghana and the European Union (EU) signed and ratified the first Forest Law Enforcement Governance and Trade (FLEGT) Voluntary Partnership Agreement (VPA) in November 2009. The Ghana/EU FLEGT-VPA is a bilateral agreement between the EU and Ghana, with the objective of enhancing forest sector governance and ensuring that timber and timber products traded on the domestic market and exported to the EU are produced in compliance with existing Ghanaian laws, rules and regulations. For the past 12 years, through unprecedented multi-stakeholder efforts, Ghana has been working to implement systems aimed at meeting the requirements of the agreement. These include the development of a timber legality assurance system, the establishment of a wood tracking system and a timber licensing scheme, the enactment of stringent laws and policies for the forestry sector, and the establishment of a whole department tasked with ensuring compliance with the provisions in the agreement.

All these efforts and structural changes in law and practice are under constant scrutiny by a joint team of EU and Ghanaian technical professionals including Civil Society. An independent third party also carries out regular assessments to ensure that the systems are working effectively. All these checks and balances have been provided for in the ratified Ghana/EU FLEGT-VPA agreement. The final process to conclude on readiness of Ghana's systems to issue a FLEGT license is undertaken by an external consultant duly selected by the EU in consultation with Ghana. In effect, the process has always functioned on the premise of mutual respect, good faith and in accordance with the tenets of implementing bilateral international agreements.

However, in September 2020, the European Commission working through the Directorate-General for Environment (DG ENVI) unilaterally decided to evaluate and assess the effectiveness of the FLEGT initiative and held an EUTR and FLEGT-VPA fitness check public consultation. The interim findings of the fitness check have widely been publicized on the EU

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website and on various platforms and meetings. The key findings of the consultation include:

- i.** FLEGT Regulation shows positive results in stakeholders' participation and governance. However, there is no evidence that VPAs have contributed to reducing illegal logging in the partner countries and the consumption of illegally harvested wood in the EU.
- ii.** Slow and very costly processes. After 20 years of negotiations, only one country (out of 15) has an operating licensing system in place. Among the top 10 EU trading partners, there is only one VPA country.
- iii.** Preference for sustainability over legality
- iv.** Removal of FLEGT license and consequently no green lane for products covered by FLEGT license

Based on these interim findings, officials of DG ENVI have made public pronouncements of considering other alternative support mechanisms (such as Forest Partnerships) in the future to enable partner countries to comply with EU requirements with the intention of revoking the FLEGT-VPAs.

OUR REFLECTIONS ON THIS DEVELOPMENT:

We the under signed CSOs, NGO platforms and individuals collectively representing civil society in Ghana who have been involved in the FLEGT-VPA processes from the beginning hereby make the following observations to the European Union through the EU Ambassador in Ghana regarding the interim findings of EUTR and FLEGT-VPA fitness check:

- i.** As a matter of principle, we do not have any problems if the EU decides to conduct their own internal evaluations to inform their decisions; however, in the spirit of mutual respect and best practices the findings and conclusions must be an internal document until a conclusive decision has been made and communicated to timber producing countries who have negotiated and signed VPAs with the EU. When very senior officials are heard and seen using the findings and its conclusions to make policy revisions and proposals without formally informing the parties to the agreement, then that migrate into the realm of disrespect for the tenets of international agreements and best practices. There are clear provisions in the Ghana/EU FLEGT-VPA agreement for revision and revocation of the agreement and all parties must respect these provisions.
- ii.** There appears to be a fundamental lack of appreciation of the status of VPAs. The VPAs are bilateral international agreement. The basic legal principle of *pacta sunt servanda* requires that these agreements are performed and resiled from in ways only prescribed by the agreements. Also, it's not the EU FLEGT regulation that gives legal status to the

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VPA. The DG ENVI lacks any authority to unilaterally conduct a fitness check on an international agreement. It is worth noting that Ghana, had to revise, amend and promulgate new procedures, laws and process in order to effectively implement its obligations under the VPA. The gains of “positive results in stakeholders' participation and governance” did not fall out of the skies. These gains were on the back of conscious legislative and procedural changes made in good faith with the aim of “reducing illegal logging”. It is premature for DG ENVI to begin to undertake a fitness check on a process that has been slowed by improper assumptions made at the conceptualization stage, internal procedural inertia on both the side of the EU and Ghana.

- iii. On the methodology applied in arriving at the findings and conclusions, we are surprised and concerned that DG ENVI did not undertake targeted and purposive sampling of respondents, but rather undertook an open consultation which we believe could not have provided accurate and constructive data for proper interrogation. Again, we think the sample size was overly skewed to the EU which may have influenced the final conclusions because stakeholders in the VPA countries do not think the assessment reflects our views. Based on the summary report published on the EU website, over 12% of respondents had no knowledge of FLEGT regulation but their views have been used to come to summary conclusions that FLEGT VPAs have not worked. Furthermore, key stakeholders in the 15 producer countries who are either implementing or negotiating VPAs were not contacted for their views. Checks with government officials who are leading VPA implementation in Ghana confirmed that they were unaware of the fitness check and their views not sought.
- iv. On the substance of the key findings:
 - a. We find it rather contradictory that in one breath the findings indicate that there has been improvement in forest governance then goes on to conclude that VPAs should be replaced with a “watered-down” version which will not guarantee governance reform. This shows a clear lack of appreciation of the combined effect of governance reform that has taken place in country. The FLEGT programme is seeking to address the root causes of deforestation – complex issues such as corruption and lack of tenure rights, for which it is unrealistic to expect quick solutions. It takes time for governance reform to translate into actual empirical results. You do not expect that by stroke of a magic wand all illegal logging will cease because of the introduction of timber licensing system. It will likely take a minimum of 10 years after all the system is functional for results to show improvements. In the case of Ghana, the available data shows that there has been tremendous decline in conventional illegal logging in the timber sector.

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- b. On the issue of the EU's preference for sustainability over legality, it must be emphasized that, in certain context where the key relevant sustainability requirements are reflected in timber legality requirements, there is no significant difference between the two. This is the case of Ghana where the legal timber definition references other detailed requirements in Manual of Procedures (MoPs), Logging Manual requirements (Best Practice requirement), administrative directives and from international best practices where the applicable local laws are seen not to be detailed or adequate. Any professionally conducted crosswalk between the Ghana timber legality requirements and any of the global voluntary timber certification requirements such as the FSC and the PEFC will support the conclusion that Ghana's legal timber definition is not far from existing sustainable timber requirements. For example, contemporarily sustainability approaches such as HCV and FPIC can be seen to be addressed in MoP fine-grain requirement and concession award requirements and earlier Forest Reservation Settlement processes respectively.
- c. To draw a conclusion that FLEGT has not worked on the basis that only one country having issued a license fails to recognize all the progress made in VPA countries. The license alone cannot be used as a measure of the success of FLEGT-VPAs, but rather all the governance reforms and opening up of the dialogue space for multi stakeholder engagement must be seen as the real success of the VPA process. Ghana has made significant strides in transparency as a result of this process. The recent independent assessment of Ghana's readiness for FLEGT licences, while identifying that some barriers to licencing still remain, confirmed the robustness of the tracking system.
- d. Stopping support of the FLEGT programme and not recognizing a green lane for FLEGT licensed timber will be in bad faith with the timber industry in Ghana who have invested so much time and resources since the coming into force of the VPA to be ready for issuance of FLEGT licenses and take advantage of the green lane. It would come across as a shifting of the goal posts by the EU. The consequences may be unpalatable – creating a mistrust and lack of confidence and commitment in future engagements with the EU.
- v. The legal maxim, “He who comes into equity must come with clean hands” is applicable in this instance. During a recent EU policy tour undertaken by stakeholders in Ghana, it came to light that most EU member states were not adequately ready to even receive FLEGT license and the few that were ready treated FLEGT timber as inferior to other certified timber such as FSC or PEFC in their timber procurement policies. The EU need to

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create a market for FLEGT license as currently there is very little incentive for private sector to continue being committed to VPAs due to the messy public procurement systems in several EU member countries that treat FLEGT licensed timber as inferior to other licenses.

CONCLUSIONS AND RECOMMENDATIONS:

In conclusion, we want to state that progress to licensing is understandably slow, given the changes we are trying to bring about. At producer-country level, we remain committed to the process as we see significant reforms and greater legal compliance.

We recommend investing in identifying the bottlenecks that are impeding the process in various VPA countries such as declining political commitments and supporting producer countries to resolve these challenges. VPAs are not perfect, but in Ghana, VPAs have brought real transformational change to the forest management and governance sector. Are there challenges with VPAs? YES, but all transformational programmes encounter challenges. Given the deep-rooted issues that the VPAs set out to tackle, we consider the duration of the process a sign of its robustness, and that licences will not be issued until the required reforms have been achieved and systems are in place. In the light of benefits that have been recorded in producer countries, we humbly suggest targeted solutions to fixing the problems identified.

If the EU continues to fiddle with programmes, it will soon lose credibility. It is time to stay course. This is not the time to change the direction of the train. This is the time to ensure that the train gets to its destination. Any hurried change of tracks not backed by science and research would be counterproductive and be still born.

The EU is currently undertaking sustainable cocoa talks aimed at developing a due diligence regulation for cocoa; in countries such as Ghana and Cote d'Ivoire, the VPA process has become the benchmark for the cocoa talks – especially the multi-stakeholder dialogue element. In our haste to bastardize FLEGT-VPAs, ***“let us not throw away the baby with the bath water”***.

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SIGNED BY THE FOLLOWING ORGANIZATIONS AND INDIVIDUALS:

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| 1. Forest Watch Ghana | 12. PROMAG Network | 23. Ama Kudom Agyemang |
| 2. Legal Working Group - Ghana | 13. CIKOD | 24. K.S. Nketiah |
| 3. KASA Initiative | 14. The ResourceTrust | 25. Domestic Lumber Trade Association |
| 4. Friends of the Earth - Ghana | 15. Pals of the Earth | 26. Rural and Environment Conservation Association |
| 5. Tropenbos Ghana | 16. Nature Development Ghana | 27. Environmental Protection Association of Ghana |
| 6. A Rocha Ghana | 17. New Generation Concern | 28. Nature & Development Foundation |
| 7. Kumasi Wood Cluster | 18. Talent Search International | 29. National Forestry Forum Ghana |
| 8. Conservation Alliance | 19. Green Earth Organization | 30. Strategic Youth Network & Development |
| 9. EcoCare Ghana | 20. The Development Institute | 31. Rural Development Youth Association |
| 10. Ghana Wildlife Society | 21. Accelerated Rural Development | |
| 11. Green Globe Ghana | 22. Institute of Cultural Affairs | |