



Policy Institutional and Legislative Reforms to Support Ghana's Forest Sector Governance

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BRIEFING PAPER

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In 2001 forest sector policy analysis brought to the fore the challenge of the State's inability or unwillingness to exact an appropriate "forest tax" that reflects the real value of timber resources. While this revelation influenced the course of NRMP by including policy reform in the forest agenda; later followed by a partial success of the reform negotiation with the private industry (competitive bidding and its frustration by political interference; events were overtaken by the emergence of the drive towards Timber legality through a VPA. A subsequent fiscal assessment in 2006 of the likely outcome of timber legality for the forest fiscal and revenue distribution also showed that the FC institution was a problem: it contributes to high transaction costs of the industry and communities, while the loss of confidence of landowners (Traditional Authorities) in the FC institution has led to a *de facto* imposition of "tax" (by chiefs) on timber operators. Institutional reform and a fiscal regime that mutually and consistently align with each other was, therefore, embraced as a more comprehensive approach to dealing with the bottom line issue of inadequate forest rent capture and inequitable distribution of whatever the State exacted from the industry. Today, the dual objective remains largely unachieved. Overharvesting and forest depletion continues, the delivery of competitive forest management services by FC remains questionable and the forest structure is rapidly changing as a result of depletion, making it important to get the policy right over the next timber felling cycle.

The above developments have implications for Ghana's poverty reduction strategy and the way it has been approached in the past. Poverty reduction still depends significantly on policies and institutions and how they promote markets and income redistribution. It is, therefore, important to understand the import of the new dimension to the forest policy analysis introduced by the above studies which moves away from the practice of discussing forest fiscal and institutional reforms as separate issues. In another related matter the challenge today for Ghana's forest institutional governance is that forest regulation and its procedures sometimes make it cheaper to bribe, if they cannot be avoided without cost, than comply. Sometimes too, it creates incentives for enterprises to exit the formal sector. While reducing state monopoly in the overall regulatory regime in order to reduce transaction costs, it becomes expedient to use legal enforcement and sanctions as balancing acts. Economic growth (creation of wealth) and poverty reduction (distribution of wealth) are not sustainable events without the fiscal, institutional and legal enforcement linkage.

POLICY FAILURE

There is an industry perception about resource availability that has resulted in the industry to expand capacity by 200% between 1990 and 1999. This perception is attributed to under-pricing of timber brought about by a log export policy on the one hand and weak resource regulation that does not constrain harvesting. Over harvesting and the current wood scarcity have been the symptoms of this policy failure. The root causes have been poor fiscal measures and very little institutional reforms

Revenue control

Wealth creation comes by capturing economic rent and value addition. But the State is doing none of these.¹ The object of fiscal policy is to exact this whole economic rent from the operator. Depressed log prices and weaknesses in forest regulation have created an industry perception of abundant wood availability. Thus, the wood industry has not had the incentive to improve technical efficiency. It consequently is not adding higher values to the resource. In view of the low technical efficiency of industry, the economic rent that should stay with it as a result of underpriced timber is wasted in processing. So the industry cannot pay higher taxes. In terms of Ghana's MDGs, it is not the object of policy to forgive inefficiency. Competitive bidding for timber resource leading to the payment of Timber Rights Fees (TRF) is therefore adopted to discourage inefficient use of the resource and to make efficient firms pay the right price. Any adverse impact of this reform would be deemed to be financed from the industry's pocket, not the government's own budget. The past few years have witnessed political frustration of competitive bidding and an eventual resistance of industry to pay TRF. As at 2006, the State had captured under 25% of the economic rent value. Stumpage fees, for instance

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- 1 Economic rent is the value of the standing tree in its highest valued market, and it is that value which remains after deducting cost of extracting the tree and a reasonable profit margin for the operator that will keep him in business. Since the State (Forestry Commission to be precise) has monopoly over forest management and regulation, the value of the standing tree includes costs of performing these functions. The State captures economic rent principally through stumpage fees [According to (Reg. 21(3), of L.I 1721), stumpage fee is collected to cover forest management costs and leave a margin for landowners]. The payment of export levies at the port is also part of this value. Then, the introduction and payment of Timber Rights Fees are supposed to mop up uncaptured economic rents, since the State has had an aged problem of leakages in stumpage fees. When the State fails to use any or all of these fiscal measures to "tax" the economic rent, the rent stays with the industry. It either remains with it as an excess gain or it is wasted. So the economic rent harboured by the industry does not all end in its pocket. Either way, gain or loss it is a bad policy outcome. If the State compromises with industry on the grounds that it is not making profit, the State forgives inefficiency, and this runs counter to the declared goal of making the private sector and engine of growth (Vide Ghana's MDGs stated in Annual Budgets).

stood at US\$8 per m³, compared to an estimated rent value of US\$40 m³, while the rest came from export levies. Wastage of economic rent continues over the years along with unaddressed policy failures. As will be addressed presently, the FC institution is also part of the problem of industry costs.

Inequitable distribution of forest revenues

The State allocates an inequitable share of forest revenue to forest owners. In 1999, forest owners represented by their land owners (Traditional Authorities and Stool landowners) received 15% of some ₵17 billion comprising stumpage fees, land rent and revenues from Social Responsibility Agreements (SRAs). The State comprising FC (collecting 53%) and District Assemblies and Administrator of Stool Lands collected a total of 75%. District Assemblies collect the largest share (55%) of landowners' revenue, but is far from being transparent in their appropriations. There is sufficient evidence to support the conclusion that DAs' share of forest revenues are largely removed from government's poverty reduction strategy.

LEGISLATION

The Timber Resource Management Act (Act 547) does not make a distinction between forest reserves and off-reserves in terms of management, allocation of timber rights and control. It provides only for the marginal involvement of DAs and traditional authorities in the procedures towards the grant of owners' consent, while FC manages off-reserves and imposes a 50 % stumpage deduction, virtually a "rogue" tax. The practice of the State serving timber interests and generally relegating poor forest users, including SMFEs, to the background makes the Act essentially a "timber" rather than a "forest" Act. Inadequacies and sometime conflicting legislation run counter to Ghana's Millennium development Goals (MDGs) and specifically its poverty reduction strategy. Forest legislation generally confines to FC powers of discretion in controlling forest users access to natural resources, concentrates power of arrest in the domain of forestry officials and criminalize the exercise of natural rights of forest users (See Box 1).

Box 1: Inadequacies and Inconsistencies in Forest Legislation (Examples of Immediate interest to Forest Owners)

Land ownership rights: Traditional ownership of land in forest reserves is undisputed (Forest Ordinance, Cap.157, 1927). But Timber Resources Management Act (Act 547, 1997) confirms previous legislation that vested natural timber tree ownership rights in both the reserves and off reserve to the state on behalf of the chiefs. Forum Project in the Volta Region articulates the views of stool landowners as having lost land use rights simply through “selection, demarcation and gazetting of land as forest reserve and takes the position that land, trees and other forest products within forest reserves are still legally owned by the traditional landowner, or by way of alienation, by private individuals.

Land use (tree) rights: Legislation on this is not clear, having regard to concurrent, enforceable and inalienable rights of land title holders. This still makes the TRMA (Amendment Act, 2002), Act 617 provision that seeks to grant full private ownership rights to the person who planted the tree contentious. Presently though, this provision is convenient under the case of land owned by traditional authorities but under state control. Farmers who plant trees under the Modified Taungya Plantation System (MTPS) are noted to have their interests unprotected. The risks of investment in tree planting are still high under these circumstances. Farmers have no incentives to preserve timber trees on their farms for similar reasons.

Clarification of “management” rights: Article 267 of 1992 Constitution states that customary owners hold allodial rights. The FC is also mandated to manage all forest reserves and protected areas, but the legal opinion expressed under this study is that the FC does not have the exclusive right to manage. Clarification of management responsibilities from a legislative point of view is currently lacking.

Source: Birikorang and Kyeretwie, 2003

UNFINISHED INSTITUTIONAL REFORMS

Conflicting roles

FC profoundly influences timber resource allocations. It sets the standards of behaviour in resource management; it assumes full responsibility for resource management and performance monitoring, proposes forest tax levels, through the Parent Ministry, to Parliament and assumes responsibility for maintenance of their real levels; sets revenue targets from annual projections of resource volume and species compositions and

collects revenues in relation to them; and determines the apportioning of revenues between it and other resource stakeholders. The VLTP studies find these roles conflicting.

Command and control

As envisioned under FC institutional reforms, the Collaborative Resource Management Unit (CRMU) and Customer Services Centres (CSCs) appear at the bottom periphery of the FC bureaucracy as the main channels for activating processes to give substance to ownership and management rights of communities.

Despite the institutional reform progress made in line with the long-term vision, the FC follows the traditional role of "command and control" over forest management and regulation. This position results from a strict interpretation of the Ghana 1992 Constitution under Act 571 that establishes the FC. Together with a decentralized government system, the combined Forestry Commission District Assembly (local government) structures crowd out chiefs in forest decision making.

Transaction costs

Wood scarcity and declines in the scale of industry operations now expose the cost of the private sector doing business with the State as a constraint to longer term industry profitability and the state's future approach to taxing economic rent. FC's forest management and regulations involve loggers in a transaction (compliance) cost of US\$6.50 per m³ of timber. Further, Traditional Authorities also impose on them an informal social responsibility cost of US\$ per m³. This is observed to be a position taken by landowners that reflects their loss of confidence in FC's revenue management, characterized by what they consider as non-transparent accounting for the resource and their exposure the risk of revenue loss from accrued "royalties." If the FC is repositioned under comprehensive institutional reforms, including a devolution of some key forest management services (in which the private sector has been established as being more cost effective), and implements a VPA through which it can guarantee real assurance and transparency, the scope of fiscal adjustments will improve by US\$15 per m³ (being the transaction cost to industry avoided and the re-establishment of confidence of land owners in FC which will eliminate the informal payments). This new scope of fiscal reforms could form the basis of advancing policy reform negotiations initiated with some limited success in 2005. While the state is maintaining a wide command and control approach to Forest Management and Regulation, it is making little investment in regulatory capacity. If the FC reforms, it can refocus on new core functions and build capacity in that context. It will also enhance better revenue-cost relationships in its finances.

Off-Reserve (OFR) Control

Devolution of OFR operational management to forest owners remains unappealing to FC. It is observed that under the MLNR Interim Measures to control illegal logging off reserves of 1994, implemented between 1995 and 1998, enumeration was a joint function between operators and the District Forest Office but these measures were not institutionalized². In its place, District Forest Quota Systems were institutionalized, but never worked satisfactorily in practice. The forest industry was also noted to have expressed opinion that the sparse and scattered standing stock in the agricultural landscape (off-reserve) does not warrant the controls of FC, and that mutual arrangements between communities and industry were a less costly option.

SUMMARY OF IMPACTS OF POLICY AND INSTITUTIONAL FAILURES

Wood scarcity

Due to past overharvesting practices, Implementation of Ghana's VPA is expected to bring about a significant reduction in the legal cut limit to between 600,000m³ and 840,000m³. In line with the wood scarcity, which has started to occur, there is an observed shrinking of the formal wood industry and increased degree of control of timber resources by a limited number of companies.

Domestic market

The domestic market has become over-dependent on illegal wood due to failure of policy to address price distortions on the domestic market resulting from the log export ban unaccompanied by other corrective measures. The price distortion keeps formal sector lumber out of the domestic market on account of incentives provided by wide export margins. This leaves the supply gap to be filled by illegal sources and at the expense of the environment. It is estimated that illegal harvesting with its attendant deforestation and forest degradation is costing the economy about 5% of GDP.

Loss of Economic Rent:

The State has failed to capture sufficient economic rent to improve investment in the forest regulator, nor for the benefit of resource owners. Continued policy failure has

2 The potential conflict of authority between the DCE and the then Chief Conservator of Forests (now Chief Executive of FC) led to the repeal of LI 1518 for which the DCE's authority to approve was derived. Today it will not become an issue under any reintroduction of a participatory framework, given the ultimate authority of the CE of FC under TRMA

contributed to an increasing proportion of economic rent being lost through sector-wide inefficiency in processing

Forestry has not been able to contribute meaningfully to poverty reduction:

DAs are not appropriating revenues in the direction that improves the coping capacities of forest owners. The nature of the State's plantation programmes involving communities on paid labour basis deprives them of a future pension scheme. Thirdly, policies and legislation delink SMFE development from Ghana's MDGs. Legislation in particular has caused timber interests to be served and, generally, poor forest users, including SMFEs, are relegated to the background.

Other Impacts

Other impacts acknowledged include the following: (a) increased risk of declining revenue for the State as a result of declining resource volumes; (b) Continued decline in levels of employment, based on unsustainable wood; (c) limited support of forest owners for Sustainable Forest Management on account of inequitable shares of revenue and little forest revenues trickling down to communities and (d) environmental risks in the form of resource crash and deforestation; and (e) in the future, a high financial risk in the form of foregone carbon and other payments for ecosystem services.

THE VPA SCENARIOS

A Scoping study carried out on the likely impacts of Ghana's VPA reviews forest policies and stakeholder perceptions and assesses the likely impacts of VPA under three scenarios: The Baseline Scenario (representing "Business-As-Usual"); The Legitimate Scenario (VPA unaccompanied by major reforms, and Sector Reform Scenario (VPA accompanied by comprehensive sector reforms). The business as usual scenario spells disaster for both the industry and future livelihoods. The legitimate scenario promises

a significant degree (but not total) of legal compliance, with industry structure virtually unchanged and declining turnovers arrested at some point in time. The likelihood of environmental governance and co-existence of legality with reduced livelihoods in the forest sector is associated with this scenario. The sector reform scenario, more than the legitimate, corrects significant policy and market failures, provides opportunity for “soft landing measures to mitigate short term adverse impacts of implementing a VPA, as well as installs satisfactory forest and environmental governance.. These measures will include development the tertiary industry, particularly the informal or small and medium scale enterprises which will in turn offer opportunities for employment generation.

CONCLUSION AND RECOMMENDATIONS

The synthesis study points to insufficient capture of timber rent which is largely wasted by the forest industry. Forest revenue distribution is also characterized by inequity, forest owners being the losers. This inequity, accompanied by non-transparency in the appropriation of forest owners’ share, has not engendered forest owners’ support for sustainable forest management and forest protection. Though forests are contributing to economic growth, they have not lived up to expectation, that is , making a positive impact on the livelihoods of forest people. Even though the forest industry has made some contribution to employment this is based on unsustainable timber.

Failure to adopt comprehensive reform measures to correct these policy failures have accentuated already existing market failures and worsened timber rent capture. The State has been unable, in the face of industry resistance, to push for further fiscal reforms. There is sufficient evidence that the approach to poverty reduction through distribution of revenues and engagement of communities in paid labour plantation programmes has not worked. There is need for simultaneous pursuit of economic growth and income re-distribution.

The following specific recommendations are made by the VLTP Fiscal Studies:

- a. Devolution of Forestry Commission functions
 - » Shared FM&R responsibility with the private sector
 - » De-regulation of off-reserve resources
 - » Role of the Ghana Institute of Foresters (GIF)
 - » Training of semi-professionals and professional staff
- b. Fiscal reforms that provide incentives for sustainable forest management and value

addition

- c. Managing the global responsibility of forest governance
- d. Transitional measures
 - » Engagement of local governments and civil society in discussions of off-reserve issues;
 - » Engagement of GIF
 - » Outsourcing of grading and inspection functions
 - » Private sector dialogue and
 - » Strengthening capacity of forest trade associations

These recommendations are consistent with sampled opinions of stakeholders under a VPA Impact Assessment Study in 2007

