



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

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**BRIEFING PAPER**

**TRADITIONAL  
AUTHORITIES**

# FOREST OWNERS [TRADITIONAL AUTHORITIES]

## BACKGROUND

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.

## CHARACTERISTICS

Under the Native Authority Ordinance (1927) Traditional Authorities enjoyed recognition as landowners as they were empowered to exercise a formal native authority over lands. Following the passing of the Forest Ordinance (1927) which vested in government the power to constitute and manage forest reserves, the powers and rights of chiefs were systematically eroded. From 1951 onwards, further developments in legislation served to seal the alienation of chiefs from their own lands.

The following important characteristics of Traditional Authorities are observed:

- a. Chiefs have constitutional rights to a share of forest revenues;
- b. Generally, Chiefs are non-transparent in the management of their share of forest revenues;
- c. Chiefs run the risk of losing their shares of stumpage revenue (as "forest royalties") in view of post-paid privilege arrangements under LI 1721<sup>1</sup>;
- d. Chiefs in the High Forest Zone aspire that indigenous Ghanaians control about 40% in the allocation of timber resources; and
- e. Generally, Chiefs are passive in finding solutions to the disincentives land tenure poses to tree planting, a broadly contrasting position with (d) above.

### Communities as subjects

Being largely agrarian, and with growing population, forest communities face land shortage in farming.

They depend significantly on the forest for their livelihoods. They comprise a wide range of focus groups: youth organizations, farmers, Community forest committees, cooperatives, women organizations, etc. With the exception of generally insignificant benefit flows from Social Responsibility Agreements with timber operators, forest benefits are inequitably distributed, forest owners being the losers (Birikorang et al., 2001). Whatever is distributed also does not trickle down to communities. On the other hand, forest communities have remained the immediate recipient of negative impact of environmental degradation.

On account of these exchanges, they have little interest in sustainable forest management and forest protection. They also exhibit significant uncertainty about safeguards for their long term interest in investments in tree given the current land tenure system. Consistently with this economic and social environment, forest communities and small

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1 FSDP-2 References document the loss of revenue to one Stool Land when one large scale timber processing company owing the State in Stumpage arrears declared bankruptcy in the mid 1990s.

and medium informal enterprises are involved in illegal timber harvest that contributes 50% of the volume of annual national harvest.

Forest communities are distant from forest management and conservation roles. Rural-based enterprises, essentially small and informal are largely undeveloped and remain individually fixated to non-permanent business turnovers. A number of studies have recently pointed to a discrimination of policy against small and medium enterprises, most of which are informal.

## District Assemblies

In analytical work on forest revenue and economic rent distribution, District Assemblies (DAs) are considered as part of the State and are both and classified among "forest owners." But in the political economy sense, their local government status places them among forest communities. So potentially, they occupy a strong position to demand accountability from FC. Secondly, they constitute potential brokers in resolving state and forest owners' conflict of interest<sup>2</sup>. DAs receive the largest share (55%) of forest owners' revenues. They hold the perception that forest revenues are one of the sources of funding their budgets. One characteristic of the transfer mechanism associated with DAs is that their appropriation of forest revenues lack transparency.

# ROLES AND INTERACTIONS

## Forest revenue management

The State has improved over time its rate of revenue collection from 42% in 1999 to 90% in 2006. However, it has been losing real revenue overtime. Stumpage fees have not been fully adjusted since 2003 for inflation or changes in foreign exchange rates, causing in 2004 and 2005 alone a loss of approximately GH¢3million. While the FC is improving upon collection rates, revenue leakage was occurring through a laundering (false labeling) of timber species and unrecorded timber volumes.

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 SRAs. The State comprising FC (collecting 53%) and District Assemblies and

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2 At various FSDP-2 Regional Forest Fiscal Reform Fora held across the High Forest Zone in 2003, District Assemblies demanded transparency in annual harvest volumes and species allocated for removal, so they could project their forest revenues. They would then demand full payment of shares from FC rather than actual amounts paid by operators which were often in arrears.

Administrator of Stool Lands collected a total of 75%. These revenues do not include export levies collected some 13 billion collected by FC. Including this would put the State share at 86% and Land owners at 7%.<sup>3</sup>

## **Off-Reserve (OFR) Control**

Devolution of OFR operational management to forest owners, as proposed under the NRMP, and further justified under the VLTP Fiscal Studies, remains unappealing to FC. VLTP Fiscal Studies 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. Unfortunately, these measures were not institutionalized<sup>4</sup>. In its place, District Forest Quota Systems were institutionalized but never worked 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.

## **Tree ownership rights for the smallholder and community groups in ff-Reserves**

Modified Taungya System of plantation development includes the engagement of farmers in replanting degraded forest reserves under a sharecropping arrangement that guarantees them 40% of future returns. Under these initiatives, land rights of traditional authorities their right to choose the management option for the forest reserve are implicitly recognized. A similar, but wider application of these initiatives are being ignored in off-reserves where tree ownership rights for the smallholder and community groups are the most important elements of poverty reduction. In off-reserves, Government is rather actively involved in engaging community labour to establish plantations, a strategy which takes away forest communities opportunities to secure some form of a future pension fund.

## **FC and Local government systems crowd out chiefs and limits communities' forest access**

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- 3 Linking the impact of this revenue sharing policy to the likely impact of wood shortage and implementation of Ghana's VPA, the Synthesis Study focuses on the importance of this policy to poverty reduction under a VPA regime, and relates the expectations of Stakeholders under the Sector Reform Scenario analyzed by the VPAIAS to the specific recommendations made in the VLTP Background Study on Ghana's Fiscal Regime.
  - 4 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

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Contrary to the institutional role played by chiefs in the pre-independence era, current policy of local government and FC's decentralization strategy have tended to push traditional authorities to one side.

With the on-going institutional changes side stepping the Chief, it is the collaboration between the DFO and DA to control (or otherwise) illegal felling in off-reserves that determines conditions of the forest environment. The DAs, which play a central role in the local government system essentially, comprise households. But, incidentally, the institutional mechanism for distributing forest benefits (including SRAs), stops short of addressing the incentives at rural household levels.

## 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**).

## 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 600,000m<sup>3</sup> and 840,000m<sup>3</sup>. 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.

## 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*

## Economic Rent Wastage<sup>5</sup>

The State has been unable to capture a sizeable portion of the economic rent in forest fees, largely because a log export ban is in place and domestic prices of logs generally remain low. This policy has encouraged the maintenance of low efficiency in processing which also makes it impossible for the industry to pay close to international prices and survive. Over the last decade and a half, the effect of the policy of timber under-pricing (low stumpage fees) has shifted the economic rent distribution more from loggers to wood processors which in turn wasted a large portion of this rent through low technical efficiency. Economic rent has been distributed to or “harboured” by the following stakeholders:

- a. Loggers
- b. Wood processors
- c. Forest owners; and
- d. A large portion that is lost through technical deficiencies in milling

Failure to address this fiscal deficiency or accompanying the log export ban policy with other appropriate measures has shifted economic rent distribution more from loggers and processors to the wastage bracket.

By 2005, the State’s forest revenue was still below 25% of the size of economic rent. The State allocates an inequitable share of this forest revenue to forest owners. In the share that goes to landowner, District Assemblies collect the largest share (55%) but are not transparent in their appropriations. Though an under-collection of revenue (about 42% in 1999) has improved to about 90% by 2006, the State has been losing real revenue overtime through a non-adjustments and/or partial adjustments of stumpage fees to take account of inflation. Revenue leakage is also occurring through a laundering of timber species and unrecorded timber.

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5 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 States forgiving 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).



## High risk of future revenue decline

There is now a high risk of forest revenues declining with the depletion of high demand species and the overall emerging wood scarcity. There is also the environmental risk that FC in its conflicting roles might allocate these species to the annual yield contrary to its own forest standards, so it can balance its budget. The resulting environmental risks will pass to forest communities..

## Limited support for SFM

The poor incentive system that does not encourage conservation among forest owners, significantly explain half of the national harvest contributed by illegal chain sawing. Chiefs own lands, but are crowded out of decision making on forestry. This makes some of them turn a blind eye to illegal logging.

## Environmental risks

Current forest practices and the existing governance regime as reviewed under this Synthesis Study point to a potential resource crash, deforestation, loss of biodiversity and degraded ecosystems. These mean in the future a high financial risk in the form of foregone carbon and other payments for ecosystem services.

## The institutional bureaucracy

### Transaction costs

FC's forest management and regulations involve loggers in a transaction (compliance) cost of US\$6.50 per m<sup>3</sup> of timber. Further, Traditional Authorities also impose on them an informal social responsibility cost of US\$ per m<sup>3</sup>. 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 legal assurance and transparency, the scope of fiscal adjustments will improve by US\$15 per m<sup>3</sup> (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.

## 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 turnover declines arrested at some point in time; the likelihood of environmental governance and co-existence of legality with reduced livelihoods in the forest sector. 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. 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<sup>6</sup>
- 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.

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6 This will largely entail the retention of a portion of economic rent by timber operators with best practice in SFM

