

Country Case Study 1

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Ghana's experience in timber verification system design

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SUMMARY

Three major lessons appear to be emerging as the debate on timber verification develops in Ghana:

- The current state monopoly over the control system presents many challenges in terms of improving accountability and transparency within the sector.
- Commitment from Government is essential to set the right economic price for timber.
- A process mutually acceptable to all the main stakeholders may necessitate phased implementation of a timber verification system.

The EU-Ghana Voluntary Partnership Agreement process needs to demonstrate that it adds value to national reform measures. It can probably best do this by seeking not to 'leapfrog' issues, but first to adopt a systematic process of cross-consultation that leads to the development of consensus, and second to provide strategic management assistance to the weaker members of the partnership to enhance their roles in negotiations.

The initial technocratic focus on improving the control system also needs to give way to a more nuanced approach, that acknowledges - and addresses - the political dimension of reform within the timber sector.

Introduction

Timber production is an important component of Ghana's economy, making up approximately six per cent of GDP. It is the fourth largest foreign exchange earner, having provided around 12 per cent of Ghana's foreign exchange between 1990 and 2000 (Lebedys, 2004). In 2004, Ghana earned €170 million from the export of 455,000 m³ of wood products (Oliver and Fripp, 2005). Countries in the EU are Ghana's major wood trading partners, accounting for just over half of total wood exports in 2004. Key markets include Germany, Italy, France, the United Kingdom and Spain (Figure 1).

Ghana's forests are divided into off-reserve and on-reserve areas. Of the 266 forest reserves, 216 occur in the high forest, timber-producing zone. These forest reserves were originally established by the state to promote ecological stability while seeking to guarantee the flow of goods and services for socio-economic development. In some areas they enjoyed a high level of support among the cocoa-farming communities, until the development of non-shade dependent varieties of cacao lessened the value of retaining an overstorey. By the

mid-1990s, many forest reserves were in a degraded state as a result of over-harvesting for timber, forest fires and farming (Hawthorne and Abu-Juam, 1995). Despite this, timber production within forest reserves increased dramatically over the next ten years. Official data show the forest reserve timber harvest increased from 120,000 m³ in 1994 (cf. 1,500,000 m³ from off-reserves) to 660,000 m³ (cf. 540,000 m³ from off-reserves) in 2003.

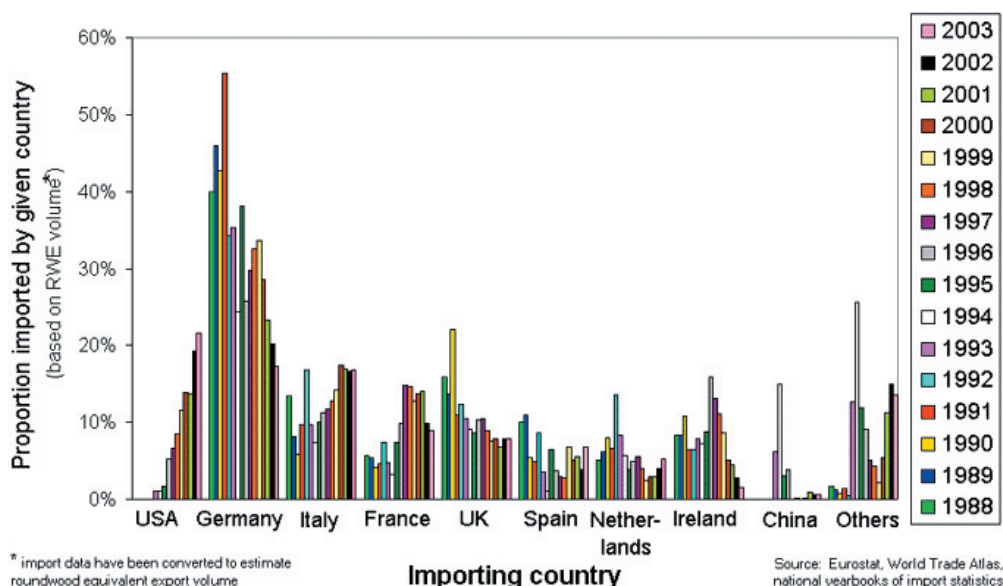
Illegal logging has been predominant in off-reserve areas, where it is associated with chainsaw milling¹. The formal sector's contribution to illegal felling is characterised largely by the over-exploitation of traditional high-value species, a practice that focuses on forest reserves because of the non-availability of these tree species in commercial quantities in the off-reserve areas. The timber industry has failed to heed repeated warnings to shift exploitation from these species to lesser-used species (Ghartey, 1989; General Wood and Veneers Consultants, 1993; Davies, 2003). As a result, the current annual allowable cut limit of 500,000 m³ within forest reserves, established by the 1997 forest inventory



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Figure 1: Timber exports from Ghana
 Source: www.globaltimber.org.uk



(Davies, 2003), is not sustainable. Commercial timber stocks within the off-reserve forest areas are much less known, but are believed to be very low, with little contiguous forest area remaining. The effect of prolonged high levels of timber harvesting in both off-reserve and on-reserve areas over the past twenty years will be a future decline in stumpage revenue levels.

The Ministry of Lands and Forestry (MLF) is responsible for policy development, while the executive agency is the Forestry Commission (FC). However, the state institutions associated with the forest sector have been in a state of flux for some years. Previous laws, and their subsequent repeal and re-enactment spanning a total of 17 years, placed the FC in an advisory position to the Ministry, while the Forestry Department and other sector bodies retained their positions as implementing agencies responsible to the Ministry. Under the most recent legislative reform – the Forestry Commission Act, Act 571 of 1999 – the four previously separate public bodies and civil service departments involved in the regulation of Ghana’s forestry and wildlife were subsumed under the FC as Divisions in 1999. Establishment of the Forestry Commission under this Act resolved the conflict between a proposed Forest Authority to replace the old Forestry Department (with a mandate to regulate and manage Ghana’s forest resources) on the one hand, and Ghana’s 1992 constitution – that mandated a Forestry Commission to take charge of the responsibility of protecting, managing and developing the nation’s forest and wildlife resources – on the other.²

Timber exploitation in Ghana

Large-scale timber exploitation has been controlled since colonial times through the allocation of cutting rights, where a legally defined area of forest is granted by the state to a private sector concessionaire for a given period of time. These cutting rights give the concessionaire the right to fell and market the timber obtained, under a regulatory regime that is set and overseen by the national forest authority.

Since 1950, three different lengths of felling cycle³ have been applied to timber harvesting within the reserved forests. A felling cycle of 25 years was in operation throughout the 1960s. In 1972, a management system termed ‘salvage

felling’ was introduced to remove so-called ‘over-mature’ trees (Adams, 2003). Under this approach, all reserved forests with or without management plans were to be logged over a 15 year period. By the late 1970s, this system of timber exploitation was poorly controlled by an under-resourced Forestry Department. For the next twenty years, forest management controls and the monitoring of log movements were ineffective in preventing over-cutting. This now means there have been several generations of timber operators who have not had to work within the limitations imposed by ‘sustained yield’ forest management. Excess profits have become an expectation for those fortunate enough to acquire timber cutting rights. The introduction of a 40-year felling cycle in 1990, as forest management planning started to address the challenges facing sustained yield timber harvesting, therefore met with considerable opposition within the timber sector.

The timber industry has grown considerably in size, driven by two main factors: (i) a log export ban; and (ii) the under-pricing of timber. The log export ban was introduced for high value species in 1979 and extended to all species in 1994. Profit levels within the timber industry rose as a consequence of the ban, as log prices fell below comparable international log prices whilst exporters continued to sell their wood products at world prices (Birikorang *et al.*, 2001). The second main driver of industrial expansion has been the under-pricing of timber by Government. Paramount has been the policy of administrative allocation of concessions and the application of unrevised stumpage charges. Companies benefited considerably from these policy measures, with an effective halving of forest taxation levels in the mid-1990s (World Bank, 2005).

Earnings from wood product exports increased steadily from \$100 million in 1990 to \$170 million in 1999. A drop in the average lumber price from \$450 to \$400 over the period was more than compensated by exchange rate adjustments. In terms of volume, the period also saw an increasing trend, with volumes growing from 220,000 m³ to 430,000 m³. In contrast, the non-revision of stumpage payments to reflect inflation caused an erosion in value to Government. The Ghana wood industry and log ban export study (Birikorang *et al.*, 2001) points to a required 4.6 factor adjustment in

stumpage between 1992 and 1997, which was not carried out, and an additional \$6 million loss in real stumpage value between 2000 and 2001. Major reform did take place in 2003, with stumpage rates progressively adjusted back to their earlier real levels, although about one third of the stumpage value has been lost through illegal logging by the wood processing sector. In addition, about half of the actual stumpage claims have not been collected by the FC due to a combination of limited capacity and unwillingness to collect. Competitive bidding today remains the key instrument to address the issue of wrong timber pricing. But 40 per cent of productive forest lands are in the form of lease holdings with a further 50 per cent under salvage permits (Birikorang and Rhein, 2004).

High profit making led to a systematic increase in installed capacity of the wood processing sector, from 2.5 million m³ in 1990 to 5 million m³ by the end of 1999, with the increase largely associated with veneer and plymilling. This installed capacity is five times the annual allowable cut (AAC) of 1 million m³ estimated in 1997⁴. The MLF set an administrative cut limit of 2 million m³ in 2002, with the total increase in yield coming from off-reserves. This was supposed to be a transitional measure to accompany sector reforms. However, with the off-reserve inventory uncertain and a possible maximum forest reserve production area not exceeding 500,000 ha. (Davies, 2003), the AAC, based on the current market classification of commercial species, will be significantly below the 1997 1 million m³ estimate. This means, first, that the industry is heading for a forced consolidation and second, that the future prospects of timber utilisation will be based on an appreciable increase in the use of lesser known species.

The Ghana wood industry and log ban export study (Birikorang *et al.*, *op.cit.*) estimated that the forest industry directly employed 104,000 people in 1999. The distribution by product segment, indicated in Table 1, shows that over half were engaged in the tertiary sector, which largely comprised cottage industries and other informal establishments. This was at a time when that industry was already beginning a consolidation phase, with the tertiary sector shrinking by as much as half in 1999. Sawmilling, which accounted for 60 per cent of industry capacity, contributed only 15 per cent of direct employment. The areas of critical concern, therefore, will be logging which will be vulnerable to the enforcement of a limited, regulated harvest level, the tertiary sector and forest-related jobs which are rural-based.

Table 1. Forest Industry employment, 1999*

Small scale loggers	1,100
Integrated logger processors	27,000
Sawmills	14,000
Veneer & ply mills	6,000
Tertiary	55,000
Illegal chain sawyers	900
TOTAL	104,000

*Based on Ghana Wood Industry Study, 2001

Re-structuring of the timber industry will be problematic, as the loss of jobs in depressed rural areas is likely to bring a high social cost. Diversification of employment opportunities

is a key policy area requiring Government consideration. Government faces two broad options in its attempts to manage the transition of the wood processing industry. A 'status quo' option, with continuing over-harvesting, will eventually lead to high levels of unemployment and loss of livelihoods as timber supplies become exhausted. The implication of this option is that Government would have to resort to its budget to mitigate any adverse social impacts. The second option is to embark upon fiscal reforms that address timber pricing and industry inefficiency. Survivors in the industry will have long-term access to the resource, but they will pay for it, and thus create a financing opportunity for both investments in forest development as well as alternative job creation. Under this option the industry pays for the cost of its adjustment, not the Government. The employment and livelihoods issues need to be addressed by Government in a macroeconomic context that focuses on best job (and productivity) opportunities. These do not, necessarily, have to come from the forest sector.

Tertiary processing will require a special approach buttressed by a financing and technical assistance programme as well as a system of incentives that penalises (by taxation) production and export of primary and secondary products (e.g. lumber, veneer and plywood) using traditional species, and promotes tertiary production for both the domestic and export markets. These appear to be missing links in the Ministry's 1996 – 2020 Forestry Master Development Plan that carries the theme of 'less volume and high value'.

The timber industry has not changed its ways despite warnings a decade ago about future resource scarcity, and has continued to depend on traditional high-value species and not to improve efficiency. It has also confirmed its annual resource consumption level of 2 million m³, established in the Ghana Wood Industry Study in 2001. This partly influenced the Ministry's fixing of an administrative 2 million m³ harvest level in 2002. Official records show that in 2003 and 2004 the industry consumed 1.2 million m³ and a little under 0.9 million m³, respectively. Export records, on the other hand, indicate that timber consumption was 1.8 million m³ and 1.2 million m³ in those years. This 30 per cent difference has never been disclosed by industry. A question may be asked as to why the industry demands 2 million m³ but reports consumption levels well below this figure. The difference in volume translates into a US\$3 million loss in stumpage to the state in 2004. The industry presumably distributes such retained revenues informally among itself, FC staff and the financing of its patronage. Illegal logging in the formal sector undoubtedly existed before 2001, but was only objectively established by the Ghana Wood Industry Study.⁵

Forest certification

In 1996 a forest certification process was started in Ghana. This initiative aimed to improve forest management and accountability, producing forest products that would be accepted by environmentally sensitive markets in Europe. A national committee on forest certification comprising chiefs, traditional authorities and representatives of governmental and non-governmental organisations was set up. A Forest Management Certification System Project (FMCSPP) was established within the MLF, with assistance from the European Union and the Dutch Government. The FMCSPP published forest certification Standards, Criteria and Indicators for the scheme. However, the process stalled in 2000, due in part to a lack of funding, and the national standards remain in draft

form. Further limited donor support was offered in 2002 with efforts to revitalise the national committee, but this failed to lead to a sustained programme.

In a separate initiative during early 2005, the World Wide Fund for Nature (WWF) and Friends of the Earth (FoE) signed an agreement with one of the largest timber companies in Ghana, Samartex Timber and Plywood Co. Ltd., to promote work towards eventual FSC certification of forest concessions managed by the company. The company has agreed to implement a moratorium on logging in primary forests; develop plans for providing benefits to the communities that own Samartex-managed concessions; and achieve certification to FSC standards in 2007. The agreement makes Samartex the inaugural participant of the Ghana Forest & Trade Network, a part of WWF's Global Forest & Trade Network (GFTN). With this first agreement in place, several other Ghanaian companies have expressed interest in joining the scheme. However, it is unclear against which forest certification standard such companies will be judged in the absence of a national standard. There is also the issue of compliance with legality, as companies unable to prove that they hold legally allocated, long-term licences to harvest timber are not allowed to join the network.

Chain of custody

The Ghanaian Government has procedures to monitor log movements through the use of a Log Measurement Conveyance Certificate (LMCC). This certificate is required to permit log haulage from forest to mill gate (ITTO, 2001). However, it is a paper-based manual system, which has made reconciliation between forest output and timber export very difficult to establish in practice. While the paper-based system, with its accompanying procedures, has increased transaction costs to industry, the FC has had major problems in monitoring and holding field staff to account. The volume of illegal logging in the formal sector and the loss of state revenue alluded to in preceding sections result directly from these weaknesses.

Legal timber production

Tenure

In Ghana, land and tree tenure are complex issues. The Forestry Department struggled from its inception in 1909 with the tenurial claims of the stools⁶ in the high forest zone. The tension between state and forest owners was most apparent during the creation of the national permanent forest estate, made up of individual forest reserves. Arguments and adjudication processes concerning the establishment of these forest reserves dragged on for decades in some localities. One such example is the Dede Forest Reserve, first selected for reservation in 1935 and finally gazetted over twenty years later, after prolonged, and often bitter, disputes over tenure. This particular forest has since disappeared, with much of the area now grassland (Hawthorne and Abu-Juam, 1995). In the past, the standing forest often existed as a buffer between neighbouring rival stools, thus representing an ill-defined partition between areas of separate jurisdiction.

Traditional councils and stools, through their specific customary laws, have landholding authority. They hold allodial title to land on behalf of their communities. The communities in turn draw usufruct rights from the stool chiefs (IIED, 1994). With the forests vested in the traditional

chiefs and stools, managed by the Government, and logged by private contractors a complex system of resource rights and utilisation ensues, which does not lend itself to simple regulation. However, recent forest legislation (see next section) has set out procedures that recognise traditional land ownership. Two competitive bidding events undertaken in 2004 were fully witnessed by stool landowners to signify their concurrence with the transparent allocation. This should create clarity in titling. The revised legislation also gives recognition to user rights, particularly in off-reserves areas.



High-value commercial tree species occur sparingly throughout the high forest.

Timber Legislation

Timber exports were a strategic issue in colonial times, as the revenue derived from this commerce contributed to the goal of a 'cost-neutral' administration. It is therefore not surprising that legislation was introduced to protect the source of revenue. The first colonial law concerning timber production was the Timber Protection Ordinance No. 20 of 1907, which prohibited the felling of immature trees of certain high-value species. With the upturn of timber exports after World War II, the Trees and Timber Ordinance No. 20 of 1949 was enacted to regulate the cutting and removal of trees for export.

The Concessions Act, No. 124 of 1962, was an important milestone in forest legislation. Under Section 16 of this Act, all timber lands – both within existing forest reserves and elsewhere – were brought under the jurisdiction of the President, empowering the state to exercise controls of protection, management and development. The first step towards establishing a chain of custody for felled timber was made in the Trees and Timber Decree 1974 (NRDC 273), which required the Forestry Department to divide Ghana into districts and allot to each district a locality mark. It also required that timber exporting companies register a 'property mark' with the Forestry Department.

The Timber Resources Management Act, No. 547 of 1997 (TRMA), is the most recent attempt at legislative reform. This

Act aims to ensure that timber harvesting is consistent with the sustainable management and utilisation of the timber resources of Ghana. The Act established a new category of timber right – the timber utilisation contract (TUC) – and, with a few exceptions, all timber harvesting has to be carried out under such contracts. Under Section 19 (1) of the TRMA ‘Any timber right, concession or lease granted under any enactment and valid immediately before the commencement of this Act shall continue in force for a period not exceeding 6 months from the date of the coming into force of this Act’. Although the date of assent of the TRMA was 17th March 1998, pre-existing timber rights have continued for over seven years, bringing the forest law into disrepute (see below).

Amendments to the TRMA, and its subsidiary regulations, were made in 2002 with the passing of The Timber Resources Management (Amendment) Act, 2002 (Act 617) and the Timber Resources Management (Amendment) Regulations, 2002 (LI 1721). These legal changes were introduced to allow:

- competitive bidding in the allocation and utilisation of timber resources;
- implementation of Social Responsibility Agreements that require concession holders to assist communities within the contract area with amenities;
- the Ministry of Lands and Forestry to regulate new investments in the forest sector, ensuring that only the required plants and equipment for the country’s needs are installed in the wood-processing sector.

Despite this evolving legislative framework for timber production and export, the forest sector in Ghana is bedevilled by a very high incidence of illegality. Much of the domestic supply of lumber is derived from illegal chainsaw milling. The Ghana wood industry and log ban export study (Birikorang *et al.*, *op. cit.*) estimated that in 1999 out of the 3.7 million m³ of timber harvested, illegal chainsaw activities accounted for 46 percent (1.7 million m³), while illegal industrial logging accounted for a further 24 percent (0.9 million m³). The number of people indirectly involved in chainsaw milling is considerable, with estimates as high as 50,000 people (Otoo, 2003). One reason for its extensive operation is that chainsaw milling has undoubtedly distributed benefits to the poor. The transportation of lumber by headload fetches daily rates more than five times the daily minimum wage. Farmers often prefer instant payments for trees from illegal chain sawyers than promises from the forest sector institutions for benefits that are eventually distributed in a non-transparent way. Also, rural demand for wood has often only been met through strenuous access to distant markets, while the raw material has passed rural communities by. Above all, chiefs, as landowners, have been crowded out of decision making by the local government system and the FC’s presence at the district level. Consequently, they have often turned a blind eye to illegal logging (Birikorang, *et al.*, *op. cit.*).

Recent attempts to control illegal timber harvesting, especially outside forest reserves, have involved a series of *ad hoc* control measures, including the registration of chainsaw operators, the establishment of mobile forest protection action groups and strict felling controls. Other measures have included co-ordinated actions by both the military and police to crack down on operators, and the confiscation of lumber, equipment and vehicles used in illegal timber harvesting operations. However, these control measures have failed to have the desired impact, mainly because of the high demand

for wood and the low penalties involved. Poor capacity at the district level has either prevented detection of illegal activities or (it is alleged) allowed massive connivance of forestry staff with illegal operators.

Legislation, regulations and codes of practice, put in place to control harvesting and to protect the forestry resource, have been either inadequate or not properly enforced. The reasons have much to do with the political economy of the country, which dwarf the technical reasons that are often cited.

Donor influence on the forest sector, 1980–2005

Following years of decline as a result of the overvalued cedi and deteriorating infrastructure, Ghana’s timber industry was identified in the early 1980s for assistance under the World Bank’s ‘Export Rehabilitation Project’ and associated co-financing. The sector was chosen as it was considered that timber exports would generate foreign exchange quickly, with this short-term economic perspective overriding any consideration of long-term, sustainable use. As a result, in 1984–85, the UK Overseas Development Administration (the predecessor of DFID⁷) made available £9 million of programme aid to assist the re-tooling of the sector. Twenty-seven privately owned exporting mills and two state owned mills were identified as meriting assistance for improvement.

Subsequent donor support to the forest sector placed emphasis on forest inventory and forest management planning (including collaborative forest management). Many changes were proposed to advance forest management towards the goal of sustainability. However, this has led to a situation where the forest management system is now highly complex, with numerous levels of planning, regulation, procedures and practices. To give one example, forest planning now involves the preparation of strategic forest management plans, 5-year operational plans, annual reports, as well as 3-year rolling district plans.

Following the 1996 Forestry Development Master Plan, a ten-year World Bank-led sector investment programme known as the Natural Resources Management Programme (NRMP) was prepared. The high forest component of this programme was designed to assist Government to formulate and implement sectoral policy and institutional reforms to enhance revenue capture; improve concession allocation procedures and concession management; and improve sustainability of the forest industry through the introduction of new legislation, streamlining the mandates of forest sector agencies and strengthening their implementation capacity. However, this programme was cut short in 2003 due to implementation shortcomings that led to reduced donor confidence.

Throughout this period illegal logging was rampant, both within and outside forest reserves, and proved to be an issue which the donor community was unable to influence in the short-term. Illegality occurs in the form of: timber harvesting beyond the approved yield; the grant by FC of forest titles outside the relevant legislation (since 1998, the TRMA and its accompanying regulations); and the overall non-compliance by the FC of the Environmental Protection Act (Act 490 of 1994) and its 1999 Regulations, which require logging to be undertaken only upon the issue of an environmental permit or licence by the Environmental Protection Agency.

Enforcement of legal provisions on the environment is primarily the responsibility of the Environmental Protection

Agency (EPA). Economic activities listed by the EPA, including logging, must pass an environmental impact assessment test and obtain an EPA permit. The non-enforcement of the EPA's regulations is an issue not limited to forestry (Birikorang, 2004), however, the FC is a member of one of the Technical Committees under the EPA Board that is supposed to advise and support legal enforcement. The FC has never insisted on this requirement and no logger has ever obtained such a permit.⁸

Donor interest now focuses on supporting improved governance within the forest sector. This is the goal of the EU Forest Law Enforcement, Governance and Trade (FLEGT) action plan and the proposed EU-Ghana voluntary partnership agreement (VPA), which proposes both supply-side and demand-side measures to combat illegal logging and the associated international trade.

Recent developments to strengthen legal timber production

Defining legality

This first step, on the face of it, looks entirely self-explanatory. Legal compliance means abiding by all the existing laws of Ghana that apply to those operating in the timber sector. However, one difficulty with such an approach is the long-term, non-compliance culture that exists. A recent report (Care International, 2005) concluded that if all relevant legislation were considered it 'would probably result in the immediate cessation of exports to the EU', i.e. all timber exports are currently illegal. The problematic starting point that has to be faced is that timber exporting companies do not comply with the sector laws. Hence, a discussion has begun over a narrower interpretation of what constitutes legality – a 'legality standard' – as a possible first step in the reform process.

Even if all timber operators were found to be working in compliance with existing laws, there remains a major concern that the present legal system regarding trees and forests in Ghana appears incomplete in a number of significant ways. In the absence of resolution through legal reform of principles such as access rights, benefit sharing and ownership of the resource, legality will probably remain open to dispute.

The existing control system

Three elements may be distinguished in a national forest control system. The first concerns the legal right to fell trees and harvest timber. As mentioned above, the laws of Ghana document how such rights are held. The second element concerns under what conditions trees can be felled and the timber harvested. Successive Government regulations have established some of the conditions under which timber harvesting – and forest management generally – must abide in terms of silvicultural practices, environmental safeguards, economic payments and social provision. However, key forest management codes of practice, such as the 1992 FC Logging Manual, have never been legally gazetted and therefore remain as non-statutory guidelines. The third element encompasses what has become known as the chain of custody: the series of processes and ownerships that timber passes through between being harvested in the forest and being made into a final product. Table 2 below outlines the succession of control measures between the tree being felled and the converted lumber appearing on the dockside ready for export.

The former Forestry Department and FC always derived their authority to regulate and manage the forest from legislation that empowered the Chief Conservator of Forests to issue directives to the forest title holder. The holder's right to operate was by interpretation 'valid' only in so far as he complied with the directives of the Forestry Department and FC (the Concessions Ordinance, Cap. 136 and the Forests Ordinance, Cap. 157). Under the present FC Act, the Divisions of the Commission exercise their powers in accordance with the broad functions prescribed. The use of instruments and procedures, sometimes written but not circularised, are prone to the exercise of discretion. The recent incidence of court cases involving the industry and the Commission over stumpage payment exposes the FC to the risks of litigation. Adherence to the Logging Manual and Manual of Procedures are mentioned in the TRMA and LI 1721, respectively, but neither manual has been gazetted to confirm their legal endorsement and their use to indict forest offenders. Interim measures involving the participation of farmers and District Assemblies in permit and felling procedures were issued by the Ministry in 1994, but these were also not legislated for. However, the standard TUC document approved by the Attorney-General is in line with LI 1721 and prescribes detailed obligations for a prospective TUC holder.

Presently, there are no operational TUCs within the natural forests of Ghana and, from recent experience of court litigations between the FC and industry, some of the procedures listed in Table 2 are a potential source for extended litigation. However, with implementation of TUCs, the rights and obligations of the TUC holder vis-à-vis the FC would be brought closer to mutual understanding. In the case of off-reserves, timber harvests are subject to annual quotas that have been broadly set to control the life of off-reserve resources for some 55 years (Kotey, *et al.*, 1998).⁹ For TUCs in off-reserve areas, annual removals (equivalent to an AAC) have been calculated over a contract time period of five years. For these TUC areas the FC quota system will not apply.

Government's response to illegal logging: the Validation of Legal Timber Programme

Government has recognised for some time that illegal logging is a major problem in Ghana's forests. It occurs during harvesting, transport and internal trade. Existing enforcement capacity is weak, leading to poor governance within the sector with a widespread disregard of forest rules and regulations. One of the main challenges to the introduction of reform is the presence of strong, long-standing alliances within the forest sector, involving producers, politicians and the forest authority who wish to maintain the status quo. Informal payments continue to define how business works. Illegal chainsaw milling in the informal sector is estimated to have distributed some US\$4.5 million in 1999. Illegal felling by the formal sector in 2004 evaded US\$7 million of tax, at an estimated average stumpage of US\$9 per m³ of roundwood. In a forest fiscal reform dialogue, in 2005, one large-scale integrated logger-processor indicated a cost of US\$8 per m³ in informal social commitments, in order to retain traditional authority and other local support for harvest operations. This does not include the transaction costs of doing business with forest institutions and the established bureaucracy. It has been estimated that informal payments 'to get things done' amount to over US\$ 1 million per year (Beeko, 2005).

Table 2. The Control System for Ghana's Natural Forests
(Text in italics suggests actions where the legal basis is presently unclear and therefore may be open to legal dispute.)

Phase	Activity	Legal basis	Control Authority
Suitability of area for TUC	Determination of suitability by FC in consultation with land and forest owners	LI 1649	Chief Executive of the FC
Pre-harvest	Property mark authorised (on a six-monthly basis)	NRDC 273	District Managers, Forest Services Division, FC
Pre-harvest	Forest reserve: 5-year TUC operational plan approved	LI 1649 Section 14 (1) (h)	District Managers, Forest Services Division, FC
	Off-reserve: Annual enumeration of trees above felling limit	<i>First established in 1994 as procedures.¹⁰</i>	District Managers, Forest Services Division, FC
Pre-harvest	Forest reserve: • Stock survey checked • Yield allocation approved	<i>No specific legislation, but subject to interpretation of CAP 136 and 157; also TUC documents approved by Attorney-General.</i>	Resource Management Support Centre, FC
	Off-reserve: Allocation of annual quota	<i>First established in 1994, as un-gazetted procedures.</i>	District Managers, Forest Services Division, FC
Pre-harvest	Compartment logging plan checked	<i>No specific legislation, but subject to interpretation of CAP 136 and 157; as well as TRMA and LI 1721.</i>	District Managers, Forest Services Division, FC
Harvesting	Monitoring compliance with Logging Manual and Manual of Procedures	TRMA and LI 1721	Resource Management Support Centre, FC
Post-harvest	Log statistics (LIF)	LI 1649 Section 23 (2)	District Managers, Forest Services Division, FC
Post-harvest	Preparation of Tree Information Form (TIF)	<i>By written procedures only.</i>	District Managers, Forest Services Division, FC
Log transport	Issue of Log Measurement and Conveyance Certificate (LMCC)	LI 1649	District Managers, Forest Services Division, FC
Log transport	Conveyance certificate checked and logs graded	LI 1649 Section 24 (1)	Timber Industry Development Division, FC
Mill site	Log yard grading	<i>No legislation; no clear procedures.</i>	No specific assigned responsibility
Mill site	Post milling inspections	<i>Inspection function specified under Act 571. However, there are no subsidiary regulations (LIs). Procedures exercised by discretion.</i>	Timber Industry Development Division, FC
Mill site	Mill licence renewal	<i>Registration mandate provided under Act 571. However, there are no subsidiary regulations (LIs). Procedures exercised by discretion.</i>	Timber Industry Development Division, FC
Post-mill site	Export contract approved	<i>Contract approval mandate provided under Act 571. However, there are no subsidiary regulations (LIs).</i>	Timber Industry Development Division, FC
Post mill site	• Final (Harbour) inspection • Customs documentation • GAPOHA certification and tallying	ACT 571; Customs and GAPOHA Regulations	Custom officers

A major Government initiative began in January 2005, with the start of the Validation of Legal Timber Programme (VLTP). The origins of this programme lie in the joint programme management of forest sector reforms, agreed between Government and donors in the early 2000s. A log-tracking proposal was developed by the Forestry Commission, containing new institutional arrangements and re-engineered log-tracking processes to improve the regulation of the forest resource and control illegal activities. Much attention was directed at institutional reform. Validating the chain of custody and legality of timber was seen as not just a step towards good governance, but also a valid service which the FC could deliver to its customers. This initiative was developed at the same time as several national studies showed the inadequacies of the existing situation as regards sector policies, particularly the large sums of lost revenue due to lack of collection of forest taxes. These reports helped convince Government of the need for reform.

In addition, Ghana's involvement in the Africa Forest Law Enforcement and Governance (AFLEG) process, leading up to the Yaoundé ministerial meeting in October 2003, contributed significant political impetus to address national deficiencies within the forest sector. Prospective financial incentives offered by the EU have also acted as a driver. There are approximately €10 million of earmarked funds to support ACP (African, Caribbean and Pacific) countries with capacity building/technical assistance for control measures once a Voluntary Partnership Agreement is signed. Early signatories will therefore be in an advantageous position to benefit from part of this finance.

The purpose of the VLTP is to put in place an efficient and cost-effective system for demonstrating the legal origin of timber, and subsequently, legal compliance of forest management. The Government of Ghana is investing US\$4 million of its own resources to develop the new system. The VLTP has four main objectives:

- To improve the monitoring of forest resource utilisation;
- To improve revenue flows from timber harvests;
- To maintain access to a major export destination (i.e. the EU);
- To establish the first step towards sustainability.

The role of the Forestry Commission would be redefined under the proposed control system being explored by the VLTP. The monitoring and verification functions currently undertaken by the FC would become the responsibility of a new institution: the Timber Validation Agency (TVA). With the establishment of the TVA, the Forest Service Division (FSD) of the FC would then be able to focus on its core responsibilities of the granting of timber rights and law enforcement. The Timber Industry Development Division (TIDD) of the FC would continue with its role in inspecting timber exports, and might also be sub-contracted to carry out the validation of legal exports. This would replace the existing TIDD issue of export permits. Alternatively, validation of exports may be undertaken by the TVA itself (with TIDD staff being seconded to the agency).

The degree of separation between the TVA and the FC is a crucial design consideration. It remains to be seen whether the present system design – which envisages the agency being created under the umbrella of the FC – will lead to the level of independence necessary for the main stakeholders to have confidence in the system. This new institutional

structure is without precedent in Ghana, and hence untested. The establishment of the TVA, which will be a substantial undertaking, is likely to require legislation to establish its legal mandate. The timescale for this to happen is uncertain, yet it clearly represents a significant hurdle to an early introduction of the proposed control system. It is planned that the TVA would become self-financing over a three-year period through payments made by the timber industry for its services. This strategy depends to a large degree on the TVA attracting support from the timber sector, which appears quite ambitious given the longstanding differences between the Forestry Commission and the timber sector.

The wood industry is averse to the numerous trade and industry controls of the FC and believes that it does not get value for money from the FC. The FC's perspective is that there is a tendency for industry to press to maintain its profit levels, and to perpetuate the status quo that guarantees preferential and easy access to the resource. This position is reflected in industry's currently expressed preference for slow movement in the transition to an electronic-based resource accounting system. In 2004, industry commissioned a study into its own operations and concluded that it needed increased volumes of throughput to break even (Brooks Associates, June 2004). But proponents of Ghana's forest fiscal reforms suggest that the conclusion of this study is the problem rather than the solution (Birikorang and Rhein, 2004). The industry has long complained of the high cost of doing business with the Government bureaucracy. The new scheme, accompanied by a more efficient log tracking system, should resolve a number of these issues.

Anyway, the case of the log tracking project's impact on wood flows to the industry is one of a zero sum game: with or without the project, the industry will face (and in fact is currently facing) resource scarcity. The VLTP objectives, for their part, blend well with the intended fiscal and institutional reforms which would also look for ways of de-regulating the industry (for instance in the area of pricing and marketing timber, as well as in the transfer of future forest management roles to the private sector).

On the other side of domestic stakeholder negotiations are the forest owners (comprising the traditional authorities, district assemblies, forest fringe communities, farmers, community forest committees and youth organisations) who consider their fortunes tied to the degree of transparency in forest transactions and appropriation of forest revenues. These voices are currently being echoed by civil society in the VPA consultation process.

System design

Figures 2 and 3 indicate the possible evolution from the present control system to a new structure. The FC and TVA are expected to enter into a 'partnership agreement', under which the FC will be seen as separating its role as a regulator from validation and verification. Under such an agreement, the TVA would be a semi-autonomous organisation. The focus of the VLTP is now on securing a legal definition of the TVA. This may require a legal enactment on the establishment and functions of the TVA, as well as the proposed Operating Council (see below). Such legislation may draw sufficiently on provisions under the TRMA and Act 571 that established the FC.

As can be seen in Figure 3, an Independent Observer is also suggested for the forest sector. This role has yet to be

Figure 2. Existing control system (after Beeko, 2005)

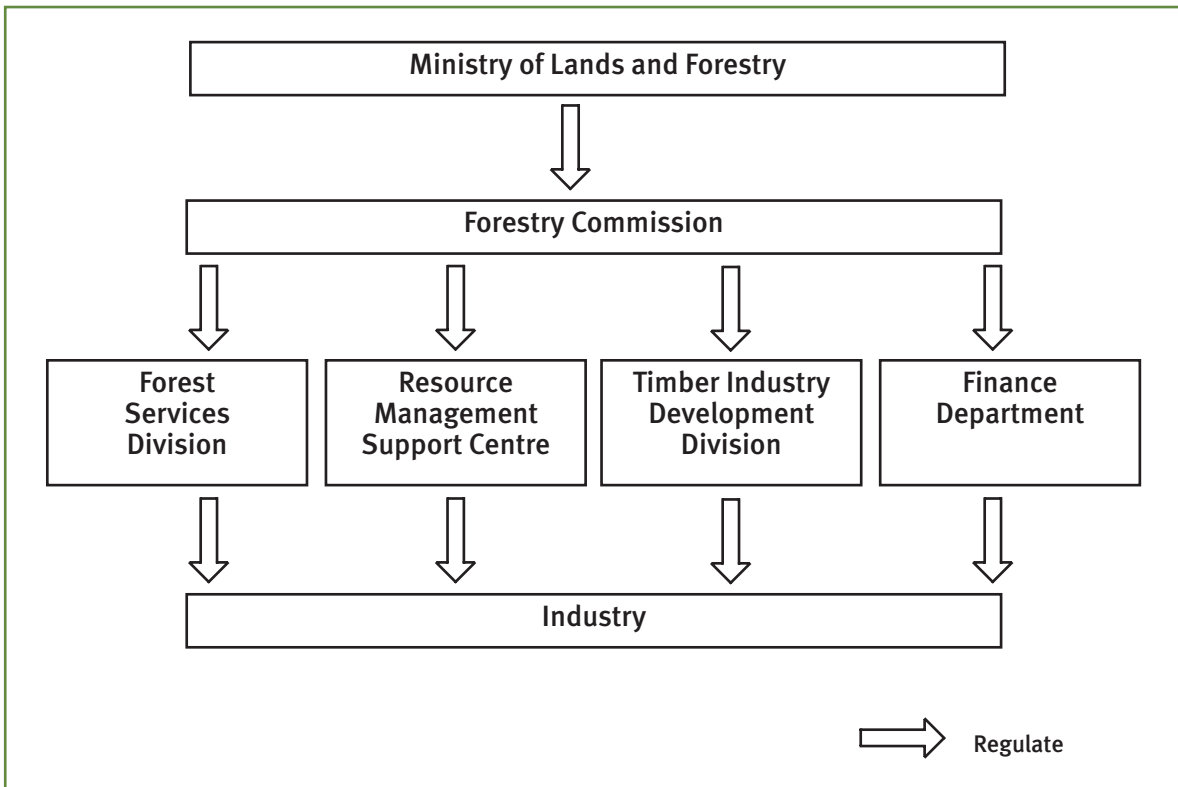
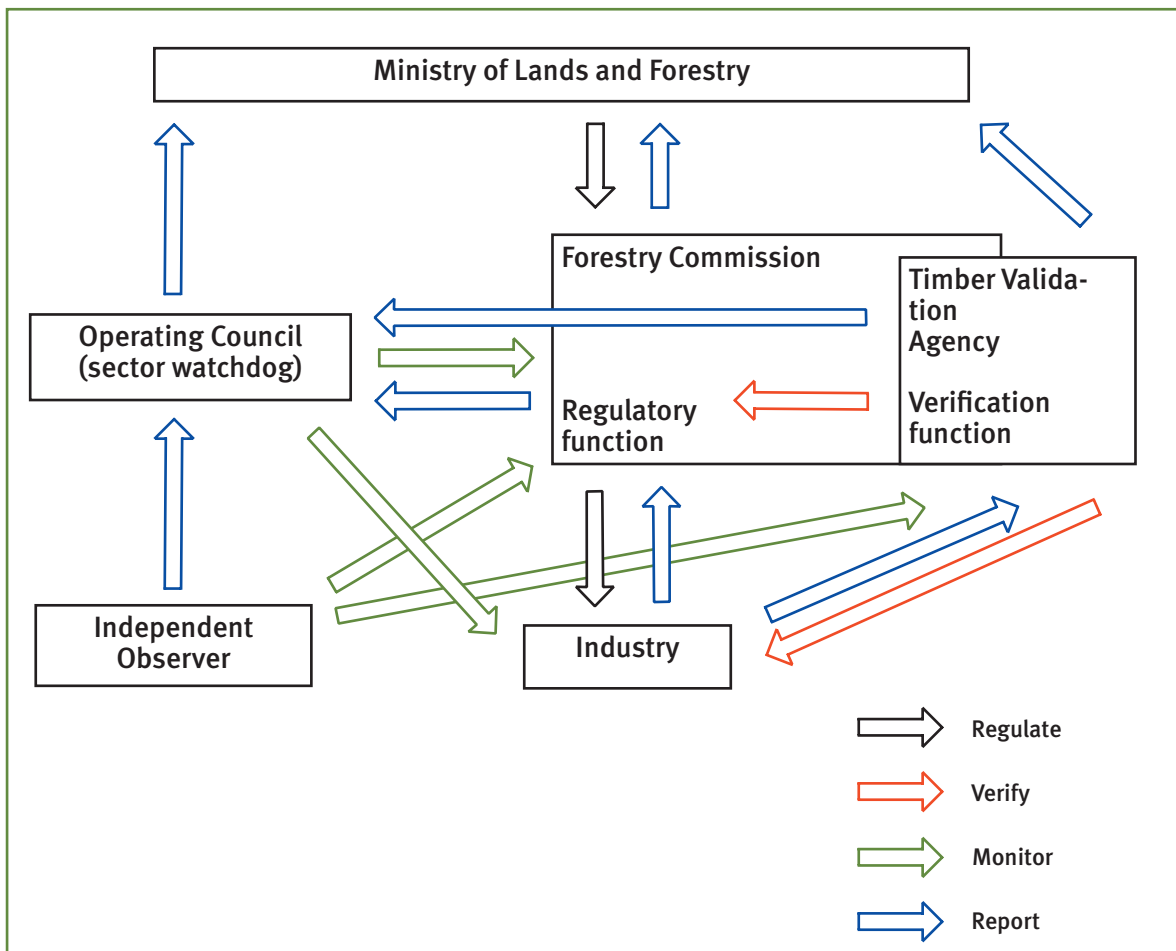


Figure 3. One option for a future control system (after Beeko, 2005)



well defined, although its purpose is clearly to increase transparency and the credibility of the system. It appears to be based on the limited international experience of forest sector monitoring under conditions of markedly poor governance (e.g. Cambodia and Cameroon). Several observers have suggested that a partnership between a reputable international organisation and local non-governmental organisations may be the way forward. However, this is another untested strategy, which brings with it questions of legitimacy. A balance may need to be found between the early introduction of such a body and its likely sustainability. Experience from elsewhere has not been particularly encouraging, with the relationship between the Independent Observer and the national forest authority often characterised as being one of conflict.

The FC envisages the separation of the functions of verification and validation on the one hand from those functions carried out by an Independent Observer. The former two functions would constitute the monitoring system implemented by the TVA with its final output the certificate of legality. The role of the Independent Observer would be to test the standards of the monitoring system. The FC insists that visits of the Independent Observer will be prompted by the FC's invitation. The Commission acknowledges that its current system of regulating and monitoring the flow of timber and revenue accounting is weak. It wants to ensure that the revised system and procedures will improve benefits and reduce costs, whilst at the same time strengthening its institutional position in the eyes of the international community.

Finally, a third new element of the control system is the proposed Operating Council, which would act as the sector watchdog with representatives from the main institutions and stakeholder groups involved. The council would oversee the functioning of the control programme, follow up forest law enforcement in general, and run a conflict resolution mechanism. However, the relationship between this proposed Operating Council and the Ministry is unclear. One key question is who will have the last say in matters of legal compliance? With the culture of litigation that exists in Ghana there is a danger that the control system could become emasculated by civil actions in the courts. Hence the high priority which needs to be given to establishing the entire system under legal statute.

Emergence of a national civil society

The potential role of civil society in implementing the Ghana reform agenda is recognised by all forest stakeholder groups. Presently, civil society is playing a greater role at decentralised local administration levels than with central government. Its grassroots collaboration has deepened, but is not properly networked. Civil society organisations in Ghana generally lack networks, fora and exchange of information processes for promoting equitable growth. As social organisations they also lack infrastructure, and have limited systems and means for funding programmes. They also lack the skills for advocacy and collaborating with central government in promoting good governance. Building capacity for civil society to play a potential role has been an issue leading to the emergence of Forest Watch Ghana (FWG), a platform of proactive NGOs working by consensus and through allocation of areas of specialisation to specific NGO members.

FWG's leadership has enabled other civil society groups and NGOs in the forest sector to be well-informed on forest policies and their implications for the livelihoods of

forest users and rural communities. It has enabled NGOs to support forest communities to gain access to forest resources and a fairer share of their benefits. The ultimate purpose is to create a better understanding of forest policies, their relevance and adequacy for meeting the requirements for poverty reduction. These include issues concerning rights, access to natural resources, participation and benefit sharing (Care International, 2004).

Lack of transparency on the part of Government continues to be a major concern for civil society. Failure to implement the TRMA has eroded the credibility of the executive (Box 1). FWG has moved through a series of negotiating strategies, from a willingness to accommodate a state amnesty for timber lease holders to convert to TUCs, to an insistence on replaced concessions paying Timber Rights Fees (TRFs). It has mounted a press campaign against the allocation of replaced concessions by the FC, which it says is illegal. The emerging issue is whether or not lease holders should pay TRF. Some reformists believe that they should pay even though there is no specific mention of lease holders under LI 1721, which stipulates that timber allocations shall be by competitive bidding. In other words, LI 1721 does not recognise timber leases. FWG's interpretation of the law is that, by this new regulation, the transitional provisions under TRMA, which invited leases to be converted, are no longer valid. Presently, FWG has followed up through the parliamentary process the passing of a total of 171 km² for six competitively-bid TUCs. It is now understood that over fifty replacement TUCs passed to Parliament for ratification by the Ministry are still pending.

Extra-sectoral experience with verification for the EU market

Some lessons for timber verification may be learnt from the experience of verifying Ghanaian fish exports to the European Union (EU). The EU has developed rules and regulations in order to guarantee that imported fish and fisheries products are as safe as possible for human consumption. The scale of fish imports to the EU is considerable, amounting to just over 3 million tonnes in 2002. Ghana's fish exports are modest, with approximately 18,000 tonnes exported to the EU in 2002. However, it is recognised as a lucrative trade with high prices offered – a situation not dissimilar to that of Ghana's timber exports to the EU. Each fish consignment exported from Ghana to the EU must now (i) have a health certificate issued by the Ghana Standards Board, (ii) come from EU-approved premises, as listed by the EU, and (iii) enter the EU through a Border Inspection Post where veterinary checks are carried out by an Official Fish Inspector.

One major impact of the fish export scheme has been that many producers have been put out of the export business. Previously, there were over 2,000 exporters but this has been reduced to 29 approved establishments at present. Particular problems have arisen for small-scale fish producers who have found it difficult to afford the costs of compliance and subsequent verification. It would thus appear that the social cost of this system has been significant. The amount of fish sold to the EU has also decreased. Other impacts include the lowering of the price of fish in the local market and an increase in the degree of processing in-country. As fish is the major source of animal protein for Ghanaians, with annual per caput fish consumption of about 26 kg, this drop in price might be expected to improve food security for the poor.

Box 1: Case of the TRMA and replaced concessions

Forty-two TUCs were allocated to a number of timber companies by the National Democratic Congress (NDC) Government and ratified by Parliament close to the end of that Government's term in 2000. These contracts were cancelled in 2002 by the New Patriotic Party Government on the grounds of non-transparency. The allocations had been made by the Forestry Commission through a points scoring system that was based on the evaluation of technical and financial proposals. The beneficiary companies submitted their performance bonds for completion of formalities to make the TUC contracts effective. Responsibility for completion of these procedures fell on the new Government which did not want to have anything to do with them. While the performance bond procedures were hanging, events were overtaken by the amendment of Regulation L.I. 1649, which prescribed procedures for the allocation of TUCs. The new Regulation, L.I. 1721, enacted in February 2001, provided specifically for the allocation of TUCs by competitive bidding and the payment of Timber Rights Fees (TRF) by the bid winners. This provision was absent in the earlier regulation, L.I.1649.

While the 42 TUCs were in the process of being returned to the competitive bidding 'pool,' a new terminology of 'Replacement' emerged as the Forestry Commission re-packaged the 42 TUC areas and re-allocated them, between 2003 and 2004, to the previous beneficiaries (and some new ones) on the grounds of replacing concessions lost through the conversion of their concession areas to protected areas (Globally Significant Biodiversity Areas, GSBAs) and placement under 'convalescence'. The Ministry simply looked on. In the last quarter of 2005, the Ministry justified the 'Replacement' actions as complying with conditions for replacement under TRMA, and has since October 2005 sought parliamentary ratification of the replaced concessions as TUCs. But the issue of illegality championed by FWG has so far stayed the parliamentary action.

The Timber Resource Management Act of 1997 provided a transitional clause to enable all valid timber leaseholders to apply for conversion to TUCs within 6 months of the Act coming into force in 1998. None of the leaseholders complied. The challenges posed by FWG to the FC rest on the following issues:

• Governance

FWG demanded timber title holdings to be rectified during a 6 months moratorium in 2003 by converting to TUCs in accordance with the law. In 2004, FWG challenged the policy of replacement of leases under convalescence on the grounds that, in most cases, they were due to over-logging, and therefore the policy constituted a reward for causing environmental and ecological damage. Non-transparency was also an issue, as in 2004 FWG had found that the Ministry's and FC's handling of these TUCs represented inconsistent interpretation of both forest policy and its enabling legislation.

• Equity

Landowners and forest communities stood to benefit from competitive bidding, but the idea of immunity of lease holders from paying TRF loomed high in industry lobbying. FWG's counter-position, since the beginning of 2005, has been that the system of lease holding and competitive bidding has important implications for the distribution of forest benefits to forest owners. FWG was therefore opposed to any immunity on the payment of these fees.

Conclusion

The timber sector in Ghana continues to be characterised by poor levels of governance, with many operators apparently operating outside the main legal statute (the Timber Resources Management Act, TRMA). Forest law enforcement capacity is limited. The institution responsible for forest control, the Forestry Commission (FC), is not strong and retains a number of potentially conflicting functions (law enforcement, monitoring, forest management, and revenue collection). However, there is increasing demand for improved transparency and accountability within the sector, much of this led by an emerging national civil society concerned over forest use. In this context, the EU Voluntary Partnership Agreement (VPA) has been acknowledged by some within Ghana as a timely international initiative that could support the national drive for reform.

Considerable investment has recently been made to establish a national verification system. The Validation of Legal Timber Programme (VLTP) within the FC is the lead initiative that aims to set in place the necessary institutions, processes and structure that will meet the needs of the EU VPA. The initial focus by Government appears to have been a technical one: to put in place the forest control technology

Box 2: Some lessons to be learnt from verification in the fish export sector

- Verification standards are equivalent to mandatory standards in the EU.
- Individual country agreements are set by EC decisions.
- The EU formally acknowledges a competent national authority.
- The EU acknowledges assurances provided by the national authority.
- The EU retains the right to conduct in-country audits of standards.
- Standard setting has caused a significant down-sizing of the industry.

(timber tracking) that would allow for the validation of legal timber. The challenge remaining is to achieve the right institutional mix to ensure a credible verification system and to establish the legal basis of the system itself.

There also appears to be new movement to tackle non-compliance with the TRMA, which would have a major impact on the timber sector if it goes ahead. The Ghana Government's 2006 Budget has specifically indicated, as

a policy initiative, that all timber leases must be converted to TUCs in accordance with TRMA and its accompanying regulations, including LI 1721 which provides that TUCs should be allocated by competitive bidding. Job losses associated with mill closures is clearly a sensitive issue, made more difficult by the fact that the sawmilling sector has been allowed to grow in recent years despite the fact that installed capacity far exceeded the estimated sustainable supply.

Three main lessons appear to be emerging as the debate on timber verification develops in Ghana: first, the current State monopoly over the control system presents many challenges in terms of improving accountability and transparency within the sector. Second, commitment from Government is essential to set the right economic price for timber. Third, a process mutually acceptable to all the main stakeholders may necessitate phased implementation. Overall, the VPA process needs to demonstrate that it adds value to the wider national reform programme for its uptake to be successful.

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Footnotes

- ¹ The conversion of round logs into lumber using chainsaws, often carried out at the tree stump.
- ² The legal resolution arrived at reflected the perspective of the office of the Attorney-General and Ministry of Justice.
- ³ The Felling Cycle is the period of time between successive timber harvests in the same forest.
- ⁴ This comprised 500,000 m³ each for forest reserves and off-reserve forest areas
- ⁵ In the early 1990s, the former Timber Export Development Board reported industry recovery rates of between 55-60 per cent. The Ghana Wood Industry Study, in contrast, established a recovery rate below 40% for industry's operations in 1999. This implied that the earlier high recovery rates masked high volumes of throughput that were not recorded.
- ⁶ Ghanaian traditional chieftaincy
- ⁷ The Department for International Development (DFID) is the UK Government department responsible for promoting development and the reduction of poverty.
- ⁸ The new TUC document broadly provides for the logger's obligation to comply with such requirements.
- ⁹ The quota system in its application is far from this reality and has been subject to extreme discretion. Illegal logging has also made it ineffective.
- ¹⁰ Reference: Interim Measures for the control of illegal logging in off-reserves. Ministry of Lands and Forestry, July 1994.

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