

Customary tenure rights, the informal economy and illegal forestry practices in Ghana

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April 2011

FRST 497

Executive Summary

The continual adoption of and/or changes to new and existing common laws in Ghana has been at the forefront of many previous tenure reform attempts. However, the result has always fallen short of creating effective and efficient laws and institutions governing this vital economic tool. As a result, inefficient and often corrupt precedents that encourage non-enforcement and disregard for the common laws have prevailed. This review looks at the potential relationship between customary tenure, the informal forestry economy and illegal logging. Analysis suggests that this relationship is one the primary sources of illegal logging in Ghana, and aims to present the problem and offer multiple solutions to addressing it in a holistic manner. The current ‘business as usual’ scenario in Ghana is no longer acceptable, if the objective is to maintain a sustainable forestry industry of native species over the long term. It represents a disregard for the domestic informal industry, the forest fringe communities and community forest governance. Therefore, it is felt that talking about and addressing these, and many other, issues is not only pragmatic, but also essential. This review suggests three solutions to reducing the chronic inefficiency and increasing the tenure effectiveness. They include: the education of forest fringe community members, addressing the variations in customary and common laws and improvement in the enforcement of weak common laws.

Key Words and Phrases

Chainsaw Logging, Common Law, Stool Tenure, Customary Land Boards, Customary Law, Formal Economy, Ghana, Illegal Logging, Informal Economy, Tenure Reform, Tenure Rights, Traditional Authorities, Voluntary Partnership

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Acronyms

ACC – Annual Allowable Cut
AOSL – Office of the Administrator of Stool Lands
CBNRM – Community Based Natural Resource Management
CFC – Community Forestry Council
CLB – Community Land Board
DA – District Assembly
ERP – Economic Recovery Program
EU – European Union
ISSER – Institute of Statistical Social and Economic Research
FERN – Forest Ecosystems Research Network
FC – Forestry Commission
FLEGT – Forest Law Enforcement, Governance and Trade
FR – Forest Reserve
GDP – Gross Domestic Product
NGO – Non-governmental Organization
NTFP – Non-Timber Forest Products
PES – Payment for Ecosystem Services
ROI – Return on Investment
SFM – Sustainable Forest Management
SMFE – Small and Medium-sized Forestry Enterprises
SRA – Social Responsibility Agreement
TA – Traditional Authority
TUC – Timber Utilization Contract
US – United States
VPA – Voluntary Partnership Agreement

Introduction

The current land tenure rights held by individuals and communities and the informal economic forestry sector are significant mechanisms supporting or perpetuating illegally sourced timber in the nation of Ghana. The term ‘land tenure’ includes all of the laws and obligations that govern “the holding and/or ownership of rights and interests in land” (Boakye *et al.* 2008). This paper will outline these issues and present three solutions that should help Ghana to move towards the development of a more sustainable forestry sector.

Customary or stool tenure rights and security are both closely tied to an understanding of the law and social agreement, through norms and customs, in the development of economic efficiency (Blocher 2006). This is due to the dual Ghanaian law system, where customs and norms guide the enforcement and regulation of customary/informal law and an understanding of common law is essential in order to work within that system, albeit often illegally. This base of common law understanding is usually found at the higher levels locally, with the Traditional Authorities and with other local authorities that oversee tenure allocation generally versed in common tenure law. Traditional Authorities are the religious and hereditary leaders within each community that wield power and authority, and are a major decision-maker around customary tenure. Therefore, it is important to develop the legitimacy of tenure agreements to further economic development within the whole economy.

In Ghana, the development and application of tenure rights and security are further complicated by the implications of a pluralistic legal system and the duality that exists within the economy. Simplistically, the formal Ghanaian legal system is a composition of English common law that was “engrafted onto Ghanaian communal

societies without taking into account the differences between...capitalist economic structures and the egalitarian communal institutions of Ghana” (Aryeetey *et al.* 2009). The dual economy is a hybrid between the formally recognized and regulated economy, accounted for in the national GDP, and the pre-capitalist informal economy, which operates outside of government regulation and the protected employee relationships that pervade the formal economy (See Figure 1) (Chen 2005).

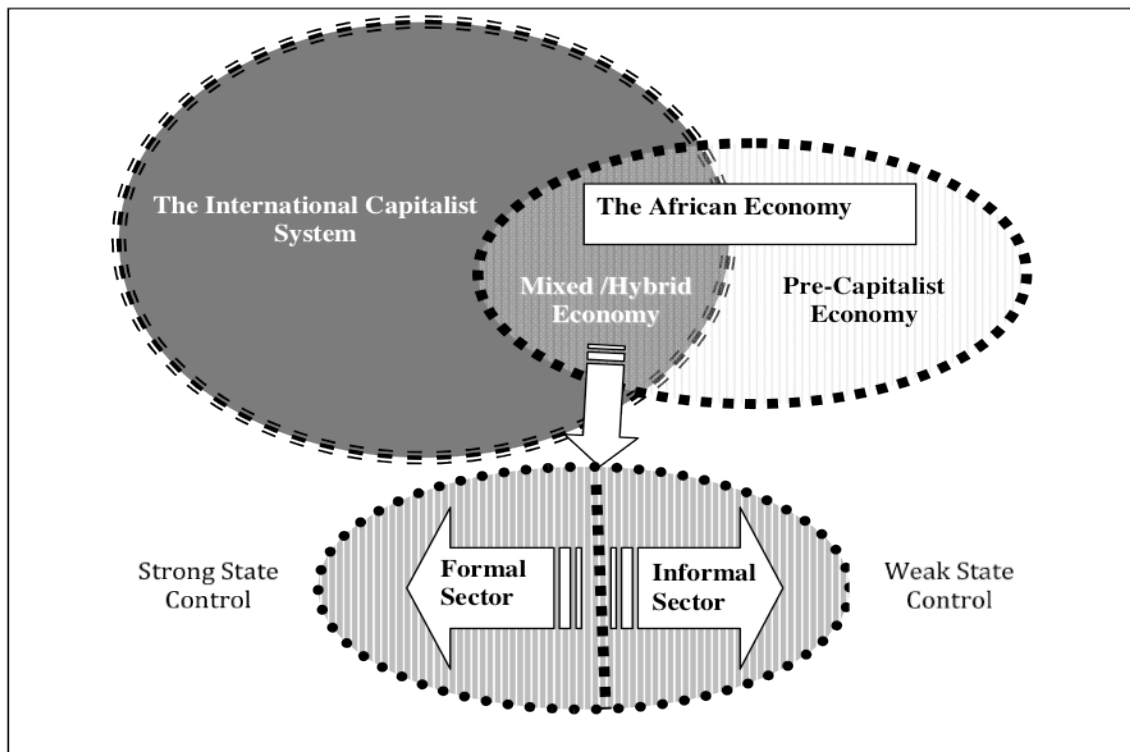


Figure 1: Formal and Informal Sectors in the African Economy
 Sourced: J.H. Owusu *New Trends in Ghana's International Timber Trade*

The informal economy is loosely based on infused ideas from both the pre- and post-colonial periods. The pre-colonial Ghanaian economy was not just “motivated by individual profit alone, but was embedded in a range of social considerations that allowed the redistribution of opportunities and benefits” (Owusu 2008). The legal system coupled with the general attitude in government that the informal sector is a “diversion of

economic transaction beyond the reach of the state” perpetuates the perception that informal activities equal illegal activities (Owusu 2008). This has allowed the line between informal and illegal activity to shift back and forth. As a result, formal economy benefactors, both foreign and domestic, have attempted to delegitimize the informal economy’s role in economic growth, which has forced informal actors to fight to have their actions legitimized. The accumulation of these issues and their pertinence to forest access rights and tenure is the primary focus of this thesis. It will address how the land tenure structure might better be addressed to contribute to the overall progress towards a comprehensive solution for the forest industry.

Common and Customary Law

Prior to colonization, Ghana was an area constituted of many different tribal groupings all based on a system of economy built on tradition, social structure and exchange (Opoku 2006). Throughout the flow of recent Ghanaian history, beginning with British indirect rule over the Gold Coast to the present day centralized state, two generally accepted systems of law have emerged. The first, a capitalist system found primarily in the urban and commercial centers is based on British common law (Agbosu 1990). The second, which dominates the rural areas, is a traditional customary system based on social norms, religion, power structure and customs that have been present long before colonization (Agbosu 1990, Opoku 2006, Wiggins *et al.* 2004).

The common law system, which derives most of its legitimacy and power from the government and government institutions, also happens to be the instrument on which economic decision-making has been based since colonialism ended in 1957. This law

finds its source in the former laws of the Gold Coast colony. Due to a standard of non-enforcement and a lack of general understanding of the common law over the better-understood customary law, the common laws are often seen as worthless and enforcement is random and arbitrary. However, the common law system continues to play a strong role in many facets of tenure in Ghana.

Under colonial law, through the *Forest Ordinance* in 1927, land was informally expropriated from the traditional stool landholders to create Forest Reserves (FRs); a form of forest tenure (Boakye *et al.* 2008). A visual representation of FR distribution in Ghana can be found in Appendix 2. Forest Reserves are “legally defined and demarcated areas of forests that have been specifically designated for management and protection of the forest in perpetuity” and the title to the land on FRs remains with the Traditional Authorities (TAs) (Odoom 2005). Additionally, traditional access to the forest by communities has been restricted, except under permit by the Forestry Commission (FC) (Opoku 2006). Policy regarding trade and industry regulation has been administered through the *Forest Protection Decree* of 1974 (Boakye *et al.* 2008, Wardell *et al.* 2006). In order to create a FR the government must now consult the customary landowners, indicating a shift away from previous approaches (Boakye *et. al* 2008).

The overarching tenure types under consideration in this review include: the interaction between customary land tenure (stools) within forest-fringe communities, both on and off reserves, and the varying forest tenure types, primarily FRs and a general grouping of off-reserve types. Off-reserves are those forests that, often in the form of concessions to large permit holders like formal forest industry firms, exist outside of FRs (See Table 1).

Under the pre-colonial customary law the chiefs and religious leaders hold most of the stool tenure allocation and administrative power. This power was further increased

Type of Forest tenure	On-reserve	Off-reserve	Rights of access holders	Rights and responsibilities of government	Remarks
Forest reserves	<input checked="" type="checkbox"/>		Permits for timber, NWFP usufruct rights	Protection, management, development and utilization	Owned by stool, shared with government
Off-reserve forests		<input checked="" type="checkbox"/>	Timber permits	Management	
Communal forests		<input checked="" type="checkbox"/>	Non-commercial gathering of tree products	N/A	All inhabitants have usufruct rights to naturally occurring trees
Community plantations		<input checked="" type="checkbox"/>	Communal gathering	N/A	Ongoing
Private plantations		<input checked="" type="checkbox"/>	Sole owner and manager	N/A	Ongoing
Industrial plantations		<input checked="" type="checkbox"/>	Sole owner and manager	N/A	Ongoing
Collaborative forest management	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Joint managers for equity	Management	Ongoing
Commercial plantations	<input checked="" type="checkbox"/>		Managers of the resource	Regulatory roles	Guidelines ready late 2006

Table 1: Features of different Forest tenure types

Sourced: K.A.Boakye & K.A. Baffoe *Trends in Forest Ownership, Forest Resource Tenure and Institutional Arrangements: Case Study from Ghana*

under British indirect rule (Opoku 2006). Institutionalization of ‘native rule’ was enshrined in the Ghanaian common law making chiefs constitutionally recognized as distinct power holders (Wardell *et al.* 2006). This gave many chiefs more powers than they held prior to colonization, because hereditary chiefs had limited communal responsibilities that were now increased to include full chieftaincy and state government participation (Wardell *et al.* 2006). The customary law dictates important community-based actions including: how stool lands are divided between members and non-members

of the community, how tenure rights and security are negotiated, and how payment for land is determined.

Stool lands are communal land-configurations that represent a power structure enabled under British indirect rule (Opoku 2006). This is accomplished through chieftaincy and has been perpetuated by successive governments ever since in order to centralize control over communities (Odoom 2005). This power base has allowed for the allocation of knowledge and understanding of the common law to primarily be held within a community by those who also dictate the customary law. Thus, a moral dilemma is created where a lack of understanding of the common law amongst community members and migrants is beneficial to the wellbeing of TAs and government. For example, the Ghanaian 1992 constitution law outlines clearly the formula from which royalties from stool lands are to be determined, but administrative determination of these royalties by the government, in violation of the constitution, is ongoing (Baokye *et al.* 2008).

Customary laws are typically, with a number of more recent exceptions, only integrated into common law when they are in agreement with the government's economic ambitions (Amanor 1997). This was seen through the industry reforms in the 1980's, which are discussed in the later section on economics. The customary – common law dissonance is especially true with regard to forestry; where access to the forest by communities continues to be restricted beyond their pre-colonial access rights (Owusu 2008). There are varying differences across the landscape, especially between the Northern and Southern regions, due to variations in tribal governance and traditional forest uses, and ecosystem differences (Boakye *et al.* 2008). The lack of congruency

between common and customary law creates a grey area where economic and political rent-seeking corruption flourishes (Odoom 2005).

Chainsawing is commonplace throughout forest areas, and disenfranchised community members often participate in the degradation of the forest resource (Wardell *et al.* 2006, Opoku 2006). The vast majority of this informal resource extraction is based on decades-old practices, developed through the precedent of non-enforcement, surrounding the laws restricting community's access to the forest resource (Wardell *et al.* 2006). Also, there is a perception that the laws are developed with little regard for the economic value that informal practices play in the development of the rural economy (Wardell *et al.* 2006). The differences between the two legal systems are more easily understood through the contrasts and comparisons of their frameworks and jurisdictions made in Appendix 1.

Therefore, efficient, effective and enforceable laws should be created in Ghana to better administer the tenure rights of Ghanaians so as to improve the legitimacy of the economic climate (Blocher 2006). Blocher also suggests that the informal customary laws can provide, through established social norms and customs, an "economizing function" in the same manner as a broadly accepted and respected formal law would. Due to the high costs of enforcement in Ghana, social norms also provide to law enforcement a resource that is efficient and effective. This is especially true where strict laws restricting forest access are often superseded by political power and bribes (Wardell *et al.* 2006). In these cases the common laws and their sporadic or non-enforcement have lead to a marginalization of the norms and customs that are used to police forest usage through incentives and rights. Instead of the continuing cycle of implementing common laws that

are in direct opposition to existing customary laws, a more cohesive and congruent common-customary set of regulations should be implemented. Then Ghana could move towards a more cohesive and transparent system of law that is understood, respected and enforced across the landscape.

Customary/Stool Tenure Types, Rights and Access

The most common measure for land holding in rural Ghana is customary land law (Blocher 2006). Under this law there are a number of titles and a breadth of rights distributed in accordance to tribal customs and common laws. The local community's TAs, their families and/or tribe usually hold the Allodial title. This title, along with its two subordinate forms of title, constitutes a legitimate form of land interest under the *Land Title Registration Law* of 1986 (Blocher 2006). It is estimated that the Allodial title carries the communal tenure responsibilities and rights of about 78% of Ghana's land base (Aryeetey *et al.* 2009). The remaining 22% fall under either private title or a vast number of other small tenure types not discussed in this paper. Under the 1992 *Constitution of Ghana*, the Allodial title charges TAs with an obligation for the management of the land and to act within the wider interests of the community, clan or family to which the title is attributed (Aryeetey *et al.* 2009).

There are two other lower forms of title under the Allodial title: the Freehold and Lesser Interests titles. The Freehold title is found under both the customary and common law system. It gives the holder the rights to develop and manage his land without interference, except from that of the Allodial titleholder (Blocher 2006). The Freehold title does not come with a specific set of rights or level of security, but rather these rights

are built up over time through participation in the community. In 2007, the granting of any further stool lands under Freehold title was formally prohibited by the state, although these titles still continue to exist (Aryeetey *et al.* 2009). The Lesser Interest titles are created only in the customary system under an Allodial title, Freehold title, or both. The predominating example of the Lesser Interest titles is sharecropping. Lesser interests carry a very low level of security or community rights for the holder and vary greatly among communities.

The Freehold and Lesser Interest titles are not organized as concretely as Allodial, but range from person to person and tribe to tribe. However, general customary law, and common law where it pertains, recognizes them in their various forms as lending to a general package of rights and security for the titleholder. The rights to tenure access are granted by inclusion in the patrilineal, matrilineal or conjugal family or the community (Awanyo 2009, Baokye *et al.* 2008). Following the granting of tenure, it is then important for tenure holders to seek further security in their rights. As stated, this is due to the level of security helping to determine what kind of role a tenure holder plays in the development or degradation of the land base.

Additionally, there are other forms of tenure including: private land holdings registered through the government and public lands under either government or communal control (See Table 1). However, this paper only focuses on the customary tenures listed, as these, due to the vast area that they pertain to, carry the greatest impact on informal forestry in Ghana. A condensed version of this information can be found in Appendix 3.

The process of negotiation for stool tenure access within an Allodial title is complex and multifaceted. It usually involves demonstrating adulthood through age, social responsibility, appropriateness of one's behavior, wealth and other qualities (Awanyo 2009). In exchange for the granting of tenure, a person will gift to the TAs 'drinks' money. These gifts were often given in the form of alcohol or food in previous eras. They now usually consist of monetary payments and displays of public 'documentation' (acts witnessed by the community), which provide further opportunity to exclude poorer Ghanaians from land access (Blocher 2006). Proof of these payments is required by formal law to be officially reported for the purposes of zoning, revenue collection and the prevention of duplicate sales. However, the TAs have effectively resisted this by misreporting the exchanges (Blocher 2006).

The continuum of land title security ranges from short term rights with little to no decision making authority, to long term rights that can be passed on through lineage and that are restricted to only those who are granted the rights; as in the case of Family lands (Awanyo 2009). It is important to note that no "customary law distinguishes between men and women in terms of rights to own and use land or trees" (Baokye *et al.* 2008). However, the rights of women to inherit land are considerably weaker and less secure than those of men. Once women have gained those rights (often through inheritance) their land use faces little or no restrictions; thus their decision making power becomes equal to that of men (Baokye *et al.* 2008).

Security of customary tenure is integral to forest management, as those who have more tenure security and rights to the trees, usually through private tenure, are more likely to participate in replanting, sustainable forest management (SFM) or to consider

retaining forest cover (Zhang 2005, Baokye *et al.* 2008). Alternatively, those customary tenure holders who have less secure or no access rights are more likely to have the forest cover removed illegally. This typically results in its sale into the informal domestic market. In a country that has seen a forest cover loss exceeding 80% in the last century, this is an important consideration and challenge for future generations to change (Opoku 2006, Owusu 2008).

The levels of tenure rights play an especially significant role in forested areas. Trees represent a long-term Return on Investment (ROI) for those who choose to plant them, and a short-term ROI for those who allow them to be cut down. Trees also present a considerable liability to a tenure holder. The legally permitted actions of formal concession holders or illegal actions by chainsaw gangs to cut down the trees may result in damages to a tenure holder's crop (Wiggins *et al.* 2004, Odoom 2005). This could greatly affect a farmer's crop revenue. The President of Ghana has held the timber access rights on all customary tenure stool lands since the introduction of the *Forest Ordinance* in 1927 (Odoom 2005, Wardell *et al.* 2006).

Six Obstacles to Tenure Efficiency

Tenure rights as they related to forests located on stool land are of particular importance, due to their major role in the perpetuation of illegal logging. Therefore, they are a major source of timber for the informal economy. There are six identified obstacles to the creation of a nation-wide transparent, effective and efficient set of tenure rights to reduce these issues.

First, registry of customary title is a difficult and protracted process especially for those in rural areas. This problem begins with customary tenure arrangements often being ‘documented’ orally, through a public ceremony, but not formally recorded (Agbosu 1990, Blocher 2006). This lack of formal (ie. paper) documentation exacerbates investment decisions, like the inability for tenure holders to seek additional contracts or loans to increase investment on the tenure (Aryeetey *et al.* 2009). Due to the lack of this documentation, it is not uncommon for tenure holders to find out after many years of cultivating the same land that someone else holds the required common law documentation to claim title on their tenure (Agbosu 1990). The length of time it may take for a land title registration to be completed, hampered by lack of staff and staff training, can be months to years. This acts as a major deterrent to rural community members. The 2005 Institute of Statistical Social and Economic Research (ISSER) survey noted that 75% of respondents shared these or similar experiences regarding the lack of effectiveness and efficiency at land registry offices (Aryeetey *et al.* 2009).

Many rural community members are not aware of all the implications surrounding their rights and security of tenure beyond their local customary laws. This affects the perceptions of security among many tenure holders, limiting the breadth of economic choices that they make and their willingness to play a stewardship role in management of the forest resource. Without a basic assurance of tenure security, it is difficult to begin proposing additional improvements to the existing system. Therefore, the system of land registration needs to become more efficient and interconnected to better improve the security of tenure. This is not the only factor affecting a lack in capital investment, but implementing these changes should positively impact the economic climate for land and

forestry/agricultural investment in Ghana; both from foreign and domestic capital sources (Agbosu 1990).

Secondly, the level transparency of the TAs is varied and they often fail to fulfill the mandate of their trusteeship as dictated by the constitution. The same case, but under slightly different mandate, can be made for government representatives; be it Forestry Commission (FC) employees, District Assembly (DA) members or representatives of another government body. All of these individuals, from TAs to DAs, have been known to be involved in a wide variety of corruption allegations (Opoku 2006, Odoom 2005). Some of the more notable cases pertaining to tenure and forestry include collusion with chainsaw operators, sometimes usurping the lower tenure holder's rights to compensation, the sale of community lands to non-members and a lack of fiscal accountability with stool revenues collected (Odoom 2005, Blocher 2006, Wardell *et al.* 2006).

For example, stumpage from off-reserve forests sees 40% of formal revenue of the timber from concessions and 60% from on-reserves paid to the FC, with the remaining amount paid out to various other actors (Baokye *et al.* 2008). This, in many respects, is a subsidy to concession or permit holders and an economic loss to the communities (Odoom 2005, Opoku 2006). These royalty rates have been considered to be some of the lowest in the world, but adjustments have been made in recent years (Amanor 1997, Baokye *et al.* 2008). This revenue from stool land tenures, including that derived from the cutting of timber legally on those lands, is collected by the FC and sees 10% paid to the AOSL and from the remaining 30% of total revenue: 25% to the TAs for stool maintenance, 20% to the TA directly and 55% to the DA where the stool is located (See Figure 2) (Hamilton Resources and Consulting 2008, Odoom 2005).

On-reserve Stumpage Revenue Allocations

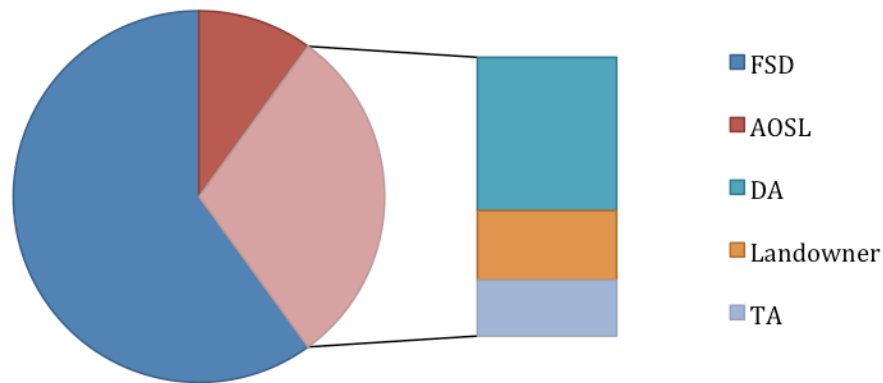


Figure 2: Stumpage Allocations
(NOTE: Allocation from 60% that is paid to FC from the total timber revenue)

Royalty, or stumpage, collection is often lacking transparency and many forest-fringe community members rarely see any of the money make its way into local projects (Blocher 2006). Additionally, there are high levels of debt among forest concessionaries and the inability for the FC to collect significant portions of the outstanding payments (Baokye *et al.* 2008). The law states that royalty funds are to be allocated for community betterment (Odoom 2005, Baokye *et al.* 2008). DAs do not have the technical information to properly budget the revenues and TAs often see the allocated funds as a stipend for management of the communal lands (Opoku 2006). In order for changes in tenure to be lasting and effective the decision making and revenue administration of these stool lands must become more transparent and equitable.

The next three obstacles under the current tenure system with regard to access rights are all regarding specific access issues. Each of them brings about another level of complexity to the issues perpetuating informal forestry activities. They include the rights surrounding trees on a tenure-holders land, education about the forest and access to

NTFPs. The rights to access trees located on a farmer's land and NTFPs play an important role in incomes of many tenure holders.

The third obstacle is outlined in the 1995 *Interim Measures to Control Illegal Timber Harvesting Outside Forest Reserves*, which gave farmers the right of veto harvesting and to demand compensation payments for damages to crops caused by tree felling (Wiggins *et al.* 2004). This increased community participation in forestry decisions, but a lack of knowledge among farmers about the market values of the trees or a fear of reprisal from armed chainsaw gangs or TAs often renders this law meaningless in practice (Mayers *et al.* 2008, Odoom 2005).

If a farmer wants access to trees for his own domestic use, he must either purchase them from distances upwards of 100 km or more or apply for a Timber Utilization Contract (TUC) or Timber Utilization Permit (TUP). Both of these are essentially felling permits (See Table 2) (Odoom 2005, Birikorang *et al.* 2009, Wiggins *et al.* 2004). The TUP is most commonly applied for among communities, NGOs and other locals groups (Baokye *et al.* 2008). However, many farmers simply opt to use trees on their land as an opportunity for instant cash payments by hiring illegal chainsaw loggers to remove them (Birikorang *et al.* 2009). This is especially true as long as the laws require TUC holders to hire a "certified timber processor or sawmiller," which is both impractical and expensive for many remote individuals and communities (Odoom 2005).

Due to the high economic rent returns attained by chainsaw gangs and middlemen through illegal chainsawn lumber, many farmers and Forestry Commission workers do not attempt to prevent the felling of trees without a permit (Baokye *et al.* 2008). This economic rent capture has also been accessed by formal industry, which also hire illegal

timber contractors (Odoom 2005). The monies are then used to increase lobbying power with government officials to perpetuate the lax approach to tackling the illegal log sourcing problems (Odoom 2005, Amanor 1997).

Permit	Primary Applicants	Process of Application	Rights	Restrains
TUC	<ul style="list-style-type: none"> • Forestry Companies • Large organizations 	<ul style="list-style-type: none"> • Apply to FC 	<ul style="list-style-type: none"> • Right to harvest a given area 	<ul style="list-style-type: none"> • Reforestation Plan (10% of area) • Follow and implement SRA • Code of Conduct on farmer rights, NTFPs and revenue sharing • Ensure SFM through Harvest Plan
TUP	<ul style="list-style-type: none"> • Communities, NGOs, • CFCs 	<ul style="list-style-type: none"> • Apply to FC 	<ul style="list-style-type: none"> • Right to harvest a given number of trees 	<ul style="list-style-type: none"> • Cannot harvest in TUC area • Can only harvest trees under permit

Table 2: Comparison between Timber Utilization Contract (TUC) and Timber Utilization Permit (TUP)
 Data Sourced from: K.A.Boakye & K.A. Baffoe *Trends in Forest Ownership, Forest Resource Tenure and Institutional Arrangements: Case Study from Ghana*

This leads to the fourth obstacle regarding the level of education that is available to rural Ghanaians about forestry and land management. Stemming the flow of these activities is further affected by the lack of knowledge that most rural Ghanaians have about the importance of the ecosystem services that the forests provide including: water filtration and erosion prevention (Odoom 2005). If there was better education about the roles forests play in providing ecosystem services and Payments for Ecosystem Services (PES) were incorporated into the payment for trees there would be a greater incentive to develop a resistance to the gangs and middlemen.

The fifth obstacle is surrounding the integral role that NTFPs play in communities, despite issues surrounding their management and access. They aid in poverty prevention

and reduction, especially as the ratio of landowning class members shrinks in relation to those who have lesser interest titles or no land access whatsoever (Opoku 2006). About 90% of the forest use in Ghana is for the production of direct energy or charcoal, not timber, as well as rattan and many other NTFPs (Mayers *et al.* 2008, Hamilton Resources and Consulting 2008). There are high levels of value addition and turnover contributions from these informal market contributors, making them a major source of economic activity in the Ghanaian forestry sector. Some studies indicate that NTFPs “generate more value per ha than timber,” with a selection of 11 such products pegged at 50% of the net value of timber and wood products (Hamilton Resources and Consulting 2008, Birikorang *et al.* 2009). Currently, NTFP access is driven by the informal market demand from urban areas and it occurs outside the rights of tenure, sometimes through permits (Baokye *et al.* 2008). NTFPs have the potential to account for at least 50% of the value of total timber and wood exports (Mayers *et al.* 2008, Hamilton Resources and Consulting 2008).

Some NTFPs, like rattan, do carry formal permit access (Baokye *et al.* 2008). It is only one of the many overexploited and under managed NTFPs, and many do not carry any sort of formal access rights or recognition (Opoku 2006, Hamilton Resources and Consulting 2008). This is both a policy failure and a market failure. As long as these products are either lacking tenure recognition or permitting there is an unaccounted economic rent, as with ecosystem services, available for the taking. This creates incentive to exploit. However, if the NTFP product access rights were instead allocated within existing tenure agreements, then management and access could be monitored more easily and paid for. Management would become more regulated and there could be a reduction

in the unsustainable degradation of the NTFP resources (Baokye *et al.* 2008). Payment could come as an addition to the ‘drinks’ money, which would be administered under the proposed changes noted later in this paper. Tenure holders would then have an incentive for the sustained existence of these NTFPs, and be more willing to protect the resources from migrants and poachers. Therefore, proper allocation of these rights is integral both to the communities who rely on these goods economically and to forestry management, as healthy ecosystems rely on the sustained continuance of these species.

The sixth obstacle is the management of access to traditional lands now located on Forest Reserves (FR). FRs represent the ultimate disenfranchisement, according to the written common laws, of forest-based communities in Ghana. The law restricts their access to the forest resource completely, but law and practice are very different (Opoku 2006). Wardell *et al.* suggest that the restriction of certain access rights to the forest on-reserves is retained in common law to perpetuate the collection of rents by authorities. However, these rents are, often illegal, as the lands on which many of the forest reserves are located were in fact “never formally expropriated and hence remain the property of their original owners” (Wardell *et al.* 2006). Therefore, the perceived ‘illegal’ use of forests on-reserve by communities is based solely on a form of “political despotism,” through the centralized government (Wardell *et al.* 2006). This is furthered on a basis of ignorance among local people (Wardell *et al.* 2006). This creates a climate of indifference, exploitation, and disregard in terms of forest management and stewardship within these communities.

As it is so eloquently stated by Boateng: “It is only when the forests have any real value to the local people will we be able to gain their cooperation and energy for forest

protection and management” (Amanor 1997). In order to better protect the FRs, it is suggested that a reform of the reserve access laws be implemented to develop a stewardship role for those communities that, despite being ‘removed’ from their traditional lands, continue to occupy and work on the reserves.

The Formal and Informal Forestry Sectors

As late as the early 2000’s the annual national harvest, both formal and informal, was approximately three times the Annual Allowable Cut (AAC); of which 70% was considered illegally logged (Hamilton Resources and Consulting 2008, Birikorang *et al.* 2009). Illegally sourced timber is estimated to account for at least 60% of the primarily export oriented formal market (Mayers *et al.* 2008). This level of illegally sourced timber has prompted foreign organizations, especially the European Union (EU), to take note of the problem. This illegal activity includes: chainsawing that has been outlawed, except for a period between 1994-98, the exploitation of permits, with more trees than permitted being removed, the use of the forest by farmers outside of common law tenure rights and other informal activities banned or restricted under the common law (Odoom 2005, Mayers *et al.* 2008). The prevalence of illegal chainsaw activities pervade due to the inability of FC staff to prevent it or resist the bribes and the increasingly militarized methods of extraction used (Wiggins *et al.* 2004). Understanding these issues is an important step towards mitigating illegally sourced logs, a step that is vital in order for Ghana to meet its commitments to anti-illegal logging initiatives like the Voluntary Partnership Agreement (VPA) with the EU.

The formal economy requires an ever-increasing throughput of logs in order to maintain viable. The informal economy is supported by a labyrinth of unauthorized payoffs and primarily supports the domestic market, as well as some of the export market, to supply the demand, which is not met by the formal sector (see Figure 3) (Hamilton Resource and Consulting 2008). Informal sector production and processing activities

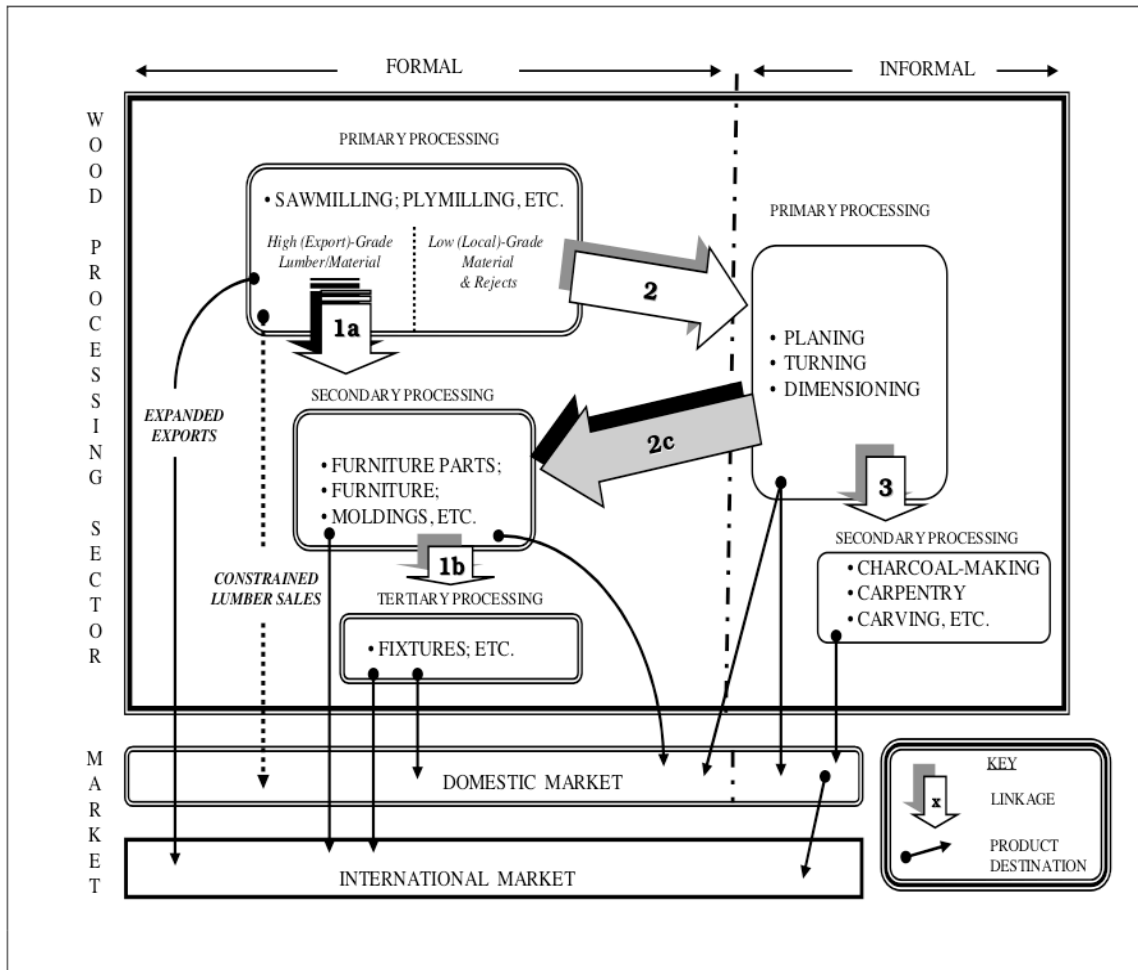


Figure 3: “Linkages between Ghana’s Formal and Informal Wood Processing Post-ERP Sectors and Associated Markets.”

Sourced: J.H. Owusu *Spatial Integration, Adjustment and structural Transformation in Africa: Some Linkage pattern Changes in Ghana.*

account for about 75% of wood-processing entities in Ghana and account for about 50% of the timber processed in Ghana (Birikorang *et al.* 2009, Hamilton Resource and

Consulting 2008). This lack of formal sector supply created pressure within the loosely controlled forestry sector for corrupt activities and chainsaw felling of illegally sourced timber to fulfill the demand. This timber makes its way into both the domestic and the export markets, both formal and informal. This is achieved through corrupt transactions that involve a multitude of actors seeking to source cheap lumber in the face of increasing forest resource scarcity (Amanor 1997).

In Ghana there is an acute domestic timber shortage. This shortage stems mainly from structural industry adjustments introduced in the 1980's and is referred to as the Economic Recovery Program (ERP). The ERP helps promote increased trade exports and revive the formal economy by bringing in foreign currency. Under these programs wood-processing firms were, and continue to be, incentivized to export timber using tax rebates and the right to externally retain 35% of export earnings for capital investments (Owusu 2008). The tax rebates are based on the volume of timber exported (Owusu 2008). Additionally, traditional mills in Ghana are required by law to "provide not less than 20 percent of their mill output to the local market" and the difference between the legally mandated supply and the local demand is filled by chainsaw lumber (Owusu 2008). On top of export incentives for the formal economy, chainsawn lumber is sold at 50% of the cost of formally produced lumber on the domestic market (Hamilton Resource and Consulting 2008). The result has been a severe reduction in the supply and quality of domestic timber used in construction and down-stream processing, and an increase in the size and importance of the informal sector.

The majority of the domestic market timber is sourced from forest-fringe communities that dot rural Ghana. These communities constitute about 14% of the

Ghanaian population, and it is estimated that their primarily informal annual income is approximately \$450 million US dollars. (Mayers *et al.* 2008). All of the aforementioned variables compile to create a massive hurdle for any significant sector reform.

Formal market participants also partake in dubious activities. They have been noted to log outside of their concessions, hire chainsaws to cheaply source timber, exploit undersized trees and evade their stumpage requirements (Amanor 1997, Opoku 2006). The symbiotic relationship existing between the two sectors demonstrates why it is difficult to ban illegal chainsaw activities. Even without the “controls and compensation” of the formal industry, the informal market plays a vital and productive role in the Ghanaian economy (Owusu 2008). It has replaced many of the formal sector jobs with jobs in the downstream linkages, or vertical integration, that used to occur between sawmills and processors. These jobs were originally lost due to the export policies of the 1980’s.

The situation that has been described, regarding the formal and informal forestry sectors, follows the dualist theory on informal economies. The dualist theory states that informal sector activities will persist in the absence of a formal presence by an industry or from the lack of formal job opportunities (Chen 2005). The informal market has now moved to include an established network of log transport and mobile sawmills that are capable of exploiting the forest resource in remote areas. This has helped solidify the informal industry presence as a source of domestic and export timber (Odoom 2005, Hamilton Resource and Consulting 2008).

Actions to curtail and limit illegally sourced timber are restricted to the areas where government officials can work safely and effectively. Additionally, the FC has,

before 2006, only captured an estimated 20% of stumpage revenues from the formal forestry sector (Opoku 2006). Therefore, if the system inclines one to cheat, and they get away with it and profit from it, then cheating will become “widespread and regularized” until it begins to form its own place in the informal laws, the customs and norms that dictate behavior in a society (Blocher 2006). In many ways, this has become true for many Ghanaians. Firms are no longer adhering to the rules laid out to dictate proper forest management and ordinary Ghanaians have been noted to act out in defiance, sometimes violently, at a lack of recognition of their rights and roles in the greater economy (Amanor 1997, Opoku 2006).

J. Henry Owusu suggests, and I agree, that the “commitment to a voluntary partnership agreement with the European Union to improve trade and production in legal timber...[is] laudable.” However, without better addressing the relationship existing between “the informal sector and constituent forest communities in a decentralized fashion” these goals will be nearly impossible to achieve (Owusu 2008). The Forest Ecosystems Research Network (FERN) warns in its 2006 report that a fine line exists between a stable developing democracy with many challenges to overcome and a failed state. With regard to the informal forestry sector, the greatest challenge will be repairing the failures in the tenure system. Therefore, I am suggesting three solutions to the problems outlined. Some of the proposed solutions are already in the VPA agreement. However, I believe the solutions described will, when added to the suggestions in the VPA, help to meet the existing shortfalls in tenure and minimize the gap between the formal and informal sectors (Opoku 2006, Riesco 2010).

Discussion of the Three Solutions

Based on the above discussions of customary and common law, tenure and the economy, three overarching problems and their solutions regarding tenure, natural resource rights allocation and enforcement will be noted.

First, the lack of understanding amongst rural Ghanaians of the common law system and its implications on tenure rights is a problem that disenfranchises them at the whims of TAs and local authorities. It also increases their lack of awareness about the implications of illegal logging. This is often exploited by authorities where, on FRs the “people’s ignorance of the extent of their property and use rights provides scope for local authorities to define current practices as illegal despite what is enshrined in official reserve documents.” (Wardell *et al.* 2006). This paper proposes that formal education of local chiefs and stool title-holders about the common law system should be instituted to help mitigate this problem.

The second major problem is the variation in customary law over the Ghanaian landscape, among and within different chiefdoms. A lack of congruence between common and customary law systems has led to a lack of meaningfulness in the common law in some parts of Ghana. It is important to recognize that property rights are not only created by, but also dependent on social norms (Blocher 2006). It is suggested that without a formal framework, where common law moves closer to incorporate customary laws, there will continue to be a lack of congruence between the two law systems and a misalignment of tenure and natural resource rights.

Finally, the lack of meaningful enforcement of the common law tenure rules and the generally weak laws that govern the enforcement of these rules is the third major

obstacle. Given blatant disregard for the law by some lawmakers, there should be greater effort to incentivize protection of the law and reduce the placement of too many responsibilities on one person or group of people. In order to increase the effectiveness of common laws there should be a meaningful increase in stakeholder engagement on both the allocation of tenure revenues and the oversight of tenure access rights and governance. Also, there should be a greater allotment of decentralized access rights to forests for both tenure holders and communities. As noted by the pilot Community Forestry Council (CFC), if these individuals and groups are given greater responsibility and incentives to manage the forest resources effectively and sustainably, this should help to ensure a greater level of enforcement of laws and a reduction in the amount of degradation and deforestation in Ghana (Baokye *et al.* 2008). Additionally, those individuals with increased rights would now have a vested interest in seeing the fruition of the VPA process, ensuring that it is a greater success.

1. Education of Forest Fringe Community Members

Many farmers and members of forest fringe communities have little understanding of Ghanaian common law in its entirety. They also have limited knowledge about the role that forests play in providing services beyond upfront cash payments. Hence, they are limited in their land use planning due to a lack of knowledge regarding their investment options. One research study in 2005 suggested, that those household heads with land tenure rights who are older, have obtained a higher education level and have additional access to ‘extension services,’ like credit, will have a higher probability of establishing a plantation on their land (Zhang 2005). However, these are

not common characteristics of the average tenure holder in Ghana. Most tenure holders are not highly educated and are in need of more reliable and congruent factual information that they can trust. This would enable them to make better land use planning decisions.

During the period of British indirect rule, plans were developed for education to be given for training the TAs in forestry management. However, shortages of staff and a lack of capital after the Second World War prevented this so-called “Native Authority Forestry” from coming to fruition (Wardell *et al.* 2006). Instead a scientific-based forestry came into place after independence in 1957.

Many farmers lack basic knowledge of the trees on their land, besides the name of the species. Therefore, the value of crop damage reimbursement that they receive is not based on the market values of the timber, but rather on arbitrary values put forth by middlemen or chainsaw loggers (Odoom 2005). This, coupled with a lack of understanding of the ecosystem services those trees provide, creates an economic rent imburement that is not reflective of the true market value of a tree. The profit margins are seen by middlemen, who don't have to deal with the direct effects like soil erosion and loss of local domestic timber sources (Odoom 2005).

Finally, a lack of understanding about the common law leaves many rural Ghanaians unable to effectively negotiate for their benefit. Often well versed in their local customary law, this creates an opportunity for TAs and government officials to mislead and take advantage of community members (Awanyo 2009, Opoku 2006, Wardell *et al.* 2006, Blocher 2006).

To effectively address these issues it is assumed: if tenure holders understood the intrinsic value of the forest to their land and soil, then future crop yields and future generations would demand higher rents from fellers. This understanding may also increase their desire to invest long term on that land through forestry activities, like replanting. This follows the feedback from the aforementioned study where education was directly linked to better land use planning. Naturally this would rely on an increase in the rights and security of tenure and the effective enforcement of laws.

For FR inhabitants, proper education concerning their legitimate access rights to the forest is a key component to the sustainable existence of Ghanaian forests. This education would create an incentive to protect the forest against poachers and illegal entrants, by also adding value to the protection and management of it.

The success of this proposal assumes that NTFP access rights would be granted in full and that more forest management responsibilities would be given to communities and their members. This would create incentive to manage the forest and see that it continues to provide NTFPs and other resources for the community's sustained economic future. Utilization of incentives to protect a resource to which you have access rights is an important step in breaking the link between tenure holders and the illegal role that they play in promoting deforestation (Odoom 2005).

In order to better inform tenure holders about the true market value of the trees on their land, the Community Forestry Councils (CFCs), should present regular updates of a list of local tree species and their domestic market prices. They could also provide a list of local registered mobile mills and legalized chainsaw loggers with whom the CFC and its constituents have had a good working relationship. The legalization of these two

informal activities is a component in reducing the informal economy's role in forestry under the VPA (Mayers *et al.* 2008).

Finally, teaching about forests as a limited resource in Ghana through public education campaigns is important (Odoom 2005). This untruth does more to perpetuate false security regarding ongoing and uninhibited forest exploitation, both formally and informally, than many other misplaced laws and incentives combined (Opoku 2006).

2. Variation in Customary and Common Laws

The amalgamation or framing of both law systems into one system is an integral part of the reform of tenure and the informal economy. Doing this should help reduce the role that small tenure holders play in introducing illegally sourced logs into the log markets.

Any country's formal laws should, at the very least, aim to "build on social understandings already in place, [and] when they don't the 'transaction costs' of legal change threaten reform success" (Blocher 2006). It is important, especially in a developing nation like Ghana, to make sure that laws do not exclude or aim to work outside/beyond the scope of the informal economy or customary laws already set in place. These institutions, albeit informal, are important parts of Ghanaian society and to disregard them is a direct attack on achieving efficient and effective laws (Blocher 2006). Therefore, the following are a few suggestions to better align the common and customary laws in Ghana: a systematic study of customary law variations across the landscape, legitimate use of customary courts as alternatives in tenure disputes, modification of stool land management groups into Customary Land Boards (CLBs) and better alignment of

customary title registration requirements to encourage land registration (Blocher 2006, Wardell *et al.* 2006). Although only one of these four points will be discussed, Customary Land Boards (CLBs), all of them are equally integral to meaningful reform.

CLBs are different than CFCs, and local CLBs actually work in conjunction with the local CFCs. A generic CLB would include representation from all vested land use stakeholders. This means customary and state administrators, TAs, DAs, community members and anyone holding a permit or interest, such as a forestry company or NGOs, would have the opportunity to play an observational role to encourage transparency and equitability.

CLBs would grant customary title with the consent and cooperation of the local TAs (Wardell *et al.* 2006). The registration of titles would then be carried out officially through land registry offices under the Allodial title to which a tenure holder belongs. This will increase the sense of security that TAs hold and decrease their legal ownership (Wardell *et al.* 2006). This would help increase the level of land title security amongst tenure holders since they know their land is registered to them and subsequently the breadth of management decisions available to them increases. CLBs would also aim to bridge the gap between the centralized structure of land registration and the decentralized structure of customary land title allocation. It is important to note that issues regarding increase in land registry efficiency are an integral component of this suggestion, but are not going to be discussed in detail here. The introduction of CLBs and the other reform measures mentioned above should help tenure holders secure a longer planning horizon for their land management decisions.

3. Lack of Enforcement of Weak Common Laws

As suggested already, it is important to develop a good system of disseminating information in rural areas to increase education and bring together common and customary laws. However, no other variable appears to supersede the importance in developing local governance over forestlands. The strength of laws enacted to protect forest access rights, who has those rights and who makes the decisions pertaining to the forest are essential components in reducing the impact that tenure and the informal economy have on perpetuating illegal forest activities. In order to achieve this lofty goal Ghana must move to incentivize protection of the common law, reduce the centralized nature of management and legitimize customary practices that uphold common objectives.

The VPA has within its program structure the desire to address issues of governance and to “address obsolete, disjointed and inconsistent laws and to introduce new legislation to implement evolving policies” (Riesco 2010, Lawson *et al.* 2010). The VPA process also suggests that the courts are working well to address conflicts (Mayers *et al.* 2008). However, a Chatham House survey conducted in Ghana in 2006 showed respondents feeling that the enforcement effectiveness of forestry laws, as well as the political will within Ghana to enact the law, was either unchanged or worse as a result of VPA activities (Lawson *et al.* 2010). Numerous other researchers and organizations, including K. Opoku and J. Henry Owusu (both quoted in this document), agree that the VPA process is falling short in dealing with the inherent incentives for illegal activities that stem from tenure policy. With a goal of reducing the informal sector to just 10% of the original baseline, or status quo, the VPA has much work to do in regard to formalization and legalization of the sector (Mayers *et al.* 2008).

Since 1962, the allocation of forest tenure concessions, distribution of unoccupied lands, and setting of royalty rates has been under the centralized supervision of government and its agencies (Odoom 2005). This has ruled out any sort of decentralized decision-making and alienated tenure holders from management decisions made on their lands. The *National Land Policy* of 2002 states that:

- The government intends for land management and administration to be equitable.
- Land tenure security, based on the registered titles, should act to better promote community participation in management.
- That there will be a divestiture of lands to the appropriate Allodial titleholders (Aryeetey *et al.* 2009).

Aryeetey and his colleagues suggest that very little has been done to implement this policy on a broad basis.

Some pilot project Community Forest Councils (CFCs), through the involvement of TAs in association with the FC, have been set up in a prototype to look at the increased effectiveness and efficiency of broadening the community involvement in management decision-making (Odoom 2005, Baokye *et al.* 2008, Mayers *et al.* 2008). These prototype CFCs are being tested to increase the possibility for a more decentralized CBNRM in Ghana (Hamilton Resources and Consulting 2008, Wardell *et al.* 2006). This is integral due to the lack of respect for common laws in the formal and informal industry sectors, the government and its agencies (Odoom 2005). Therefore, without “effective formal enforcement mechanisms,” values such as trust and honor found within the social norms and customs of rural communities “play an important economic role by filling the

‘enforcement gap’” (Blocher 2006). The CFCs can then enable the formal legal framework through accountability and transparency, by reducing the discretionary power of government officials and the potential for illegal activities (Odoom 2005).

For example, common laws currently do not state how TA and DA revenues from stumpage payments must be specifically allocated other than in the best interest of the communities. CFCs could act as the custodians of the development and bring forward the projects most necessary in their community. These projects, in consultation with the appropriate authorities and formal concession holders, could be ranked by importance and managed by the CFC. In this way there would be greater opportunity to hold authorities accountable to the law. The projects could also provide local employment during times of the year when locals or migrants may otherwise have been carrying out illegal or informal forestry-related activities for profit.

The 1997 *Timber Resources Management Act* dictates that formal timber concession holders should consult and negotiate with community members to create Social Responsibility Agreements (SRA) (Wiggins *et al.* 2004). One component of these SRA is the development of a Code of Conduct, which should stipulate the projects most important to the community (Baokye *et al.* 2008). However, the SRA framework should be adjusted to more clearly define that consultation should go beyond the TAs to the broader community, and ultimately the CFCs. This will require the full legalization of CFCs and their decision-making power, as well as their broad implementation across the land-base by the government.

CFCs currently do not have any incentive to act against aggressive chainsaw loggers to protect the forest (Odoom 2005). Granting CFCs full rights to act as described and an increase in meaningful consultation through SRA could limit this.

Holistically, CFCs must act on a mandate that is transparent. Public meetings with open elections and representation of all forms of tenure rights within the stool are integral components to maintaining transparency. Otherwise they will perpetuate the status quo of poor law implementation and enforcement, and non-transparent authority. CFCs existence should help to reduce the role of illegal chainsaw loggers by creating incentive to seek the highest economic rents possible so as to increase community returns (Mayers *et al.* 2008). CFCs could potentially act as a financial entity and enter into joint ventures with timber concession holders to help them reduce their access costs and tenure holder's crop damages. This could be accomplished by contracting out operations and timber processing to legalized informal mills and loggers from within the community or nearby. As well, they could act to help sustainably manage access to NTFPs for the entire community, as these are important products for tenure holders and those who have no tenure access (Opoku 2006). This would require further permitting and regulation around NTFPs in a manner that made them efficient, equitable and enforceable.

To further this point J. Henry Owusu states, in his paper on *New Trends in Ghana's International Timber Trade*, that “community participation contributes to the formalization of the informal sector” (Owusu 2008). Baokye *et al.* note a number of improvements in communities where the pilot CFCs were instituted. These include:

- Change in attitude among community members to forest conservation and tree planting

- Incorporation of trees into the tenure of CFC members and other tenure holders
- Prompt payment of compensation to tenure holders for damages caused from felling on their land
- Increased recognition by government officials about the role of communities in SFM
- Increased ability for communities to efficiently and effectively initiate and implement forestry activities
- Reduction in bushfire occurrence (Baokye *et al.* 2008)

Therefore, a more formalized informal sector would promote movement away from the issues relating to tenure rights and security and informal economy participation. This would help the VPA to achieve its stated objectives of reducing the informal sectors role in the overall economy and “improving forest governance” (Riesco 2010). It would also help the Ghanaian government to increase the overall legitimacy of its common law across the country.

Conclusion

In the last decade the national government has moved to implement an internationally recognized scheme on export log verification, the VPA. This process has resulted in a number of significant and recent changes in the country with regard to the forestry sector. Many difficult aspects of that sector were discussed, which have long been victims of the status quo. The formal sectors and writers of common laws see these

to be primarily customary problems, and as such, they are difficult to quantifiably identify. However, at the foci of the problems is land tenure.

Customary tenure is a multi-faceted issue with many different actors each vying for the opportunity to either increase their power or maintain the status quo. These include tenure holders with a desire to seek further security and rights, TAs trying to maintain oversight of revenues and title and government officials and agencies trying to maintain a centralized control-style management of the forest resource.

Three solutions, aimed at limiting the six obstacles to efficient tenure outlined in this paper, were suggested. These could prove to increase sustainable forest management and give local tenure holders and community members more involvement in planning (See Appendix 4). Sharing the management of forests through broad implementation of CFCs should help to ensure that a move away from continuance of corruption and illegal activity and towards a shared approach to timber usage is made. This is seen to be a bottom up approach, and better at addressing the specific needs of communities. The utilization of education and the introduction of CLBs is also integral to increasing awareness of the issues and to mitigate the lack of congruence between laws.

Maintenance of the status quo will do little to provide future opportunity for any sort of diversity in the forest resources in Ghana. Swift and immediate action is required so that a balanced approach to forestry is achieved before the remaining 20% or less of Ghana's pre-colonial forests are depleted or degraded. This can, and should, start with a reform-minded and meaningful approach to tenure and the informal economy.

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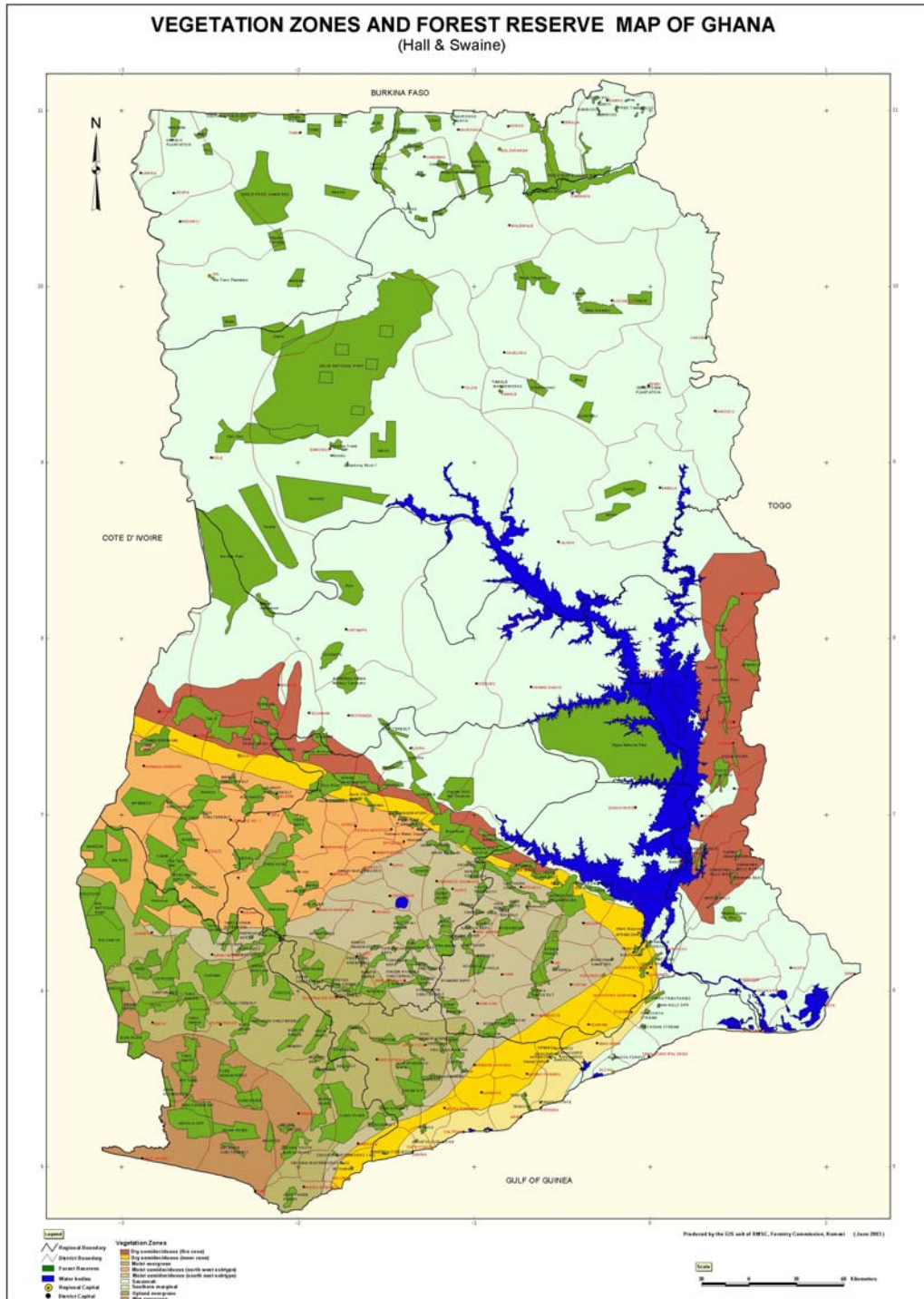
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APPENDIX 1: Customary vs. Common Law

	Customary/Informal Law	Common/Formal Law
Law Leadership and Developers	<ul style="list-style-type: none"> • Traditional Authorities: including chiefs and religious authorities 	<ul style="list-style-type: none"> • Legislative and Judicial branches of Ghanaian government
Legal Framework	<ul style="list-style-type: none"> • Based on public oral “documentation”, tradition and religious and hereditary authorities • Enforced through customary courts 	<ul style="list-style-type: none"> • Based on laws written formally by elected and appointed figures of authority • Rule of law requires consistent and law-based enforcement • Enforced using government agencies and formal court system
Primary Centers of Law Adherence	<ul style="list-style-type: none"> • Small communities, primarily rural 	<ul style="list-style-type: none"> • Larger cities and industrial centers
Industrial Forest Sectors Affected by the Law	<ul style="list-style-type: none"> • Informal sector predominantly • Some formal sector involved in log sourcing 	<ul style="list-style-type: none"> • Formal sector heavily involved, lobbies for further advantages • Informal sector under formal jurisdiction, corruption creates gaps in adherence and enforcement
The Law and Tenure	<ul style="list-style-type: none"> • Law recognizes all of the informal tenure titles including: Allodial, Freehold and Lesser Interests 	<ul style="list-style-type: none"> • Law recognizes all formal (private and public land titles) and informal tenure titles except for Freehold title
The Law and the Forest	<ul style="list-style-type: none"> • Informal recognition of forest ownership as a traditional jurisdiction of the Forest-fringe Community and community members 	<ul style="list-style-type: none"> • Formal recognition of all trees is under the jurisdiction of the government • All cutting permits are allocated by the government • The formal law does not recognize customary rights to the forest

APPENDIX 2: Vegetation Zones and Forest Reserves in Ghana

Sourced: K.A. Boakye & K.A. Baffoe *Trends in Forest Ownership, Forest Resource Tenure and Institutional Arrangements: Case Study from Ghana*



APPENDIX 3: Customary/Stool Tenure Types

Type of Stool Tenure	Ranking	Ownership & Access	Rights	Forest Access	Length of Tenure
Allodial	Highest	<ul style="list-style-type: none"> Recognized under the constitution Generally held by TAs 	<ul style="list-style-type: none"> Administers Freehold and Lesser Interests Receives stool payments and stumpage revenues 	<ul style="list-style-type: none"> Has say in some forest activities (establishment of FRs) Limited to compensation for forest activities 	<ul style="list-style-type: none"> Perpetual
Freehold	Secondary	<ul style="list-style-type: none"> Through inheritance or acquisition Based on community membership, social stature and ongoing community involvement 	<ul style="list-style-type: none"> Right to claim compensation for tree felling Communal rights to royalty/stumpage revenues 	<ul style="list-style-type: none"> Limited Usually through permits for timber (TUC/TUP) or NTFPs 	<ul style="list-style-type: none"> Based on development of rights over time through community specific requirements
Lesser Interests	Lowest	<ul style="list-style-type: none"> Inconsistent and varies by community and from plot to plot Agreements reached with higher tenure holder for cropping terms 	<ul style="list-style-type: none"> Almost none, mostly regarding compensation in some cases 	<ul style="list-style-type: none"> Very little to none 	<ul style="list-style-type: none"> Based on an agreement with higher tenure holder Usually on a short term basis (3-5 years)
Other	Private or Communal	<ul style="list-style-type: none"> Access to resources for private is generally unrestricted Communal access to NTFPs & religious sites usually guaranteed where tenures exist 	<ul style="list-style-type: none"> Right to access forest resources for private property Right to access NTFPs, sometimes by permit, on communal 	<ul style="list-style-type: none"> Based on common law allotment of rights for private Communal lands usually have NTFP access 	<ul style="list-style-type: none"> Perpetual

APPENDIX 4: Six Obstacles to Tenure Efficiency and the Solution

	Primary Faults	How it affects tenure	How it affects forestry	Economic Impact	Solution
Land Registry	<ul style="list-style-type: none"> • Difficult and protracted process • Lack of staff to process claims • Lack of title holder formal documentation 	<ul style="list-style-type: none"> • Reduces security • Many people may have title to the same land 	<ul style="list-style-type: none"> • Reduces incentive for long term plans • Lower incentive to protect land assets (trees) 	<ul style="list-style-type: none"> • Inefficiency in the economy • Increases investment risk 	<ul style="list-style-type: none"> • Speed up process times • Increase documentation reliability through CLB involvement
Low Transparency	<ul style="list-style-type: none"> • Corruption, entitlement of TAs & Das • Poor information • Royalty revenue not administered correctly 	<ul style="list-style-type: none"> • Disenfranchises communities from legislated revenues • Creates mistrust 	<ul style="list-style-type: none"> • Increases incentive to illegally fell trees on land • No compensation for forest loss 	<ul style="list-style-type: none"> • Money not properly allocated • Promotes informal economy 	<ul style="list-style-type: none"> • CFCs would oversee projects, revenues and royalty management
Tree Rights	<ul style="list-style-type: none"> • Aggressive chainsaw activity reduces effectiveness • No easy tree access for local use 	<ul style="list-style-type: none"> • Those with tenure are required by common law to be compensated 	<ul style="list-style-type: none"> • Abused by both formal and informal forest industry 	<ul style="list-style-type: none"> • Economic rent not properly realized due to limited knowledge • Monies used improperly 	<ul style="list-style-type: none"> • CFCs to promote better understanding of timber markets • CFC management involvement to incentivize tree retention
Education	<ul style="list-style-type: none"> • Lack of knowledge about importance of retained trees & compensation • Lack of knowledge about amount of forest in Ghana 	<ul style="list-style-type: none"> • Poor decisions are made by tenure holders to remove trees • Compensation often inadequate 	<ul style="list-style-type: none"> • Forests are abused by locals and chainsaw gangs 	<ul style="list-style-type: none"> • Economic rent not fully realized • Loss of forest for sustained yield • Promote informal economy 	<ul style="list-style-type: none"> • Public education about lack of forests and importance of forested land • CFCs would promote better information for tenure holders
NTFP Access	<ul style="list-style-type: none"> • Limited access except on Communal lands and through permitting 	<ul style="list-style-type: none"> • Overexploitation of land 	<ul style="list-style-type: none"> • Overexploitation of forest 	<ul style="list-style-type: none"> • Reduces formalization of NTFPs 	<ul style="list-style-type: none"> • Promote community management of NTFP access through CFCs
Forest Reserves	<ul style="list-style-type: none"> • Lack of access to rightful land and forest 	<ul style="list-style-type: none"> • Reduces management influence by rightful owners 	<ul style="list-style-type: none"> • Creates disincentives to protect the forest 	<ul style="list-style-type: none"> • Allocates management and payments to government instead of communities 	<ul style="list-style-type: none"> • Reform reserve laws • Education about rights