

ONE HUNDRED YEARS OF FORESTRY IN GHANA: A REVIEW OF POLICY AND REGULATORY DISCOURSES ON TIMBER LEGALITY

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ABSTRACT

Ghana has seen incremental shifts in forest policy, legislation and management approaches in the last one hundred years. Information on forests through time and knowledge of policy evolution, laws, and participants and institutions involved in the policy process is important to deal with complexities associated with timber legality and trade. This paper reviews the evolution of forest policies and regulations on timber legality in Ghana using a historical discourse analysis. It characterises the regulatory discourses of successive forest policies and legislations and the extent to which policy and policy instruments, particularly on trade of legal timber, reflect the hard, soft, and smart regulatory discourses. The paper shows that until the mid-1980s Ghana's timber regulation policies had been characterized largely by state control using top-down management and hard law regulations. The mid-1980s and the early 1990s represent an interface between the softening of state control and the emergence of de-regulation and soft law discourses. The 1994 Forest and Wildlife Policy reflected this interface calling for improved collaboration with communities and market-driven strategies to optimize forest use. The post-1994 period was confronted with how to approach supply of legal timber with illegal chainsaw timber production posing the greatest challenge. The Voluntary Partnership Agreement, as a market-based regulation instrument emerged and its negotiation, ratification and implementation has embodied both hard and soft law measures, reflecting the 'smart' regulatory discourse model. To date, the VPA has been the most significant trade instrument that has institutionalized the mix of soft and hard regulatory discourses.

Keywords: Policy and legislation, timber legality, regulatory discourse, timber trade

INTRODUCTION

Ghana's forests are important assets both to the nation and to a wide variety of individuals and communities, local and international. The forests are potentially useful and essential to people for economic, ecological and socio-cultural reasons. Forests play a major role in people's lives

fulfilling important role in national and local economies and in environmental quality. Policies and legislation affecting forests thus affect national development, sustainable livelihoods and poverty alleviation (Kotey *et al.*, 1998). Forest policies and legislation are essential because resources are potentially scarce in terms of their distribution across the nation and people's

ownership and tenurial rights raise the problem of access to the resources. The resources are potentially destructible through over exploitation and unwise utilization. Forest policies are, accordingly, formulated to address conflicts between different interest groups and conflicts between present and future generations (Owusu, 1989).

Ghana has seen incremental shifts in forest policy, legislation and management approaches in the last one hundred years. Initial focus of forest policies and legislation in Ghana was on protective functions and on forest reservation. However, the development of timber trade resulted in huge interests in timber exploitation. Timber harvesting in Ghana started during the later part of the 19th century but it was in 1909 that a forestry department was established to manage timber resources (Taylor, 1960).

Today, the level of illegality with regard to access to forest resources, especially timber, is quite high in Ghana. This is a major concern for the Government of Ghana which seeks to combat illegal activities in the country and to promote trade of only legal timber in both international and domestic markets. The Government of Ghana sees the need for increased scrutiny of compliance with laws governing legal timber harvesting, processing and trade; and therefore the need to strengthen verification and monitoring of legal compliance. Verification systems can only succeed if there are broad consensus around the types of illegal activities that are of concern to the market and other stakeholders. Such a consensus could help avoid inequities in international trade due to more careful scrutiny of policies and legislative instruments (Brack *et al.*, 2002; Gupta, 2002). Core concerns over legality verification and monitoring thus appear to be crucial to ensure the

delivery of legal timber to both domestic and international markets.

Addressing the issues surrounding timber legality and trade and forest management in general, requires information on forests through time. In addition, a thorough knowledge of policy evolution, type of institutions, laws, and participants that were involved in the policy process is of utmost importance to deal with the complex nature of policy reforms (Cubbage *et al.*, 1993; Gautam *et al.*, 2004) associated with timber legality and trade. A number of past studies have looked into the history of forest policy in Ghana till 1997 as well as past trends of regulating timber harvest from forest reserves and how past policies to control illegal logging have failed (e.g. Kotey *et al.*, 1998; Asamoah Adam *et al.*, 2006; Hansen and Treue, 2008). However, none of those studies explored the complete history of policies and legislation relating to timber trade and legality nor provided a review of definition of legal timber in Ghana. This paper therefore reviews the evolution of forest policies and regulations on timber legality in Ghana using a historical discourse analysis.

A HISTORICAL DISCOURSE THEORETICAL PERSPECTIVE

The analysis of the evolution of policies and regulations on timber legality will be conducted using regulatory discourses, particularly the categorisation by Arts *et al.* (2010). In a recent review, Arts and others conducted an extensive review of the literature on *meta*, regulatory and forest discourses that shape global forest governance. Regulatory discourses are selected to frame our analysis because they deal with regulations and instrumentation of policy issues;

they are more directly related to policymaking through the shaping of regulatory styles and policy instruments within sectors (Arts *et al.*, 2010). Since our analysis is broadly focused on tracing historical policy and regulatory interventions in Ghana, our analysis operates more at a 'meso' level of organising policy implementation processes though we cannot discount the influence of global governance ideas. From their review, Arts *et al.* (2010) distinguished three regulatory 'phases' or 'fashions' which chronologically replace and partly parallel each other over time. These are (1) State regulation and hard law; (2) De-regulation, self-regulation and soft law, and (3) Smart regulation and instrument mixes.

In the 1960s and 1970s, in line with command-and-control model of state regulation, environmental politics was dominated by the use of hard law linked to the meta-discourses that held that natural resources are scarce and in need of protection. However it should be noted that forest regulation in Ghana predates this period of international forest regulation and as early as the 1920s, Forest Ordinances were passed in Ghana. A number of important 'greening' global policy and laws were initiated in the 1970s. Key environmental agreements ratified were the Ramsar Convention, the World Heritage Convention, and the Convention on International Trade in Endangered Species of wild fauna and flora. By the late 1970s it is widely reported that much command-and-control regulations could not perform to the expectation of policy makers; indeed, in most cases it was found to be ineffective (Elliot and Thomas, 1993; Kotey *et al.*, 1998).

Following the 'failure' of hard law and inspired by the neoliberal tendencies in the 1980s, a new regulatory discourse emerged to emphasise

extensive de-regulation and voluntary policy instruments. The discursive hegemony of neo-liberalism was strong enough to override the evidence in support of the efficacy of the hard law regime in some areas of environmental conservation (Arts *et al.*, 2010). During this time, corporate social responsibility became eminent in environmental governance, especially in the United States of America and Europe (Charkiewicz, 2005). The de-regulation discourse also affected global forest regulations. For example, two 'soft' laws emerged from UNCED: Chapter 11 of Agenda 21 and the Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests. Since then, the Intergovernmental Panel on Forests (IPF) - Intergovernmental Forum on Forests (IFF) - the United Nations Forum on Forests (UNFF) processes has been voluntary. New voluntary rules such as criteria and indicators for SFM and bottom-up approaches like forest certification have characterised regulatory discourses (Cashore, 2002; Arts *et al.*, 2010).

Finally, following the arguments by Gunningham and Grabosky (1998), a 'third way' has been advocated, distinguished as 'smart regulation and instrument mixes phase'. This positions itself between the traditional top-down regulation and fashionable de-regulation. The 'smart regulation' term has received considerable attention in scientific policy scholarly referring to finding smart solutions to complex policy problems based on clearly designed instrument mixes; both governmental and binding and non-governmental and voluntary in order to create win-win solutions (Arts *et al.*, 2010).

Following these perspectives, the paper reviews the evolution of forest policy and legislations in Ghana and examines the extent to which they have reflected or been shaped by these regulatory discourses. Specifically, the paper seeks to (1) characterise the regulatory discourses of successive forest policies and legislations and (2) examine the extent to which current policy and policy instruments, particularly on the trade of legal timber, reflect the hard, soft, and smart regulatory discourses. To this extent the paper will review the definition of 'legal timber' and the implementation of the Voluntary Partnership Agreement in the light of these regulatory discourses.

FORMAL FOREST POLICIES ON TIMBER LEGALITY

Ghana has had two public forest policies. The first one was formulated in 1946 and approved in 1948; and the second was adopted in 1994. However a number of policy positions and instruments came first and assisted in the formulation of the first public Policy. It should be stated that Ghana is currently going through a consultation process to review the 1994 Policy.

Before 1948

The first Forest Policy in Ghana was formulated before World War I and consisted of only one clause, that aimed at conserving a sufficient area of forest suitably distributed throughout the country to protect water supply, prevent erosion and to ensure the maintenance of suitable climatic conditions in the high forest zone which are essential factors in the cultivation of cocoa, cola and other crops on which the prosperity of the country then largely depended." This policy

mirrors the early emphasis on the protective role of the forest and its ability to create a good micro climatic condition for agriculture. The forests productive role was at the time not of high importance and since timber trade was then developing, it was therefore not policy priority.

In the 1920s, a voluntary process commenced to try and persuade the Chiefs to set aside some land as permanent forest. Despite assurances that the forest reserves would always be the property of their native owners the suspicion remained that this must be an elaborate land grabbing scheme by Government. By 1927, progress on reservation was deemed too slow and a Forest Ordinance was finally passed to enable the Government to compulsorily constitute forest reserves if necessary (Kotey *et al.*, 1998).

From 1948 to 1994

A new Forest Policy was drawn up in 1946 and adopted by the Government-in-Council in 1948. This forest policy provided for the management of permanent forest estates, research in all branches of scientific forestry, maximum utilization of areas not dedicated to permanent forestry, provision of technical advice and cooperation in schemes for the prevention of soil erosion and in land use plans. The 1948 Forest Policy was developed against the backdrop of a fledging timber industry and therefore recognized the role of the timber processing and wood utilization sectors of forestry and stipulated that the management of the forest resource should be on a sustained yield basis (GoG, 1948).

The 1948 Forest Policy consisted of eight clauses. Clauses 1 and 4 dealt with forest reservation by Central Government and/or Local Authority for protective and productive purposes. This,

however, met initial problems from the Aborigines' Rights Protection Society (a colonial human rights organisation) which interpreted reservation as an attempt by the colonial power to expropriate indigenous lands. Instead of entering into dialogue with the local communities on how best reservation could be undertaken, the government decided to continue with enforced reservation. The local communities responded to this by rapidly converting forests into farmlands, the moment intent was declared, in order to avoid reservation (Agyeman *et al.*, 2007).

Clause 5 stipulated the progressive utilization, without replacement, of the remainder of the forest resources outside the reserves not dedicated to permanent forestry. This clause was possibly drawn with the view that clauses 1 and 4 would be successful and that Local Authorities and communities were going to add to the forest reserves created by the Ordinance. However, the policy of lack of replacement of felled trees outside reserves as stated in clause 5 coupled with increasing timber harvesting as a result of population increase and an increasingly vibrant timber industry encouraged large scale deforestation. By the mid-1980s, it became necessary to review the 1948 Policy objectives, and strategies for meeting them due to the perceived failings of the Policy (Smith *et al.*, 1995; Tuffour, 1996). In 1989 the review was carried out and a new formal Forest and Wildlife Policy adopted in 1994.

After 1994

The 1994 Forest and Wildlife Policy consist of a statement with twelve main clauses in addition to an action programme (GoG, 1994). This Policy seeks to optimize resource utilization, to ensure future supplies of wood and non-wood products

and to manage national forest and wildlife resources so as to maintain the ecological balance and the diversity of the natural environment. Five of the 16 guiding principles of the 1994 Forest and Wildlife Policy had to do with the sustainable development of the timber industry. They are, (1) The provision of strong incentives to encourage responsible use of forest resources, e.g. long-term concessions, equitable access and appropriate fees (3.2.3), (2) The need for incentives to stimulate private enterprise and encourage respect for regulations (3.2.4), (3) The provision of incentives to encourage more rational and less wasteful utilization, including the introduction of market forces particularly to increase production of value-added wood products for export (3.2.9), (4) The transformation of the timber industry from a high volume, low value business to a low volume, high value trade based on sustainable forest management (3.2.10), and (5) The need to encourage competitive industries based on local raw materials and to pay close attention to international trade (3.2.14).

In 1996, the Ministry of Lands and Natural Resources launched the Forestry Development Master Plan (FDMP) 1996-2020 as a basis for implementing of the aims of the 1994 Forest and Wildlife Policy (FDMP, 1996). The FDMP outlined strategies, programmes and scheduling for the implementation of the 1994 Forest and Wildlife Policy with the aim of maximizing the rate of social and economic development of the country and optimizing the operations of the timber industry. Key actions of the FDMP included, (1) Consolidation of forest management systems to ensure that timber can be certified as "sourced from sustainable managed forests" by the year 2000, (2) Creation of an enabling climate for rationalization of the timber industry and consolidation of fiscal measures for efficient

utilisation and increased value-added processing, (3) Maintenance of a commercial plantation establishment system and the development of timber harvesting, handling and marketing facilities, and (4) Promotion of total value-added (tertiary) processing and competitive marketing (FDMP, 1996).

REVIEW OF REGULATION ON TIMBER LEGALITY AND TRADE

Forest Legislation before World War II

Growing interests in forests and minerals commodities begun after the abolition of the slave trade in the first half of the 19th century. European commercial interference in the land use of the moist forest zone dates back to the end of the 19th century when first British and later French companies began harvesting African mahogany. Timber exploitation mainly of African mahogany (*Khaya* and *Entandrophragma* spp) started in 1891 when about 3,000 m³ of mahogany were exported (Taylor, 1960). Since then timber trade has grown steadily and become an important economic activity.

The rapid expansion of timber extraction resulted in the urgent need to regulate harvesting activities. Moloney (1887) noted that timber resource was rapidly and visibly diminishing and that re-planting and prevention of waste had become worthy considerations. This awareness led to the introduction of institutional mechanisms to halt environmental degradation.

The Land Bill 1897 is the first legal regime that sought to provide the contractual basis for timber concessions in Ghana. Under the provisions of the Land Bill 1897, a concession court has the right to

make inquiries and interpret the terms of timber concessions or timber utilization contracts. The 1897 Land Bill had to be abandoned due to the extreme opposition that it encountered. However, in 1900, some of its basic principles were incorporated in the Concessions Ordinance that provided similar rights to the concession court to interpret, adjudicate and enforce the contractual terms of concessions. The Concessions court was also given the right to revise royalty levels.

Following its failure to achieve overall control of land, the then Government decided to concentrate its attention on gaining control over the means of production. In 1907 the Timber Protection Ordinance (Cap. 96) was enacted in order to protect immature trees of certain species against felling (Taylor, 1960). Under this Ordinance a Forest Officer was appointed to inspect trees before they could be felled. Cap 96 also stipulated the registration of property marks by all persons engaged in the timber export trade (Douglas, 1955).

Due to the increasing interest in timber exploitation, H.N. Thompson, the Conservator of Forests in Southern Nigeria, was invited to visit the country in 1908. The study tour lasted 6 months and a comprehensive report on Ghana's high forests and parts of the southern savanna woodland was submitted. In the report Thompson (1910) suggested the enactment of forest legislation, the protection of timber trees and the introduction of property marks for fellers. In the course of 1910 a Forest Ordinance was passed to empower the Governor to declare certain lands subject to forest reservation. The aim of this Ordinance was to reserve 1.5 million ha of moist forest. But the Government dared not implement the Ordinance in face of local opposition, so its implementation was delayed until 1927 (Taylor,

1960).

In 1921 the introduction of the property marks under the Timber Protection Rules took place. In 1925 and 1926 amendments to the Concessions Ordinance of 1900 were made which gave the Chief Conservator of Forest power to regulate operations within concessions, to lay down directions and limitations before work commenced and to prescribe penalties for infringement.

The Forest Ordinance (Cap 157) was passed in 1927, which vested power in the central government to constitute and manage forest reserves. The right to establish forest reserves by Native Authority by-laws was also recognized. In both instances title remains with landowner, while management is undertaken in trust of landowner. The Ordinance empowered the State to make regulations with respect to timber leases or permits. The Ordinance further outlined the conditions under which concessions could be granted and largely indicated that chiefs and community members had no right of access to trees or land in the reserves except for domestic use on permit from the Forestry Department (FD), now Forest Services Division (FSD) of the Forestry Commission (FC).

Timber harvesting increased in the 1930s and in order to regulate the operations of timber contractors, a Concessions Ordinance (Cap 136) was promulgated in 1939. The Concessions Ordinance introduced a system of timber harvesting rights, and revenues. The Ordinance also mandated the Chief Conservator of Forests to prescribe conditions, restrictions, limitations and directions of concession operations like the tolerable level of forest destruction due to logging, construction of logging roads and landing areas, diameter limits and species of trees that could be

felled. It also provided for natives' rights with respect to lands, and agreements relating to rights such as timber and to a limited extent empowered chiefs to grant concessions on their lands.

Timber concessions were granted by the stool (chieftaincy) to operators to remove trees from their land. Concession rights generally covered only a few years, but ever since the Concessions Ordinance of 1939, concession rights normally lasted up to 40 years and exceptionally as long as 99 years to commit concessionaires to exert responsible forest management. At the time, the ownership of land was with the natives as well as the trees standing on it. So concessionaires had to compensate the owners of the land for any felling damage to their agricultural crop and an arranged fee per felled tree (Kinloch and Miller, 1949).

With the onset of the World War II, sawn timber was needed as never before. Across British West Africa the colonial governments were instructed to maximize rubber, and timber production, often acquiring new regulatory powers in order to do so. By the time peace returned in 1945 (i.e. at the end of World War II) new export markets for the previously little known West African woods, particularly Wawa (*Triplochiton scleroxylon*), had been established and a colossal demand for timber to rebuild Europe had been created. At home in Ghana, the price of cocoa was rising and the local purchasing power of Ghanaians was leading to a real increase in the internal consumption of sawmill wood.

Post World War II Developments

World War II imposed its own priorities on forestry as selection, demarcation and reservation changed over to supplying forest products for the war effort. The products were many and varied

and included timber, furniture, shingles, rubber, firewood and charcoal (Kotey *et al.*, 1998). After the World War II most of the forest reserves were opened up for timber production as a result of the establishment of new export markets and the resulting high demand for timber to rebuild Europe. The unreserved forests were gradually converted to other land uses which were sped up by the high population pressure. There was high European interest in the establishment of sawmills and veneer mills in the country. Ghanaians who had long been established as exporters of logs continued in this capacity, often supplying the mills too. However by the mid-1950s local contractors were being squeezed out of the saw mill business by their lack of access to the kind of capital and technology which the European companies could command.

Before World War II, only *Khaya ivorensis*, *Tieghemella heckelii* and *Entandrophragma cylindricum* numbered among the exports. However, the list was broadened to about ten; and it included wawa which since then has been a tremendous resource for the timber trade and industry not only in Ghana but throughout West Africa and parts of Central Africa. Such a surge in demand called for tighter controls. Legislation was introduced on prices of trees, prices of logs, regulation of log transport and control of pit-sawyers, all aimed at ensuring adequate and stable supplies (Kotey *et al.*, 1998).

The Trees and Timber Ordinance (Cap 158) was promulgated in 1950 to regulate and control the timber trade through the registration and issuing of property marks to concession holders and the issuing of licenses and permits for the felling of forest trees. In 1956 it was estimated that the annual deforestation rate by farmers stood at 300 square miles, while concessionaires operated over

just 200 square miles per annum. Even though it is correct to say that concessionaires opened up forest for farmers, a rat race evolved to catch up with the ever expanding farming activities. In fact, rumors for a concession to be granted could already cause an area to be occupied by new farming settlers (Wills, 1962). Concession agreements thus served to accelerate the exploitation of formerly unexploited forest. By 1960, although the log output from the reserves was still only about 10% of the total, the forest reserves over which timber rights had not been granted were either too hilly or too poor in economic species to be exploited.

The post-war expansion of the timber industry was colossal. In just ten years from 1945 to 1955, timber production moved out of the hands of the pit-sawyers and into the ambit of large, foreign owned companies. The low royalty rates being negotiated with the chiefs and the low export duties being maintained on timber by the government further encouraged the European prospectors. To counter-balance these dramatic developments the Protected Timber Lands Act (Act no.39 of 1959) was enacted which gave the Government the legal authority to declare off-reserve areas “which consisted wholly or mainly of standing timber” temporarily protected as Protected Timber Lands (PTL). The next year it was followed by the Forest Improvement Fund Act 1960, which essentially mandated the Chief Conservator of Forests to collect royalties and other timber fees on certain Stool lands.

Two powerful chiefs had been observed by the Government not only to be sympathetic to the views of the opposition National Party but also to have contributed financially to support the Party. Since stools derived their wealth from stool lands, the government asserted that revenues from stool

land were being used for purposes unconnected with the stools in question; its response was to pass the Ashanti Stool Lands and the Abuakwa (Stool Revenue) Acts of 1958. Henceforth the Government would hold the lands in trust for the stools concerned.

The success of its intervention in the affairs of these two stools encouraged the State to extend the principle to the rest of the country. The Administration of Lands Act (Act 123) of 1962 carried the principle of State control even further. The Act aimed at regularizing dealings in stool land and ensuring stool land revenue was used in accordance with the interests of the State. Together with the State Land Act of 1962, the government gained the right to compulsorily acquire unoccupied stool lands for redistribution in a manner conducive to national economic development. This meant that the post-independence government had, in effect, been able to achieve what the Public Lands Bill had failed to do in 1897.

Also in a move to further strengthen the control over the timber trade, a Concessions Act, 1962 (Act 124), which amended the Concessions Ordinance, was passed. Act 124 divided forests and protected areas into concessions for the purpose of timber exploitation. It also dealt with forest fees, timber lease and licenses. The Concession Act 1962 (Act 124) vested timber rights on all forest land in the "President" in trust for the owners. The President acting as the trustee is to implement the provisions of the Act through the relevant Ministers with jurisdiction on land and forest issues (normally the Minister of Lands and Natural Resources). The designated Ministry negotiates forest utilization contracts with concession applicants on behalf of the Stool and the Government. By mandating the assigned

Ministry to negotiate, regulate and enforce concession terms and obligation, the Concession Act of 1962, transferred the rights and responsibilities of concession management from the judiciary (Concessions court) to the executive. With the passing of the Concessions Act (Act 124) and the Administration of Lands Act (Act 123) the State gained control over administration and allocation of all timber resources and forest reserves. This has continued to the present case, where concession administration and collection of timber royalties and fees in both forest reserves and off-reserve areas have been under the jurisdiction of the Forestry Services Division (FSD) of the FC.

Act 124 was however amended in 1974 by Trees and Timber Decree (NRCD 273). The decree was aimed at regulating the commercial exploitation of reserved and unreserved lands. Besides these, the Timber Industry (Government Participation) Decree, 1972 (NRCD 139) together with the Forest Improvement Fund Act, 1960 were all passed to ensure that forest resources were used judiciously (c.f. Agyeman, 1993). From the time of Ghana's independence in 1957 until 1973, forest lands were held in trust for the chieftaincy by the central government. Applications for land use, including timber concessions, were submitted to the chieftaincy that derived significant revenues from leasing timber rights (Gillis, 1988). As an outgrowth of political conflict, all rights over natural resources were stripped from the traditional communities and taken over by the central government in 1974. The benefits were no longer for the local community and the authorities lost respect by the people. This new attitude was especially felt in the unreserved forests where previously mature trees had been left untouched by farmers. These trees formed the next potential yield in a second felling series by the

cessionaire. As a result of the changed usufruct rights, the shifting cultivator felled or killed timber trees in his farm by applying fire at the stem foot (Parren and de Graaf, 1995). For such reasons the total unreserved forest area fell within two decades to as low as 300,000 ha (Ghartey, 1990).

The implementation of all these Decrees resulted in an increase in the number of concessions granted and political patronage. A resultant effect was the spillover of concession from forest reserves into off reserve areas. The Decrees made it a criminal offence to operate without valid property mark and prohibited any activity in forests without the consent of the Forest Services Division.

At Ghana's Independence in 1957, 96 percent of all the timber concessions were held by expatriate companies, but the next couple of years the number of Ghanaians involved in the timber industry increased while average concession size decreased. One mechanism for increasing the number of Ghanaian contractors was the provision of interest free loans. Indigenization was, however, a limited strategy. In 1972 the Timber Operations (Government Participation) Decree was passed to enable the government to acquire majority shares in some timber companies. The Decree led to an unprecedented level of state involvement in the timber sector. With effect from October 1, 1972 the Government acquired 55 percent of the equity capital of the largest concession holding operations in Ghana. Many of the remaining foreign interests in the timber industry were nationalized or transferred into Ghanaian interests. The Timber Industry and Ghana Timber Marketing Board (Amendment) Decree, 1977 (S.M.C.D. 128) also conferred on the Timber Marketing Board the sole monopoly of export of Ghana timber. It became an offence

under the Decree to export timber without the Board's authorization in writing. This period of State participation was also characterized by the highest level in the misuse of public funds that led to all pervasive corruption, which came to be styled "*kalabule*."

In order to curb the increased activities of concessionaires especially in areas outside forest reserves and its attendant conflicts of interest between forest communities and concessionaires, an Economic Plants Protection Decree 1979 was passed to prohibit the granting of felling rights to timber trees located in particularly cocoa farms. Although the Economic Plants Protection Decree prohibited the felling of timber in cocoa farms, it did not specifically and explicitly provide similar protection for farms where other crops are grown. The Decree also did not prevent the establishment of farms within timber concessions.

Between 1972 and 1982 inflation got out of control, and the period can be characterized as a period of over-regulation, productivity disincentives, infrastructure collapse, institutional demoralization, public sector mismanagement, and lack of rural infrastructure (Agyeman *et al.*, 2007). Aging sawmills gradually came to a standstill, trucks fell idle, road and rail facilities to the ports fell into despair, while those companies that managed to reach the port in Takoradi found the loading facilities had collapsed too. Production and exports declined dramatically, the value of timber exports fell from US\$183 million to US\$15 million and by 1982 the industry's share of overall export earnings dropped from about 18 percent to under 2 percent (Agyeman *et al.*, 2007).

By 1983, annual inflation had spiraled to 123 percent, the national debt had reached US\$1.5 billion and external reserves could barely cover a

few days' imports (Agyeman *et al.*, 2007). Severe drought and bushfires had brought starvation to many peoples' doors for the first time, while the enforced return of a million young men from Nigeria imposed further strain. This left the government of the day to embark on a major economic recovery programme with the support of the International Monetary Fund and the World Bank. Programmes to rehabilitate the main traditional export sectors of gold, cocoa and timber followed radical monetary and exchange rate reforms. The next Economic Recovery Programme (ERP) era (i.e. 1983 – 1988) allowed for soft loans to be made available in the order of US\$140 million to some identified timber companies to enable them purchase new equipment and materials. The wood industry was back on its feet, the number of log exporters grew from 90 to 300 at the end of the 1990s. The industry remained mainly export-oriented with the local market virtually neglected. During the ERP period there was virtually no attempt to review the policy framework within which industrial rehabilitation was being carried out. Nor was there any attempt to provide similar support to forest administration and controls, it was virtually a period of free-for-all (Agyeman *et al.*, 2007; Hansen *et al.*, 2009).

Since the construction boom during the Economic Recovery Programme era (i.e. 1983 – 1988), demand for lumber has been on the increase both domestically and for exports. The enforced return of a million young men from Nigeria in the early 1980s brought another phenomenon to Ghana: the use of chain-saws as an artisanal way of producing lumber for the domestic demand offering an alternative rural livelihood. Legal backing was given to chain-saw lumber production in 1991 by the Trees and Timber (Chainsaw Operations) Regulations (LI 1518). This was an attempt to

satisfy the increased demand for lumber. This was followed by the institution of the "Interim Control Measures" on exploitation and transportation of trees from off-reserve areas in 1995. These measures, which involved local community involvement in monitoring and management, was meant to ensure that social responsibility agreements, environmental and ecological issues were implemented in order to ensure sustainability of wood supplies from off-reserve areas. The second step under the "Interim Control Measures" was a shift from the policy of "liquidation" to sustained management of off-reserve areas. The ensuing chainsaw permit system has been grossly abused by the communities, the District Assemblies and some Forestry officials so much that even today it can be considered to be out of control. Neither the "Interim Measures" instituted in 1995 nor the Task Forces formed in 1996 to crack down on the abuses of the system have made any significant impact. Chain-sawing was consequently outlawed in 1997, LI 1518 was repealed by the Timber Resources Management Act, 1997 (Act 547) and the related LI 1649 enacted to ban chain-sawing.

The legal reform of the concession system was introduced through the Timber Resources Management Act, (Act 547) of 1997 and the accompanying Timber Resources Management Regulations (LI 1649) of 1998. Timber concessions or rights are allocated on both forest reserve and off-reserve areas. Timber concessions are replaced by Timber Utilisation Contracts (TUC) in both forest reserve and off-reserve areas. TUC is new legal contract between the state, holder of timber rights and landowner, which gives greater ability to enforce regulations on established terms and conditions including compliance with forest management specifications, and periodic audits, or to revoke

the contract for non-compliance. Act 547 formalises the rights of other stakeholders to be consulted. Also, applications for timber rights have to be submitted with 'proposals to assist in addressing social needs of the communities who have interest in the applicant's proposed area of operations' (that is, Social Responsibility Agreements).

In 2002 both the Act 547 and LI 1649 were amended by Timber Resources Management (Amendment) Act, 2002 (Act 617), and Timber Resources Management (Amendment) Regulations, 2002 (LI 1721) to exclude the granting of timber rights on land with private forest plantations or land with any timber grown or owned by individuals or groups of individuals, and introduced competitive bidding for timber rights. The reforestation obligation was dropped at the same time.

Presently, forest reserves which were created under the Forest Ordinance 1927 (Cap. 157), protected under the Forest Protection Decree 1974 (NRCD 243) and regulated under the Timber Resources Management (TRM) Act of 1997 (Act 547), Timber Resources Management Regulations, 1998 (LI 1649), TRM (Amendment) Act of 2002 (Act 617) and TRM (Amendment) Regulations (LI 1721) form the core legal framework supporting the 1994 Forest and Wildlife Policy.

Timber Trade Regulation and the Voluntary Partnership Agreement

Following the high incidence of illegal logging and production of timber around the world, especially in the last two decades, the European Union (EU) initiated a Forest Law Enforcement, Governance and Trade (FLEGT) in the early 2000s to combat illegal logging and trade. In

Ghana, the domestic market had been flooded with illegal chainsaw timber, accounting for at least 80% (see Odoom, 2005; Adam *et al.*, 2007; Marfo, 2010). The chainsaw operation ban by LI1649 in 1998 had failed after 10 years in spite of the use of military interventions. By 2009, it had become clear that the enforcement of the law banning chainsaw operation had been ineffective and that strong advocacy for alternative strategies had begun. In 2009, Ghana and the European Union completed a VPA which required that only legal timber will be traded in Ghana and exported to the EU.

REFLECTION ON REGULATORY DISCOURSES

A closer examination of the historical account given suggests that Ghana forest policy experimentations have largely been characterized by state regulation and hard law to the extent that till date, there are still elements of state control (top-down) in the management of forest resources (Figure 1). Even though one can argue that the 1994 Forest and Wildlife Policy introduced a language for soft regulation such as the call for collaborative and participatory forest management, respect for the right of communities and with the intent that forest benefits must be shared equitably for the benefit of the entire society, subsequent legislations did not entirely reflect this gesture. Even though corporate social responsibilities were internalized in the form of Social Responsibility Agreement (SRA), individual rights to own trees planted were admitted, community forest committees (CFCs) were formed to collaborate with state officials for monitoring and 'soft' agreements with farmers are signed to benefit from tree planting in forest reserves under the current government plantation programme (the Modified Taungya System), there

is still evidence of state control in all these (see Marfo, 2009).

The VPA and Timber Legality

The negotiation of the VPA is the most significant trade policy and agreement that affect forest and timber trade in the last decade. The VPA itself, as an instrument under the FLEGT programme, has a character that reflects smart regulation (Figure 1). While it maintains the force of a ‘hard’ law, it relegates the responsibility to Ghana to define what ‘legal timber’ is in accordance with national laws, granting greater flexibility uncharacteristic of a top-down regulatory discourse.

The VPA implementation has been designed using different mixes of instruments, including definition of legality standards, wood tracking system for verification and an institutional regulation system. For example, Annex II of the Agreement elaborates the legality standards, which significantly draws on various laws in Ghana (Table 1).

In addition, certain requirements in the legality standards are drawn from the FC’s Manual of Procedures (MoPs) for the management of forests. Concerning the legal status of the MoPs, they are output of requirements of the Act 547, LI 1647 and LI 1721.

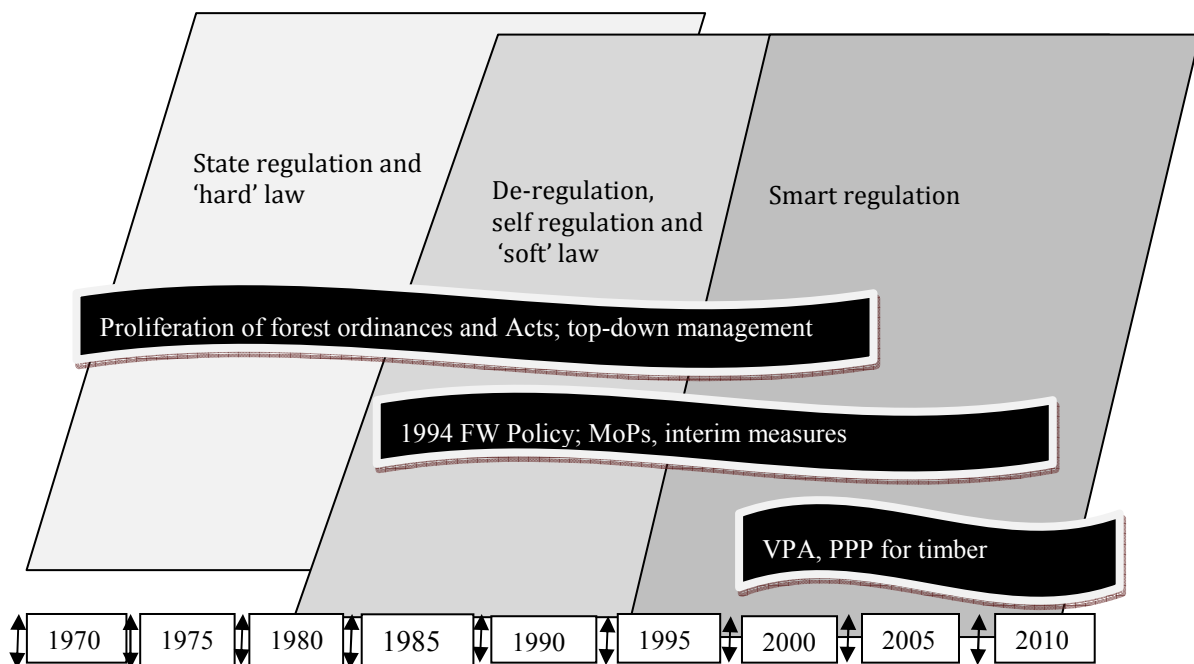


Figure 1: Interfaces of (global) regulatory discourses (in gray shades) and important policy landmarks in Ghana (in black).

Table 1: Laws and regulations defining timber legality in Ghana

Acts		Legislative Instruments	
Name	Year	Name	Year
Forest Ordinance (Cap 157)	1927	Forest Fees (Amendment) Regulations (LI 1576)	1993
Concessions Ordinance (Cap 136)	1939	Timber Resources Management Regulations (LI 1649)	1998
Administration of Lands Act (Act 123)	1962	Environmental Assessment Regulations (LI 1652)	1999
Concessions Act (Act 124)	1962	Timber Resources Management (Amendment) Regulations (LI 1721)	2003
Factories, Offices and Shops Act (Act 238)	1970		
Forest Protection Decree (N.R.C.D. 243)	1974		
Trees and Timber Decree (N.R.C.D. 273)	1974		
Economic Plants Protection Decree (A.F.R.C.D. 47)	1979		
Social Security Law (PNDC Law 247)	1991		
Trees and Timber (Amendment) Act (Act 493)	1994		
Timber Resources Management Act (Act 547)	1997		
Value Added Tax Act (Act 546)	1998		
Forestry Commission Act (Act 571)	1999		
Internal Revenue Act (Act 592)	2000		
Timber Resources Management (Amendment) Act (Act 617)	2002		
Forest Protection (Amendment) Act (Act 624)	2002		
Labour Act (Act 651)	2003		

The legality definition reflects the ‘hard law’ regulatory discourse, showing the extent to which this regulatory discourse has entrenched itself throughout forestry history in Ghana. However, the Agreement also attempted to institutionalize regulatory discourses that reflect the ‘soft’ and ‘smart’ types. For example, Article 10 requires monitoring to be done by independent agencies that do not have any conflict of interest. This softens the conservative approach where the Forestry Commission acts as the manager, regulator and monitor at the same time. This provision is consistent with neoliberal tendencies. Article 16 of the Agreement also reflects the bottom-up approaches to enforcing timber legality

standards with a call for strong stakeholder consultation and participation in its implementation. Another regulatory discourse characterizing forestry discussions since the 1990s and institutionalized in the Agreement is the culture of responsible management and the need for corporate responsibility to affected society. Article 17 of the Agreement makes explicit demands for social safeguards to mitigate impacts of forest policies and practices related to enforcing timber legality standards.

Further, Article 18 calls for the use of market incentives such as public and private procurement policies that favour trade in legal timber. Indeed,

as part of measures to implementing the VPA, Ghana is at a final stage of promulgating a public timber and timber products procurement policy. Thus, the VPA encapsulates a mix of measures or instruments, some being hard law, others being market, de-regulation and soft law measures; all these as outcome of the prevailing discourses in the search for 'smarter' ways of confronting the difficult problem of ensuring trade of legal timber in the domestic and export markets.

CONCLUSION

Ghana has a long and elaborate history in forest policy dating back to the 19th century. Following from the historical narrative of the evolution of timber regulation policies in Ghana, it can be argued that until somewhere in the middle 1980s, they had been characterized largely by state control using top-down management and hard law regulations. The period between this time and the early 1990s seems to represent an interface between the softening of state control and the emergence of de-regulation and soft law discourses. Thus, Ghana almost adjusted to soft law discourses when they 'erupted' in the international forest politics and had stayed long with it till date. The 1994 Forest and Wildlife Policy therefore reflected this interface calling for improved collaboration with communities and market-driven strategies to optimize forest use.

The post-1994 period was confronted with how to approach supply of legal timber with illegal chainsaw timber production posing the greatest challenge. The VPA as a market-based regulation instrument emerged and its negotiation, ratification and implementation has embodied both hard and soft law measures, reflecting the 'smart' regulatory discourse model. However,

Ghana was, in general, a bit late in adopting 'smart' regulation and the VPA has been the most significant trade instrument that has institutionalized the mix of soft and hard regulatory discourses.

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