
IMPLEMENTING TIMBER LEGALITY ASSURANCE REGIME IN GHANA: A REVIEW OF STAKEHOLDERS CONCERNS AND CURRENT INSTITUTIONAL CONSTRAINTS

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ABSTRACT

Illegal logging has contributed significantly to slowing the march towards sustainable forest management in Ghana. Illegal logging has been found to thrive in environment where regulatory controls are not adequate. Stakeholders are concerned about the verification of legal compliance for timber harvesting and processing in Ghana. The Government of Ghana initiated the Validation of Legal Timber Programme (VLTP) to enhance the Forestry Commission's capacity to control illegal logging and ensure production of legal timber. This paper reviews the scope of stakeholders concern and current institutional constraints for legal timber verification in Ghana. The aim is to provide background information as input for a new institutional framework under the VLTP. The review has shown that the current institutional set-up is not suitable for implementing timber legality assurance regime and therefore necessary to instigate a programme of institutional changes. A key element in institutional change is acquiring stakeholder support, which may not be easy when there are employment issues and vested interests at stake. It is essential that a participatory, open and inclusive approach is taken involving all the stakeholders.

Keywords: Institution, timber legality, log tracking, timber industry, chain of custody

INTRODUCTION

Forests are the basis for livelihoods of the population. However, the forest resources are under continuous threat of degradation and depletion driven by various factors including illegal logging. Illegal logging has severe negative environmental, economic and social implications (Contreras-Hermosilla, 2002, Richards *et al.*, 2003). For example, illegal logging results in government revenue losses. It is estimated that

some US\$ 5 billion of government revenue is lost globally each year because of illegal forest activities (World Bank, 2004), and the market value of products resulting from illegal logging exceeds US\$ 15 billion annually (Brack, 2007). In Ghana, illegal logging has contributed significantly to slowing the march towards sustainable forest management. The cost of forest degradation in Ghana is estimated to be about US\$ 500 million (Birikorang *et al.*, 2007). Worldwide, illegal logging has been a prominent issue

discussed in national, regional and international forestry debates over the past decade. Several initiatives, e.g. the European Union' Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan, have been launched to address the problem (EU, 2007).

Illegal logging has also been found to thrive in environment where regulatory controls are less than adequate. Towards removing the bottlenecks in forest regulatory controls and paving the way for effective log tracking, the Government of Ghana, through the Forestry Commission (FC), initiated the Validation of Legal Timber Programme (VLTP) in 2005. The VLTP is intended to improve the methods of conducting critical forest control activities such as inventory of trees, the labeling and tracking of logs and lumber from forests through the mill gate and onwards to the domestic market as well as harbor and/or overland border transactions involving wood products. Combined with an improved system of verification, the VLTP is expected to enhance the Forestry Commission's capacity to control illegal logging.

The proposed VLTP involves a comprehensive review of FC's current timber monitoring system, which is largely paper-based and operated by more than one operational division. Major problems include the difficulty of reconciling data across divisions and the long delays that render reconciliation ineffective. Previous efforts at building a credible monitoring system have focused on meeting national regulatory requirements. However, the current VLTP focuses on building a system that meets the requirements of legal timber of Ghana's major export markets, especially the European Union (EU).

The objective of this paper is to review the scope

of concern of stakeholders and the current institutional constraints to the effective implementation of legal timber verification and monitoring in Ghana. This will serve as inputs to the needed institutional reform process on setting up a credible institutional framework for legal timber in Ghana.

The paper is structured in four sections. Following the introduction (section 1), section 2 discusses the concerns of government, civil society, timber industry and the market with respect to the verification of legal compliance for timber harvesting and processing in Ghana. Section 3 is the review of the institutional constraints and section 4 presents the conclusion and associated implications for designing and implanting timber legality assurance regime in Ghana.

Scope of Concern of Key Stakeholders on Timber Legality

The designers of any system to verify legal compliance in the forest products industry must identify the scope of concern of key stakeholders and judge which aspects of legality warrant inclusion. Systems to verify legality must balance scope in covering the range of issues of concern to different stakeholders, with the practicalities of designing a system that is affordable and workable (Boedijono, 2002). Approaches to finding this balance include (1) limiting the scope of inquiry to one or more specific aspects of production such as the circumstances under which the wood is harvested, (2) concentrating routine enquiries on what can be readily verified such as existence of a valid permit to harvest in the area where the wood was sourced, and (3) stepwise approaches: starting off with simple checklists and progressively adding complexity as experience and confidence are gained. For example, the European

Commission recommends a phased approach to verifying legality, with an initial focus on whether forest management and processing have been properly licensed and later extending this to include compliance with all national laws (Anon., 2002).

This section reviews the concerns of government, civil society, timber industry and the market with respect to the verification of legal compliance for timber harvesting and processing in Ghana.

Government (Public Sector Agencies) concerns

Government is concerned about the high incidence of illegal logging and over-exploitation which has resulted in forest degradation and deforestation. Timber exploitation estimates for 2005 indicate that national timber harvest was 3.3 million m³ round wood (Birikorang *et al.*, 2007). The Annual Allowable Cut (AAC) is 2 million m³, with 0.5 million m³ from forest reserves. However, official records show harvests from off-reserve and forest reserve to be 300,000 m³ and 600,000 m³ respectively. This means that about 2.4 million m³ of timber harvest is unrecorded or illegal.

The inability of public sector agencies in the forestry sector to collect royalties or other revenues that are due to the state is an important concern of the government. This is against the backdrop of the high importance that the 1994 Forest and Wildlife Policy places on the generation of adequate revenue for forest management through among others the collection of forest fees and taxes. The Forestry Commission has not been able to collect revenue due to the state. For instance, as of September 2002 the timber industry had only paid 57 percent of stumpage fees due and was behind payments with

GH¢2.84 million. Stumpage fees are a proportion of the value of logs harvested, and are in essence economic rent that the Forestry Commission (FC) and other institutional stakeholders and landowners derive from the operations of timber firms. The Office of Administrator of Stool Lands (OASL) is mandated to collect and disburse all stumpage. However, under a memorandum of understanding between the FC and the OASL, the role and function of stumpage collection and disbursement has been ceded to the FC. In December 2003 the outstanding stumpage fees amounted to GH¢4.3 million or 67 percent of the billed amount (FC financial statements for the years 2002 to 2004). Accordingly, the timber industry has generally delayed more than 50 percent of its stumpage fee payments by at least a year. The value represented by this delay in payments is a direct and, strictly speaking, illegal loss inflicted upon the beneficiaries of stumpage fees as provided for in the law and constitution (Treue, 2005).

Civil Society Concerns

One of the key concerns of civil society groups is that there is currently unfettered access to an under-priced wood source. In spite of the numerous fees and charges, it has been observed that under the current fiscal and trade regimes, the domestic price of timber remains well below its international level. In 1999, the average difference between domestic and international log prices was about US\$40 per m³; however, in 2003 the difference was reduced to US\$ 25 per m³. The Ghana Timber Association estimated that the cost of wood delivered to the mill was approximately US\$ 28 per m³, which is a low log delivery cost, particularly when compared with a weighted average export value for lumber of US\$330 per m³ (Awudi and Davies, 2001).

Civil society is concerned that this low pricing also extends to concessionaires and loggers. Forest fees that were set in 1998 by the Timber Resources Management Regulations (LI 1649) were reviewed for the first time in April 2003. In addition, wood product pricing mechanisms have not been indexed to the value of the Ghana Cedi and therefore real values for forest products have not been realized over time (Agyeman *et al.*, 2003). Even though the nominal rate for timber tree species doubled between 1992 and 1997, in constant Ghana Cedi terms their stumpage rates halved over the same period. The concern is that Forestry Commission may have lost about US\$6 million in revenue within that period (Birikorang *et al.*, 2001). Thus there is emerging consensus among civil society groups that the present fiscal regime is counterproductive to both the forest sector and broader growth objectives, and that the fiscal regime needs to be reformed so as to correct existing policy failures. Other major concerns of civil society include issues on institutional constraints as discussed in the next section.

Timber Industry Concerns

Several studies have shown that the log export ban, forest taxes and fees and the modalities for granting rights to standing timber have created an over-capacity in the industry, resulting in massive official revenues forgone and a decline in the timber industry and timber resources (Awudi and Davies, 2001; Birikorang *et al.*, 2001; Treue, 2001; Birikorang *et al.*, 2007; Hansen *et al.*, 2009; Hansen and Lund, 2011). Consequently, a major concern of the timber industry is the large unutilised capacity of outdated machinery and low rates of recovery. The industry is, at present, distressed by lack of trees for felling due to the dwindled timber resource base and the inability to control or monitor illegal “cut-and-run” operators.

Therefore, the timber industry is concerned that its compliance to timber legality standards, without appropriate steps to curtail activities of illegal or cut-and-run operators, might tend to collapse the industry.

Furthermore, any legality regime that makes substantial contribution to good governance will essentially have to include timber and wood products circulation on the domestic market. The industry is concerned about the high demand for lumber in the domestic market. The domestic timber trade is mostly served by the chainsaw operators who operate without any legal authority or license. Any legality regime that would shut down these chain-sawing activities - without the commensurate measure to have the vacuum in supply that may be created filled - would adversely affect the local lumber market and subsequently the furniture and construction industries. On the other hand, a flourishing illegal domestic market would nullify any gains that are made on the export market and will fail to lift the sector to the level of governance required to make a difference. Strategies for implementing a legality regime must therefore cover both markets.

Market Concerns

The market, especially the external market, is concerned about the sources of timber use. They have increasingly applied pressure to ensure that their timber supplies are derived from legally verified sources and well-managed forests. They want producers to show evidence that there is efficiency in the wood supply chain, which prevents or exposes theft and fraud.

Worldwide concern about illegal logging and fraudulent activities associated with logging operations suggests that chain of custody systems

are generally poor in many developing countries and in countries undergoing the transition to market economies. This makes it possible for corrupt operators to commingle illegal logs with those from legal sources or to steal logs with relative impunity. As a result the whole forest sector is tainted indiscriminately so that law abiding operators have little incentive to apply best practices.

Institutional Constraints to Current Chain of Custody System

Current Regulatory and Legislative Frameworks

The current legislative framework for the regula-

tion of legal timber is very stringent and in some instances not cost-effective to implement, especially within the current poor public forestry sector institutional framework. It is noted that the high institutional cost of enforcing current legal timber monitoring procedures encourages the private sector operators to exit the formal sector (e.g. engagement in illegal logging). These conditions create corruption, as operators find it cheaper to bribe than comply with procedures. Box 1 gives some explanation on why the current regulatory and legislative frameworks are not working effectively.

Box 1: Reasons for weaknesses in current regulatory and legislative frameworks

The current regulatory and institutional frameworks are not working effectively because:

- i. Non-compliance to regulations: There appears to be a long-term history of non-compliance to regulations by forestry sector agencies in the country. For example, since the coming into force of Act 547, only about six TUC's have been ratified by Parliament but logging continues. In such circumstances, the majority of the timber exported from Ghana in the last six years or so has been harvested under contracts/permits that do not conform to the legal standard. Secondly the Timber Rights Fees provided for in LI 1649 has not been paid but logging has however started and continues under old concessions that should have ceased.
- ii. Too many regulations governing the forestry sector: Currently there are 23 Acts and 26 Legislative Instruments in the statute books governing the management of forest resources. Thus the provisions governing the criteria for defining timber legality are scattered in different regulations making it difficult for the industry to comply.
- iii. Low penalties for default: A number of regulations and legislative instruments contain penalties that are "affordable," that is to say, not commensurate with the illegal activity (crime committed). The costs that are listed as penalties in some regulations are substantially lower than the potential benefits of the illegal act. This is due to the fact that a number of regulations have not been reviewed regularly.

Organisational Performance

The Forestry Commission's current timber monitoring system is largely paper-based and operated by more than one operational division. This makes data reconciliation across divisions very difficult resulting in long delays that render the reconciliation ineffective. In addition, previous efforts at building a credible monitoring system have focused on meeting national regulatory requirements.

Another institutional constraint is corruption within the forestry sector. Corruption is a major cause of illegal logging and trade. Forestry related corruption includes payments to officials to step outside of their legal mandate and prevents them from enforcing laws. Areas of corrupt practices in the forestry sector in Ghana includes false documentation, delays in granting permits which forces contractors to bribe their way through and abuse of timber rights allocation systems.

Concerning the timber industry, its performance has been very inefficient (high logging waste and low milling recovery) and this has contributed to the rapid decline of forest resources. Recovery rates are estimated at 20 percent for export and 40 percent for total production recovery. However, the industry did not have to be efficient to be profitable due to the low prices of logs (Birikorang *et al.*, 2001).

Although civil society is willing to support the enforcement of timber legality assurance regime, their capacities are weak to carry out possible responsibilities. On the other hand, resource owners are not involved in decision making with respect to verifying legal compliance for timber harvesting; and not given enough powers to prevent illegal activities.

Organisational Structure and Personnel

Beeko (2007) provides an analysis of the current system of control and recognizes some of the problems or constraints with it. These include lack of capacity for systematic analysis of data resulting in no effective verification of data; staff limitation; and poor communication and coordination between government agencies.

Currently, the Forestry Commission (FC) does not have the capacity to control the hundreds of (illegal) loggers, each of them logging and marketing few timber trees. Funding and staffing of monitoring and enforcement agencies (especially at the district levels) is inadequate to cover all these operations. The failure to ensure the flow of legal timber in the forestry sector could largely be attributed to inappropriate organisational and institutional arrangements to manage and regulate the timber harvesting, processing and marketing sectors. According to Kotey *et al.* (1998), strong organisational and institutional structures are important requirements for the success of forest management schemes.

Incentives and Investments

Major institutional constraints to the effective implementation of effective chain of custody system in Ghana include the existing poor investment framework in the forestry sector. The private sector is generally unwilling to invest in sustainability because of insecurities in access to resources. Furthermore, the present capacity of the public forestry sector to render extension services to the private sector is still very limited.

In addition, the institutional capacity to control and monitor forest activities and to patrol the forest is weak. There is inadequate logistic support

and the government lacks the capacity to prevent, detect and enforce the law. The FC does not have the capacity to control all felling sets (teams), whether legal or illegal. Funding is inadequate and transportation is a big problem (in some cases there are no functional vehicles for district staff to carry out monitoring activities).

Enforcement Characteristics

The behaviour of the timber industry is critical to law enforcement and to reduce illegality. However, the timber industry has a long history of non-compliance with rules and regulations. For many years, the wood processing industry has depended on both legal and illegal timber supply and has defaulted in the payments of royalties and other fees. The industry is at present seriously distressed due to inadequate legal allocation of trees to be harvested and faces under-utilisation of installed capacity. As such they are willing to turn to supplies from illegal sources for their operations and as such they are willing to breach the laws.

Mechanisms of Inclusion and Participation

One of main constraints facing the forestry sector is how to spread participation to include all those who bear the brunt of ensuring sustainable management of the resource within a regime of good governance, respect of rights and just reward investments in factors of production. The duplication of roles and responsibilities among the institutions with a mandate for chain of custody monitoring and validation have created a poorly functioning chain of custody system. This has led to conflicts among implementing agencies.

There is the poor integration of local communities into current legal timber validation schemes. The

lack of effective arrangements to create an effective platform for engagement of local communities and civil society at large so as to sustain their goodwill, commitment and active participation have not led to effective implementation of legal timber control measures. Communication and coordination between various government agencies are also poor. Although the activities of most agencies in the other sectors of the economy like agriculture, road, infrastructure and population have direct impact on the timber resource, there are ineffective mechanisms or no mechanisms at all for coordinating the activities of these institutions. Lack of effective coordination and communication has resulted in increased difficulty in enforcing laws.

CONCLUSION AND RECOMMENDATIONS

At present, there is a need to strengthen verification and monitoring of legal compliance in the country. This paper has reviewed the scope of concern of key stakeholders and the current institutional constraints for chain of custody system and legal timber verification in Ghana. The Government, civil society, timber industry and the market are all concerned about the verification of legal compliance for timber harvesting and processing in Ghana. The institutional constraints that have influenced effective implementation of the current chain of custody system in the country are numerous and varied.

The review has led to the following main conclusions and associated implications for designing and implanting timber legality assurance regime in Ghana.

Re-Tooling of the Industry is Necessary

Industry low recovery rates contributes to the intense pressure on the already dwindled timber resource base. The timber industry requires significant re-tooling to increase their milling efficiency.

Legality Assurance Regime should Include Measures for Supplying the Domestic Market Demand

The domestic timber trade is mostly served by the chainsaw operators who operate without any legal authority or license. On one hand, any legality scheme that would shut down chain saw milling without corresponding measures to supply the domestic market with timber would negatively affect the local lumber market and subsequently the furniture and construction industries. On the other hand, a thriving domestic market being fed illegally would cancel out any gains made on the export market and will fail to lift the sector to the level of governance required to make a difference. Strategies for implementing a legality regime must therefore cover both markets.

Extending the legality net over the domestic market has some important socio-political dimensions. Government will need to deal with moving a large labour force that has tended to depend on illegal logging for a livelihood on to a new source of livelihood for survival. The search for new avenues of support for a possible new army of 'economic migrants' should equally command as much attention of policy makers both in the EU and potential partner countries as the issues of defining legality and establishment of improved technical systems. Without a clear picture of how tomorrow's 'migrant' workers can be relocated, Governments confronted with the

decision to fully implement the legality regimes will find it politically suicidal.

Institutional Reform should Include Stakeholders in the Reform Process

The current institutional set-up is not suitable for implementing timber legality assurance regime and therefore it is necessary to instigate a programme of institutional changes to achieve government's objective of producing legal timber. A key element in the institutional change is acquiring stakeholder support, which may not be easy when there are employment issues and vested interests at stake. It is essential that a participatory, open and inclusive approach is taken involving all the stakeholders. The successful implementation of any institutional reform process would have to incorporate the development of essential governance structures, based on sound objectives, credible, transparent and consistent decisions.

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