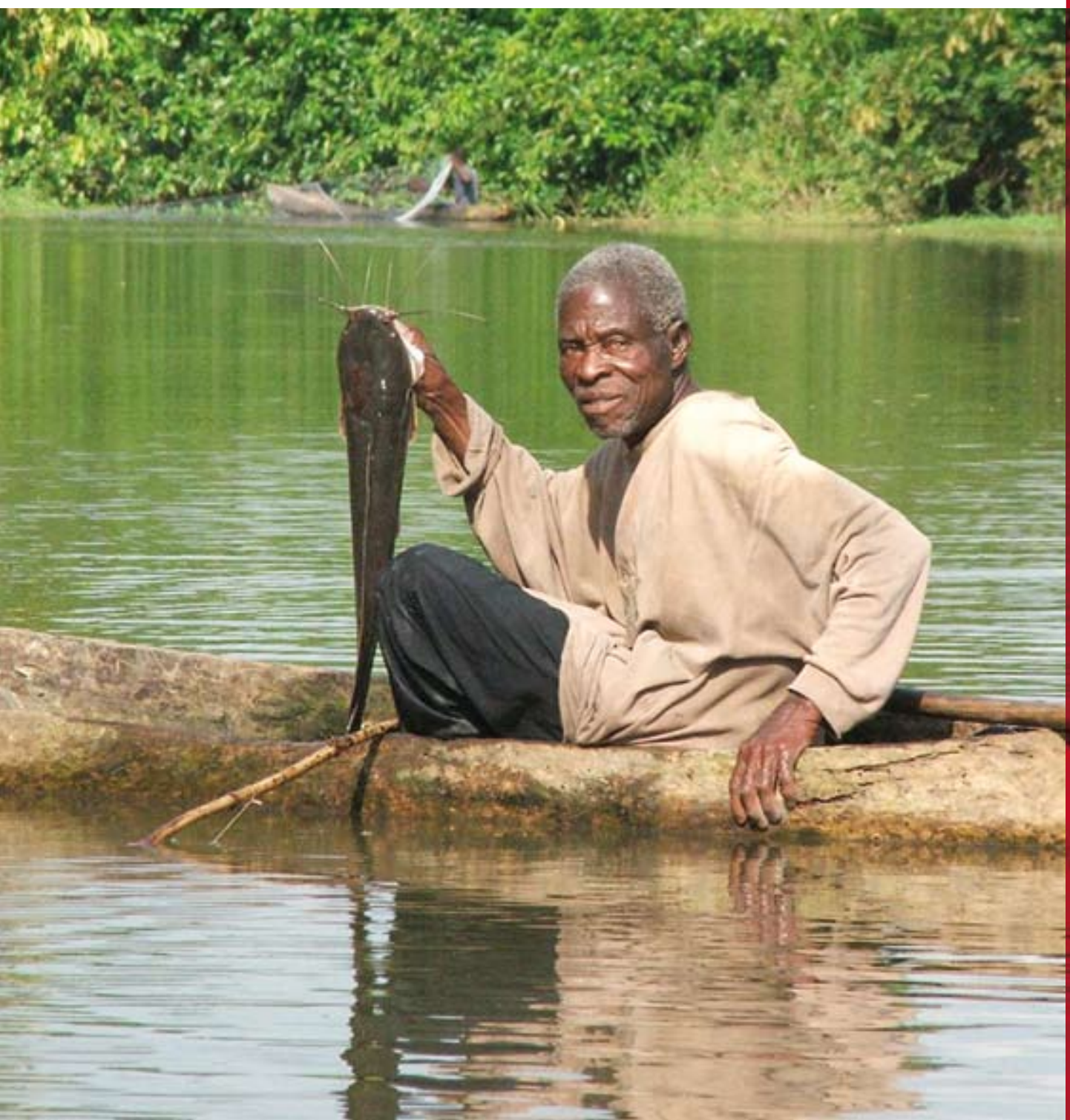


# Forest Governance in Ghana

## An NGO perspective

A report produced for FERN by Forest Watch Ghana, *March 2006*



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## Abbreviations

AFLEG	African Forest Law Enforcement Governance
CBNRM	Community-based Natural Resource Management
CFC	Community Forest Committees
CFM	Collaborative Forest Management
CSO	Civil Society Organisation
DfID	Department for International Development (UK)
EC	European Community
ECFP	European Community Forestry Platform
EU	European Union
FLEGT	Forest Law Enforcement Governance & Trade
FSDP	Forest Sector Development Project
FWP	Forest & Wildlife Policy (1994)
GHATEX	Ghana Association of Teak Exporters
GTA	Ghana Timber Association
GTMO	Ghana Timber Millers Organisation
IRS	Internal Revenue Service
MSG	Multi Stakeholders Group
NTFP	Non-timber Forest Product
TRF	Timber Rights Fees
TUP	Timber Utilisation Permit (non-commercial logging permit)
VLTP	Validation of Legal Timber Programme
VPA	Voluntary Partnership Agreement

*Cover photo:  
Local communities  
need access to  
forest products and  
a sustainable, well  
managed forest  
resource. Skilled  
craftsmen make  
dugout canoes  
from species such  
as wawa trees  
(Triplochiton  
scleroxylon),  
generating an  
income and  
providing essential  
equipment for local  
fishermen.*

Author: Kyeretwe Opoku, Civic Response Ghana

Photos: Dorothy Jackson

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FERN office UK

1C Fosseyway Business Centre, Stratford Road, Moreton in Marsh, GL56 9NQ, UK

FERN office Brussels

4 Avenue de l'Yser, 1040 Brussels, Belgium

[www.fern.org](http://www.fern.org)

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The views expressed in this report are those of Forest Watch Ghana and have been subjected to a peer review. They do not necessarily represent FERN's position.

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This report is one of a series looking at forest governance from an NGO perspective. Other reports in the same series cover Ghana, Congo (DRC) and Malaysia. These countries are among a group of countries that are expected to negotiate Voluntary Partnership Agreements with the EU. The aim of these Voluntary Partnership Agreements is to control illegal logging and to contribute to sustainable forest management. The series aims to provide constructive input to the development of these Voluntary Partnership Agreements. All reports are available at [www.fern.org](http://www.fern.org).

## **Forest Watch Ghana**

Forest Watch Ghana is a broad coalition of civil society organisations and NGOs in forestry, environment, rural livelihood support, development rights advocacy, cultural rights advocacy, information rights and governance. Its members include Kachito Community Development Centre, Ghana Integrity Initiative, Juxtapose Integrated Development Association, Programme for Women and Children in Development, Friends of the Earth, Friends of the Nation, League of Environmental Journalists, CARE International, Green Earth Organisation, Centre for Indigenous Knowledge and Organisational Development, Institute for Cultural Affairs, Ghana Wildlife Society, Integrated Action for Development Initiatives, Conservation Foundation, Ghana Conservation Network, Rural Youth Development Association, Third World Network Africa, Tropenbos and Civic Response.

*Forest Watch Ghana's "Forests for the People" campaign works for fair access to forest resources, fair sharing of benefits from forest exploitation, participatory forest governance and greater civil society involvement in forestry.*

## **Laws Discussed**

- 1 Constitution of the Republic of Ghana, 1992.
  - 2 Forest Commission Act 1997, (Act 571).
  - 3 Forests Ordinances, 1927 (cap 157).
  - 4 Forest Protection Decree, 1974 (NRCD 243).
  - 5 Free Zone Act, 1995 (Act 504).
  - 6 Local Government Act, 1993 (Act 462).
  - 7 Timber Resources Management Act, 1997 (Act 547).
  - 8 Timber Resources Management Regulations, 1998, (L.I. 1649).
  - 9 Trees and Timber Decree, 1974 (NRCD 273).
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## Executive summary

Ghana's forestry sector is in deep crisis. The timber industry-led assault on this resource is building towards ecological catastrophe. The state's failure to capture even a minimal portion of resource rent for the public and for the communities that own and depend on these forests for their livelihood has created a social catastrophe. The descent of affected communities into poverty, social decay, conflict, and violence threatens a political and security catastrophe as well.

Ghana's forest sector has an elaborate superstructure of constitutional rights, seemingly progressive policies, comprehensive laws, well-developed institutions, and a cadre of well-trained professional foresters. The workings of the sector are, however, determined largely by the substructure of exploitative and repressive relations between the corporate timber industry and the state on the one hand and forest-dependant communities and the public on the other. These relations, established under colonial rule, remain intact throughout the natural resource sector 50 years after independence.

Recognition that the sector needs governance reform rather than just technical assistance and credit is an important step forward. Governance initiatives that focus solely on the superstructure (laws and policies) without addressing the basic political economy of forestry and the wider extractive sector cannot lead to change. NGOs believe that the European Union (EU) Forest Law Enforcement Governance & Trade (FLEGT) and Voluntary Partnership Agreement (VPA) strategies have the capacity to disrupt the existing political economy for the better.

If the EU and timber buyers ally themselves, however temporarily or tangentially, with the environmental and social justice agenda, it will create space for peaceful reform. The European Commission and European buyers can support the participation of NGOs and community representatives in the VPA process politically and materially; they can, in particular, support a definition of "legality" that substantively addresses pressing social and environmental concerns and not just formal legislative processes. This precedent would represent a significant breakthrough for the sector. NGOs will work with and for such a VPA process in addition to pursuing other initiatives.

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*Dawn over the Kakum National Park. Most of this area of moist evergreen forest was selectively logged from at least 1975 to 1989. It is now is a major tourist attraction featuring a canopy walkway.*

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# 1. Introduction

This paper looks at Ghana's forestry crisis and the role that the EU FLEGT/VPA initiative can play in transcending this crisis. It adopts a socio-economic and environmental perspective that is supportive of forest-dependent communities but sets their immediate demands within a national framework. This perspective rests on the premise that forestry is about the relations between different social groups around forest resources. "Governance" is thus not just an aspect of forestry, but its essence. Those who are serious about reforming the sector must recognise this fact and its implications.

The EU FLEGT/VPA initiative on trade in illegally logged timber is the most significant international initiative on forestry reform in many years. NGOs and social stakeholders in general are enthusiastic about it. It has, however, one weakness. In countries like Ghana, the state (the EU's VPA negotiating partner) is a structural part of the forestry problem. It will settle for cosmetic change given the opportunity. Success requires that the EU negotiators move, however subtly, beyond trade facilitation negotiations and at least table the wider social and environmental issues around forestry in Ghana. If the process remains at a superficial or super-structural level it will not deliver value for any of the parties involved, and could even discredit participants. The price of failure could be a further (even final) loss of faith in systemic approaches on the part of communities and a strengthening of tendencies towards disintegration of an already weak state.

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*Timber cut by chainsaw operators is freely on sale throughout Ghana, although it is illegal under the Timber Resources Management Regulations of 1998. It is usually the only affordable timber for local communities and is also widely used in government construction projects.*

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## 2. The state of forestry in Ghana today

### 2.1 Unfair access to forest resources

#### 2.1.1 Deforestation

Ghana suffers from rapid deforestation and destruction of biodiversity. Between 1900 and 1990 Ghana lost 80% of its forest cover (8m ha – 1.6m ha)<sup>1</sup>. Satellite pictures of state-managed forest reserves taken in 1990 and 2000 demonstrate rapid deforestation within these reserves as well; some lost as much as 90% of cover in this short period. There are no more recent measurements, but communities and Forest Watch Ghana members working at the forest fringe continue to report rapid shrinkage of forests. Official estimates suggest that logging is proceeding at about four million m<sup>3</sup> per year – 4 times the sustainable rate<sup>2</sup>. Ghana has the dubious distinction of being the first country to have lost a major primate species since the Convention on Biological Diversity came into force: the red colobus monkey has been extinct since 2003 because of destruction of its habitat.

The Forestry Commission has joined the forestry industry in blaming bush fires, farmers, and chainsaw operators for deforestation. This is a gross distortion of the truth, however. While there have, for example, been bush fires (especially in the mid-1980s), these can be purposefully set by the unscrupulous as a tactic to destroy evidence of over-logging. There is also illegal clearance for farming, but this, too, often occurs in the wake of industrial devastation. Finally, there is indeed a chainsaw problem, but the evidence suggests that chainsaw operators are increasingly funded by and answerable to persons close to the established timber (export) companies – the same companies which, according to civil society activists, also provide the prime market for chainsaw-cut lumber. The main driver of deforestation is the timber industry, which is able to suborn national policy processes to protect its profits<sup>3</sup> and systematically violate permit regulations with complete impunity<sup>4</sup>.

Of course, the logging industry is objectively propelled by an installed primary and secondary capacity that is 6 times the sustainable supply of wood from Ghana's forests<sup>5</sup>. With an average (and declining) efficiency of 37%<sup>6</sup>, the timber industry simply cannot afford to import wood at international market prices. With the domestic resource on its last legs, there is pressure on companies to cash in while some resource remains. There is

1 The 1907 Forest Policy contemplated the destruction of all non-reserve forests.

2 Birikorang et al. (2001).

3 For example, the Forestry Commission doubled the annual allowable cut in 2002 despite the deforestation crisis. The Forestry Commission also made concessions on minimum girth and allowable cut restrictions in June 2005 as part of its settlement with the GTA. Further, in December 2005, Parliament ratified illegal "Replacement Allocations" issued by the Forestry Commission.

4 Almost the entire industry operates in defiance of the permits regime established by the Timber Resources Management Act in 1998 and continues to operate under concession agreements that expired by operation of the Act in September 1998. See Forest Watch Ghana (2004).

5 Birikorang et al. (2001). Half of this capacity was acquired between 1993 and 2000.

6 Ibid.

already talk (and some evidence) of capital flight from Ghana timber into other sectors and into other producer countries, particularly in the Congo basin.

### 2.1.2 Discrimination

The ownership rights of pre-colonial communities and the applicability of their customary laws to surface land are not in dispute<sup>7</sup>. The Constitution describes these as “stool lands” (lands owned by pre-colonial communities, symbolised by wooden stools). Article 267(1) says, “All stool lands in Ghana shall vest in the appropriate stool on behalf of, and in trust for the subjects of the stool in accordance with customary law and usage”.

Since independence, the state has successfully claimed ownership of minerals<sup>8</sup>, hydrocarbons, and water resources. The state has also compulsorily acquired lands for various public purposes. The Constitution recognises these as “public lands”. For over 100 years, the state has asserted the right to manage areas designated forest reserves on behalf of landowners<sup>9</sup>. In 1974, the state extended this power to standing timber resources outside of forest reserves.

In practice, state management rights have meant expropriation of communities. The only incidences of ownership that these communities still enjoy are the right to receive a share of royalties from forest exploitation and to participate in inventory taking prior to the award of Timber Utilisation Contracts. The state takes most important decisions without reference to communities, and discriminates against communities with respect to resource access. Laws dating back to 1927<sup>10</sup> have criminalised community use of forest reserve resources. In 1974<sup>11</sup>, the Minister was empowered to extend this regime to any timber-bearing forests by declaring them “protected”. Indeed, the provision of draconian punishments for the smallest infringement of forest use restrictions has been the most consistent feature of forestry legislation through the years<sup>12</sup>. Of course, the Forestry Commission does not apply these rules to timber or mining companies – only to rural citizens.

Though the 1994 Forestry and Wildlife Policy stresses the importance of collaborative forestry management (CFM) and community-based natural resource management (CBNRM), the state’s legislative efforts since then demonstrate where its real commitments lie:

- In 1997 the state enacted a comprehensive investment code for timber – the Timber Resources Management Act<sup>13</sup>. There are no laws supporting CBNRM.

7 The Aborigines’ Rights Protection Society defeated the British attempt to pass a Crown Lands Ordinance in the Privy Council in 1897.

8 Including sea-salt crystallised naturally in lagoons during the dry season.

9 Forest Ordinance.

10 Ibid.

11 Trees and Timber Decree.

12 Governments reproduce these restrictions almost as a reflex every time they pass new legislation. Today different presentations of these rules appear in the Forest Ordinance, the Forest Protection Decree and the Forestry Commission Act.

13 Timber Resources Management Act.

- The Forest Ordinance provides for NTFP access in forest reserves based on permits issued by the Forestry Commission<sup>14</sup>. The state has passed no laws regulating access to non-timber forest products (NTFPs) on which community households and businesses depend. There are, no rules specifying how to apply for such permits, how applications will be processed or evaluated, or how the Forestry Commission will price permits. Nor is there provision for review or appeal against unfavourable decisions. The process is fraught with arbitrariness, discouraging community access to their forest resources.
- The situation regarding non-commercial timber use is no better. The Timber Resources Management Regulations of 1998 (LI 1649) establish “Timber Utilisation Permits” (TUPs) that allow communities, District Assemblies and NGOs to access trees for non-commercial purposes. TUPs are clearly a legislative afterthought not mentioned in the parent legislation<sup>15</sup> but appearing in the Regulations<sup>16</sup> under a chapter headed “Registration and Use of Chainsaws”! Further, the Regulations do not specify application and operating procedures for these permits. The result is that communities cannot in practice make use of TUPs. Rather, the Forestry Commission illegally uses TUPs to facilitate cheap corporate access to logs. Between 2001 and 2003 the Forestry Commission issued at least 125 TUPs to commercial loggers<sup>17</sup>.

## 2.2 Unfair benefits sharing

The ongoing expropriation of community resources by timber companies becomes clearer when one looks at how stakeholders share benefits from timber. Forest-owning and -dependant communities receive negligible returns from the destruction of their resources. Forest Watch Ghana members believe that community representatives receive less than 5% of their royalty entitlements and none of their entitlement to timber rights fees (TRFs)<sup>18</sup>. There are three distinct elements to this problem<sup>19</sup>. One relates to the terms of trade between North and South. The second relates to the state’s tendency to facilitate industry expropriation (which in turn facilitates industry patronage of forestry officials) at the expense of forest-dependent communities. The third relates to elite capture of revenue collected by the state.

### 2.2.1 Terms of trade

“Market prices” for tropical wood products do not reflect the real economic, environmental, and social value of the forests destroyed to supply wood products. In the case of

14 Forest Ordinance.

15 Timber Resources Management Act

16 Subsidiary legislation normally regulates the exercise of legal rights created by a parent statute. It is unusual for it to create rights absent enabling provisions in the parent legislation.

17 There was a ministerial ban on allocation of new Timber Utilisation Contracts “in force” in this period. The Forestry Commission Board of Directors similarly embarked on questionable allocations of so-called “Replacement Allocations” to favoured companies.

18 The analysis of stumpage collection and royalty distribution follows. The Forestry Commission has not collected TRFs since the law came into force in 1998. The current position of the Forestry Commission is that communities are not entitled to participate in TRFs.

19 The scandalous exploitation of wage labour in forests and mills falls outside this discussion.

the export industry, this represents a direct transfer of forest rents to buyers, and perhaps to Northern consumers. In the case of domestic sales, the transfer goes directly to the Ghanaian industry. This subsidy ensures that an inefficient industry that recovers only 37% of the wood supplied to it nevertheless stays in business.

### 2.2.2 Revenue collection

Industry keeps the bulk of its turnover. It does not meet statutory obligations to the state and the public, principally timber rights fees, stumpage fees, and income taxes. The export industry does pay export levies, but is mobilised to have this impost revoked.

#### Timber rights fees

Only six of approximately 600-odd active timber concession holders have registered to pay the timber rights fees that became mandatory in September 1998 under the Timber Resources Management Act. The Ministry of Lands, Forestry and Mines and the Forestry Commission never took steps to enforce the permits regime established by this law (and opposed by industry) because it involved a redistribution of resource rent. Forest Watch Ghana has calculated conservatively that this represents a subsidy to industry of \$100 million per year<sup>20</sup>.

#### Stumpage fees

Industry has accumulated arrears in stumpage fees over the last eight years<sup>21</sup>. The Forestry Commission assesses these arrears at about 30 billion Cedis (3.3 million \$).<sup>22</sup> Forest Watch Ghana disputes this figure<sup>23</sup>. Forest Watch Ghana argues that the Forestry Commission understates the stumpage entitlement (*e.g.*, by failing to index these for inflation between 1997 and 2003, when average fees dropped from about \$12.00 to \$3.00). Further, the Forestry Commission only invoices about half of the accrued stumpage<sup>24</sup>, and then collects only half again of what it invoices. Finally, the Forestry Commission also failed to calculate the commercial interest that the law imposes on these arrears<sup>25</sup>. Forest Watch Ghana calculates that the correct historical outstanding is closer to 300 billion Cedis<sup>26</sup>.

20 Forest Watch Ghana (2004).

21 In 2005, the Forestry Commission attempted to collect these arrears. The GTA sued in court to block the Forestry Commission and threatened to expose long-term collusion of Forestry Commission officials in allowing companies to cut undersize logs provided they declared the minimum girth on the Log Measurement & Conveyancing Certificates. The Forestry Commission then used this falsified information to calculate stumpage obligations. As long as industry ignored stumpage obligations, it obviously did not mind the higher rates. The out of court settlement involved the Forestry Commission accepting deferment of arrears for another year interest free, waiving of minimum girth standards and relaxing of Annual Allowable Cut rules.

22 Forestry Commission Forest Service Division (2005). Also repeated in several media-reported speeches by A.S.K. Boachie-Dapaah, Chief Executive of the Forestry Commission.

23 Forest Watch Ghana (22 June 2005).

24 Forestry Commission F&A Dept. (2005).

25 Commercial interest rates over the last 8 years have averaged above 30%.

26 As of 2005.

## Income tax

The Large Taxpayers Office of the Internal Revenue Service (IRS) reports that, since 2001, most of the large millers – who are also major concessionaires and exporters – registered as “free zone enterprises” under the Ghana Free Zone Board Act. These companies have thereby acquired ten-year tax holidays and do not pay the 30% corporate income tax that would otherwise apply. The IRS considers this an abuse of the Free Zone Act since these companies are milling timber acquired either from concessions they themselves hold or from purchases at subsidized domestic market prices rather than international prices. The IRS observes that in many cases these companies have used old and thus ineligible plants to qualify for Free Zone status.

## Export levy

The 3% levy on wood exports is perhaps the only area of effective Forestry Commission collection (70% recovery). The timber industry, however, opposes this<sup>27</sup> and Ministry of Lands Forestry and Mines has expressed a readiness to see the Forestry Commission surrender it. Indeed, in December 2005, having failed in a bid to abolish the levy, Ministry of Lands Forestry and Mines instructed the Forestry Commission to pay the proceeds into the consolidated fund. The effect of such interventions in stumpage and export levy collection would have been to collapse the Forestry Commission financially.

### 2.2.3 Revenue distribution

#### Forestry Commission management fees

The Forestry Commission annually collects less than 20% of its stumpage entitlement. Powerful interest groups appropriate this revenue inequitably and illegally. Ghana's constitution provides a formula for distributing revenue accruing from stool lands. This formula is set out in Article 267(6) as follows:

*Ten percent of the revenue accruing from stool lands shall be paid to the office of the Administrator of Stool Lands to cover administrative expenses; and the remaining revenue shall be disbursed in the following proportions:*

- a twenty-five percent to the stool through the traditional authority for the maintenance of the stool in keeping with its status;*
- b twenty percent to the traditional authority; and*
- c fifty-five percent to the District Assembly, within the area of authority of which the stool lands are situated.*

27 Industry's case is legitimate: it is irrational to penalise exporters. Industry cannot insist on a rationalisation, however, when it refuses itself to meet statutory obligations.



*A market in a forest-zone village.*

The Forestry Commission ignores this constitutional provision. It officially appropriates 60% of revenue deriving from forest reserves and 40% of revenue deriving from off-reserve<sup>28</sup> as “management fees”<sup>29</sup>.

Of course, the Forestry Commission’s claim for compensation is legitimate, but must be resolved within the Constitution. Three solutions are possible:

- I Forestry Commission expenses are charged to the consolidated fund and the state finds a way to tax stool lands revenues;
- II The state and Forestry Commission must request forest owners to pay the Forestry Commission for the services it provides; or
- III Steps are taken to amend the Constitution to provide for management costs or to empower parliament to provide for management costs.

### **Community representation and local elite capture**

The Constitution selects three institutions to receive communities’ shares of royalties<sup>30</sup>. These are District Assemblies (55%), stools (25%) and traditional authorities (20%). None of these institutions accounts to forest-owning communities for royalties they receive; none of these institutions has deployed these resources in development projects

28 Birikorang et al. (2001).

29 The Forestry Commission has recently introduced a scale of fees applicable to different types of plantation forests.

30 From this point forward a discussion of TRFs is not possible since there is no record of collection on which to base analysis.

that could create long-term economic opportunities that compensate communities for resource destruction. Each has its own unique problems.

District Assemblies are constitutional institutions regulated by the Local Government Act<sup>31</sup>. They are composed two-thirds by elected assembly members and one-third by presidential appointees. The President also appoints the District Chief Executive. Assemblies have limited statutory roles in forestry. District Forest Managers are not accountable to Assemblies. One result of this disconnect is that Assemblies do not have the information necessary to budget for timber royalties or institute proper controls on their use. This is largely a technical problem; the state can create mechanisms to correct it<sup>32</sup>.

The stool presents a more serious and complicated problem. Traditional political institutions are undergoing a very uncertain transition. Stools are not thrones. They symbolise the social unit and not the personal authority of the person who occupies<sup>33</sup> the stool. Families, shrines, states, and confederations all have stools that symbolise their unity. Since, under customary (and constitutional) law, land resources are communal property, it follows that royalties belong to the community as a whole – not to chiefs. Chiefs in customary law are custodians of the community interest and not feudal lords<sup>34</sup>.

The colonial administration promoted chieftaincy above other stool institutions. It also promoted private property in natural resources. Since the colonial period chiefs have therefore sought to increase their powers and re-invent tradition to suggest personal rights over stool property.<sup>35</sup> Today, chiefs tend to appropriate royalties for their personal or household use<sup>36</sup>. They claim that this is the meaning of “*maintenance of the stool in keeping with its status*” and that it is only the royalties allocated to District Assemblies that belong to communities. Enhancement of chiefly powers was probably indeed one of the objectives of the Constitution’s drafters<sup>37</sup>. However since land is communal property it follows that royalties (compensation to land owners) belong to the community as a whole and not to chiefs. The “status” of the stool can therefore only refer to the well being of the community that it symbolises.

“Traditional authorities” are also stools. The term refers to the most senior stools within the political hierarchy of traditional states or confederations. Traditional authorities may be land-owning stools in their own right, but this is seldom a function of political seniority. The paramount stool of a traditional authority may command the political allegiance of thousands of subordinate stools without gaining control of stool lands. The move towards pseudo-feudal status that began under colonial rule, however, has

31 Act, 1993 (Act 462).

32 It is an open secret however, that DCEs are under pressure to find funds to support ruling party activities.

33 Chiefs do not actually sit on stools; they keep them in special stool-houses and perform sacrifices to them several times a year.

34 Indeed, customary practice was for the chief to surrender all his private possessions to the stool upon enstoolment.

35 An interesting description of this process is provided in Berry S (2004)

36 For example, communities in Enchi have used their District Forest Forum to demand accountability from chiefs and to insist that royalties go to fund Forest Forum costs.

37 The chairman of the Drafting Committee a respected international jurist is also Paramount Chief of Asokore in Asante.

encouraged traditional authorities to advance claims to rights over subordinate stools' lands, notably in Asante.

There are two problems associated with the role of traditional authorities in royalties administration. First, some subordinate stools complain that payment of royalties through traditional authorities in practice enables paramount stools to appropriate part or all of these monies. Secondly, by allocating 20% of royalties directly to traditional authorities the Constitution further blurs the customary law distinction between "ownership" and "political leadership". It condones state sponsorship of elite chieftaincy institutions in a way that gives them a stake in the system whereby timber companies exploit community resources.

## **2.3 Condition of forest-dependent communities**

The social condition of forest-dependent communities (60% of Ghana's 20 million people) is alarming. For centuries before colonialism, these cultures depended on forest resources. Economic production, social organisation, religious belief, and identity all depended on this relationship. Destruction of the forests and community exclusion from access to them has massively disrupted these communities. Unlike Europe or the Americas, where similar rates of deforestation occurred in the nineteenth and early twentieth century, deforestation in Ghana has not been part of any domestically integrated development. The result has been the catastrophic decay of forest-dependent communities.

### **2.3.1 Economic condition**

Deforestation leads to a reduction in the water and soil nutrients that sustain agricultural productivity, which is the main activity of these communities. It also means the disappearance of NTFPs (plants, animals, and minerals) on which such communities depend for food, preservatives, medicine, construction, packaging, and other basic needs – thus forcing them into the cash economy. Negligible returns from timber extraction, lack of forward integration of industry, and state withdrawal from social investment means no investment to create non-agricultural jobs to sustain these communities.

### **2.3.2 Human rights condition**

Communities also experience significant human rights abuses at the hands of timber companies and state officials. This includes destruction of crops and destruction of community infrastructure during haulage operations. Communities that have tried to resist these abuses or to demand compensation are largely ignored. In some cases, farmers report threats of reprisals by timber company officials. The arbitrary and biased enforcement of forest reserve rules against community members, though sanctioned by statute, also constitutes rights abuse.

### **2.3.3 Socio-cultural rights abuse**

Deforestation also undermines traditional religion and culture – an important issue in

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communities already facing social crises, and one that tends to strengthen traditional hereditary institutions at the expense of modern democratic ones.

### 2.3.4 Insecurity and conflict

The combination of felt deprivation, rights violations, and a sense of betrayal by state institutions is increasing the levels of tension and conflict in forest fringe communities. These tensions are exacerbating pre-existing gender, age, and lineage tensions. Forest Watch Ghana members report increasing domestic violence, chieftaincy disputes, and neglect of the aged, including its extreme community form – accusation of witchcraft. There is also increasing tension between earlier settlers (so-called indigenes) and later settlers in particular areas: in other words, ethnicity is crystallising as a class distinction in some places. Forest communities are also confronting timber companies in an organised manner and demanding rent illegally. For example, many Community Forest Committees<sup>38</sup> around the Desiri Reserve (typically chaired by the “Ode kuro”<sup>39</sup>) in the Nkawie Forest District have set up illegal road-blocks and forcibly demand “tolls” from passing timber trucks. Communities are tacitly supporting raids of company concessions by chainsaw operators – who at least pay rent up front. Most significantly, however, both gangs of illegal loggers and forest-dependent communities are now willing to confront the state over resource access in an increasingly violent manner. There have been repeated reports by District Forest Managers that gangs of illegal chainsaw operators are armed and prepared to resist state interference with their operations. There is no evidence to suggest that this represents community-based “activism” or whether communities are simply responding to and taking advantage of the obvious breakdown in authority. There are nonetheless several places, such as Desiri, where the state has lost control over the reserves and where armed communities have demonstrated a willingness to confront Forestry Commission officials, police, and military to protect illegal farming activities<sup>40</sup>. Though state officials tend to play these incidents down, these trends could completely undermine the state, and national integrity, if not checked.

Further attempts at state repression will only accelerate this disintegration: precisely such abuse of communities created the crisis in the first place. Repression ultimately fails – especially in a state as weak as Ghana’s. The national political elite understand but reject the real solutions to this crisis, which include:

- I The participatory development of a programme of local government and natural resources policy reform that cedes some measure of control over resources to democratic local institutions;
- II Greater national investment in modernising rural communities on the basis of local resource utilisation; and
- III A conscious effort to democratise rural institutions and to re-develop a national

38 Community Forestry Commissions are village-level committees initiated by the Forestry Commission to mobilise support for forest policy goals and to represent community concerns to District Forest Offices.

39 An “Ode Kuro” is a Village head-man, literally “holder of the town”.

40 In 2005, for example, the media reported that in Enchi communities engaged in 3 days of gun battles with Forestry Commission officials and police who tried to drive them out of illegal farms. In the process, communities kidnapped and seriously injured several police officers.



*Forest giant in wet evergreen forest at Ankasa Resource Reserve, one of Ghana's most biodiverse sites. The south of the reserve was logged during the 1960s and 70s.*

and even pan-African identity to counter the disintegrative effect of ethnic political agendas.

# 3. Forest policy and law in Ghana: context, content, impact, and potential

## 3.1 Context

Forest policy, forest legislation, the forestry bureaucracy, and the rest of the governance superstructure all have roots in the colonial experience, and continue largely to be determined by the substructure of exploitative international economic relations that colonialism introduced to Ghana between 1850 and 1950. Post-colonial changes in this substructure are responsible, however, for the specific features of today's crisis.

### 3.1.1 Colonial forestry

The colonial state was the creation of European merchant houses. They created it to supervise the final destruction of pre-colonial modes of production that survived the trans-Atlantic slave trade. These modes of production were based on communal agriculture, low-volume manufacture, and trade (including trans-continental trade in salt, gold, leathers, etc.). Colonialism subordinated the elites of pre-colonial cultures through military conquest or diplomacy, and reduced these to paid "Native Authorities" within the colonial local government system. They then enhanced or created<sup>41</sup> Native Authorities' coercive powers over their communities in order to facilitate foreign corporate access to landed resources, and to develop through conscription the infrastructure necessary for an export economy – roads, railways, mines, ports, and so on. They introduced, or encouraged the development of, cash crops for export. They discouraged traditional subsistence economic activities in a bid to force communities into the cash economy and to cut off their links with their resources.

This enabled the establishment of a dependent "national" economy based upon export of minerals, cash crops, and timber to Europe, in exchange for cash with which to import industrially manufactured commodities. Through Native Authorities, the colonial state guaranteed investors cheap access to mineral and timber concessions. It also ensured low taxation of extractive industries while the workings of the "international market" ensured that peasant-produced commodities were available at less than their value. This ensured that the most of the wealth produced in the colony was realised and retained by European companies. What little remained in the Gold Coast went to pay the costs of the colonial administration and to reward local collaborators; almost nothing was left over for the rural communities who depended on and legally owned these resources.

### 3.1.2 Post-colonial forestry

Post-independence governments have mostly strengthened the fundamentals of Ghana's

41 In many parts of West Africa chieftaincy as an institution was a colonial creation.

extractive economy<sup>42</sup>. The state continues to ensure cheap access to communities' assets on behalf of the corporate sector (especially the transnational corporate sector)<sup>43</sup>. The state continues to abuse community rights<sup>44</sup>. The international commodity markets continue to undervalue natural resources and transfer wealth to big business in the North. As a result, Ghana suffered internal economic disruption, and now even depends on foodstuffs imports.

The British transfer of the power of patronage to Ghanaian politicians changed the internal composition of the timber industry and its relationship with the political and forestry establishments. These changes have determined the specific character of the present crisis. Hundreds of indigenous supporters of successive civilian and military governments joined the ranks of logging concessionaires. These, of course, put additional pressure on resources<sup>45</sup>. More importantly, from a governance point of view, they changed the character of "regulation" completely. Whereas British concessionaires were largely well-established corporations (such as Unilever) employing professional foresters and lawyers to manage their relationships with the state, few of the new timber contractors understood or were interested in a rules-based regulatory system, and none worried about environmental impact or sustainability issues<sup>46</sup>. They were politically savvy and willing to use their connections to override regulatory restrictions on their activities. It was (and remains) difficult for underpaid forestry officials to assert authority over wealthy and politically influential timber men, especially where these proved willing to offer substantial rewards to "flexible" officials. As their wealth grew, timber contractors freed themselves from their original political sponsors, spread their risks, and became patrons of the national political elite as a whole. In time, they extended their influence from politicians to more powerful silviocrats, and throughout the forestry system to its lowest operating levels.

Normally, though the superstructure serves the dominant interest, it does so with some independence and in accordance with the internal logic of, for example, the legal system. In Ghana, the tendency to provide instant gratification to powerful timber men ultimately undermined the integrity of the superstructure. Between 1948 and 1992 there was no major policy review despite independence, Africanisation, international commodity price collapse, nationalisation, and the many shifts in the political-economic function of the forest sector. Politicians and civil servants ran the sector by *ad hoc* administrative fiat; governments passed laws to catch up with administrative pronouncements or not at all<sup>47</sup>. Management plans mostly expired in the late 1960s and were not replaced. With the

42 Ghana's first independent government did commit to building a national industrial base and expended state resources in establishing national milling and furniture making capacity. With its overthrow in 1966 pursuit of a self-reliant national economy and "downstream" investment in the wood industry ceased.

43 Smith, E. Kofi, (1999) demonstrates how between 1955 and 1965 average taxes on cocoa farmers were 33% compared to a wood tax rate of 2.5%.

44 For example, in 1974, the Forest Protection Act extended the Minister's draconian powers over Forest Reserves to any standing timber resources that the state declares "protected".

45 Financial and technological entry barriers to the logging sector are low compared to mining. There was a ready market for logs. Indeed the larger millers and exporters were willing to pre-finance loggers in order to guarantee a cheap supply source. This made timber concessions the ideal way to reward political supporters.

46 Of course, some sophisticated indigenous timber businesses do exist. However, these are the exception and they do not oppose the general *modus operandi* of the industry.

47 A ban on round log exportation has been in effect since 1992 with no statutory basis.

increasing power of industry, sector governance capacity atrophied. By 2004, the situation had degenerated to the point where the Forestry Commission Board could unashamedly justify flagrant abuse of the statutory permits regime with the claim that it had acted in “the best interest of the timber industry and the nation”<sup>48</sup>.

Of course, some professional foresters and environmentalists raised concerns about the rate of deforestation. They lacked the organisation, skills, critical mass, or evidence to mobilise public opinion, however.

## 3.2 Content, efficacy and potential

### 3.2.1 1994 Forest & Wildlife Policy

By the early 1990s, several factors had combined to compel a fundamental policy review. There was global (particularly donor country) concern about the environment, especially climate change and the importance of tropical forests in combating this; there was heightened national awareness of deforestation and its consequences following the major drought and bushfire crisis of the mid-1980s; and finally, the public became aware of the central role the timber industry played in deforestation. Indeed, from the late 1980s through the early 1990s, Ghana was at the centre of a series of spectacular exposés of the corruption and rapaciousness of the international timber industry<sup>49</sup>. All parties therefore had an interest in restoring order and credibility to the sector. Obviously, the reformers either miscalculated the state’s real agenda or underestimated the strength of industry-state symbiosis. The 1994 Forest & Wildlife Policy that resulted did not mark a sea change in Ghana’s forest governance; indeed, it represented only a temporary set-back to resource plunder.

The 1994 Policy is not a clear guide to the corrective action that the authorities promised<sup>50</sup>. It does not choose between fundamental paradigms for forestry, but gives the impression that all agendas can co-exist, reading rather like a menu of competing interest groups’ agendas. It fails to engage sector-specific problems. To the extent that forest regulators and politicians paid any attention to it at all, they clearly read it as license to continue business as usual.

Despite its limitations as an administrative guide, however, the policy is a useful advocacy tool for NGOs. It clearly commits to collaborative forestry management (CFM) – enhancing the role of communities in forestry at policy, managerial and implementation levels. It commits to ending “timberisation” and to paying more attention to the environmental, cultural, scientific, and social functions of forestry. It promises greater attention to NTFPs, and commits to an efficient “low volume high value” timber industry

48 Forestry Commission (2004) - Rejoinder.

49 Adjetei, L. (1991) and FOE, (1992).

50 Smith, E. Kofi (1999). Smith, the then technical director of the ministry, describes as “madness” the pre-1994 situation in which the short-term demands of industry dominated state policy to the near exclusion of both bio-diversity and community survival, and predicts that the Policy would lead to a re-balancing of power that would ensure sustainable and equitable forest resource management.

that creates meaningful jobs and cedes greater rent to the state for the benefit of society as a whole. Finally, it states a commitment to greater transparency and probity in the management of the sector. These are important issues for NGOs, and a policy reference is a useful campaign tool.

### 3.2.2 Forestry laws

Much of what has been said about the 1994 Policy applies to sector legislation. Whereas the 1994 Policy preserves the *status quo* by throwing competing agendas into the mix, however, post-1994 legislation largely ignores community rights issues. When work began towards new sector legislation to give full effect to the Policy, a committee submitted discussion papers<sup>51</sup> on the basis of which DfID consultants drafted a new Forest Act and a Timber Rights Act. These drafts, which clarified substantive and procedural questions of community rights<sup>52</sup>, were shelved by the ministry. E. Kofi Smith<sup>53</sup> attributes this to the power of the industry lobby, which sought to prevent competitive bidding and TRFs from becoming law. Since then, there has been no real attempt to pass meaningful legislation promoting or protecting community rights in forestry.

Instead, Parliament passed bastardised versions of these laws: the *Timber Resources Management Act 1997 (Act 547)* and the *Timber Resources Management Regulations (L.I. 1649)*. These created a new permits regime that both strictly restricts resource access by industry and raises the state's share of the resource-rent through a combination of timber rights fees and stumpage fees. Of course, the drafting of both was such that it held up implementation of access restrictions and fiscal measures until after 2002, at which time Parliament passed the obvious amendments. After 2002, the Forestry Commission and industry simply ignored access restrictions and fiscal measures with impunity. The new laws also give community representatives a role in the conduct of forest inventories (without identifying who will pay the costs of this participation) that precede the allocation of timber resources by the state. They further assert farmers' right to determine whether trees standing on their farms may be felled by Timber Utilisation Contract holders. They make provision for Social Responsibility Agreements under which timber companies spend up to the equivalent of 5% of stumpage obligations to support projects social projects in communities affected by their operations (although since communities have no way of knowing what stumpage obligations are, performance is difficult to monitor). Finally, they provide for criminal sanctions for forestry officials who subvert the Act. With all their flaws, the Timber Resource Management Act and the Timber Resources Management Regulations therefore remain (together with the Forests Ordinance and the Forest Protection Decree) very important legislation from a NGO point of view. NGOs are promoting these as the basis of the definition of legality for the VPA process.

51 Boachie-Dapaah, A.S.K. (1995-1996).

52 Cirelli, Teresa M. (1997).

53 Ibid.

# 4.

## NGOs and Ghana's VPA process

### 4.1 Ghana VPA preparations 2005

The Ghana government made a public commitment to negotiate a VPA with the EU in October 2003 at the Yaoundé AFLEG Ministerial Meeting. It has nevertheless been slow to set clear objectives for these negotiations, define a process for moving forward, or set up structures to lead or at least support that process. Knowledge of and interest in VPAs was until recently limited to a few senior officials in Ministry of Lands Forestry and Mines/Forestry Commission. There was little notice taken within the forestry sector (and none outside it) until DfID was authorised by the EU in 2005 to assist Ghana's preparations towards negotiations. The major milestones have been as follows:

- In February 2005, the Ghana Lands and Forestry Policy Support Facility (GLFSPF) published a report entitled "Legal Timber and Ghana", which looked at the problems of legal reform in the timber sector, and in particular the question of a definition of "legality" posed by the VPA process.
- In March and April 2005, the Forest Sector Development Programme tasked three consultants to find out what stakeholders already knew about EU FLEGT/VPAs; provide basic information to interested stakeholders; and collect preliminary feedback on stakeholders' aspirations for a VPA.
- In mid-May 2005, representatives of the UK Timber Trade Federation as well as buyers from Germany and Italy held a meeting in Kumasi with exporters and representatives of the various industry associations to underline their commitment to compliance with a "legality" standard and to the VPA as the process for defining this.
- In May 2005, DfID and Ministry of Lands Forestry and Mines held a "National Meeting on Ghana's proposed entry into a VPA with the European Union" in Accra. The forestry establishment, representatives of relevant state agencies, industry, and civil society groups including NGOs, organised labour, and stools met for the first time to discuss the VPA. Representatives of the EC and EU member states were also present. Facilitators presented the findings from the March-April survey as the basis for discussion. Each group of stakeholders expressed their hopes and fears about the process; each asked material questions about the EU's specific agenda. For the most part, definitive answers were not available, as the EU itself had not agreed the final regulation establishing the VPA scheme. However, all groups recognised that Ghana needed to do its own preparations and not simply react to the EU. There was general consensus about the needs for:
  - A workable definition of "legal timber" (though not about what that definition should be);
  - A system for verifying the legality of timber from forest to export point (though several participants were sceptical about the Forestry Commission's Validation or

- Legal Timber Project (VLTP) approach);
- A credible Monitoring and Validation Agency to operate the agreed verification system (though there was some discussion about whether this should be located within or outside the Forestry Commission);
  - An independent third party to audit the entire system; and
  - Full stakeholder involvement at every stage of the process (though there was no agreement as to whether this included actual negotiations or just agenda setting and oversight, who stakeholders are, or how to represent them). The meeting recommended the immediate convening of a Multi-stakeholder Group<sup>54</sup> by Forestry Commission/Ministry of Lands Forestry and Mines to consider how to move forward.
- In July 2005, at the request of the EC delegation in Accra, the Forestry Commission presented a list of required studies and other preparatory works. Civil society participants protested what they saw as EC willingness to proceed bilaterally with Ministry of Lands Forestry and Mines and Forestry Commission without reference to other stakeholders. They also objected to some of the proposed studies, which they suspected represented a timber industry assault on elements of the legal regime, such as competitive bidding for timber rights, the provision by an independent third party of a reserve bid for timber rights auctions, and the payment of timber rights fees.
  - On 22 September 2005, the Forestry Commission invited various stakeholder groups to nominate representatives to the Multi Stakeholders Group.
  - After the European Council adopted the FLEGT-Regulation late last year, there was a flurry of consultancy and NGO initiatives related to the VPA process (some of them EC-funded), visiting Ghana, holding workshops, and making demands of Government of Ghana which it was not yet prepared to address.
  - In November, a Forestry Commission official issued a discussion paper drawing attention to the full costs of VPA compliance.

## 4.2 Ghana VPA preparations 2006

In January 2006, the Forestry Commission/Ministry of Lands Forestry and Mines appointed Chris Beeko, who is also VLTP<sup>55</sup> Coordinator, as VPA Coordinator. Presumably, this position relates to the forestry sector and not to the coordination of the actual negotiations with the EC, which will involve several ministries and be led by either the Ministry of Trade or the Ministry of Foreign Affairs.

54 The Multi Stakeholders Group should include representatives of Industry (timber and NTFP), landowners, organised labour, NGOs, and the various state agencies with an interest in VPAs. At the meeting, NGOs argued for the inclusion of other stakeholders such as the research community. NGO representatives will propose a more specific representation structure when it finally convenes in March or April 2006.

55 The Validation of Legal Timber Project is the Forestry Commission's attempt to create the technical infrastructure to track timber and products from tree to mill or export points. The VLTP originated outside of the VPA framework but the Forestry Commission now wishes to incorporate it as the validation system for the VPA. Industry and some NGOs are not enthusiastic.



Preliminary indications are that there will be an initial meeting with EC representatives (with DfID officials perhaps continuing their role as facilitators) as early as March 2006. Actual negotiations will commence in July. Ghana is at a very early stage of preparation and these deadlines are not likely to be met. They do indicate clearly, however, that things are moving forward, and that social stakeholders must be united and well organised if they are to influence the process and its outcomes.

### 4.3 NGOs' dilemma

NGO activists in forest governance face a dilemma. Their methods may increase awareness of the problem and demonstrate viable alternatives, but reasoned argument will not fundamentally change the conduct of either industry or the state<sup>56</sup>. National institutions of democratic redress (Parliament, the courts, the Commission on Human Rights, police, etc.) do not yet have the strength to tame the vested interests that dominate the extractive sector. They are as weak as the forestry superstructure discussed earlier. Indeed many NGO activists believe that Parliament and the judiciary are already under industry's influence. NGOs are not set up to take on what is essentially a political challenge. Forest Watch Ghana, which is an umbrella advocacy vehicle for most NGOs active in forestry and forest community welfare issues, has had very little success in influencing official conduct. It has, however, been successful in exposing the seriousness and origins of the sector's problems.

At the same time, NGOs cannot hold the social forces that are building up within our communities in check. Ultimately, these communities respond to their perception of injustice, deprivation, and marginalisation within the larger society. Forest resources play a major role in this perception because these are the only assets that many poor communities have, assets they can see being carted away by "strangers" with state support. The patterns of violence discussed in 2.3.4 pose a real danger to Ghana's statehood. Similar patterns of conflict in countries all over the world have followed a predictable course where not checked: violence will escalate in frequency and intensity; ethnicity (lineage, tribe, religion) will become the basis of social organisation at the community level. Democratic constitutional institutions such as District Assemblies will give way to ethnic leaders seeking to exploit these tensions for their own purposes. Ultimately, a relatively minor incident can trigger complete collapse, with local ethnic politicians emerging as warlords. Of course, warlords very quickly link up with (or become) natural resource plunderers in their own right. Ghana's social elite and their political leaders are in denial about these trends and continue to assure investors and donors that all is well. However, Sierra Leone and Cote d'Ivoire were equally "peaceful" before they collapsed, seemingly overnight. Time is running out.

56 Most of the ideas that, *e.g.*, Forest Watch Ghana has proposed to the Forestry Commission had already been proposed by professional foresters and shelved.



*Mona monkeys (Cercopithecus mona mona) at Tafi-Atome Monkey Sanctuary in Ghana's Volta Region. The villagers brought the fetish monkeys with them when they migrated to the area 200 years ago, and protected them and the sacred grove in which they lived. By the late 1980s the forest and monkeys had dwindled severely due to the erosion of traditional beliefs by Christianity. With Peace Corps support the Tafi-Atome villagers were able to re-establish community management of the forest and a develop a successful community-based ecotourism project.*

#### **4.4 NGOs' strategic hopes for the VPA process**

Ghanaian NGOs began to study EU FLEGT and VPAs in 2004. In 2005, VPAs became a major focus. NGOs regard VPA negotiations as potentially strategic. Negotiations will deploy political and economic forces more potent than Government of Ghana or industry and can thus disrupt the *status quo*. For example, both the European Union in its own right and its Member states are major donors – a significant voice in a group that provides 70% of Government of Ghana's development budget and often as much as 40% of recurrent expenditure. In addition, EU timber buyers account for 60% of Ghana's wood exports and their most profitable contracts. Neither the domestic (export) industry nor the state can ignore or dismiss an initiative promoted by EU governments and buyers. The trick, then, is to get these forces lined up behind the forestry reform agenda.

NGO activists do not assume that buyers or EU bureaucrats share the community agenda in its totality. The elements that do place the environment and social equity above corporate profits are not dominant in these institutions. NGOs that followed the debate about VPA leadership within the EU are aware that the Directorate General of Trade (rather than Environment or Development) ended up in the driving seat. They recognise that this means a tendency towards trade facilitation. This is the biggest fear that NGOs have about the VPA process; if the EU adopts the attitude that anything sanctioned by Government of Ghana is acceptable to them, then NGOs would feel compelled actively to denounce the process.

However, NGOs also recognise that both the EU and buyers are susceptible to EU public opinion – without which FLEGT would probably never have seen the light of day. The EU FLEGT Action Plan reflects concerns of ordinary EU citizens. Fortunately, there exists an active well-organised Northern NGO movement around tropical forests with links to EU consumers and voters. It is reasonable to believe that the EU will approach the VPA with the seriousness and integrity with which a superstructure normally operates.

Ghanaian NGOs hope that, by working with Northern NGOs, they can establish an alliance with EU negotiators. Ghanaian NGOs do not expect the EU to wage pitched battles for them; all they need is open space for community and NGO voices as promised by the Action Plan. Once at the table and participating in an open and transparent process with reasonable publicity, social stakeholders can hold their own against industry and the state.

A strong political line from the EU would open up tactical options and alliance possibilities that civil society is poised to exploit.

- a For one thing, all NGO demands fall within the AFLEG declaration that Government of Ghana drafted and signed up to in 2003. They also derive logically from the Government of Ghana's 1994 Forest and Wildlife Policy. The NGO position on the definition of legality derives fully from current legislation. It would be difficult (albeit not impossible) for Government of Ghana to retreat from its own public positions in the full glare of publicity.
- b Secondly, there is a possibility of new alliances in the face of pressure from EU buyers. Clearly, the arrangements that have maintained the *status quo* for the last 30 years are under serious strain. The 2005 lawsuit between the Ghana Timber Association (GTA) and the Forestry Commission exposed a growing rift between professional foresters and timber magnates. It also demonstrated friction between the GTA (small-time, low capacity "contractors") and the Ghana Timber Millers Organisation (GTMO), large-scale industrialists. GHATEX, for example, filed a legal suit<sup>57</sup> against the Forestry Commission to block the holding of timber rights auctions. This represents a challenge by junior companies to the sweetheart deals that better-connected companies take for granted. The Forestry Commission Board's direct and successful rebuff of the Minister's attempt to terminate export levy collection demonstrates tensions at this level and represents an unprecedented defeat for the GTMO. Within the GTMO itself, solidarity is breaking down: these are, after all, competitors. The larger companies depend on the EU market; they are interested in pursuing sustainability certification but cannot do so unless regulatory practice improves significantly. They are questioning why they should follow the lead of companies that do not have significant EU contracts or a need to address certification in the short run. Some have openly expressed a desire to reposition themselves and take a more openly critical stance towards the *status quo* and the timber magnates who support it. NGOs have to develop the skills to exploit these divisions and to encourage dissenters to take a principled stand on the issues.

57 GHATEX secured an injunction on timber rights auctions, claiming that the Forestry Commission abuses pre-qualification procedures to promote its favourites and disqualify companies that are openly critical of the Forestry Commission.

## 4.5 Specific NGO VPA objectives for 2006

The first task of NGOs in 2006 is to convene a strategy meeting of social stakeholders represented on the Multi Stakeholders Group to coordinate their efforts based on the May 2005 stakeholders' declaration, but with broader and deeper participation. Some issues for discussion are as follows.

### Multi Stakeholders Group remit

What is the specific role of the Multi Stakeholders Group? Government of Ghana will resist civil society participation in actual negotiations. Should civil society representatives contest this? Should they be content with an advisory role? Should they insist on participation in mandate setting? Should they seek parallel meetings?

### Multi Stakeholders Group procedures and structures

What procedure and structure will apply? Will it take decisions by consensus or by vote? Will meetings require quorums? Who chairs? How often and where will it meet?

### Composition

What should the balance of representation be (especially if decisions will be taken by majority vote)? Should civil society demand increased representation?

### Timetable for EC-Government of Ghana negotiations

What is the ideal timing of negotiations? When will important preparatory work be completed? Immediate negotiations could be a tactic to "legitimise" the *status quo*. On the other hand postponement towards 2008 enhances the power of industry as politicians begin looking for campaign funds for elections in that year.

### Preparatory work

What studies and surveys are required to inform negotiations? The May 2005 workshop gave the Multi Stakeholders Group a role in setting these priorities. Civil society organisations therefore objected when the Forestry Commission unilaterally submitted a funding programme to EU member state missions in Accra.

### Publicity

What public profile should stakeholders seek for VPA processes? How will they achieve this?

### Alliance strategies

What alliances will civil society organisations seek around VPAs? How will they pursue these? Are revenue agencies objective allies? Are professional foresters allies or opponents?

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Are there timber companies we can work with? Can we take the solidarity of NGOs and other social stakeholders for granted?

### **Resources**

What technical and financial resources can social stakeholders mobilise within and outside EU development assistance? What is available internally? Can EU civil society organisations (NGOs, Unions, churches, etc.) provide solidarity? For example, in 2005, Forest Watch Ghana established contact with the European Community Forestry Platform coordinated by FERN. This has proved to be a strategic relationship. It led to a member of the Forest Watch Ghana MC attending meetings in Brussels with the EC Directorate General of Trade on the VPA programme. More importantly, this enabled Forest Watch Ghana to network with civil society coalitions from Europe, Indonesia, Cameroon, Brazil, and the Democratic Republic of Congo. This has opened other doors with Forest Watch Ghana now regularly invited to European meetings on VPAs and illegal logging where Forest Watch Ghana has been able to draw attention to Ghana's problems. Forest Watch Ghana has also interacted with about 30 Cameroonian NGOs (members of the ECFP) working on forest governance and the VPAs at a workshop in Yaoundé in September 2005. In March 2006, Forest Watch Ghana will participate in an IUCN sponsored "networking" visit to Monrovia to discuss Ghana's VPA experience with Liberian NGOs. Nothing would be more potent than to have all producer countries raising similar issues at VPA negotiations.

### **Other platforms**

What other platforms are available to advance the sector reform agenda and influence the VPA process? For example, Forest Watch Ghana is organising regional and national forest forums this year. The Forestry Commission is organising another with support from FAO. What use can we make of meetings of the National House of Chiefs, etc.?

### **Conclusion**

Environmental and social NGOs are preparing to engage with the VPA process based on a clear understanding of Ghana's forestry crisis and what progress will require. This effort will take up huge NGO resources (time, money and above all community goodwill) in the months ahead. To move forward and have any chance of success NGOs will require technical and material resources, and political solidarity. Active links between producer country and committed Northern NGOs will be the only way to influence European Community civil society, EU negotiators and the Ghana government to create a healthier and more stable resource use environment.

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## Appendix

### National meeting on Ghana's proposed entry into a voluntary partnership agreement with the European Union

#### NGO position<sup>58</sup>

- 1 We are committed to Ghana's Forest & Wildlife Policy aim of: "conservation and sustainable development of the nation's forest and wildlife resources for maintenance of environmental quality and perpetual flow of optimum benefits to all segments of society". We are specifically committed to:
  - a Sustainability and biodiversity; and
  - b Equity, i.e.:
    - i Rural livelihoods protection; and
    - ii Optimised sector contribution to overall national development.
- 2 We support AFLEG & EU FLEGT initiatives that contribute substantively to Forest and Wildlife Policy objectives mentioned. We caution against narrow trade deals that project market access without concretely addressing wider ecological, social, and development issues.
- 3 We are working closely with NGO groups in the EU and in other producer countries to push for and monitor FLEGT processes that meet the needs of the worlds' peoples.
- 4 As regards process, our minimum requirement is a guarantee of full participation of all stakeholders at all stages of the FLEGT process through, *e.g.*:
  - a Representative steering/planning committee;
  - b Support for development of "national forest forums" and other consultative mechanisms; and
  - c Concrete support for civil society participation in these processes.
- 5 As regards content, our minimum requirements are that:
  - a Certification of legality is pursued as the first step in a programme towards sustainability and social responsibility certification;
  - b The EU should impose a full-scale ban on circulation of illegal timber products and not just restricted products from volunteering producer countries. The EU should also use its diplomatic influence to globalise regime;
  - c Ghana's definition of "legal timber" (even in the short term) should include strict compliance with the Timber Resources Management Act and the Timber Resources Management Regulations, i.e.:
    - i Immediate cancellation of all illegal Timber Utilisation Permits, Salvaging

<sup>58</sup> This was adopted by social forestry stakeholders participating in the meeting and representing landowners, organised labour, and NGOs. July 2005

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- Permits, Replacement Allocations, and commitment of affected areas to a pool for reallocation exclusively through competitive bidding;
  - II Conversion of eligible concessions to Timber Utilisation Contracts and cancellation of ineligible concessions and commitment of affected areas to pool for reallocation exclusively through competitive bidding;
  - III Retention of the Independent Third Party bid component of the competitive bidding process; and
  - IV Full recovery of revenue arrears and outstanding penalties.
  - d Funding is set aside from timber rights fees and stumpage fees to pay for:
    - I Development/updating of management plans for all forest management units;
    - II Development of a full-scale forest monitoring system (beyond the Legal Validation of Timber Programme); and
    - III Independent monitoring of Ghana's forestry system.
- 6 We believe that Voluntary Agreements should then focus on provision of incentives to companies and countries that commit to higher standards, rather than sanctions.
- 7 Our minimum agenda for wider stakeholder discussions to be supported by FLEGT alongside VPA negotiations includes:
- a Fair access to forest resources:
    - I A properly regulated non timber forest products regime;
    - II A workable incentive schemes for private planters and managers;
    - III Legislative backing for community management schemes;
  - b Fair sharing of revenues and benefits from forestry:
    - I Review of stumpage collection mechanism;
    - II Review of stumpage and timber rights fees distribution;
    - III Review of remuneration, job security and working conditions in the timber industry;
  - c Stakeholder participation in sector governance;
  - d Provisions for mitigation of impacts of transition.
- 8 We are committed to working in good faith with all stakeholders in any structures necessary or desirable to achieve these objectives. We will help to:
- a Develop a methodology and programme for compliance monitoring;
  - b Support independent third party compliance monitoring;
  - c Analyse and disseminate reports from ITP monitors;
  - d Network with local and international NGO for better compliance; and
  - e Promote the successes of the scheme locally and internationally.
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## References

- 1 Adjetey, L., et al. (1991) "Report of the Timber Subcommittee national Investigations Committee" (unpublished).
  - 2 Birikorang, G., et al. (2001) "Ghana Wood Industry and Log Export Ban Study".
  - 3 Boachie-Dappah, A.S.K., et al (1995 & 1996) "The proposed Contents of a New Forest Act: Discussion Paper", Ministry of Lands and Forestry.
  - 4 Cirelli, M. T. (1997) "Report of forestry Legislation Consultant", FRR/ODA.
  - 5 Forestry Commission (23 October 2004) "Rejoinder: Ghana loses ₵900 billion (\$100 Million) Annually from Uncollected Timber Rights Fees!", Graphic Communications Group Ltd.
  - 6 Forest Service Division (2005) Statement of Contractors Accounts as of 31 December 2004, Forestry Commission (unpublished).
  - 7 Forest Watch Ghana (1 October 2004) "Ghana Loses C900 Billion Annually from Uncollected Timber Rights Fees!", Graphic Communications Group Ltd.
  - 8 Friends of the Earth, (1992) "Plunder in Ghana's Rainforest for Illegal Profit: An exposé of corruption, fraud and other malpractice in the international timber trade", (Vol. 2) FOE.
  - 9 Forestry Commission Finance & Administration Department (2005) "Self-financing of the Forestry Commission by 2005: Review of scenarios", Forestry Commission (unpublished).
  - 10 Smith, E. Kofi (1999) "Developments & Setbacks in Forest Conservation: the New Political Economy of Forest Resource Use in Southern Ghana", Ministry of Lands & Forestry.
-