

Realising REDD: Implications of Ghana's Current Legal Framework for Trees

Questions of tree tenure and rights over carbon storage and sequestration are central to making Reduced Emissions from Deforestation and forest Degradation (REDD) work. Like other countries with tropical high forests, Ghana is in the early stages of grappling with the opportunities and challenges posed by carbon finance and REDD. One of the key challenges is the development of a legal, policy and institutional framework for REDD. The current legal and regulatory structure for forestry in Ghana provides indications of how carbon rights might be managed, as well as some likely hurdles. While options exist for creating stronger incentives for tree planting and forest protection through REDD, realizing the full economic potential calls for demonstrating innovative applications of existing mechanisms, as well as legal reforms.

Based on the current legal framework for forestry in Ghana, which is mainly oriented towards commercial timber production, it seems most likely that carbon stored in trees, the focus of many REDD strategies, will be classified as a natural resource and managed as an economic commodity, similar to timber. Other options for classifying or defining carbon are possible, and may be more appropriate given that significant amounts of carbon are also emitted from disturbed agricultural soils and from the destruction of aquatic ecosystems like wetlands and mangroves. [See Box 1]

Who will own the carbon and receive the benefits?

Ownership and tenure issues are key factors in any national REDD strategy. If tree-based carbon is classified as a natural resource then one can also assume that current forestry related legislation will have an influence over carbon ownership. It is therefore prudent to look at the current legislative framework for forestry.

This framework presents some problems and challenges that could impede implementation of REDD strategies in Ghana. Firstly, while *naturally regenerated trees* are nominally owned by the traditional authority or chieftancy (known in Ghana as the "Stool" or "Skin"), management and commercial rights to timber species belong to the State in both reserved (protected) and off-reserve areas (areas outside Forest Reserves, National Parks and other lands gazetted for protection). The landowner or land user neither owns, nor has economic rights to timber trees naturally occurring on their land. Yet these stakeholders clearly influence the vegetation that is allowed to grow, and for how long. So the question emerges, what will be their rights to credits for helping to conserve forest carbon? If they cannot own the tree, can they have any right to the REDD benefit of carbon stored inside it?

The second point highlights the fact that the question of who owns the carbon may be less important than considering how farmers will be

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Box 1: Classifying Carbon as an Ecosystem Service

Carbon is a naturally occurring element that flows between the atmosphere – mainly as carbon dioxide (CO₂) – and terrestrial ecosystems. Unlike tangible commodities like timber or gold, whose value is derived by extraction, carbon is most valuable when it is sequestered in woody biomass, soils, and sediments. Terrestrial storage, however, is not permanent because when trees are felled, or when the soil is substantially disrupted, carbon is emitted back into the atmosphere in greenhouse gases that contribute to climate change. Carbon sequestration is often considered an ecosystem service, but ecosystem effectiveness in sequestering and storing carbon is affected by human decisions. Therefore, to reduce emissions from deforestation and degradation, policies, laws, and institutions must positively influence the decisions of individuals and entities that control (legally or not) the extent to which carbon is emitted from terrestrial ecosystems.

compensated for efforts to sequester carbon or maintain carbon stocks. For example, depending on the REDD architecture decided on in the Climate Change Framework Convention discussions, carbon ownership may not be critical under a system of national carbon accounting, but it is critical in the context of current project-based carbon trading because it is strongly linked to the risk of impermanence. Therefore, issues of benefit-sharing become paramount if the State decides to retain carbon property rights. State ownership of carbon rights could in principle be compatible with incentives for forest managers or users if benefits are efficiently distributed and equitable incentive structures are in place.

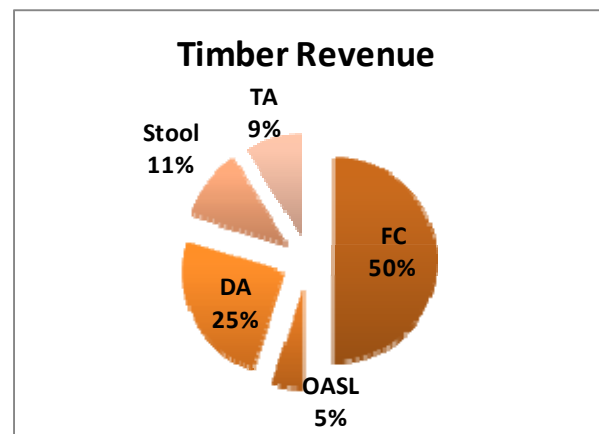
In the case of timber harvesting on Stool Lands (which comprise roughly two-thirds of land in Ghana), the Forestry Commission takes 50% of stumpage fees for the management of this resource, while the remaining revenue is divided according to a constitutionally agreed formula between the Office of the Administrator of Stool Lands (OASL), the Stool, the Traditional Authority and the District Assembly [See Chart 1]. The landowner or land user receives nothing. An obvious problem with this revenue sharing arrangement, if applied to REDD, is that there is no compensation to farmers or land users for their opportunity costs in retaining rather than felling a

tree. How can landowners and land users be motivated to cooperate with REDD schemes? It is possible that they could receive a portion of the Forestry Commission's 50%, or alternately receive a share through a Constitutional amendment. Supposing land users and owners are included in the distribution, a key question is then whether the limited carbon revenue pie is sufficient to satisfy all of the legal stakeholders as well as the opportunity costs of land users.

A third issue, related to REDD revenue sharing, is that the farmers' main user right to *naturally regenerated trees* is the ability to fell trees for agricultural purposes. Farmers are highly incentivised to clear land because this is the customary manner in which land is claimed. For REDD to work, farmers in off-reserve areas would have to be compensated for the opportunity cost of not exercising their right to clear land.

A fourth challenge is that under the current legal framework it is risky for farmers to retain high value timber trees in their farmland because logging companies can fell the trees and cause considerable damage to cocoa or other crops. Therefore, contradictions between the commercialisation of timber via the current system of apportioning off-reserve areas to timber concessionaires and the pursuit of REDD revenues generated in off-reserve areas will have to be resolved.

Chart 1: Distribution of Timber Revenues (Stumpage Fees) on Stool Lands



Box 2: Under-implemented laws that could favour forest carbon finance

- ❖ **Tree Planting:** In off-reserve areas, a planted tree belongs to the person or people who planted it, and therefore the economic rights to the tree are clear. Teak and tree crops like cocoa are commonly planted in rural areas, but it is much less common for farmers to plant other timber species. Afforestation or reforestation (A/R) programmes may therefore have more immediate applicability in Ghana.
- ❖ **Limits on Logging:** Timber rights should not be granted on farmland in off-reserve areas without the written authorization of the individuals, groups or owners concerned, on land with private forest plantations, or on land with any timber grown or owned by individuals or groups of individuals. Farmers also have a right to participate in an inspection prior to logging and to veto felling for reasons that include, but are not limited to, damage to crops or soil conservation/erosion concerns (Timber Resources Management Act, (Amendment), 2002).
- ❖ **Economic Plants Protection Decree (1979):** This act states that, “no felling rights with respect to timber shall be granted where such timber trees stand in farms where specific crops like cocoa are cultivated” (section 4 (1)).

Ironically, the strong potential for reducing deforestation emissions in Ghana stems from the fact that the current forestry policy creates incentives for deforestation. If the idea is that carbon management fits within the current forest policy and legal framework, lawmakers should re-think ownership and user-rights so that land users have legal as well as economic incentives to reduce deforestation and degradation, and to allow natural regeneration.

Fortunately, laws exist in Ghana that with greater recognition or better implementation could provide a stronger foundation for REDD activities. [See Box 2]

Alternative resource management and benefit sharing mechanisms

Ghana's 1994 Forest and Wildlife Policy contains goals which are strongly compatible with a REDD strategy, including;

The management and enhancement of Ghana's permanent estate of forest and wildlife resources for preservation of vital soil and water resources, conservation of biological diversity and the environmental and sustainable production of domestic and commercial produce.

The ability to achieve these goals using REDD-Plus mechanisms will require the use of alternative management and benefit-sharing structures. Within the forestry sector, several options for integrated management, benefit-sharing, and/or revenue sharing are available and have been tested at different scales:

- **Commercial Plantation Agreements (On-Reserve)** enable private operators to bear the cost and effort of replanting in degraded Forest Reserves (using either exotic or native timber species), but allow them to retain 90% of the revenue, while the remaining 10% goes to the Forestry Commission.
- **Community Forest Management Projects (On-Reserve)** that use the 'Modified Taungya' system to reforest degraded reserves share 40% of harvesting revenues with the farmers and farmer groups that plant and manage these trees. These farmers also receive additional social and economic benefits from their participation. Under this revenue sharing scheme, the other 40% goes to the Forestry Commission, 20% goes to the Traditional Authority, and 5% to the local community. Both of the aforementioned schemes are based on the recognition that outside participation (beyond the Forestry Commission) in resource management requires adequate incentives or compensation.
- **Community Resource Management Areas (CREMAs) (Off-Reserve)**, while yet to be backed by legislation, are being incorporated into the new Wildlife Bill and offer a good opportunity for community resource management in off-reserve landscapes that include mosaics of forests, agroforests and agriculture. Although

CREMAs have been primarily developed for wildlife management and eco-tourism, there is little to prevent them from being extended to other areas of natural resource management. Some strengths of CREMAs include clear boundaries, a Constitution that is developed through a participatory process, backing by District Assembly bye-laws, strong social cohesion and opportunities for generating revenue and benefit-sharing outside the normal legal framework. For example, in a typical CREMA, 5-10% of revenue goes to the CREMA Executive Committee, while 90-95% is allocated to the communities, although certain CREMAs have intentionally chosen to share revenues with their District Assemblies and Traditional Authorities. From a REDD perspective, all of these factors combine to significantly increase the likelihood of permanence. While it has yet to be tested, CREMAs could potentially be used to vest full or partial carbon or tree tenure rights among the associated communities within a designated off-reserve area.

- **Dedicated Forests (DF)** provide a similar opportunity for local communities to protect sacred groves or otherwise locally valued off-reserve forests, and to receive economic benefits through community forestry management. These currently include attempts at artisanal harvesting of timber and the collection of non-timber forest products (NTFPs).

The way forward

Challenges associated with tree tenure and property rights, while very important, should not be seen as complete barriers to initial REDD-Plus initiatives. Efforts to introduce REDD projects in rural communities and landscapes in Ghana should move forward, particularly in consideration of the following points:

- Lead by example: harnessing REDD compatible structures and legislation, such as CREMAs or legal limits on logging in off-reserve areas, can help inform the national REDD strategy and implementation debate.

- Different options exist for how carbon ownership rights may be defined, but the question of benefit-sharing and distribution may be more critical than carbon ownership *per se*.
- A/R options provide a very strong platform for initial efforts because ownership and benefit-sharing are clearly defined, so that the permanence risks are greatly reduced.
- Areas where logging is not practiced or is less common may be appropriate places to develop and test the implementation of carbon tree rights through the creation of District Assembly bye-laws.
- REDD-Plus policies should favour the land users – it should be recognised that reforming tree tenure would result in more powerful incentives for farmers to retain trees than carbon finance alone.

The Katoomba Group and its partners, including Climate Focus and Yaw Osafo, a lawyer with carbon finance expertise, are continuing to analyse and assess the key legal and institutional issues affecting REDD in Ghana, including as part of the REDD Opportunities Scoping Exercise (ROSE) process discussed in another Katoomba XV paper. While this paper provides a brief overview of REDD implications of Ghana's legal framework for trees and associated benefit-sharing mechanisms, a more comprehensive report will be produced in due course.

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