

Reconciling policy reforms with forest legislation

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Cover photo: Participants of the workshop (A. Wieman)

RECONCILING POLICY REFORMS WITH FOREST LEGISLATION

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TABLE OF CONTENTS

TABLE OF CONTENTS	I
ACRONYMS	II
PREFACE	III
ACKNOWLEDGEMENTS	IV
SUMMARY.....	V
1. INTRODUCTION	1
1.1 BACKGROUND	1
1.2 WORKSHOP OBJECTIVES	1
1.3 WORKSHOP PROCESS	2
1.4 REPORT STRUCTURE	2
2. PRESENTATIONS	3
2.1 FORESTRY REFORMS: HOW FAR, WHICH WAY?.....	3
2.2 FOREST PROTECTION, RESOURCE DEVELOPMENT AND MANAGEMENT	11
2.3 BENEFITS SHARING & PARTICIPATORY RESOURCE MANAGEMENT	18
2.4 THE CHALLENGE OF MOVING FROM POLICY TO LEGISLATION	27
3. DISCUSSIONS	35
3.1 GENERAL DISCUSSIONS.....	35
3.2 GROUP PRESENTATIONS & DISCUSSIONS	39
4. CONCLUSIONS & RECOMMENDATIONS.....	45
APPENDICES	46
APPENDIX 1: PROGRAMME FOR FOCUS GROUP DISCUSSION	46
APPENDIX 2 : PARTICIPANTS LIST	47
APPENDIX 3: GROUP MEMBERS AND FACILITATORS	48

ACRONYMS

AAC	Annual Allowable Cut
AG	Attorney General
CBAG	Community Biodiversity Advisory Group
CBO	Community Based Organisation
CBRD	Community Based Resource Development Programme
CFC	Community Forest Committee
CFMU	Collaborative Forest Management Unit
CNRMC	Community Natural Resource Management Committee
CRMC	Community Resource Management Committees
DA	District Assembly
ERP	Export Rehabilitation Programme
EU	European Union
FAWAG	Furniture and Woodworkers Association of Ghana
FC	Forestry Commission
FIMP	Forest Inventory and Management Project
FMC	Forest Management Committee
FORUM	Forest Resources Uses Management project
FPID	Forest Product Inspection Division
FRMP	Forest Resources Management Programme
FSDP	Forest Sector Development Project
FSD	Forest Service Division (of FC)
FWP	Forest & Wildlife Policy
GHATEX	Ghana Timber Exporters
GIMPA	Ghana Institute for Management and Public Administration
GIF	Ghana Institute of Foresters (formerly GIPF)
GoG	Government of Ghana
GPRS	Ghana Poverty Reduction Strategy
GSBA	Globally Sensitive Biodiversity Area
GTA	Ghana Timber Association
GTMO	Ghana Timber Millers Organisation
LI	Legislative Instrument
M&E	Monitoring & Evaluation
MLFM	Ministry of Lands, Forestry and Mines (formerly MLF)
MoU	Memorandum of Understanding
NFF	National Forest Forum
NGO	Non-Governmental Organisation
NRMP	Natural Resource Management Platform
NRCD	National Redemption Commission Decree
NTFP	Non Timber Forest Product
PAMAB	Protected Area Management Board
PDFB	Plantation Development Fund Board
PNDC	Provisional National Defence Council
PSC	Parliamentary Select Committee
RMSC	Resource Management Support Centre
SNV	Dutch International Development Agency
SRA	Social Responsibility Agreement
SRMP	Savannah Resource Management Project
TBI	Tropenbos International
TRMA	Timber Resource Management Act
TRMR	Timber Resource Management Regulation
TUC	Timber Utilization Contract
TUP	Timber Utilization Permit

TRF	Timber Rights Fee
UCC	University of Cape-Coast
VLTP	Validation of Legal Timber Programme

PREFACE

Legislation may not always be necessary for effective policy implementation, but in general legislation is required to give effect to policy implementation and avoid arbitrariness, it is therefore essential to keep legislation in line with policy. Over the past few years, the Ministry for Lands, Forestry and Mines has carried out some policy reforms in the forestry sector. Legislation has however not kept pace with these reforms. Against this background, TBI - Ghana organised a public symposium (Focus Group Discussion - FGD) on the theme '*Policy reforms and legislation*' with the view to identifying areas where legislation needs to be reconciled with policy. Topics treated were:

1. Policy reforms: how far and which way?
2. Forest protection, resource development and management
3. Forest benefit sharing and participatory resource management
4. The challenges of moving from policy to legislation

The presentations were followed by group discussions of the key issues. This report contains the outcomes of the meeting held at Elmina in July 2005.

This focus group discussion was the 5th in the series of TBI-Ghana FGDs under the broad theme of '**Collaborative forest management: making the policy work**'. Previous topics discussed were: *Natural resources management in Ghana: challenges to professionalism*, *Chainsaw lumber production: a necessary evil?*; *Equity in forest benefit sharing: stakeholders' views*, and *Alternative livelihoods and sustainable forest management*'. These are published as TBI-Ghana Workshop Proceedings.

By providing a common platform for stakeholders to discuss topical issues in forestry, TBI-Ghana promotes collaboration among forest stakeholders and also generates relevant information that could prompt a policy review.

In putting the proceedings together, the editors try to objectively represent the views of participants expressed during the discussions. The views are edited for style and consistency but not with respect to the content. The opinions expressed in this publication are thus those of the authors and do not necessarily reflect the views of Tropenbos International or Tropenbos International-Ghana.

KSN
November 2005

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This report is the product of the combined effort of several people. Messrs R.K. Bamfo, J.G.K. Owusu, Nayon Bilijo and Kyeretwie Opoku made time to research and present the four main papers which constitute the substance of the report. Honourable D.A. Adzei-Bekoi, Chairman for the Council of State also took time off his heavy schedule to chair the 2-day workshop at which the materials were presented and discussed; the report was painstaking put together by Mr Kyeretwie Opoku and Ms Emelia Arthur, who also facilitated some of the workshop sessions.

Dr Kyere Boateng, Ms Anneke Wieman, Messrs Fredua Agyeman and K.S. Nketiah planned and organised the Focus Group Discussion with support from the TBI-Ghana staff including Ms Rose Adisenu-Doe and Kwame Okae Kissiedu who also covered the sessions as rapporteurs.

Tropenbos International – Ghana (TBI-Ghana) wishes to acknowledge the intellectual input and diverse contributions from all these people and the distinguished participants of the workshop, not forgetting Dr Christine Amoako-Nuamah, a member of the International Board of Tropenbos International for her support.

K.S. Nketiah
November 2005

SUMMARY

TBI-Ghana organised a “Focus Group Discussion” for forestry stakeholders in July 2005. The Focus Group Discussion examined the perceived divergence between forestry sector policy and legislation. It paid particular attention to the areas of resource sustenance, benefits sharing and participatory management. Participants heard and discussed four main presentations.

By way of introduction Mr. Robert Bamfo, Head of Monitoring at the Forestry Commission presented a paper entitled “Forestry Reforms: how far, which way?”. It presented the official perspective on the performance, status and challenges of the reform process initiated with the 1994 Forest & Wildlife Policy. He indicated that national forest policy had moved from a singular focus on the needs of the timber industry to address sustainability and optimal benefits for all stakeholders. He discussed the Forest Development Master Plan currently in the second of its three phases. Key objectives include sustainable resource management (timber, wildlife and NTFPs), industry rationalisation, market development and fiscal reform. He reported significant progress in all areas but acknowledged that significant challenges remained. He listed these challenges as including: legislation on tree tenure, rationalisation of the milling industry, responding to new EU market access rules designed to check illegal logging and promotion of alternative livelihood options for chain sawyers to bring illegal felling under control. He also spoke of the need to integrate forestry policymaking and planning into national frameworks such as the GPRS and national trade policy and also engage civil society more systematically.

Mr. J.G.K. Owusu’s paper was entitled “Forest Protection, Resource Management and Development”. He looked at the policy-legislation gap in terms of the condition of the forest resource. He noted the piecemeal character of the policy process in Ghana. He argued that each major sector programme had shifted official policy somewhat particularly in the direction of rights-based participatory resource management. He observed that sector legislation has generally been weak. However, he also observed that given the commitment to participatory management, legislation was not always the best route to policy implementation and that flexible administrative approaches such as negotiation were often more effective. He advocated a case-by-case approach. He addressed the state of policy and legislation in three broad areas. Under “Resource Protection”, he observed that policy on ceding boundary demarcation to forest fringe communities would not require substantial legislative reform. However, establishment of exclusive community managed forests would require legislation. He explained that where legislation had utterly failed, effective wildfire control systems have actually developed through consultative processes. He explained that “Resource Development” policy for example in relation to investment in plantation development was already adequately covered by legislation although the legal framework on sharing benefits is out of date. He also looked at “Resource Management” policy, which called for greater community involvement through mechanisms such as CFCs and Forest Forums. Here he recognised the need for a consolidated Forestry Act to strengthen community participation rights and to create space for district assembly structures to participate in forestry based on model bylaws similar to those provided in colonial times to traditional authorities, which set acceptable standards across the board for their participation in resource management.

Mr. Kyeretwie Opoku spoke on “Benefits sharing and Participatory Resource Management”. He discussed policy and law in relation to benefits sharing and participatory resource management. He argued that there really is no discrepancy between policy and legislation as regards benefits sharing or participation in management. The state’s historical role has been to protect inequitable benefits sharing by ensuring that community level voices remain excluded from the discussion making process. He analysed the historical context and text of

the Forest & Wildlife Policy and concluded that rather than providing policy direction, it merely provides a menu of platitudes that administrators could select from in managing the sector. Accordingly, the dominant timber interests continued to determine official practice in the sector. He observed that industry's grip on power was weakening because of domestic opposition and changing market and buyer-country government sensitivities to unsustainable and illegal logging. He argued that in this situation it is possible to make progress towards equity and participation and to consolidate these gains in legislation. He called on campaigners not to set their sights above enforcement of the 1994 Policy and ground their campaigns in the constitution and an objective historical analysis of the workings of the sector.

Hon. Nayon Bilijo spoke on "the Challenge of Moving from Policy to Legislation". He cited both political and technical-institutional problems. He identified the roots of the political problem in the character of governance and public administration that has grown since self-government in 1951. Political factors include poor policy management, shallow policy consultation processes, ambiguous draughtsmanship and industry interference. Institutional problems include the weakening of the civil service in both the ministries of Lands and Forestry and of Justice evidenced in the non-involvement of all relevant expertise in the policy process from start-up and the lack of holism in the policy-legislative process. He also observed that these reflect the poor resourcing of the public sector over the years. He called for a review of the 1994 Policy to be done in a participatory and inclusive manner and which would look at the larger issues of constitutional and public administration that underlie the policy-law divide.

The general discussions that followed each presentation ranged from the technical to the political. Most participants focused on the relationship between the state, the timber industry and the forest owning communities. The alleged distortion of official process by timber industry patronage and disruptiveness was at the top of most participants' agendas.

Following the presentations, participants broke into three groups to discuss how to take the discourse forward. Group work took the discussion from the general analysis of the problem towards indicative programmes of action in three areas. These were: "areas of policy-legislation dissonance", "policymaker's information needs" and "means of fast-tracking the legislative process". Groups reported back to the plenary session and their recommendations were discussed at length and improved significantly.

The meeting did not conclude on the nature of the existing relationship between policy and legislation. It did however offer some important insights and areas for further collaborative work.

1. INTRODUCTION

1.1 BACKGROUND

Most forestry stakeholders agree that the most critical challenges facing the forestry sector are resource sustainability, improved benefits sharing and more effective forest fringe community participation in resource management. There is also growing consensus that these problems must be tackled holistically and consistently. Progress requires that we see increasing congruence between policy (national and institutional) legislation (substantive and subsidiary), institutional development and management practice.

Most observers would also agree that the programmed response to these challenges launched with the 1994 Forest and Wildlife policy has faltered. The crisis in the sector is deepening rapidly. Satellite imagery suggests that the resource is depleting faster than at any time in our history and that state managed forest reserves are now also under siege. As resources dwindle and industry competes fiercely for what remains, the vicious cycle of state capture, over-logging, rural stakeholder marginalisation and conflict has speeded up considerably. Again several observers seeking an understanding of this phenomenon have pointed to the apparent disconnect between official policy and sector legislation. Important components of the 1994 Policy such as collaborative forestry management have still not been captured in legislation. Other important elements such as competitive bidding have been captured only after considerable delay and in a diluted and contested form. Further, many institutional policies adopted by the FC within the framework of national sector programmes such as CFCs and NFFs have also found no expression in sector law. Indeed the Consolidated Forestry Act anticipated in 1994 and which was expected to render the 1994 Policy operational never materialised. The Boakye-Dapaah report submitted to the Ministry of Lands and Forestry in 1995 and again in 1996 was simply shelved in a manner that has weakened the hand of reformers considerably. Obviously, if the state is unable to translate policy into specific laws it is not likely to be able to influence the actual day-to-day conduct of many different players.

This observation has proved a prolific source of enquiry and discussion. What is the interplay between the processes, institutions and even personalities engaged in policymaking and legislation? What access do the different stakeholder groups have to these processes, institutions and personalities? Are they hierarchically arranged (and if so what is the hierarchy – is the executive branch senior to the legislative branch?) or do they simply respond to different signals? Is the problem a want of technical skill, a lack of appropriate information or political differences? Is the process different for different issues in the sector (e.g. is the policy-law relationship closer as regards resource sustenance than it is in relation to benefits sharing?). It was to begin to get a better understanding of these issues that TBI-Ghana organised the two-day July 2005 Focus Group discussion in Elmina under the theme “Reconciling Policy Reforms with Legislation”.

1.2 WORKSHOP OBJECTIVES

The objectives of the meeting were to:

- to identify areas where forest legislation needs to be brought in line with policy reforms; and
- to address challenges in moving from policy reforms to legislation

1.3 WORKSHOP PROCESS

The meeting involved 30-odd forest regulators, forestry consultants, timber company representatives, scientists, civil society activists and policy practitioners.¹ It was held under the distinguished chairmanship of Prof. Adzei-Bekoe, Chairman of the Council of State.

The meeting involved four main presentations in plenary, syndicate work in three groups to discuss responses to the identified problems and a concluding plenary session where syndicate groups presented their reports and participants discussed concrete steps that could improve the situation.

1.4 REPORT STRUCTURE

This is a report on the Elmina Focus Group Discussion. Chapter one gives an introduction to the report. At the request of the organisers, each presenter prepared a written paper as well as a power point presentation. Written papers are reproduced in chapter two. Chapter three describes the general discussions that followed each presentation as well as the work of the syndicates, whilst conclusions and recommendations are captured in chapter four.

¹ See Annex 2 for full participants list.

2. PRESENTATIONS

2.1 FORESTRY REFORMS: HOW FAR, WHICH WAY?

By Robert Bamfo²,

Overview of the Forestry Sector

Forests and wildlife resources contribute enormously to the socio-economic development of the country through:

- GDP 6%
- Export earnings of US200 million per annum
- Direct employment to over 100,000 people and indirect employment to over 2.5 million Ghanaians
- Fuelwood of about 14 million cubic metres (75% of the energy consumption in the country)
- Environmental benefits of forests that cannot be easily quantified.

Role of Forestry Sector in GPRS

The forestry sector is contributing to the Ghana Poverty Reduction Strategy or Programme (GPRS) in the following ways:

- Improved food security and livelihoods
- Enhancement of community-based (collaborative) resource management and enterprise development to empower the local communities
- Equitable distribution of costs and benefits
- Increased revenue through enhanced efficiency and greater production of value added products
- Reforestation of degraded forests and woodlands
- Development of essential infrastructure for the provision of clean water
- Efficient establishment, utilisation and marketing of wood fuel and;
- Measures to control desertification.

The 1994 Forest and Wildlife Policy

Ghana is said to have lost about 80% of its forest cover in the last century at a deforestation rate of 65,000 hectares per annum.

Until 1994, forestry policy was driven by the need for commercial timber production mainly for export.

² Head of Monitoring & Evaluation, Forestry Commission, Accra

With the coming into force of the Forest and Wildlife Policy in 1994, the purpose of policy turned to “*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*”.

The objectives of the Forest and Wildlife Policy are:

- (i) Management and enhancement of Ghana’s permanent estate of forest and wildlife resources;
- (ii) Promotion of viable and efficient forest-based industries, particularly in secondary and tertiary processing
- (iii) Promotion of public awareness and involvement of rural people in forestry and wildlife conservation
- (iv) Promotion of research-based and technology-led forestry and wildlife management, utilization and development;
- (v) Development of effective capability at national, regional and district levels for effective forest and wildlife management.

Forestry Development Master Plan (1996 – 2020)

The implementation of the 1994 policy objectives is managed through the Forestry Development Master Plan (1996 – 2020) or National Forest Programme as follows:

Phase 1 – (1996 – 2000):-

- consolidation of sustainable forest management systems to ensure that timber can be certified as “sourced from sustainably managed forests”;
- implementation of a Wildlife Protected Areas System Plan;
- development and launching of schemes for investments into commercial forest plantations and tree farming;
- propagation of non-timber products and wildlife;
- creation of enabling climate for rationalization of timber industry; and
- consolidation of fiscal measures for efficient utilization and increased value-added processing.

Phase II – (2001 – 2010)

- continuation of sustainable forest management and protected areas management systems;
- commercial plantation establishment systems;
- promotion of total value-added processing; and
- competitive marketing.

Phase III – (2011 – 2020)

- continued maintenance of sustainable forest and wildlife management systems;
- continued commercial production systems;
- competitive marketing; and
- competitive value-added processing.

Policy implementation challenges

Despite the above policy implementation framework, the forestry sector has been subjected to various impacts and pressures that have threatened the sustainability of timber resources and certain wildlife resources. This has affected the sector's ability to contribute to the country's socio-economic development and maintenance of the environment.

The problems are:

- over-cutting of timber;
- non-transparent allocation of timber rights;
- under-pricing of timber resources;
- illegal chainsaw operations in the forests;
- low stumpage fees;
- inefficient forest revenue collection systems;
- ineffective institutional structures;
- inefficient harvesting and conversion practices;
- lack of effective involvement or participation of resource owners and local communities in forest management and decision-making; and
- inadequate incentive structures to ensure sustainable forest management.

Completed Policy Reforms

On 17th June 2002, Cabinet approved the following policy reforms in order to ensure sustainable management and improved utilization of the country's forest and wildlife resources for optimum benefits to the country and resource owners in particular.

Increase in Off-Reserve Annual Allowable Cut

In order to salvage valuable timber from being destroyed, the annual allowable cut (AAC) in off-reserve areas was increased from 0.5 million m³ to 1.5 million m³. The AAC for forest reserves was maintained at 0.5 million m³ to ensure sustainable forest management in the country. The total AAC thus increased from 1.0 million m³ to 2.0 million m³.

Competitive Bidding for Timber Rights

The resource allocation procedure is now done through competitive bidding to ensure the transparent and efficient allocation of the timber resources and control of over-cutting of timber.

The legal backing for the competitive bidding process is provided by the Timber Resources Management (Amendment) Act, 2002 (Act 617) and the Timber Resources Management (Amendment) Regulations, 2003 (LI 1721).

The prequalification criteria include companies' payment of statutory liabilities such as income tax, social security contributions, stumpage and rent.

The competitive pricing of timber has improved realisation of resource economic rent through the payment of timber rights fees (TRF). For example, the value of standing timber attributed to competitive bidding is estimated to range between US\$100/m³ to US\$145/ m³ for plantation timber which is significantly higher than the previously administered price of US\$45/m³ to address the problem of under pricing forest resources.

Increase Stumpage Fees for Timber

All forest and wildlife fees including stumpage, rent and levies are now reviewed from time to time to reflect the true and economic rent value/stumpage of the resource, foreign exchange and market fluctuations.

Rationalization of Timber Industry Taxation and other Forest Fiscal/Incentive Regimes

There is a rationalization of the forest fiscal and taxation regimes in order to achieve realistic revenue for FC and the national economy.

Market based incentives have been put in place to improve the efficiency of the timber industry and encourage downstream processing or value-added processing of wood products. This will increase the current level of timber export revenue earning for the country.

The fiscal incentives include:

- Export levy on air-dried lumber (according to species) that is paid into the Plantation Development Fund
- National Reconstruction Export Levy (7% on lumber FOB, 3% on plywood FOB) – now waived to free additional resources for timber business to grow
- Value-added tax (VAT) for domestic sales
- Removal of import taxes on logs and lumber

Mobilization of Chainsaw Operators into Alternative Productive Ventures

To curtail indiscriminate felling of trees, chainsaw operators have been engaged in alternative livelihood support schemes to create employment avenues for them through:

- the National Forest Plantation Development Programme
- thinning in the existing forest plantations
- forest reserve boundary cleaning and demarcation
- forest plantation coppice management
- recovery of off-cuts and branches in the forest for processing by small-scale timber companies
- the establishment and operation of mobile mills in strategic locations in the country to supply lumber to local communities (in collaboration with the Ministry and various District Assemblies)

It is however argued that if the package involved is not attractive enough it would not have the required impact since chainsaw operators earn huge sums of money from illegal logging.

The law now backs stronger sanctions for damages to any forest reserves and forest crimes.

Log Export Suspension

The log export suspension that was introduced in April 1995 was maintained to increase value added processing and create more job opportunities in the timber industry.

The Ministry is dialoguing with the saw millers and loggers to evolve a mechanism to ensure competitive domestic pricing through negotiation for private contract agreements at competitive prices to address the distortions in domestic market pricing created by the log export suspension.

Benefit Sharing for Natural Forest Timber Revenue

The Ministry is working to ensure equitable distribution of benefits to communities, resource owners and farmers as a way of facilitating effective decision-making and participation of all relevant stakeholders in the sustainable management and development of the resource.

Since sustaining the off-reserve requires less management, the benefit-sharing arrangement for natural forest timber revenue in off-reserve areas was changed from:

- Forestry Commission 60%
- Stool Landowners 40%

to:

- Forestry Commission 40%
- Stool Landowners 60%

In the case of forest reserves, management operations are very significant and the benefit sharing arrangements between FC and the Stool Landowners remained unchanged:

- Forestry Commission 60%
- Stool Landowners 40%

The distribution of revenue to Stool Landowners is carried out in accordance with the provisions of the 1992 Constitution.

Improved incentive structures to ensure the sustainable forest management include:

Social Responsibility Agreements

Social Responsibility Agreements are now enshrined in the law and give forest fringe communities a financial stake in commercial timber operations.

TUC holders negotiate social responsibility agreements with the local communities by providing for the provision of amenities, services or benefits not exceeding 5% of the value of stumpage fees from the TUC area.

Incentives for Forest Plantation Development

The Forest Plantation Development Fund Act, 2000 (Act 583) as amended by the Forest Plantation Development Fund (Amendment) Act, 2002 (Act 623) makes funds available to

both the private and public plantation developers to engage in commercial plantation development or small woodlots. Incentives for plantation development include:

- harvesting of planted trees for commercial purposes without a specific contract/timber rights or the consent of the landowners;
- exemptions from duties/VAT;
- guarantees for repatriation of profits; and
- guarantees against expropriation by State.

Plantation Development Strategy

The MLF, the Commission and other stakeholders have jointly developed and agreed on a comprehensive plantation development strategy aimed at:

- restoring the forest cover of degraded forest reserves;
- addressing the wood deficit situation in the country, especially timber, which has been estimated as 4-5 million m³ per annum and fuelwood consumption also estimated at 14 million m³ per annum;
- creating employment opportunities at the rural community level to generate income for plantation owners, timber processors and the national economy; and
- contributing to food production in the country.

Ongoing Policy Reforms

Improved Revenue Collection System

The Commission is putting in place a log tracking and validation of legal timber system to trace the flow of timber from the forest to the ports of exit in order to capture all revenue from the harvesting of timber.

Benefit Sharing for the Modified Taungya Plantations

The modified taungya system of forest plantations guarantees farmers greater security of tenure and equitable benefits. Farmers will remain on the land until trees mature and maintain the trees. The benefit sharing formula is as follows:

- Farmers 40%
- Forestry Commission 40%
- Traditional Authorities 15%
- Community 5%

Benefit Sharing For The Commercial Forest Plantations

The commercial plantation development also has benefit sharing arrangement to guarantee local and foreign investors easy access to land and security of tenure as follows:

Commercial Investor	94%
Forestry Commission	Negotiable (FC staff allowances and salaries)
Traditional Authorities	Lump sum for Community development
Community	Lump sum for Community development

Conversion of all Valid Concessions into TUCs

The conversion of all valid concessions into the legally required form, i.e., timber utilisation contracts to provide a level playing field for timber rights holders is ongoing.

Fiscal policy reform

The reform of the counterproductive fiscal regime governing the sector, which has hindered the achievement of both sector and broader development goals, is ongoing.

Validation of Legal Timber

The implementation of the Validation of Legal Timber Programme (VLTP) is ongoing to ensure the country's continued access to her major wood export markets.

Domestic Log Pricing

The MLFM is dialoguing with the millers and loggers to evolve a mechanism to ensure competitive domestic pricing through negotiation for private contract agreements at competitive prices to address the distortions in domestic market pricing created by the log export ban.

Forest Fora Network

A forest fora network is being established to involve civil society, NGOs, landowners and other stakeholders in policy formulation and decision-making processes at the national, regional and district levels.

Outstanding challenges

- The amendment of the legislation that governs land and tree tenure, and farmer tree rights is a fundamental step that has yet to be taken. Forest tenure reform is a prime objective of civil society advocacy groups, and supports efforts to improve governance in customary land management institutions.
- The reconstruction of the inefficient wood industry, including its un-proportioned processing capacity vis-à-vis the sustainable level of timber supply, is inevitable.
- The new EU timber trade regulations, which will exclude timber from illegal or dubious sources, are likely to create external pressure for change, e.g., the revision of the legal definition for legal timber and the negotiation of new trade agreements.
- Despite several attempts to implement and strengthen punitive measures, illegal chainsaw operations are on the rise. This problem is closely related to rural poverty and will require a comprehensive solution. The policy of banning chainsaw operations has proven both unrealistic and counterproductive. It needs to be revised.

These linkages between forestry and poverty reduction are recognised in the National Forest Programme and have been given priority in its implementation.

The Way Forward

In order to substantially increase the full value and contribution of the forestry sector to the national economy, appropriate and effective policies would continue to be adopted to improve upon the efficiency of the sector with respect to:

- poverty reduction and improved livelihoods
- economic development of wildlife resources i.e. ecotourism

- ecological stability
- carbon sequestration
- hydrological stability i.e. water resource protection
- biodiversity conservation (rich stock of genetic resources)

Synergies for the achievement of broad policy objectives need to be created by establishing links and embedding forest sector reforms into macro-initiatives and frameworks, such as:

- embedding the forest sector fiscal reform in GoG's broader fiscal and private sector development framework;
- creating indicators and monitoring mechanisms (GPRS) that ensure that the forestry and wildlife sector reforms stay on track and that the sector increases its contribution to national development;
- embedding Voluntary Partnership Agreements on timber trade in broader trade agreements and regulations;
- integrating the organisational reform in the forest sector with the broader public sector reform programme to ensure good governance;
- integrating or linking collaborative resource management initiative with the community-based resource development programme (CBRD);
- creating links between social rights and civil society forum with broader advocacy initiatives;
- creating new partnerships with the private sector, NGOs (local and international), private forestry associations (GIF) and the forest industries;

Conclusion

It is envisaged that the approved forest policy reforms and the supportive legislations would lead to greater efficiency within the forestry sector and a vibrant timber industry in terms of sustainable management and utilisation of forest and wildlife resources.

2.2 FOREST PROTECTION, RESOURCE DEVELOPMENT AND MANAGEMENT

By J. G. K. Owusu³

Introduction

The forestry and wildlife sector in Ghana has gone through considerable policy reform in the past 20 years. All the high profile projects in the sector such as the Forest Resource Management Project, the Natural Resource Management Project, the Forest Inventory and Management Project, the Forest Protection and Resource Use Management Project, the Forest Sector Development Project, the Protected Areas Management and Wildlife Conservation Project and the Northern Savannah Biodiversity Conservation Project all had policy reform components.

Especially since the Forest and Wildlife Policy (FWP) was adopted in 1994, most of the reforms have promoted stakeholder, and particularly forest fringe community, participation in forest management.

A few of these initiatives, for example the Social Responsibility Agreements (SRAs), have subsequently been backed by or incorporated into legislation but many have not. Consequently, an imbalance has developed between policy and legislation, which creates confusion and weakens policy implementation.

Legislation versus Administrative instructions in policy implementation

Legislation is not always indispensable for effective policy implementation. Policies may often be quite satisfactorily implemented and enforced through administrative instructions, which are more flexible than laws and legal instruments. Participatory management relies on negotiations, mutual recognition, mutual agreements and goodwill. The Memorandum of Understanding (MOU) is thus often a satisfactory means of recording firm agreements reached and regulating relationships among collaborating partners.

Legislation in the form of Acts of Parliament, Legislative instruments, By-laws, etc. creates obligatory and enforceable relationships. It is thus useful:

- for backing new policies with the threat of the use of “force”, hence encouraging partners to follow the agreed guidelines;
- for creating avenues for enforcing compliance during the time that one or other of the partners does not find following the guidelines “convenient”;
- for providing a means for “peacefully” seeking redress; and
- Perhaps, most importantly in the participatory management framework, for giving partners assurance and creating (in the less powerful partners) a feeling of confidence, security or trust in the agreements reached and actions taken.

Stakeholder empowerment in forest protection

Community involvement in forest reserve boundary maintenance

a. The Policy reforms

Quality forest management takes place within a defined, clearly delineated and legally secured forest area. This requires generally that the boundaries should not only be described, but also be visibly defined on the ground and mapped. Forest reserve boundaries in Ghana

³ Forestry Consultant, Kumasi

are marked by cut and cleaned lines, with numbered pillars at intervals, often planted with distinctive trees, surveyed, mapped, and kept clear by cleaning to the ground twice a year.

Policy reform in the 1990's was to cede the periodic boundary clearing from Forest Service Division (FSD) employed Forest Guards to selected community members on short term contract for a small fee.

b. Current Legislation

Protected area boundaries are described in the legislation constituting the area a forest or wildlife reserve, thus form part of the law, but boundary maintenance is not prescribed by law. The Forest Protection Decree (NRCD 243) as amended by Act 624, 2002, makes it an offence to alter, move, destroy or deface any boundary mark of any forest reserve, punishable on summary conviction by a fine not exceeding 500 penalty units or imprisonment not exceeding 2 years or both.

There is a long standing policy, contained in the old Forestry Department Manuals of Procedure and reproduced in the old Forest Management Plans (Working Plans) to the effect that "government will pay for all costs of administration, research, supervision and protection, for the remuneration of staff from the rank of Learner Forest Guard and above and, specifically, that costs of labour on external and internal reserve boundary maintenance will not be debited to the landowner."

Contracts for maintenance of reserve boundaries are entered into formally between selected applicants from fringe communities and the FSD for lots of multiples of 500m.

c. Implications for legislation

Contracting community members to weed forest reserve boundaries should not require legislative authorisation or change in existing legislation.

The draft contract (Attachment 2, CFMU 1999) obliges the boundary maintenance contract holder to take steps to prevent illegal encroachment activities and promptly to report any offence detected. Section 8 (1) of the Forest Protection Decree, NRCD 243, already imposes a legal obligation on "any person who is employed in a forest reserve" to assist any forest officer in preventing the commission of any offence under the Decree.

In terms of arresting an offender or suspected offender, however, it is doubtful if a community member under contract to weed the reserve boundary is a "forest officer" for purposes of the powers of arrest without warrant granted under this and other legislation such as NRCD 273. This may require looking into, probably as part of the general revision to give legal recognition to such involvement by community institutions such as the Community Forest Committees, the CFCs.

New Categories of protected areas

There seems to be policy recognition for a new category of **community-dedicated forest** that is not yet known to our laws. The **Globally Significant Biodiversity Areas (GSBAs)** also are sufficiently distinct and require landowners to forgo such significant benefits as to merit recognition by law.

Other **large grained protection areas** (such as hill sanctuaries and swamp sanctuaries) and fine grained protection areas (e.g. watercourse buffer zones) may be regarded as normal subdivisions for purposes of management which do not need legal recognition beyond that given for example in the Timber Resources Management Act (Act 547) to the Logging Manual.

Stakeholder involvement in wildfire management

The Policy reforms

A comprehensive National Wildfire Policy has been agreed after considerable stakeholder involvement and consultation, and is awaiting cabinet acceptance and promulgation.

Among other things, the new Policy

- covers both protected forests and non-‘protected’ lands;
- institutes an incentive and reward system in wildlife prevention and control (including proposals for a Fund and for incentive schemes by District Assemblies);
- recognises roles for various institutions (e.g. traditional authorities, District Assemblies and local communities) in implementation.

The latest community involvement is in the establishment of green firebreaks.

The existing legislation

PNDC Law 43, 1983, attempted to respond to the nation-wide wildfires of 1982/83 but proved inadequate because the public institutional responsibility was confused, while the only role assigned to other stakeholders was the prohibition against starting a fire without preventing its spread.

By the late 1980’s the role of local communities and institutions in policy implementation had begun to be more widely appreciated. The Control and Prevention of Bushfires Law, 1990 (PNDCL 229) therefore created a pivotal role for the District Assemblies (establishment of a Bushfire Control Sub-Committee of the Assembly’s Executive Committee, power to make By-laws, obligation to set up town, area and unit Bushfire Control Committees, direction of the activities of the Fire Volunteer Squads which are expected to be established at town, area and unit levels.

Implication for legislation

The law will need to recognise the existence of the CFCs and reconcile their roles with those of the Fire Volunteer Squads, widen the role of the District Assemblies with respect to incentive schemes. The institution of non-custodial, more traditional type punishment for wildfire offences has been advocated.

Stakeholder involvement in resource development

Resource development in this context may be viewed simply as resource expansion, involving the development of new resources (particularly forest plantations) qualitative improvement/rehabilitation of severely degraded resources, and the provision of services.

The Policy reforms

The policy reforms in resource development may be summed up briefly as the acceptance of the need for involvement by other stakeholders in addition to the Central Government. Most work has been done in relation to forest plantation development. Areas of involvement here include community/private nursery development, establishment of planted tree stands, both large-scale commercial plantations and small-scale plantations using the taungya techniques.

The thrust of the reforms have been to

- Attract additional investment into forest plantation development
- Provide financial, technical advice and other support to tree growers;

- Provide assurance of ownership to tree growers/plantation developers;
- Work towards equitable sharing of the costs and benefits of plantation development in non-government owned degraded forest reserves by the stakeholders involved;
- Use forest plantation development as a pathway for reducing (rural) poverty, providing additional livelihood, creating rural employment, rehabilitating marginally productive land and meeting future demand for wood.

Consideration has been given also to private sector involvement in the provision of services within Protected Areas.

The existing law and deviations from reformed policy

The functions of the new Forestry Commission (FC) under the Forestry Commission Act, 1999 (Sec. 2 (2) c, Act 571) include assisting the private sector and other bodies with the implementation of forest and wildlife polices by

- i. advising and the provision of technical services with regard to matters of resource protection, management and development..
- ii. supporting the development of forest plantations...”

The Timber Resources Management Act 1997 (Act 547) sought to assure potential tree growers by providing that no timber rights (timber utilisation contract) could be granted over land with forest plantations or land with timber grown by a group without the written authorisation of the individual, group or owner concerned.

The Timber Resources Management (Amendment) Act, 2002 (Act 617) has removed these two classes of land from lands over which timber rights could be granted by government.

The Forest Plantation Development Fund Act, 2000 (Act 583) as amended by the Forest Plantation Development Fund (Amendment) Act, 2002 (Act 623) establishes a Fund to provide financial assistance for the development of forest plantations, for research and for technical advice to persons involved in forest plantations. Section 3 (3) of the Act assures beneficiaries who observe conditions set by the Fund’s Management Board of their rights of ownership over any timber produced.

Act 623 responds more closely to the policy of stakeholder involvement also in the amended composition of the Board of the Fund. The Chairman, who originally was to be “from the private sector” must now be “a person involved with the plantation industry”. The Chief Executive of the FC and the representatives of the two timber trade associations and of the Minister responsible for finance are replaced with “two representatives of institutions, organisations, companies or bodies involved with the plantations industry”.

Incentives including repatriation of profits from investments, exemptions from duties, VAT etc. for non-zero rated plant, machinery and equipment, and guarantees against expropriation are provided for investment in the forestry and wildlife sector generally are provided under, the new sections 14A to 14J of the Timber Resources Management (Amendment) Act, 2002 (Act 617).

Dealing with remaining deviations between policy and legislation

- Cost and Benefit Sharing in respect of Plantations

At the Focus Group Discussion on Benefit Sharing organised by Tropenbos International – Ghana in October 2004, the Minister of Lands and Forestry gave the assurance that the Attorney General’s Department had completed an Indenture (legal framework) on benefit

sharing among landowners, forest fringe communities, FC as service provider, commercial tree plantation developers and taungya tree growers. Beside the issue of equity, this would also provide the framework for accessing lands in the degraded forest reserves.

Other issues that may need to be addressed by law or by law-related actions include:

- Reconciling the requirement for assurance of long-term security of tenure (at least two rotations) with the limited maximum leasehold period permitted by the Constitution of the Republic for non-Ghanaians.

One way of dealing with this without amending the constitution may be to decouple land ownership from tenure to the planted trees so that a foreign (or local) investor does not necessarily have to lease or otherwise acquire land but can enter into a partnership with land-owning stools or other entities, in which the landowners bring the land into the partnership as their share capital. The appropriateness of the formula in the constitution has however been questioned.

- Quicker dispute resolution (determination of cases by the law courts)
- Compensation for unlawful seizure or expropriation by local communities:

Act 617 makes adequate provision for the risks of expropriation by government or the state. It is however not uncommon, when a business in the rural areas grows or begins to prosper, for (a section of) the community to attempt forcible seizure or to create conditions that compel the owners to “pack up”. Greater transparency in the negotiations and in benefit – sharing may obviate some of this but, for a long-term investment such as a forest plantation, the fear and risk is real. It may be necessary to explore compensation by the state on specified conditions where rights are clearly infringed and it is not possible to proceed against a local community or a section of a community in the law courts.

Stakeholder involvement in resource management

In summary, the policy reforms have been to ensure greater involvement of traditional landowners and fringe communities in forest management planning, implementation and monitoring, in resource exploitation and in some commercial forestry operations. In the production reserves, timber utilisation contract holders are also to assume greater responsibility for the sustainable management of the resources. There is additionally a move toward wider multi-resource management.

The procedures for stakeholder involvement are outlined in the Forestry Commission Charter and elaborated in Manuals of Procedures of the Forest Services Division.

In management plan preparation, it is required that communities not only be consulted but through the Community Forests Committees (CFCs) or similar institutions participate in the socio-economic surveys, be engaged in reserve level community workshops to access their needs, interest and alternative livelihoods. Draft Management Plans prepared by the FSD are to be submitted to communities for discussion and approval. These roles are not supported by legislation.

The involvement of traditional authorities, District Assemblies and communities in resource exploitation through the identification of potential TUC areas and in the negotiation and implementation of Social Responsibility Agreements (SRAs) is prescribed in the Timber Resources Management Act 1997 (Act 547) and its Amendment (617) and in the Timber Resources Management Regulations (LI 1649) and their Amendments (LI 1721). Community access to limited quantities of timber for community project is provided for through Timber

Utilisation Permits. The TUC holder is required by Act 547 to have a professional forester as manager in charge of his forest operations.

The concept of the CFCs, besides possible involvement in commercial resource development activities (nurseries, plantations) discussed above, includes encouragement, where feasible, to engage in small scale timber conversion ventures and in enterprises for the processing and marketing of NTFPs. If supported by policy, legislation could be used to exclude small reserves or parcels of off-reserve areas from the TUC bidding system to provide preferential access to resources for such ventures.

Community and local level government institutions

The Policy reforms and existing laws

Promoting effective stakeholder involvement often requires encouraging the development of new institutions or the strengthening of existing institutions and the recognition of new roles. People rarely can effectively negotiate their rights, roles or responsibilities, returns or equitable benefits and relations as individuals. Equally, people rarely can make effective contribution to resource management and conservation (through advocacy, contribution to policymaking, protection, field management or even sustainable utilisation of resources) as individuals. The development of viable institutions that make it possible for community members and other stakeholders to function effectively in resource protection, management and development has been an intrinsic part of all sector reforms.

The pre-1980's policies and laws recognised community ownership over forests and forest reserves and assigned important roles to the traditional authorities (the right to constitute reserves under By-laws, to manage reserves on the advice of the public forestry agency, to be involved in the early stages of negotiating timber felling rights, to revenue where the option of management by the public forestry authority was exercised). No other resource related community institutions or structures were created or envisaged.

The reforms of the 1990's and after recognised the need to create or stimulate the development of structures and institutions to enable (fringe) community members and other stakeholders participate effectively and appropriately and benefit equitably.

Community level institutions created included:

- The Fire Volunteer Squads established under section 7, PNDCL 229 (town, area, unit level members volunteering their services and being trained for fire prevention, fire control and fire education duties);
- The Community Forest Committees, CFCs; and their variants, namely, the Forest Management Committees (FMCs); the Community Resources Management Committees, (CRMCs); the Community Natural Resource Management Committees (CNRMCs) (structured bodies representing grassroots interests on forest management issues, both policy making and field work);
- Various kinds of management Advisory Boards (e.g. the Community Biodiversity Advisory Groups, CBAGs; the Protected Area Management Advisory Boards) which are structures for formal participation in management;
- The Forest Forums which provide a neutral ground for interaction, discussion and debate by a wide range of stakeholders, including Traditional Authorities and landowners, community institutions, timber utilisation contract holders, tree growers, NGOs, District Assembly, the Forestry Commission and other central government public agencies.

Implications for legislation

A comprehensive Forest Act will need to take cognisance of local level community organisations. Three approaches are possible:

- Legal establishment of institutions whose composition, functions and relations with the public institutions are described in detail in the Act. The CFC type institutions are the most likely candidates. This type of approach however must be used with caution. Though to some extent the differences between the FORUM originated FMCs, the CFMU sponsored CFCs, the CNRMs of the NSBCP only reflect the philosophies of the donor-funded projects, sometimes they also reflect slight differences on the ground with regard to social organisation etc. at the community level. A straightjacket detailed legal prescription may lose us the flexibility desirable in collaborative situations.
- Mention of local level institutions and their required involvement in a principal legislation, with or without more elaborate prescription in subsidiary legislation (see, for example, the involvement of local level authorities and communities in field inspections in the identification of suitable TUC lands in Regulation 2 of LI 1649)
- The model of the Logging Manual where the detailed guiding rules are set out in a Manual that is prescribed and made mandatory in an Act (547) and in Regulations (LI 1649).

District Assembly By-Laws

In several respects, the District Assemblies represent an opportunity lost. The Assemblies are under-performing with respect to management of the environment and mobilisation of local resources for local development. With respect to the forest and wildlife sector, the Assemblies are almost a violation of the guiding principle that sharing in benefits should go with some sharing of responsibility. (Besides their “respectable” share in royalties or stumpage from timber, District Assemblies even receive 80% of fees from the issue of licences for trading in bush meat – LI 1452).

The Traditional Councils did very well with respect to forest reservation in the early years of reservation because they were presented with Model By-Laws. That model should be followed with the District Assemblies.

2.3 BENEFITS SHARING & PARTICIPATORY RESOURCE MANAGEMENT

By Kyeretwie Opoku⁴

Introduction

The crisis in Ghana's forestry sector is now notorious: unsustainable rates of logging; growing poverty in forest fringe communities; poor returns to the public and resource owners from forest exploitation; weak enforcement of sector rules; and pervasive corruption in the public sector. As the meeting theme suggests, many observers believe that sector policy⁵ is adequate, even progressive and that the crisis results from or is sustained by the absence of legislation to back policy implementation. The focus group meeting has been organised to examine the relationship between policy and legislation with specific regard to the issues of "forest protection, resource development and management" and "benefits sharing and participatory resource management" – the principle manifestations of the forestry crisis.

This essay examines the proposition state above in relation to benefits-sharing and participatory resource management. It argues that the relationship between "policy", "legislation" and "administration" is not linear but complex; all reflect more fundamental social relations and the character of the state that authors them. It argues further, that inequality and exclusion are not incidental features of the forestry crisis but its substance. It argues that there are no sharp contradictions between policy and legislation – just significant policy mirage. Finally, it argues that with the decimation of resources, growing public awareness and civil society activism for policy reform and compliance and changes in the international market environment, there are signs that the power balance is shifting healthily and that a window of opportunity for real policy reform is now opening up.

Political Economy of Ghana Forestry

Two specific observations about Ghana's political economy are important in understanding problems of policy and legislation in relation to benefits sharing and participatory resource management.

The first observation is that the current situation regarding benefits sharing is not accidental. It is a system of exploitation carefully constructed over a century for the benefit of corporate capitalism. Over the last hundred years, "Ghana" like most third world countries has been absorbed into a global system of capitalist production. Corporate capital has gained control over the sources and means of production placing it in a position to control production processes and broadly, society as a whole. In pre-colonial society, production was organised communally principally to meet social needs. Private accumulation had commenced as evidenced for example by institutions like chieftaincy, slavery and gender discrimination. "Global" interventions such as the trans-Saharan and trans-Atlantic slave trade hastened these processes but did not displace the prevailing mode of production. Today, however especially in the historically forested areas, production is increasingly organised by corporations solely for the purpose of accumulation through profit. This involves several different processes. First, the international commodity market system (controlled by corporate capital), keeps commodity prices low and ensures that real profits from production are realised in Europe, Japan and the USA. This is as true of the timber trade where individual exporters and buyers negotiate sales, as it is of the large impersonal exchanges that determine prices for e.g. gold.

⁴ Coordinator, Civic Response

⁵ "Policy" for the purposes of this paper means the 1994 Forest and Wildlife Policy - Government's declared sector policy. Cabinet-approved programmes such as the Forestry Development Master Plan are not policy or sources of policy. They are (or should be) means to achieve set policy goals.

Second, the individual firms operating in Ghana (e.g. mining, milling and plantation companies) engage in textbook wage labour exploitation. Timber industry workers suffer unsafe working conditions, low pay, little job security and few statutory benefits. Thirdly, (and of particular relevance) extractive sector companies access communities' natural resources (land, forests, minerals, water etc.) at prices far below their value. For example, Forest Watch Ghana alleges that by systemic failure to enforce the law the Forestry Commission compels poor forest owning communities and the Ghanaian public in general to subsidise the timber industry with hundreds of millions of dollars every year!⁶ Then of course, there is a history of fraud, illegal transfer pricing and other dodges used through out the corporate extractive sector to appropriate profits for owners and managers.

The second observation is that the role that the Ghanaian state plays in corporate exploitation of people and resources is also not accidental. The Ghanaian state came into being to further the process of capitalist penetration of these economies. The states' primary role has been to ensure exclusion of local interests from decision-making processes. A reluctant British government established colonial rule at the behest of British traders seeking competitive advantage against French and other European merchant houses and suppression of African resistance to European control of production. The British subordinated traditional elites through exclusive "protection treaties" and wars of conquest (touted as "pacification" and even anti-slavery campaigns!). They enhanced the power of chiefs within traditional states and society. Colonial attempts to acquire direct control over natural resources late in the 19th Century failed. However, they did establish state "management rights" over e.g. forest resources and a concessions regime that guaranteed their client companies secure access to natural resources conceded by traditional rulers. Through chiefs, they also instituted forced labour to develop extractive and export infrastructure. The state's essential bias in favour of corporate and especially transnational business survived political independence and thrives today. Despite decades of failure, the state continues to promote "the private sector" as "the engine of growth" and to allocate resources accordingly. The ideology of the state (self-promoted) as a neutral arbiter of social conflicts – "working for all of us" - is a false one. The state broadly (but not mechanistically) reflects the shifting power balance in the struggle over production; in other words the state works broadly in the interests of the dominant socio-economic groups.

Forest Policy 1909 – 1994

Major events in Ghana's forestry history illustrate both observations. This highlights some of the major policy interventions of different political leaderships demonstrating the essential continuity of policy.

Colonial Government

Formal state organised "scientific" forestry followed the first cocoa boom at the end of the 19th Century. The colonial establishment learned that plantations and thus "land ownership" were not necessary for successful corporate control of domestic cocoa industry. Under its 1909 forestry policy, the colonial government intervened to create a permanent forest belt that would sustain the ecological conditions for cocoa and the economic conditions for colonialism. Forest reserves were originally established for conservation purposes. The Forestry Department adopted a hostile or at best paternalistic stance towards forest-owning communities and used its draconian statutory powers to oust them completely from forest reserves. This attitude towards resource owners has probably been the most consistent aspect of "policy" in the last century. It is only in the last ten years that a more collaborative

⁶ Forest Watch Ghana "*Ghana loses ₵900 billion (\$100 million dollars) annually from uncollected timber rights fees*" Advertiser Announcement, Daily Graphic (8 October 2004). Also Forest Watch Ghana "*Timber revenues and the current crisis in the forestry sector*"

approach has begun to develop slowly within the FC⁷. By contrast, when the state has always responded quickly to industry needs. In the post World War II timber boom, European corporations like UNILEVER's African Timber & Plywood displaced local pit saw gangs and took mill-sawn production from 250,000 cu. ft in 1946 to 7,400,000 cu. ft in 1956. Smith observes that by 1948 colonial reserve policy changed from "conservation" to allow for "maximum productivity and value on the basis of sustained yield"⁸. The Colonial Government also shifted the burden of increased costs of reserve management onto the landowners by reducing their share of royalties from a minimum of 70% under the Forest Ordinance to 40%!

The CPP

Smith tells us that self-government and independence changed little in terms of the structure and functioning of forestry in Ghana. Even, the nationalist CPP⁹ did little substantively to curb the power and privilege of industry. The CPP government demonstrated a clear bias in favour of corporate enterprise. Between 1955 and 1965, peasant cocoa farmers paid an average tax of 26.4% on their earnings. By contrast, timber companies in the same period paid an average of only 2.2% of their earnings.¹⁰ The CPP did bring many Africans concessionaires into a previously "European" timber industry. It also attacked the privileged position of chiefs who had collaborated with European companies and the colonial government to deprive their "subjects". However, Africanisation did not involve a challenge to the privileged position of industry in relation to communities. Further, the powers (to grant concessions and collect revenue) taken away from chiefs were centralised in the state rather than democratised.

NRC - SMC

The NRC-SMC¹¹ governments passed laws entitling the state to a majority equity position in foreign timber concerns. No doubt, there was an element of nationalism behind this move. However, this did not improve either community participation or benefits sharing. On the contrary, in 1976 the SMC arbitrarily increased the state's share of royalties from 60% to 70%. It also arrogated to itself the power to manage off-reserve timber resources in the same manner as reserves – i.e. using the same draconian sanctions against community members that interfered with these resources¹².

PNDC

The 1970s global downturn badly affected commodity-producing countries. Ghana's extractive sector all but collapsed. However, so too did its agriculture and industrial sectors. Certainly, farmers in the high forest zone fared no better in the late 1970s and early 1980s than timber magnates. It is instructive that the thrust of the state's strategic response, even under the avowedly revolutionary leadership of the PNDC¹³, was to improve conditions for extractive sector companies – often at the expense, for example, of its working class support base. The state under its Export Rehabilitation Programme placed hundreds of millions in donor funds in the hands of timber companies to facilitate their acquisition of plant and machinery with the explicit understanding that they would then increase production for

⁷ The orientation of the CRMU, the usefulness of CFC's and Forest Forums are still matters of contestation within the Commission.

⁸ Gold Coast Forest Policy, 1948, Clause 2.

⁹ Convention Peoples Party 1951 - 1966

¹⁰ Frimpong-Ansah, Jonathan, H (1991) *The Vampire State in Africa: The political economy of Decline in Ghana*.

¹¹ National Redemption Council 1972 – 1974, Supreme Military Council 1974 – 1979.

¹² Trees and Timber Decree, 1974 (NRCD 273)

¹³ Provisional National Defence Council (1982 – 1992)

export. The PNDC did not put measures in place to ensure greater equity or participation in the anticipated boom. Moreover, it did little to create a commensurate capacity in the state sector to monitor this increased activity. It is not surprising then that timber companies misused much of the donor resources pumped into the Export Rehabilitation Programme just as they did the forest resources under their management. Investigations in the late 1980s and early 1990s by the NIC¹⁴ and international environmental organisations¹⁵ revealed that transfer pricing, tax evasion and illegal logging were rife. These exposures and the corruption trials, convictions, voluntary reparations and prison sentences that followed shook the industry, state and the donor community. It provided a wake up call that led *inter alia* to the 1994 policy – the first overhaul since 1948.

Reassessing the 1994 Forest & Wildlife Policy

Smith is explicit that the ministry intended the 1994 Forest and Wildlife policy to address the problems of socio-economic injustice and irrationality¹⁶ discussed above. He speaks of a “new political economy of forestry” the imperative of which is “to establish the legitimacy and primacy of interests other than that of the timber contractor and political elites, to remove abnormal profit taking and to ensure civil society and local communities can hold the state accountable for resource stewardship”.¹⁷ He describes in some detail the features of this new political economy”. These include the institution of the “national interest, local interest and multiple values” as the “clients” of forestry with the state forestry institutions “managing resources in accord with clients’ legitimate interests as defined in law, policy [and] plans”.

Read against Smith’s stated expectations the 1994 Policy is disappointing. Of course, it does not explicitly attack “participation” or “benefits sharing”. Official statements must always pay lip service to social ideals. Indeed the Policy is sprinkled with positive statements about both benefits sharing and participation. The problem is that the policy hangs outside of any material context. Nowhere in the document do we read the kind of analysis that Smith makes and which he suggests informs it. Nowhere do we see the systemic choices about political-economy paradigms for forestry. Promotion of the “private sector” (i.e. corporate) investment ranks at least as high as promotion of community rights of participation even though from Smith’s analysis the real problem is that the industry is over powerful and acts with impunity! Rather, than defining national strategic direction, the Policy is a menu from which different interest groups can select what best suits their agendas. Given the severe distortions in power relations in the forestry sector the lack of a categorical option for greater participation is effectively an option for the status quo and administrators would inevitably understand it as such. Legislators and administrators were likely to understand such a weak Policy statement as a signal to continue business as usual. From all appearances, that is what happened.

Why is the policy so weak? The probable reasons are complex. First, it is unlikely that Smith’s concern about the fundamental political economy of forestry was widely shared in Government. From the mid 1980s, the PNDC had converted to wholesale support for “private-sector-led” growth under the tutelage of the International Financial Institutions. Indeed, it had become systematically repressive in protecting “investor” “rights”. There were of course a few high profile “environmentalists” in government – notably the PNDC chair Jerry Rawlings.¹⁸ These expended their energies in pursuits like campaigning against bush fires – activities that were at best politically neutral or more often than not targeted marginalised communities unfairly. There are echoes of this in the current scape-goating of chainsaw operators by the forestry establishment. There was also a populist obsession with

¹⁴ National Investigations Committee (a precursor of the Serious Fraud Office)

¹⁵ Friend of the Earth, (1990) Plunder in Ghana’s Rain Forests: Corruption for Illegal Profit

¹⁶ Smith uses the word “madness”.

¹⁷ *ibid* p32.

¹⁸ Subsequently President of the Republic

eradicating corruption, which as we have seen caused some discomfort for timber magnates. All of this however falls far short of a commitment to democratising the extractive sector. Second, the return to electoral politics and the need for campaign funding would have eroded the NDC's appetite for confrontation with timber men. By the early 1994, there were signs of rapprochement between the NDC government and important industry figures. Third, pressure for reform from the international media and the donor community abated once the policy reform process was in hand. Fourth, and most important, there was no widespread or consistent social pressure for reform. There were sporadic eruptions of communal violence¹⁹, widespread bush burning and an explosion of illegal chainsaw operations. However, this remained off the media radar and unrecognised as protest activity. Structured protest took another 10 years to arrive.

Post 1994 Policy

In June 2002 Government adopted policy reforms. The only one of these that relates to benefits sharing or PRM is the adjustment in off-reserve royalty rates from 40% of stumpage to 60%. On paper, this may perhaps seem impressive. However, it must be contextualised. First, the formula for distributing revenues from stool lands²⁰ is set out in the Constitution. By seeking to determine royalty rates administratively, the Ministry is acting in violation of the constitution. Secondly, the FC track record of stumpage collection is so poor that the real "benefits" of such a policy are at best nugatory.

Post-Policy Legislation

The 1994 Policy did not actually set a very high standard for a post-1994 legislative programme on benefits sharing and participatory resource management as we have seen. It offered only a menu. The Ministry apparently shelved plans for a consolidated Forests Act after 1996 by which time it must have become clear to the professionals and administrators that the politicians did not wish to drive fundamental reforms. Since 1994, legislative programmes have made selections from the policy menu that demonstrates the essential continuity of official thinking. The legislative programme has been limited and "timberised". It excludes benefits-sharing or participatory resource management issues.

First off the mark in 1997 was the **Timber Resources Management Act 1997 (Act 547)** as amended. Under this Act Parliament has also passed **Timber Resources Management Regulations (L.I. 1649 and L.I. 1713)**. These focus on promoting and regulating timber companies demonstrating how little state priorities have actually changed. Act 547 and LI 1649 are not brilliant pieces of legislation. They are untidy, clumsy and even self-contradictory doubtless the result of ad hoc chopping and pasting. It is not difficult to sense the struggle that must have gone on over even this relatively minor declaration of state authority over the timber industry and the demand for transparency and competitiveness in the allocation of timber rights. Smith²¹ tells us that the law took several years to move from the Ministry of Lands and Forestry to Parliament because of effective industry opposition to "competitive bidding" for allocation of timber rights - a move likely to threaten the power base of the less efficient but politically significant loggers. Indeed, in a final compromise the draughtsmen replaced the term "competitive bidding" with "competitive allocation" apparently to appease the industry. Act 547 came into force in March 1998. Still the FC held no competitive bids until November 2003. Since then the FC has held only three bids for timber rights.

The Forestry Commission Act 1999 (Act 571) reorganised and consolidated the existing state agencies (the old Forestry Commission, the Forestry Department, the Department of

¹⁹ e.g. the Desiri Forest Reserve

²⁰ This definitely includes forests.

²¹ *ibid*

Game and Wildlife, the Forests Products Inspection Bureau and the Timber Export Development Board) into one corporate agency with both management and regulatory responsibility for forestry. It is telling that none of the 16 functions assigned to the Commission²² addresses either the promotion of participatory management or equitable benefits sharing. What Act 571 does is centralise sector authority further. It dashes hopes engendered by the Local Government Act 1993²³, that elected and locally accountable District Assemblies will play a role in forestry policy and management.

The Forest Plantations Development Fund Act, 2000 (Act 583) does not directly address community rights to benefits or management. However, in a curious provision in Section 3(3) it empowers the Board by guidelines to confer ownership rights on plantation developers. The Board has probably never applied this provision. If it had, it would amount to unconstitutional expropriation of community land rights, which would probably not stand up in court.

Conflict between Policymakers and Legislators?

We have seen that as regards benefits sharing and resource management all governments since colonial times have acted consistently as agents of industry. We have seen that the 1994 policy did not represent a radical departure from the pre-policy status quo. It is also worth mentioning at all times since promulgation of the 1994 policy the political party in the Castle has also had a comfortable parliamentary majority. Further, Parliament under the fourth Republic has been quite weak and has never seriously challenged the executive. The notion of cabinet and Parliament locked in a dispute over “timber policy” is counter-intuitive. The policy-law-conflict is really an ideological presentation of the obvious gap between official declarations and deeds that obscures the real drivers of both.

²² Act 571 Section 2

²³ Act 462 Section 161.

Ways Forward?

It is the material balance of power between social groupings struggling over the production process that ultimately determines policy and legislation. There was no real shift in production relations in the late 1980s and early 1990s such as would enable such changes. Industry, state and donors were embarrassed by the international exposure of corruption and waste in the sector. However, the investigations did not reflect organised social opposition to the status quo. Once the state and industry pledged better conduct, there was no organised social constituency able and ready to ensure their fulfilment. In this situation, a return to business as usual was predictable. As Davies²⁴ notes:

The present management of the MLF and FC are probably too compromised, and have too much at stake in obscurantism to stomach a fundamental programme of reform. The pressure for changing the rules of the game is predominantly external.

Now ten years later, a new push is under way. Changes in the business environment have weakened the position of industry considerably. It appears that Industry and state are willing to make policy and legislative concessions to stabilise the situation. This means that there is an opportunity for more radical and permanent reforms.²⁵

Resource depletion is a powerful incentive for business to improve efficiency and to explore a broader more sustainable activity. International markets are moving away from products that cannot be certified as legal and in some cases sustainable. In May buyers from the UK, Italy and Germany met companies in Kumasi to underline their seriousness about these standards. Governments are also getting serious. EU member states have adopted strict timber procurement guidelines that exclude illegal and unsustainable-source timber in public projects – estimated to be about 20% of the EU market. The EU as a bloc is preparing to negotiate a “Voluntary Partnership Agreement” with Ghana allowing EU customs officials to embargo “illegal” timber”. The EU absorbs 60% of Ghana’s exports. By contrast, Ghana timber represents less than 2% of the EU supply. Other governments notably the US, Japan and even China have indicated their willingness to follow the broad EU example. The industry has to take this seriously. Some of the more sophisticated companies (organised within the GTMO) have begun to reposition themselves as “forest” rather than “timber” industries and to seek relevant certification. Their executives insist that it is unfair to lump them with their less reputable colleagues. They blame the laxity of the state agencies for the damage to their credibility and business. They claim to want higher standards and (of course) greater self-regulation. Of course, this is not a widespread phenomenon as witnessed by the recent move by a section of the industry to bully the FC into accepting a literal waiver of outstanding stumpage fees.²⁶ However, it is a response on which greater rationality can be based.

A more important reason in the long run is that social activism around forestry policy is at an all time high and growing. Forest fringe communities are more conscious and assertive of their rights. For example, community based organisations have begun to use Forest Forums as vehicles for community voice in forestry affairs. This is especially the case in the District Forest Forums facilitated by NGOs like CARE International but it is also apparent in those facilitated by the FC itself. Outside of deliberative fora community organisations have began

²⁴ Taming Sasabonsam

²⁵ This is not to say that the political conditions for a transformation are in place.

²⁶ In April, the GTA asked a court to stop the FC from collecting stumpage fees on the dubious grounds that the Minister had acted improperly in setting stumpage and that the FC measurement technique was flawed. The FC had every reason to contest the case. The industry actually had more to lose from a judgement in their favour since the logical outcome would be a cessation of logging while the state works out a new stumpage regime. Inexplicably the Ministry asked the parties to withdraw the case from court and allow it to mediated a settlement.

to demand sight of companies' logging permits and to challenge the use of illegal "Timber Utilisation Permits". There is a darker side to this. There are increasingly frequent reports in places like Enchi and Desiri of communities taking the law into their own hands. There have been violent, even armed confrontations between communities on the one hand and FC officials and Police on the other - in which the state forces have fared badly. Some District and Regional Forest Managers have been heard to request military escorts before entering reserves under their management. This is a frightening development. It does however demonstrate a significant and growing determination on the part of forest people to change the status quo – one that neither the timber industry nor state can afford to ignore. Community level activism is reflected in and amplified by regional and national level civil society engagement over forestry issues. Many individual NGOs such as the Ghana Wildlife Society have taken issue with national forestry policy and practice. Some of this activity has coalesced into campaign networks. No sector has seen as many national civil society networks as the Forestry Sector. The Natural Resources Management Platform was formed in 2001 by largely forestry NGOs as an advocacy vehicle. The "National Coalition on Mining" (originally, the "National Civil Society Coalition Against Mining in Forest Reserves") was formed in 2002. "Forest Watch Ghana" was formed in 2004. All of these present substantive evidence-based challenges to the status quo. There has also been significant media mobilisation and stimulation of public interest in forestry affairs. National NGO networks have also linked up with international civil society to pressure the donor community through their citizens. Perhaps the most significant development for the long term is the growing restlessness of workers in the timber sector and the growing interest of the Timber and Woodworkers Union in wider engagement over these issues.

The state will respond to this new situation. This will not happen overnight. It may take years. However, it is coming. The recent court action brought by the GTA against the FC signals the end of the FC-industry consensus that has governed the sector for decades. The FC is near bankrupt and cannot afford to subsidise companies by non-collection of stumpage fees. Most GTA members are too inefficient to stay in business without these subsidies. The Ministry has attempted to paper over this crisis by forcing the Chief Executive of the FC out of office and proposing an out-of-court settlement. This will deepen the FC's crisis. Soon the hard questions about the future of forestry and the timber industry must be faced. Communities and their allies are also preparing to challenge the FC legally. Already issues of participation and equity are so fiercely contentious that the FC was compelled to create a Collaborative Resource Management Unit in the early 1990s. The unit has pioneered some engagement with forest fringe communities though some would question whether FC engagement is yet "collaborative". The unit has also piloted seven District Forest Forums. These have demonstrated potential to give community stakeholders significant voice in forestry affairs. Many professional foresters are uncomfortable with rights-based collaboration and the effort faces significant resistance. Some District Forest Managers view its work with suspicion and equate rights based engagement with "incitement" against authority. These forces however clearly are unable to roll back the trend.

In this emerging environment, substantive change in policy, legislation and practice has a more realistic chance than at any time in the last 20 or even sixty years. A door is opening. The clarity, determination and organisation of campaigners for change will determine whether this door will stay open and what changes will pass through it. This enquiry into the connections between policy and legislation is useful. It points to sources of practice that are more fundamental than "policy" and which require study. If the 1994 Policy does not provide a strong platform for social justice in the sector where must campaigners look for this? Perhaps it is time to invest in a deeper political economy of Ghana, a deeper understanding of the aspirations of our people and of, for example, the 1992 Constitution in fashioning a new vision of forestry.

References:

- Amanor K.S (2005) *Equity in Forest Benefit Sharing and Poverty Alleviation* in Equity in Forest Benefit Sharing and Poverty Alleviation – Stakeholders’ Views Tropenbos International –Ghana Workshop Proceedings 3
- Asare A. (2000) *Operational Guidelines on Community Forest (Management) Committees* ITTO/FSD Collaborate Off-Reserve Forest Management Project, Forest Management Support Centre, Kumasi, Ghana
- Davies Jonathan (2004) *Taming Sasabonsam: Future trends for forest management in Ghana* in Silviculture and Economics of Improved Forest Management Forestry Research Institute of Ghana
- Forestry Commission (2001) *Ghana Wood Industry and Log Export Ban Study*. Final Report
- Government of Ghana / MLF (1994) *Forest and Wildlife Policy*. Republic of Ghana. November 1994. Ministry of Lands and Forestry, Accra
- Kotey, E.N.A., Francois, J., Owusu, J.G.K., Yeboah, R., Amanor, K.S., Antwi, L. (1998) *Falling into Place. Ghana Country Study*. Policy that works for forests and people series no. 4. International Institute for Environment and Development, London
- Mayers, J. & Kotey, E.N.A. (1996) *Local institutions and adaptive forest management in Ghana*. IIED Forestry and Land Use Series No.7. International Institute for Environment and Development, London
- Shepherd, G. (1986). *Forest Policies, Forest Politics*. Social Forestry Network Paper 3a, ODI, October.
- Smith E. Kofi (1998). *Developments and Setbacks in Forest Conservation: The New Political Economy of Forest Resource Use in Southern Ghana*.
- Townson, I.M. (1995). *Incomes from Non-Timber Forest Products: Patterns of Enterprise Activity in the Forest Zone of Southern Ghana. Summary Report*. Oxford Forestry Institute, Department of Plant Sciences, University of Oxford, U.K.

2.4 THE CHALLENGE OF MOVING FROM POLICY TO LEGISLATION

By Nayon Bilijo²⁷

Introduction

Policy implementation requires an action plan. Action plans normally detail strategies and timetables for the implementation of policy. Legislation is one of the key instruments Governments use to implement policy. Legislation involves parliamentary endorsement of executive policies. It transforms policy from statements of principle into enforceable instructions that all stakeholders and particularly administrators must follow in the pursuit of their different objectives. The failure of policymakers to update legislation can undermine policy. It provides naturally conservative tenured officials with an excuse not to pursue change. While policy necessarily leads legislation, a prolonged discrepancy between policy and legislation suggests a political or even a constitutional crisis.

Several observers have pointed to the existence of such a crisis within Ghana's forestry sector. They observe that in 11 years, provisions in the 1994 Forest and Wildlife Policy relating to resource sustenance, community benefits and community participation in management and policy processes have not found legislative backing. This has serious unfortunate consequences for the progress and stability of the sector.

While not all policy requires legislative backing, all will agree that bringing legislation in line with policy is an important objective. To meet this objective we must understand what is involved. Where are the bottlenecks? Is the problem the character of the policy itself? Is it inherent differences in outlook between the legislature and the executive? Is it about institutional weaknesses? If so, which institutions require our urgent attention? Is the failure a lack of political commitment? This paper examines these questions drawing on the author's experiences as both a legislator and policymaker.

Historical Perspective

In this section, we examine each of Ghana's three forestry policies – 1908, 1948 and 1994 - and the legislation that followed them to assess congruity and understand the origins of this problem.

The first forest policy was promulgated in 1908; the second came 40 years later in 1948 and the most recent 46 years later in 1994.

The 1908 Policy

The declared objectives of the 1908 forest policy were to:

- ensure the preservation of a sufficient area of forest covered land so distributed as to protect water supply; and
- ensure the maintenance of the humid forest type of climate, which was an essential factor in the growth of major cash crops like cocoa and cola.

Of course, the British also sought through the policy to gain some measure of the control over natural resources that opposition from the Aborigines Rights Protection Society had denied them ten years earlier.

²⁷ Forestry Policy consultant, former Deputy Minister of Lands and Forestry, and former Member of Parliament, and Ranking Member of the Parliamentary Select-Committee on Lands and Forestry.

Principal enactments following the 1908 Policy included:

- the Native Authorities Ordinance No.18 Of 1927(Cap.111) established a system of local government which revolved around a paramount chief and his traditional council of elders (native authority). These Traditional Councils had the power to pass by laws constituting forest reserves;
- the Forest Ordinance 1927, (Cap.157) provides for the establishment of forest reserves. It provides guidelines for constitution of forest reserves “*on (1) lands the property of the Government; (2) tribal or stool lands, at the request of the Native Authority; (3) private lands, at the request of the owner.*”; and
- the Concessions Ordinance 1939, (Cap.136) which *inter alia* regulates the grant of commercial timber rights by stools or “natives” and the endorsement of such grants by the courts’ through certificates of validity.

These laws clearly served the policymakers’ intent and there was high congruity between policy and legislation.

The 1948 Policy

The 1948 forest policy involved a move away from the protective functions of forestry emphasized in the 1908 Policy. The new emphasis was timber production (to position British industry to meet Europe’s post-war reconstruction needs). The 1948 policy provides for “management of forest reserves by methods which will achieve maximum production and value on the basis of sustained yield”. The colonial government’s last legislative intervention in the Forestry sector was the Trees And Timber Ordinance No.20 Of 1949, (Cap.158). This addressed the regulatory needs of a fast growing timber industry. It empowered the Government to establish property marks, regulate cutting and removal of timber, and creating new offences. In other words, legislation followed logically and supported declared policy.

Just three years after the colonial government published the 1948 policy the Gold Coast attained self-governance. Quite naturally, the designated role of forests in the national political economy changed significantly with this political sea change. For example, for the CPP Forest resources were required to strengthen the state in pursuit of socialism, attack the economic base of the anti-republican “opposition” and (paradoxically) offer patronage to loyalists of the CPP. Unfortunately, neither the CPP nor any of its successors (until the NDC in 1994) took steps to formally amend or replace the Policy before embarking on their own legislative programmes or administrative interventions in the sector. The “nationalist” legislative programme included the following:

- The Local Government Ordinance, 1951 (No.29) replaced traditional councils with elected local councils.
- Forest Improvement Fund Act, 1960 (Act12) centralised collection and management of revenues related to forest reserves depriving chiefs of their economic power. Subsequent amendments widened the definition of forest revenue to include rents, dues, and royalties from forest produce, fees for silvicultural work, including work made necessary by mining or digging for minerals, and fines.
- The Concessions Act, 1962 (Act 124) vested all timber or trees on any land identified as concessions in the President on behalf of the stools, and also granted the state the power to allocate timber felling rights.

Of course, the CPP’s objectives were legitimate and it operated within a difficult political environment. The fact remains however that declared policy and sector legislation began to

bifurcate in 1951. This is surprising because the CPP was otherwise strong on policy and planning.

A clique within the Ghana Armed Forces overthrew the CPP in 1966 launching a generation of political instability. Under the NLC and PP governments, no significant legislation was passed though there were indeed many administrative interventions in the sector.

Following the NRC coup d'état in 1972 *de facto* forestry “policy” sought to promote law and order in forestry, find the appropriate institutional form for management and regulation (post “socialism”) and capture rent for a hungry state machine. At the same time, administrative practice bent the rules for the benefit of the patrons or clients of whichever group controlled the state machinery. The targets of the disciplinary drive were mostly forest fringe communities who suffered one draconian law after the other. Forestry legislation from this period reflects this PR approach to governance. Some of the highlights are as follows:

- The Forest Protection Decree, 1974 (NRCD 243) attempts to protect the integrity of forest reserves by prohibiting virtually any activity therein if done without the prior written permission of the Forestry Department.
- The Trees And Timber Decree, 1974 (NRCD 273) extended the Forestry Department’s jurisdiction outside Forest Reserves by empowering the minister to create “protected areas”. It provided operating guidelines for the timber industry such as the requirement to obtain a registered property mark from the Chief Conservator of Forests. It imposed fees and levies on operators and provided sanctions for non-compliance.
- The Ghana Forestry Commission Act, 1980 (Act 405) provided for the establishment of a commission in line with the 1979 constitution of Ghana to among others manage, maintain and protect forests as an economic resource in perpetuity. The existing forestry sector agencies became divisions of the commission.
- The Forestry Commission Act, 1993 (Act 453) repealed Act 405 and re-established the Commission as an advisory body. The existing forestry sector agencies gained independence once again and operated separately.

The 1994 Policy

The 1994 Policy followed this period of *ad hoc* sector governance and the crisis that resulted from it. The timber industry collapsed along with most of the Ghanaian economy in the early 80s. This PNDC government responded with an Export Rehabilitation Programme supported by the World Bank and other donors. This was designed to rehabilitate plant and equipment and increase value-added production and jobs in the sector. In practice, much of the money lent to timber companies was misused and though production did increase radically the benefits of this to the country were largely lost through transfer pricing and other malpractices. The ERP also failed to build regulatory capacity. The scandalous state of affairs was exposed by both an internal Government investigation and by an independent NGO study published in 1990. Of course, in 1992 global awareness of the problems of tropical deforestation was enhanced by, for example, in the UN Earth Conference on Environment and Development (Earth Summit) in Rio de Janeiro.

Drafted to correct “timberisation” of the forestry sector, the policy states its aims as “conservation and sustainable development of forest and wildlife resources for maintenance of environmental quality and the perpetual flow of optimum benefits to all segment of society.” (MLF Forest and Wildlife policy document of 1994).

Some of the guiding principles that informed the 1994 Policy include the following:

- the rights of people to have access to natural resources for maintaining a basic standard of living and their concomitant responsibility to ensure the sustainable use of such resources;
- the nation's viability is dependent on the wise use of the forest and wildlife resources as part of an integrated land use policy, because of their contribution to the economy in maintaining vital ecological and life-sustaining processes and conserving pools of genetic material that offers development options and opportunities for tourism, scientific, cultural and educational advancement;
- the need for economic and development incentives to stimulate private enterprise and encourage respect for regulations, thus offsetting real and perceived costs imposed by loss of access or restriction on use;
- the need for support by appropriate legislation in harmony with laws concerning related sectors and for policy revision in the light of changing circumstances and updated information;
- a share of financial benefits from resource utilization should be retained to fund the maintenance of resource production capacity and for the benefit of local communities;
- forest and wildlife fees and taxes are considered as incentives to encourage more rational and less wasteful utilization and should be revised according to market forces, and particularly to increase production of value-added wood products for export;
- the timber industry should be transformed from high volume, low value business to a low volume, high value trade based on sustainable forest management.

The declared objectives of the 1994 Policy are to:

- manage and enhance permanent estate of forest and wildlife resources.
- promote the development of viable and efficient forestry based industries (particularly in secondary and tertiary processing).
- promote public awareness and involvement of rural people in the management and conservation of the resource.
- promote research based and technology led resource management; and
- develop institutional capacity at all levels for sustainable resource development.

The legislative programme rolled out in the 11 years since the publication of the Policy has been slim. It consists of the following enactments:

- The Timber Resources Management Act, 1997 (ACT547) as amended replaces the concessions system with Timber Utilisation Contracts. Contracts are allocated through competitive bidding amongst pre-qualified companies. Contracts have limited duration and spatial limits. The Act extends investment incentives available to other sectors to investors in the forestry and wildlife sector. Under Timber Resources Management Regulations 1998, (L.I.1649) as amended in 2002 prescribe procedures and criteria for the grant of timber rights through a competitive process.
- The Forestry Commission Act, 1999 (Act 571) re-established the Commission as a semi-autonomous corporate body incorporating all the pre-existing forest and wildlife agencies.

- The Forest Plantation Development Fund Act, 2000 (Act 583) provides for the establishment of a fund to provide financial assistance and the management of such funds for the development of forest plantations.

Criticisms of the post 1994 legislative programme are specifically that:

- a. It took 8 years from publication of the Policy to the enactment of a specific competitive bidding regime and in that period, Ghana has suffered the most rapid deforestation in its history. The tardy legislative response has encouraged industry and administrators alike to ignore key provisions of Act 547 such as those requiring conversion of pre-existing concessions to TUCs and sanctions for recalcitrant administrators.
- b. None of the laws passed in the last 11 years explicitly support the policy of community participation in resource management. Accordingly, not much has been done in this area. The gains made through the CRMU such as CFCs and Forest Forums are weak and face stiff opposition within the FC.; and
- c. None of the laws passed improves benefits sharing from industrial exploitation of the resource.

The next few sections attempt to explain this unfortunate situation.

Poor post-independence policy management

Probably the most important factor has been the poor level of policy management the forest sector has experienced since 1951. It is not simply that a long period passed before a policy review; a similar period passed between the 1908 and 1948 policies. It has more to do with the culture of public administration that developed after attainment of self-rule. The state “managed” Africanisation, socialism, commanding heights, industrial collapse, reconstruction and the corruption crisis administratively and on ad hoc basis. There appears to have been no effort to address the growing disparity between policy and law in the sector by e.g. amending the policy to take account of changing circumstances. Policy ceased to be a reference point. Eventually the system appears to have lost the capacity to respond to policy. When a new policy finally appeared, the “normal” administrative reflexes failed to kick in. Today surprisingly few people in forestry administration are familiar with the policy.

Related to this were frequent political interventions in technical and administrative matters. Timber rights were such an important source of patronage that all national governments were willing to systematically violate the rules (including their own) in order to protect the accumulation of capital by their supporters. Politicians too frequently demanded transfers or even dismissals of District Officers who gave favoured timber companies a hard time about non-compliance with sector regulations. Such frequent interventions further weakened the public administrative culture around forestry. In this environment, it was logical (though unfortunate) that many silviocrats would capitulate and secure their own well-being at the expense of professional management. Eventually at some point even legislation ceased to be an important reference point for administrators – all that mattered was keeping the industry happy. Today many FC officials do not know the law on permits for example. They simply substitute their own preferred views on a case-by-case basis.

This was the ideal environment for the industry to expand its own influence. It was not slow to do so. Political patronage might have been the original route to timber rights. However, only forestry officials could ensure continual windfall profits by ignoring infringements or even instruct companies on how to beat the system. The industry gradually extended its direct

influence over the Forestry Department from the top downwards. The influence of various timber lobbies is a major determinant of the way the sector fails. As Smith for example describes the industry has been successful in blocking legislation that they oppose.

Shallow Policy consultation and consensus building

By its very nature, the colonial government could avoid democratic discussions about forest policy. This no doubt helped keep legislation and policy in sync. The need to engage in broad consultation may also have been a factor in the avoidance of formal policy reform for so long after independence. Obviously, the NDC government of the day considered the deep crisis of the sector and the ideological environment that dominated the UN Earth Summit etc. as sufficient mandate to proceed. With hindsight, however it is deeply ironic that a pro-people forestry policy intended to empower rural people could be developed without actual widespread consultation. The crisis actually required deeper and broader public consultation. This would have strengthened policy performance and addressed some of the problems discussed. The implications of various formulations would have been explored. Officials would have been compelled to make enforcement commitments to chiefs, communities, and even NGOs. These could then have held them accountable for these after the Policy was passed. It might even have helped put forestry legislation a campaign issues in 1996. The failure to create a broad support base for the Policy undermined it. Today forest-owners, organised labour and other groups who one would expect to mobilise around it are silent; they do not know what their rights are.

Policy ambiguity

Another factor is the language of the Policy itself. It is simply not dispositive regarding issues like inclusiveness and equity. Most of the encouraging language occurs in the sections dealing with “principles”. The issues disappear in the sections detailing “objectives”. There is little to provide comfort to communities or guidance to legislators and administrators. This “oversight” is hard to explain especially when set against the clear problem analysis provided, for example, by E. Kofi Smith who was Technical Director at the Ministry at the time. It is not surprising that issues such as competitive bidding and community participation remain contentious today.

Disruptive industry influence

There can be no doubt that the industry has fought policy implementation successfully for many years. Smith for example attributes the delays in getting Act 547 passed directly to industry interference. Certainly by the mid 1990s (or much earlier if Smith is to be believed) the industry - state relationship was inverted. The sector was run for the benefit of timber men. All other considerations came a distant second. The situation has impoverished both industry and regulators. Ghana’s timber industry has not matured in the main and is not capable of surviving under formal rational regulation. It operates politically and informally to impose its will in a short sighted and reckless manner mirroring the management of the sector over the years. Now that resources are depleting and real pressure for change has emerged, it is not clear what the future holds for the industry at large.

Institutional problems

In addition to these political problems, one must consider a number of institutional problems that have helped to retard legislative development. The Civil Service is weak and is a pale shadow of its pre-1980s self. It is not able to provide the support that political leadership requires.

For example, the approach to legislation is fundamentally flawed. Policy management to be effective must be integrated and holistic. Ideally, policy, principle enactments and subsidiary legislation should be prepared (though not necessarily enacted) more or less simultaneously. This is the only way that for example Parliamentarians (and the public) can assess whether a proposed legislative provision is realistic and likely to achieve policy objectives. This approach also optimises resources. This approach would have helped to prevent the fits and starts around competitive bidding (reflected in amendments to LI 1649) that delayed competitive bidding for 9 years. The failure of the ministry in this regard is significant. Following the promulgation of the 1994 Policy, the Ministry commissioned work on a Consolidated Forestry Act. This could have addressed the policy-law gap effectively. As it is, the committee submitted a comprehensive draft report in 1996. Unfortunately, work on the Forestry Act ceased inexplicably after 1996 by which time focus had already shifted to single issue Acts such as the Timber Resources Management Act.

Another example is that until relatively recently, neither the Ministry of Lands and Forestry nor the Forestry Commission had in-house legal expertise. Similarly, the Statutory Draughtsman's office cannot afford to detail an officer to work with the Forestry sector in its policymaking and legislative drafting processes from commencement through to completion. This has made for miscommunication between the two ministries. Often, ministry officials confronted with a professional interpretation of statutes feel that they have been completely “misrepresented” by the draughtsmen. The level of industry power-mongering and official vacillation that the sector suffers exacerbates the situation.

Of course, Ghana still has many talented and dedicated civil servants. However, recruitment and training have not kept pace with the growing needs of the sector or indeed the nation; they are overwhelmed. Recruiting, training and retaining quality in the Civil Service requires resources. There is a vicious cycle operating here. As long as Ghana is unable to improve rent recovery from the timber industry, the public sector will not have the funds to sustain let alone build up the sector.

One must in addition consider the institutional weaknesses of our Parliament. The public has the impression the MPs simply vote on party lines. The truth is that most Parliamentarians would like to take well-informed positions on issues such as forestry. Unfortunately, they lack the financial, technical and secretariat resources to allow a proper evaluation of national policy and legislative proposals tabled before them. MPs are reduced to merely responding to Executive initiatives rather than driving the policy debate in the manner envisioned in the constitution. This in turn relates to the way Parliament is funded, its effective subordination to the Executive branch of Government and even the constitutional requirement that the president appoint at least half of his ministers from Parliament creating divided loyalties.

Ways forward

Having understood the problem, we must act. What are some of the things we can do to tackle this problem and move forward?

A review of the 1994 Forest and Wildlife Policy is overdue. It is 11 years since Government adopted the Policy. Regular reviews of policy allow the system to take account of new trends at home and internationally. This should be sufficient reason for a review under normal circumstances. In this case, it is obvious that the system has failed to achieve the projected results. We are in a crisis and must respond accordingly. For example, the Forestry Commission projects that commercial species could be logged out in as little as five years. Surely, it is time to put the question directly: does Ghana need or can it afford a timber industry? If so, what kind of industry makes sense?

In conducting this review, we must encourage broader participation than has occurred in the past. Not only must, for example, government lawyers be involved in the discussion from the start but also other agencies that play a role in forestry and forestry industries such as revenue organisations, law enforcement agencies and the judicial services should play a role. Parliament must also be brought into the picture right from the start since their role is crucial. Beyond this, direct stakeholders must be engaged. The timber industry, organised labour, landowners, non-timber land users and NGOs must all have a seat at the table and make inputs. Government must lead the way. It must invest in processes such as the Forest Forums. It must take advantage of resources that might be available under the EU Forest Law Enforcement, Governance and Trade programme expected to be launched later this year. It can take advantage of resources available through for example the IUCN to engage all stakeholders. There is also room for private initiative. For example, civil society is making considerable progress in the forestry sector. From livelihoods and ecological support work NGOs are now active in policy work. They can contribute constructively to a public debate. This Tropenbos initiative is truly timely in that sense.

Public engagement around forest policy must also take on board how things work or can work. It cannot stop at a statement of principles and objectives. As we have seen, the problems extend far beyond the forestry sector. Clearly, the policy-law divide is not just a forestry problem but also a problem of politics and accountability. The engagement must begin to address the whole question of constitutional and public administration – policymaking, legislation and implementation. From the position of black sheep, the forestry sector could be the fulcrum around which public administration reform moves forward in Ghana.

There is no question that fundamental reform will be difficult to achieve. However, there does not seem to be any real alternative. There is also every reason for confidence in the ability of Ghanaians to rise to this challenge. Even this Tropenbos Focus Group discussion demonstrates that thinking is already moving in this direction. Our task is to hasten it.

References:

E. Kofi Smith (1998). *Developments and Setbacks in Forest Conservation: The New Political Economy of Forest Resource Use in Southern Ghana*.

1994 Forest and Wildlife Policy of Ministry of Lands and Forestry.

1996 Forestry Development Master Plan of Ministry of Lands and Forestry.

Nii Ashie Kotey et al. (1998). *Policy that works for forests and people No.4 Ghana: Falling Into Place*. IIED

3. DISCUSSIONS

3.1 GENERAL DISCUSSIONS

Three general discussion sessions took place. This section presents these thematically.

Forestry Reform: how far, which way

Interventions in the Domestic Market: Participants were interested to understand how the FC intervention in sales contracts between loggers and millers and the log export ban had affected local prices.

Mr. Bamfo agreed that the sales contract system needed revision. He explained that the FC introduced this to control domestic log prices. FPID was tasked to ensure fair arms-length negotiations between the millers and loggers. It had not worked because both millers and loggers refused to play by the rules. For example, loggers took advance payments from millers thereby putting themselves at a disadvantage in subsequent negotiations. He said the Ministry banned log exports to promote value-added processing and generate employment and not to control domestic log pricing.

Chainsaw control: Participants also questioned the inability of the FC to deal with the chainsaw problem after many years and whether it was not time to abandon the law enforcement approach in favour of an alternative livelihoods approach.

Mr. Bamfo agreed that facilitation of alternative livelihoods for chainsaw operators was the only way forward. He said that FC efforts to direct chainsaw operators into boundary clearing had failed because the 'benefits' were not comparable with those of chainsaw operation.

Stumpage Distribution policy: Participants questioned the basis for FC appropriation of 40% of stumpage from plantations.

An officer of the FC responded that these sums go to pay for the costs of developing and sustaining technical expertise in forestry.

Competitive Bidding administration: Participants also expressed concern about delays in completion of TUCs in respect of which "notices of grant" had been outstanding for more than one year even though the statutory period for this is 100 days. They pointed out that in this time illegal logging had robbed these TUC areas of much of the resource that companies actually bid for. Participants asked whether there were no regulations or protocols governing such situations.

Mr. Bamfo said that the main problem was that loggers made unrealistic bids, which they could not fund. Payment delays paralysed the whole process because the FC was not then in a position to inform the minister within the 100-day period that loggers had met their obligations. He discussed the Ministries concession on staggered payment arrangements to allow companies to meet their obligations within the statutory period but lessen the cash flow burden. Mr. Bamfo stated that once a logger receives a notice of grant the FC expects that logger to take responsibility for protection of the concession area.

Participants expressed concern about these positions. They argued that the proper thing was to cancel non-performing bids, return the affected TUC areas to the bidding pool and conclude with those who had met their obligations. They observed that the current approach unfairly penalised companies that had met their obligations. Some suggested that the FC fix a

ceiling price in addition to the floor price it currently sets. This would ensure that companies that made unrealistic bids could not then paralyse the system as appeared to be happening. They also pointed out that prior to awarding a final TUC the state could not expect timber companies to incur management expenses in respect of the forests covered by it. Some participants also suggested that the problem was that the FC did not pilot the competitive bidding system properly before moving for legislation. He recommended piloting for all future policy interventions.

Forest Protection Resource Development & Management

One participant stressed the need to address communities' need for timber for local development projects. He agreed that the concept of dedicated forests could meet this need. He however stressed that dedicated forests need not be protected within the meaning of the law.

Another participant observed that District Assemblies' weakness affected all their responsibilities and not simply natural resources. She called for a discussion of how to challenge or motivate Assemblies to perform more effectively. She wondered if regulations should be prepared to assist Assemblies and communities to play forestry roles effectively. In response to this, another participant suggested that the language used was often a barrier to community-level participation. He asked that officials pursue jargon-free communication. Other participants questioned whether decentralising forestry to District Assemblies made sense in a situation where DAs have not mastered their current responsibilities.

Mr. Owusu agreed with suggestion about model byelaws, which discussed, with communities and District Assemblies in non-technical language. Another participant pointed out that once the formulation of by laws etc. starts from the grass root the problem of language will not arise. He also called for policy rationalisation towards effective forest management.

Benefits Sharing and Participatory Resource Management

Management Philosophy and Sector Stability

A participant asked whether widespread non-enforcement of laws by FC and MLFM would bog the state down in litigation in the near future. Another participant made a case for the use of "crude methods" such as those used by the colonial government in creating forest reserves without which Ghana would not have any forest to argue about now. He said that through forestry fora and other collaborative forestry initiatives FC is informing communities of their ownership and other rights. He called for legal backing for collaborative forestry. However, he also called for 'wisdom' pending legislation. He cautioned against exposing the illegalities involved in timber operations and benefit sharing to the communities because this encourages radical confrontations and legal battles. Another participant argued that it was rather the failure to inform communities about new policy that led to apparent disaffection.

Mr. Opoku responded that if the state did not lead in reforming the sector and enforcing compliance through participatory approaches it would indeed face disruptive legal challenges from different quarters. It should also expect violent responses from communities such as Desiri and Enchi who reject the whole system as unjust. He denied that collaborative forestry advocacy creates confrontations at the community level. Rather, communities perceive the relationship between their growing poverty and the increasing wealth of timber men, forestry officials and politicians and are right to reject this. He argued that the way forward was greater equity through collaboration and not information control.

Quality of Legislation

Participants expressed interest in the legislative process. Former ministers observed that too often legislation does not capture the policymakers' intentions. Statutes are sometimes also contradictory and un-enforceable. Some participants suggested simplification of legal material to facilitate local community action to protect their own rights and official policy.

Mr. Opoku observed that part of the problem appeared to be that over many years the system taught officials that laws were unimportant so officials stopped paying attention to the law. That is why recent legislation reads so poorly compared to pre-1980s legislation.

The role of Industry

Participants also discussed the alleged dominance of the timber industry over regulators. Former ministers described the difficulty of managing pressures from timber lobbyists in both legislation and policy implementation. In response, a representative of the industry said that the timber industry rather feels marginalised in forestry policy decision-making because the Forestry Commission does not consult the industry about matters that concern timber companies. He also pointed to the emergence of a "forest industry" as distinct from the "timber industry". He said forest industries were by definition responsible and sustainable whereas timber companies were simply extractive. He argued that Ghana had too little of the former and too many of the latter. He insisted that there were responsible companies that wanted to work within the rules provided the state would enforce them evenly and not create unfair competitive advantage for the lawless.

Mr. Opoku insisted that most timber companies are actually just logging contractors with no interest in or capacity for sustainable forestry. This was the real reason for example why so many companies appeared unable to make realistic bids for TUCs in auctions. Most would not survive in a properly regulated environment. They stay in business now because the FC compels society to subsidize them. He agreed that there might be a nascent forestry industry which was as concerned as civil society about current trends. However, if they choose to remain silent on the issues they should not complain if society fails to make a distinction and eventually sanctions them alongside their more reckless colleagues.

Hon. Nayon Biliyo insisted that the timber industry exercises tremendous influence over government regarding legislation. He discounted industry claims about lack of consultation as a tactic to avoid responsibility for decisions that they participate in making. He saw the need to broaden the consultation process to involve all stakeholders in policy formulation.

Benefit Sharing

Participants questioned the basis for the sharing of off-reserve stumpage in a manner which excludes the farmers who nurture the tree. Participants also asked why companies should pay SRA in addition to Timber Right Fees, Stumpage Fees and other levies and taxes. An FC official pointed out that SRAs are reciprocal; companies pay cash and communities commit to protect contract areas from fire and encroachment. He thought that these were useful element worth retaining.

Mr. Opoku responded that there is no legal basis for the FC appropriating any part of stumpage or timber rights fees for itself. The Constitution does not provide for recovering the costs of generating stool land revenue. The proper systemic response would be to seek an amendment to the Constitution. However just as state officials prefer to ignore policy they also prefer arbitrary administrative solutions that impoverish constitutionalism. He argued that the state must seek amendments to the constitution to allow Parliament to determine the distribution of forest revenues. Alternatively, the FC must negotiate with resource owners (through chiefs and District Assemblies) for the payment to it of the required management fees. This would be difficult but would engender greater accountability on the part of the

state agencies to resource owners. He called for the abolition of SRAs. He argued that companies should pay taxes and leave the state to provide development services to citizens. The SRA approach facilitates corporate penetration and undermining of communities and is expensive. He agreed that there is a need for a complete review of the fiscal regime for timber towards fewer imposts and lower administrative costs.

3.2 GROUP PRESENTATIONS & DISCUSSIONS

The organisers selected three topics for group work. They asked groups to identify respectively:

- a. specific areas where reconciliation is required;
- b. information needs for policy and legislation; and
- c. mechanisms for fast tracking movement from policy to legislation

The plenary heard and discussed group reports. Presentation and deliberations are discussed below.

Group 1: Areas for Reconciliation between Policy and Legislation

Presentation

The group listed major policies of the last 10 years and assessed the extent of legislative backing for each under three categories “full”, “partial” and “none”. They presented this analysis in a table reproduced here as Table 1.

Table 1 Policy/Legislation Reconciliation

ISSUE (Ranking) F-Full; P-Partial; N- None	COMMENT/SOLUTION
Allocation of resource (P)	<ul style="list-style-type: none"> • No access for tertiary producers / communities.
Competitive Bidding (P)	<ul style="list-style-type: none"> • Inventory confirmation period inadequate. • TRF bid ceilings needed. • Post audit needed to pilot new policies.
Forest management responsibility/ PRM / capacity building (N)	<ul style="list-style-type: none"> • Mandate and roles of various stakeholders should be clearly spelled out. • Criteria for participation in management schemes should be spelled out • There should be facilitation / support to implement mandate
Plantation / development mandate / planters' rights / NTFPs development (P)	<ul style="list-style-type: none"> • Need to clearly state reforestation mandate • Ownership rights of tree planters / NTFP developers must be clearly stated in positive terms • restate reforestation mandate
Benefit sharing (P) Stumpage Plantation	<ul style="list-style-type: none"> • Only stools are recognised • Farmers / land users should be adequately motivated to assist regeneration of timber • Basis for FC take should be spelt out in legislation
Off reserve management (N)	<ul style="list-style-type: none"> • legislation required to recognise agric / timber systems and rights thereof • Dedicated forest schemes
Downstream processing / downsizing / fiscal rationalisation (P)	<ul style="list-style-type: none"> • Fiscal / simplified regime should be used to address the policy provisions • Building capacity in downstream processing skills, marketing support
Mining / exploration guidelines (N)	<ul style="list-style-type: none"> • Guidelines promulgated • Contradicting FWP & must be suspended

The group also suggested areas where fresh policy work is required as follows:

- a. Using Forestry to Alleviate Poverty
- b. Carbon trading
- c. Structure of FC / Other institutions
- d. Off-reserve area policy
- e. Encroachment on Forest Reserves – Galamsey
- f. Mining in Forest Reserves
- g. Creation of New Reserves – how
- h. Supply of sawn timber to make the use of chain sawn lumber unattractive on the domestic market
- i. The use / employment of certified (professional) forester in reforestation / rehabilitation programmes

Discussion

The following issues came up for discussion.

1. Narrow recognition of chiefs in distribution of stumpage excludes communities where there are no chiefs or chiefs do not own land. The FC officials present argued that the system recognizes traditional authorities whether chiefs or not.
2. Participants asked the group to distinguish clearly between defective policy, poor legislation and poor implementation. For example, participants observed that there was adequate policy regarding supply of lumber to the domestic market though there were problems of enforcement and effective monitoring.
3. One participant suggested that the FC review its techniques for evaluation of TUC areas as part of the competitive bidding process.

Group 2: Information Needs for Policy & Legislation

Presentation

The group used a power-point presentation. They asked and answered a series of questions.

Q. What are the **characteristics of information** needed?

A. Information should be:

- demand-driven information generated through continuous contact between researchers and policy makers;
- information that makes a difference;
- information that is little influenced by other factors i.e. can stand on its own
- information that has long term value; and
- information generated timely.

Q. What **information** do we need?

A. Information needs include:

- technical information on resource status;
- national vision and aspirations for the sector;
- local needs, concerns, views etc;

- global concerns and agenda;
- discrepancies in existing policy and laws;
- current relations among stakeholders; and
- impact of the existing policy (criteria and indicators).

Q. What information is required to **align policy with legislation**?

A. To reconcile policy and legislation we need to know:

- gaps in the existing laws;
- contradictions in policy and laws (intra and inter sectoral);
- weaknesses in existing laws;
- New opportunities offered by the policy;
- strengths of the policy;
- threats to the policy aspirations;
- the level of political will to implement policy; and
- motivation for change or status quo.

The group identified the following **capacities or skills** as necessary for progress

- legal skills;
- socio-economic analytical skills;
- group facilitation skills;
- monitoring and evaluation ;
- advocacy;
- lobbying;
- realism;
- research ;
- public relations/awareness creation;
- conflict resolution and negotiation; and
- collaborative skills (Group process).

The group identified the following as **specific needs** of the sector.

- laws to back the roles, responsibilities and rights of primary stakeholders e.g. the Interim Measures to control felling off-reserve;
- research;
- advocacy; and
- education.

Discussion

Discussion focused mainly on the definition and measurement of “political will”. Some participants insisted that political will is a matter of personal commitment of policy makers. Others argued that the “national interest” takes precedence over partisan political interests. Others argued that the public cannot ask more of a minister than s/he implements his or her Party’s programme faithfully. Other participants argued that the public must learn to demonstrate clear preferences for one policy approach over another through elections. Parties and governments would respond through policy statements and manifestos thereby creating a social contract. Bodies such as the Institute of Professional Foresters must become more vocal on issues of forest policy and especially social justice in forestry. Mobilising public opinion might be the greatest contribution foresters could make to policy. Other participants called for greater engagement between researchers and policy makers on the one hand and forest fringe communities on the other.

A participant asked how one assesses popular acceptance of policy. Other participants responded that this was only possible if we built and promoted increasingly representative institutions from Unit Committees up to Parliament.

Group 3: Mechanisms for fast tracking movement from policy to Legislation

Presentation

Group 3 first outlined the steps through which policy becomes law as follows:

- a. MLFM identifies problems and conceives ideas/policy.
- b. The Ministry forwards a memorandum to cabinet, which explains content, need, economic, social and political implications.
- c. Cabinet approves or disapproves and informs AG's department and MLFM.
- d. AG waits for drafting instructions from the ministry.
- e. A draft is prepared and sent to the ministry for validation.
- f. After necessary amendments, final draft goes to cabinet and approved.
- g. The AG authorises government printers to print the bill
- h. The Attorney General sends copies of the Bill to Parliament.
- i. The Bill is laid before parliament and goes through first reading.
- j. The Bill is then referred to the Parliamentary Select committee on Lands and Forests, which deliberates on it and may hold public hearings and invite memorandum from the public. After all this the Select Committee reports to the full house of parliament on its deliberations.
- k. The full house of Parliament considers the Select Committee's report and makes amendments to the Bill as it sees fit.
- l. The bill is passed on the third reading and forwarded for Presidential assent.
- m. The Presidential assents unless (s)he has reservations on any aspect of it. In such situations, the President may consult with the Council of State and then submit his comments for the reconsideration by Parliament.
- n. If the Presidents arguments fail to persuade Parliament the President must give his assent.

Challenges and bottlenecks in the process

The Group also presented a table that isolated the different "players" in the legislative process and identified the constraints each faces in playing their designated roles. We reproduce this as Table 2. Finally, the group proposed measures to address the constraints identified in table 2. These are set out in Table 3.

Discussion

Participants discussed the difficulty of identifying grassroots civil society interest groups and their legitimate representatives for purposes of participation in policy formulation. Some suggested that organising forestry within the District Assembly structures would ease this problem.

Participants also dwelled on the problems of ineffective communication between policy makers and draughtsmen. All agreed that draughtsmen should be involved from the initial formulation of policy. If for logistical reasons this is not possible then FC legal staff should collaborate with AG staff in drafting legislations. FC legal staff could even prepare first drafts of legislation for improvement by the AG's specialists. However, one participant argued that statutory drafting is so specialised that FC legal staff cannot handle it.

Table 2. Challenges and bottlenecks

Cabinet	FC/MLFM	Stakeholders	Parliament & PSC	AG	Development partners & foreign consultants	civil society
<p>Heavy schedules, procedures and lack of cooperation amongst members</p> <p>Lack of political will</p> <p>Lack of cooperation amongst members</p>	<p>Vested interests within FC and MLFM.</p> <p>Conflict of interest & lack of appreciation of policy/legislation</p> <p>Ignorance of related laws</p> <p>Poor interaction between MLFM & PSC</p> <p>Lack of political will</p> <p>Grievances based on perceived marginalisation of certain agencies, departments and individuals.</p>	<p>Strong industry lobby</p> <p>Inadequate stakeholder identification.</p> <p>Poor mechanisms for consultation & stakeholder involvement - particularly landowners and CBOs. (How do you determine sufficiency of consultation?)</p> <p>Poor representation of some stakeholders groups – farmers, CBOs, herbalists, traditional priests, educational institutions, District assemblies.</p>	<p>PSC not proactive</p> <p>Ignorance of related laws.</p> <p>Parliament's timing and procedures.</p> <p>Poor interaction between MLFM & PSC.</p> <p>Lack of political will.</p> <p>Late involvement of PSC</p> <p>Grievances based on perceived marginalization of certain agencies, departments and individuals.</p>	<p>Understaffing</p> <p>Under-resourcing (computers, software)</p> <p>Late / non-involvement of drafting personnel.</p> <p>Ignorance of related laws</p> <p>Improper drafting instructions, style and presentation.</p>	<p>Development partners demanding rushed processes.</p> <p>Reliance on recommendations of foreign consultants who do not understand local context in drafting legislation.</p>	<p>Lack of knowledge of the legislative process to demand quick action</p>

Table 3. What has to be done?

Who/which institution?	Does what?
Civil society groups & coalitions	Advocacy and activism to engage with MLFM & FC, exert pressure for faster action Educate stakeholders to make demands and participate in consultative processes
MLFM / FC / GoG	Engage with public making forest resource management & governance a national objective Joint timeframe setting with AG's dept, cabinet & Parliament Inclusion of provision of technical support (computer) for AG's department in project proposals Educate PSC on policy and legislation being advocated District Assemblies should be recognized as a key partner in the whole process of forest resource management, policy and legislation. Concrete steps must be taken and if possible legislative change must happen for DAs to take up official mandate
Tropenbos	Documentation of manuals of procedures to engage in stakeholder education on the process of moving policy to legislation
Consultancy / Commissioners	Ensure local partnership with foreign consultants for understanding of context for proper recommendations
GIMPA	To provide training in legislation process
PSC	Be part of the legislative process from the very beginning
FC Legal Unit	Team up with AG's office to draft legislation
FC Board	
AG's department	

4. CONCLUSIONS & RECOMMENDATIONS

The Focus Group Meeting confirmed the importance of an enquiry into the policy and legal environments and the processes through which these evolve in Ghana as part of the correction of the sector's problems. It did not "resolve" the policy legislative disconnect and could not have been expected to do that. However it was thought-provoking and offered all participants useful insights into the nature of the problem or problems. It also pointed to interesting avenues of further enquiry for Tropenbos and its associates.

First we need an agreement about what "policy" is. Discussants obviously used the term in very different ways. Some discussants reserved the term for the 1994 Forest & Wildlife Policy positing it as an almost juridical standard for practices in the sector. Others included all the cabinet approved sector programmes and indeed some specific cabinet decisions (e.g. suspension on round log exports or increases in the off-reserve AAC). Some obviously considered decisions of the FC as "policy". Others even suggested that policy is what institution "do" rather than what they "declare". Some consensus on terminology is useful for further discourse.

Secondly (and most importantly), the discussions pointed to the need for a better understanding of how policy is made in Ghana. Who influences it and how? What processes do the participants go through? Are these processes peculiar to the forestry sector or are they general? Allegations about timber industry capture of the policy process to the exclusion of all others should not be dismissed. Neither should they be taken for granted. The timber industry appears to encompass many different and shifting interests – some of which, like FAWAG and GHATEX count themselves amongst the marginalised. How specifically do the different interest groups influence policy? What are the incentives offered? Though greed plays a role this is almost certainly an oversimplification. Other motives including solidarity (ideological, professional and institutional) and political exist and must be understood. Even where there is corruption we must ask how this is actually done. Who takes from whom? Is the relevant theatre the FC, the Ministry or Parliament or all three? What is the cost of this to timber companies compared to the expected costs of a more transparent arrangement? All of this needs to be properly investigated in order for corrective measures to be initiated by affected stakeholders.

Thirdly, there is a need for further interrogation of the legislative process. The official process was well reported in the work groups. However the official process has not delivered value. What could be done differently? The working groups came up with a number of suggestions. Are these practicable? What would they mean for the organisation of the government machinery and the costs of its functioning. For example, at present the Attorney General's department gets involved in the legislative process only after cabinet has approved a policy. Some of the proposals made at the FGD require an earlier involvement by the legal service. Is this possible within current resource constraints? Is it within the competence of the Legal Service or are we making unfair assumptions?

Finally, the meeting threw up issues about local or district level policy and lawmaking. Especially in relation to resource sustenance issues, but also necessarily in relation to benefits sharing and management, there is clearly a role for local leadership. The example of the success of the fire control policy developed without (or in spite of) legislative intervention is an important one. The search for models for by laws and practices whether from forestry or other sectors and whether from pre or post independence local government is one that should be taken seriously. This could also prove a fruitful area of research for organisations such as Tropenbos.

APPENDICES

APPENDIX 1: PROGRAMME FOR FOCUS GROUP DISCUSSION

- Theme:** Reconciling policy reforms with forest legislation
Venue: Elmina Beach Resort;
Dates: Monday 4th - Tuesday 5th July, 2005
Objectives: 1. to identify areas where forest legislation needs to be brought in line with policy reforms.
2. to address challenges in moving from policy reforms to legislation

Day 1 Monday 4th July

- 10:00 -11:00 Arrival and registration of participants – Anneke and Olivia
11:00 -12:10 **Opening ceremony**
11:00 -11:05 Introduction of chairman Ms. Olivia Larbi-Nyanteh
11:05 -11:10 Chairman’s response Prof. D. Adzei-Bekoi
11:10 -11:25 Welcome addresses Mr. K.S. Nketiah
11:25 -11:55 Keynote address – Policy reforms: which way and how far?
Mr. R.K. Bamfo
11:55 -12:10 Chairman’s remarks Prof. D. Adzei-Bekoi
Group photograph

12:30 -13:30 **Lunch**

13:30 -14:15 Forest protection, resource development and management
Mr. J.G.K. Owusu
14:15 -15:00 Forest benefit sharing and participatory resource management
Mr. K.O. Kyeretwie
15:00 -15:45 Challenges of moving from policy to legislation.
Mr. Nayon Bilijo

15:45 -16:15 **Break**

16:15 -17:30 **Group discussions**
GROUP 1: Identify the areas where reconciliation is necessary
Leader: Mr. A. Asare
GROUP 2: Identify the information needs for policy
Leader: Mr. K.K.F. Ghartey
GROUP 3: Mechanisms for fast-tracking movement from policy to
legislation Ms. Emelia Arthur

17:30 **End Day 1**

Day 2 Thursday 5th July

- 7:10 - 8:15 **Breakfast**

8:30 -10:00 Presentation of reports from the Groups – Group Leaders

10:00 -10:15 Chairman’s response – Prof. D.A. Adzei-Bekoi

10:15 -10:20 Vote of thanks – Mr. K.S. Nketiah

Closing and departure

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APPENDIX 3: GROUP MEMBERS AND FACILITATORS

GROUP 1: Identify the areas where reconciliation is necessary

1. Mr. Alex Asare – Leader
2. Mr. J.G.K. Owusu
3. Mr. Kyeretwie Opoku
4. Mr. Frank Nana Enos
5. Mr. F.K. Odoom
6. Mr. Fredua Agyeman
7. Mr. Ellis Paul Atigah
8. Mr. Kwasi Darko Asare
9. Mr. Frederick Koomson
10. Mr. Samuel Afari
11. Ms. Rose Adisenu-Doe

GROUP 2: Identify the information needs for policy

1. Dr. Kyere Boateng – Leader
2. Mr. Hans Vellema
3. Mr. J.K.G. Armonoo
4. Mr. Oheneba Amponsah Agyemang
5. Mrs Edith Abruquah
6. Mr. K.K.F. Ghartey
7. Mr. Samuel K. Nyame
8. Mr. Michael Nzulu
9. Ms. Anneke Wieman
10. Dr. Mark Appiah
11. Dr. Ari Pappinent

GROUP 3: Mechanisms for fast-tracking movement from policy to legislation

1. Ms. Emelia Arthur
2. Dr. Christine Amoako-Nuamah
3. Prof. D. Adzei-Bekoi
4. Hon. Cletus Avoka
5. Mr. R.K. Bamfo
6. Hon. Nayon Bilijo
7. Mr. Kwame A. Oduro
8. Mr. J.E.N. Nyadu
9. Mr. U.K. Armoo
10. Mr. James Anewenah
11. Mr. K.S. Nketiah