

Learning lessons from FLEGT-VPA to promote governance reform in Ghana's cocoa sector



1. Introduction

Cocoa is crucial to Ghana's economy, but is also a significant driver of deforestation. The Ghana National REDD+ Strategy identifies agricultural expansion to be responsible for at least 50 per cent of deforestation, with cocoa a major contributor¹. The forest loss is damaging cocoa production itself, as local forests are key to maintaining rainfall and soil and water quality. Ghanaian cocoa farms are aging and becoming less productive, further exacerbating the risk to remaining forests as farmers expand outwards to find new productive areas to farm.² Farmers themselves – who are largely smallholders, working on farms from 1-5 acres – suffer from low and volatile cocoa prices, with most living far below the United Nations extreme poverty line of US\$1.90 per day.³ The endemic poverty in the sector has also fed the use of child labour.

Poverty and child labour in the cocoa sector have become issues of international concern – as has, more recently, deforestation. A number of

voluntary initiatives have been launched to tackle these problems – but there are a host of deeper governance issues that must be addressed for these initiatives to make an impact.

In this briefing note, we seek to provoke a conversation around how producer and consumer countries, including the EU, could use legally-binding schemes to tackle these governance issues. In so doing, the paper draws lessons from Ghana's on-going Voluntary Partnership Agreement (VPA) process, which has been successfully tackling governance problems in the timber sector for some years. In particular it explores how a bilateral partnership agreement – one of the options identified as having "high" impact by the 2018 European Commission feasibility study on agricultural deforestation—between Ghana and European countries could help encourage governance reform in the cocoa sector.⁴



2. Existing initiatives in Ghana's cocoa sector

Ghana has participated in many initiatives to address deforestation in its cocoa sector. The most recent are Cocoa Action, the Cocoa Forest REDD+, the Climate Smart Cocoa Standard and the Cocoa & Forest Initiative (CFI). There are also certification schemes, namely UTZ/Rainforest Alliance and Fair Trade, which attempt to guarantee sustainability along specific supply chains. Several chocolate companies have also launched programmes to make their own supply chains sustainable and equitable.

So far these initiatives have mainly been built around voluntary action from companies and government, and often focus on individual supply chains or cocoa production areas rather than national-level issues. It is important they avoid the fate of voluntary industry initiatives to end child labour in the cocoa sector,

which despite over a decade of significant financial and time investment, left the NGO-led Cocoa Barometer to conclude in 2018 that child labour was still “widespread” throughout the industry – with “not a single company or government...anywhere near reaching the sector-wide objective of the elimination of child labor, and not even near their commitments of a 70% reduction of child labor by 2020.”⁵

In light of this experience, the global chocolate industry recognised, in their 2018 World Cocoa Conference Declaration, “the urgency and scale of the challenges” facing the cocoa sector, calling for approaches supporting “effective governance” and emphasising that “voluntary compliance has not led to sufficient impact”.⁶

3. How governance problems drive deforestation in Ghana's cocoa sector

Poor governance is driving problems in the cocoa sector, including poverty and child labour. This briefing note focuses on deforestation, but poverty issues are very tightly linked, and policy approaches should consider the social and environmental issues holistically.

Weak enforcement of Forest Reserves and National Parks

In comparison to other sectors, environmental aspects of cocoa production in Ghana are poorly regulated. The only legal constraint limiting deforestation for cocoa is the prohibition of land-clearing within National Parks and Forest Reserves. However, the enforcement of that prohibition is weak, with clearing happening regularly outside of legally-admitted farms. Ghana's Framework for Action under the Cocoa & Forests Initiative says that from 1 January 2018 it is forbidden to source cocoa from National Parks, Wildlife Sanctuaries and Wildlife Resource Reserves, except from farms with existing legal status. But this is already illegal under national law: the question is how to ensure this is actually enforced.

Ultimately, enforcing National Parks and Forest Reserves is the government's responsibility. And it is the government's responsibility to devote sufficient resources to do this effectively. But the Ghana Cocoa Board (COCOBOD) has built infrastructure and provided extension services for cocoa farmers within Forest Reserves that have been illegally cleared for cocoa, perpetuating the problem and encouraging newcomers. Weak government coordination exacerbates the issue, with COCOBOD actively resisting efforts of the Ghana Forestry Commission to

cut down cocoa trees in Forest Reserves, as it would reduce national production levels.

The fact that cocoa is still coming from Forest Reserves and National Parks is partly explained by the lack of legal accountability for downstream actors for buying cocoa from illegal production areas. Licensed Buying Companies (LBCs) face no sanctions; neither do government agents for providing extension services in those areas; and neither do the traders who take the cocoa out of Ghana. There is no national-level monitoring system to check that cocoa is not coming from an illegal area: currently, Ghana's national traceability systems focus on the quality of the bean without questioning its source. This means that any legal prohibitions against growing cocoa in protected areas are almost entirely lacking teeth. Company-led traceability systems can help to some extent, but ultimately the only actor able to guarantee cocoa legality and traceability on a mass scale, and for the long term, is the Ghanaian government.

Lack of legal protection for trees outside Forest Reserves

There is a lack of legal protection for trees outside of Forest Reserves – where most of the deforestation in Ghana's cocoa sector takes place.⁷ Deforestation in off-reserve areas has a long history: since 1948, Ghana followed a national policy which designated all areas outside the Forest Reserves to decimation, giving out permits for felling trees so that the state could claim these before they were destroyed by farmers. Today, if a farmer wishes to clear trees in the off-reserve forest area to plant cocoa, there

are no over-riding environmental considerations in Ghanaian law preventing him/her from doing so. The VPA-FLEGT did not address these forest conversion issues.

Weak tenure rights for farmers

Another key issue is that cocoa farmers do not have ownership of the naturally-occurring trees on their farm. These are owned by the state and when the government sends in a timber concessionaire to cut the trees, they often destroy the farmer's cocoa in the process. This same dynamic also disincentivises farmers from allowing any natural tree regrowth on their farms, presenting a serious obstacle to any reforestation or agroforestry plans.

Another issue is weak ownership rights over land. At the moment, the majority of Ghanaian cocoa farmers are migrant farmers – meaning their right to farm a certain piece of land is given to them as a temporary, customary permission by the local traditional chief. The land access right given to farmers by the chief is generally based on the condition that cocoa trees remain planted on the farm. This disincentivises farmers from replacing aging and unproductive cocoa trees with new varieties, as this would allow the chief to reclaim the land or change the terms of the original agreement.

Poor government coordination and land-use planning

Ghana also lacks an overarching land-use planning process. It is not clear at the national level, and

there is no long-term strategy, as to which areas are designated for cocoa (and palm oil) production and which are not. This is partly due to the traditional land laws whereby chiefs decide on where and how land is used outside of state-owned Forest Reserves and National Parks.

Weak coordination between government agencies is another issue: the COCOBOD does not work effectively with the Lands Commission and Forestry Commission to discuss how national priorities around cocoa production can be counter-balanced with other priorities such as forest protection.

National policy is focused on production, not long-term sustainability

Overall, Ghana's cocoa sector suffers from the fact that its whole system of governance – whether it is the mandate of the COCOBOD, the National Cocoa Policy, the national traceability system, or the mandate of the cocoa growers' cooperatives & Licensed Buying Companies – is entirely focused on short-term production and sale. Even the national cocoa plan aims for higher yields, which in the absence of higher productivity means expansion. Environmental objectives, the interests of cocoa farmers, or even the long-term survival of the sector, have never been part of the picture. The whole system needs a national discussion and overhaul, which apart from government and private sector, brings in cocoa farmers, citizens, and national civil society who can advocate for a more holistic and long-term set of objectives.

4. Positive lessons learned from Ghana's VPA process for illegal timber

The European Union developed the Forest Law, Enforcement, Governance and Trade (FLEGT) Action plan in 2003 to address illegal timber that entered the EU. As part of the FLEGT Action Plan, the EU entered into a bilateral Voluntary Partnership Agreement (VPA) with Ghana in 2009 to address the drivers of illegal logging and support Ghana to develop a system to enforce its laws. To reward such investments, the EU would give Ghana and other VPA countries easier access to the EU market.

To implement the VPA, Ghana took several steps. Firstly, Ghana developed a "legality definition" of what constitutes legal timber in Ghana. This process also led to the identifying of areas of national law that were unclear or lacking – such as policy and legal incoherence, inadequate public access to information, inadequate tax revenue collection from forest management and non-delivery of logging companies' obligations to forest communities. These

issues were then put on the agenda for legal reform. Secondly, Ghana developed and is rolling out an electronic national traceability system, with built-in quality controls and independent auditing, to ensure that all timber sold in Ghana is legal. These processes – from negotiation through implementation of the agreement – were deeply rooted in a multi-stakeholder deliberative and participatory process where issues of concern for different stakeholders were raised and addressed as part of the process.

One important outcome of this process was Ghana's 2012 Ghana Forest and Wildlife Policy, which was heralded as providing the most ambitious steps to date towards addressing tree tenure and community participation in forest management. The VPA stakeholders also worked together to eliminate a whole category of "special permits" in 2016, which were being issued by the forest minister without meeting the environmental standards of logging

permits. The VPA process has led to a 640 per cent increase in logging taxes being collected by the government.⁸ And stakeholders worked together to pass a landmark new law for the forestry sector

in 2017, LI 2254, which cleared up inconsistencies in the sector, brought old social and environmental standards up to date, and passed key reforms on public access to forestry information.

Successes of FLEGT-VPA implementation in Ghana :

- Clarity in the timber legality regime – general acceptance of what constitutes legal timber
- Well established traceability system with built-in quality controls and independent third-party audits to ensure compliance
- Open policy and law-making space for multi-stakeholder deliberative and participatory processes
- Transparency and access to information for stakeholders

Lessons from FLEGT-VPA for Ghana's cocoa sector :

- Importance of multi-stakeholder deliberative process and the value of well-informed and assertive national civil society groups
- Legality and sustainability are not mutually exclusive
- Private sector will act responsibly if there is clear show of political leadership with mutually respected regulatory framework
- Verifying enforcement and including a complaint mechanism builds credibility
- Governance reforms takes time, tact, resources and enduring political will
- Manuals, procedures and guidelines are important, but legislation gets things done
- Voluntary commitments need to align with national laws and policies

5. Recommendations: how a bilateral partnership agreement can support cocoa sector reform

To stop deforestation, combat climate change and promote restoration of Ghana's cocoa-growing forest landscapes, a transformation needs to happen in the governance of the cocoa sector.

But transformation will not come on its own. At the moment, governments and chocolate companies have made commitments to stop deforestation in the sector. But to succeed they need strong collaboration with other actors, particularly farmers and civil society, who are either directly involved in cocoa production or have a stake in the challenges to be addressed (like deforestation).

There is also the need for strong incentives if the more intractable governance challenges are to be resolved. As previous cocoa initiatives have shown – as well as the experience of FLEGT – a market-driven mechanism could help provide this incentive. This is where the main importing European countries – France, Germany, the Netherlands and the United Kingdom – could play a key role. As the importer of 60 per cent of global cocoa, the EU has significant power to influence the entire cocoa value chain – and Ghana is important to the European chocolate

industry too, providing 25 per cent of European cocoa imports⁹. Actors pushing for governance reform in Ghana would benefit highly from a clear political signal of support from the main importing European countries and from the European Commission. In time and in close cooperation with the government of Ghana, these countries should ban the production and trade of illegally-produced cocoa, via a Bilateral Partnership Agreement on cocoa.

Bilateral partnership agreement with key consumer countries

Important consumer countries (such as the Netherlands, Germany, France and the UK – preferably the EU as a whole) could sign a bilateral partnership agreement with the government of Ghana, saying they will only accept cocoa that is legally sourced according to Ghanaian law. This would be of great help in ensuring that promised legal enforcement and reforms actually take place. They would also commit to providing diplomatic, technical and financial support to national processes to clarify and improve Ghanaian laws around cocoa. These governments could meet with the

government of Ghana periodically to check on the implementation of its commitments (similar to what the European Commission has done effectively within the VPA process; see proposal below re: a Joint Implementation Committee).

The European Commission's feasibility study on tackling agricultural deforestation identified that such "bilateral partnership agreements on forest risk commodities" would have "high" contribution to solving the problem—one of only two supply-side interventions that were ranked so highly.¹⁰

Legality definition

Ghana should develop a legality definition setting out what laws and standards should be met for cocoa to be considered "legal" in Ghana. This should include looking at areas where new laws need to be drafted, in order to fill gaps in the current legal framework and address some of the issues laid out in the previous section of this briefing note. National laws could be brought in line with internationally-accepted standards for the cocoa sector, including High Carbon Stock/High Conservation Value, certification standards like UTZ/Rainforest Alliance and Fair Trade, Ghana's Climate Smart Cocoa standard, and the recently developed ISO standards, which all address environmental, social, equity and quality issues for the cocoa sector. Any legal reforms must come from a deliberative process that allows government, industry actors, national civil society, and cocoa farmers to make decisions together.

National traceability system

A bilateral partnership agreement on cocoa would need to build traceability from the farm gate to the point of export, ensuring that the legality definition set out above is being met.

The Cocoa Health and Extension Division of COCOBOD (CHED) is mapping all cocoa farms and farmers; this would be a good start for ensuring traceability. Different actors along the supply chain-- CHED, LBCs, the Produce Buying Companies (PBCs), and cocoa traders—would be made legally responsible for ensuring they are only sourcing legal cocoa. Some buying companies have already completely mapped their supply chains, so there is a good beginning on which to build, but information needs to be shared. The next step is to ensure that this level of information is available across the whole country.

COCOBOD should be legally tasked with verifying the traceability system, but it should also be monitored by independent actors – such as

independent auditors, existing certification bodies (UTZ/Rainforest Alliance and Fair Trade), and national civil society.

Real multi-stakeholder participation

The main lesson from Ghana's VPA process has been that different stakeholders can use it to table their concerns, and more importantly raise the core problems affecting stakeholders, allowing an honest discussion about solutions. This goes beyond "consultation", to genuinely deliberative processes where stakeholders respect, argue, build trust, decide and collaborate on an equal level. This is something lacking in most government processes in Ghana, and has so far been unique to the timber sector because of the VPA. Cocoa farmers are currently not organised to represent their collective interest, or to advocate in national policy discussions; at the moment, cocoa cooperatives are solely focused on organising cocoa purchase and sale. Ghanaian NGOs have a big role in facilitating cocoa growers to more effectively participate in policy-making.

In the VPA process, two multi-stakeholder committees have been instrumental in moving the reform process forward: firstly the Multi-Stakeholder Implementation Committee (MSIC), comprising national government, national private sector and national civil society; and secondly the Joint Implementation Committee, bringing together the EU and the Ghanaian stakeholders. These committees have met every few months, allowing stakeholders to check up on each other's progress, bring new issues to the table, and ensure promised actions actually happen. Similar institutions could be established for cocoa.

Role of an Independent Facilitator

In the forestry sector, the high level of trust between VPA stakeholders has been built over the years thanks in large part to the FLEGT facilitator. The FLEGT facilitator, who is independent from any of the stakeholder groups, has been influential in ensuring that where there are deadlocks, there are still back channels for communication to address controversial issues. This has enabled stakeholders to compromise on hard-line positions to find common agreement.

Endnotes

- 1 <https://www.forestcarbonpartnership.org/sites/fcp/files/2016/Sep/Ghana%27s%20National%20REDD%2B%20Strategy%20Dec%202015.pdf>
- 2 FAOSTAT The agricultural production, [Online], 2015. Available at: http://faostat3.fao.org/download/Q/*/E, April 20, 2015
- 3 http://www.cocoabarometer.org/Cocoa_Barometer/Download_files/Cocoa%20Barometer%202015%20.pdf
- 4 <http://ec.europa.eu/environment/forests/pdf/KH0418199ENN2.pdf>
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- 6 <https://www.icco.org/about-us/icco-news/387-berlin-declaration-of-the-fourth-world-cocoa-conference.html>
- 7 Proforest, "Building on legality to deliver responsible and deforestation-free commodity supply chains," 2018.
- 8 https://loggingoff.info/wp-content/uploads/2017/02/civicresponse_ghana.pdf
- 9 https://www.cbi.eu/sites/default/files/market_information/researches/trade-statistics-europe-cocoa-2016.pdf
- 10 <http://ec.europa.eu/environment/forests/pdf/KH0418199ENN2.pdf>

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