

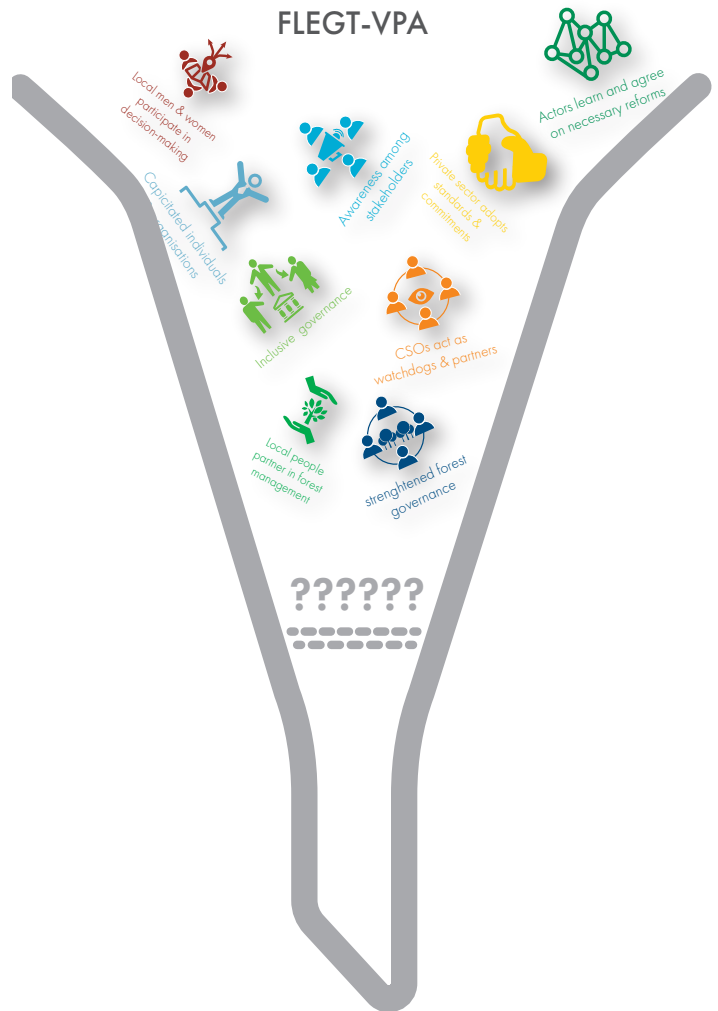
Transferring lessons from FLEGT-VPA to promote governance reform in Ghana's cocoa sector

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 farm². Farmers themselves – who are largely smallholders, working on farms from 1-5 ha – suffer from low and volatile cocoa prices, with most living 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 been an issues of international concern for the last 10 years – 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 successfully



Ghana's cocoa sector

tackled governance problems in the timber sector for some years. In particular it explores how a multilateral 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



This Briefing Paper draws on a “*Scoping Study on the Relevance of FLEGT-VPA for Sustainable Agro-commodity (cocoa) Initiatives in Ghana*”. This study was commissioned by Tropenbos International with financial support of the

Ministry of Agriculture, Nature and Food Quality of the Netherlands and executed by Tropenbos Ghana, in collaboration with EcoCare Ghana and Forest Watch Ghana.

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. The NGO-led Cocoa Barometer concluded in 2018 that Sector-wide efforts to improve the lives of farmers,

communities, the environment and addressing child labor made in the past decades have not led to significant impact.

The present approach – with a multitude of different strategies and hundreds of projects – will not be successful, especially as there are almost no efforts to challenge the underlying issues around power and political economy. A renewed sense of urgency must be coupled with alignment and action commensurate to the size of the challenges⁵.

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 they do not disclose information on the farms from which they buy. Ultimately all information needs to be disclosed and available to Ghanaian government and an independent auditor to guarantee cocoa legality and traceability on a national scale.

Lack of legal protection for trees outside Forest Reserves

There is a lack of legal protection, or insecure tree tenure, 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 cleared 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. There is no land-use planning. 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. Climate change with decreasing rainfall is already effecting cocoa production, the frontiers of the cocoa growing zone of the country is drifting southward.

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 increased production targets, which in the absence of higher productivity means expansion. The increase in production from 300.00 tons in 1990 to 800.000 tons in 2016 is attributed to increase in ha from 0.6 to 1.6 million ha. Also the number of cocoa farmers has followed the same trend to around 800.000 in 2016. Environmental objectives, or even the long-term survival of the sector, have never been part of the picture.

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 which allowed for issues of concern for different stakeholders to be 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 ministers 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, child labor).

The key governance challenges identified included:

- Weak enforcement of Forest Reserves and National Parks laws
- Lack of legal protection for trees outside Forest Reserves
- Weak land and tree tenure rights for farmers
- Poor accountability due to weak monitoring
- Elite capture of the sector
- Poor government coordination and land-use planning

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 Multilateral Partnership Agreement on cocoa.

Multilateral 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 multilateral/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 Action against 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 and independent verification

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 disclosed and 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.

6. Demand for deforestation free and sustainable cocoa and the need to go beyond certification

Certification as standard bearer

Certification is one of the available tools in the market to ensure the application of principles for sustainable production of commodities, like cocoa. It comprises a set of principles addressing

social and economic concerns of farmers, farmer groups and communities including environmental requirements.

Within their scope, the different certification schemes vary in their main focus or strategy for

achieving a more sustainable cocoa production with some of them focusing on the creation of sustainable trade relations (e.g. Fairtrade) and others with a greater focus on increasing farmer productivity as a way to strengthen farmers (e.g. UTZ Certified). It can be said that overall they seek improvements in farmers' livelihoods, focus on developing good agricultural practices and on capacity building. It is important to highlight that Fairtrade differs in this sense from other schemes, as increases in productivity is not of the focus. Instead, Fairtrade aims for better and more just trade relations. UTZ and Rainforest Alliance are explicit about their objective of increasing farmers' yields. Recently the ISO drafted a new cocoa standard which could become quite influential when it is operationalized.

Consumer demand

Consumers and consumer governments play an important role in demanding for quality in producer countries. Without such demand, efforts at sustainable sector transformation cannot work. Demand from consumers both local and international need to be aware of the ecological foot prints of their consumption practices and make more meaningful choices to reward responsible value chains through premium payments. Consumer governments also need to support private sector and civil society momentum towards deforestation-free commodity chains and where necessary use regulatory levers.

Because of the growing consumer awareness on issues such as poverty, child labor and deforestation as well as concerns of future cocoa production, the major cocoa companies are committed to sustainable sourcing. Concerns for sustainable cocoa and consumer demand for certified cocoa is highly concentrated in Western countries. For example, Fairtrade retail sales in 2015 were 79% in Europe, 16% North America, 3% Oceania, 1% Asia and 1% other (Lernoud et al, 2017).

Multilateral action against deforestation

In Europe; Denmark, France, Germany, Italy, Netherlands, Norway and the United Kingdom signed the Amsterdam Declarations with the commitment to import deforestation-

free and sustainable commodities by 2020, including cocoa. The Declarations emphasize non-legally binding political intentions and support to the private sector but stop short of committing to strong regulations to address the problem of deforestation. The implementation strategy focuses on (1) Facilitating European actions on climate, deforestation and trade; (2) work through public-private partnerships and landscape approaches to promote deforestation-free supply chains; (3) enhance the dialogue with major producer and consumer countries; and (4) enhance monitoring, transparency and corporate social responsibility (CSR) – reporting.

The need to go beyond (voluntary) certification

There is an increasing recognition for the need to go beyond certification and for sector-wide approaches and the need to transition from voluntary commitments to mandatory systems that put responsibility on both producer and consumer countries to ensure responsible production and sourcing respectively. 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. Aligning sustainable production initiatives and cocoa sector reforms in Ghana with the Cocoa & Forest Initiative and creating synergy with the Amsterdam Declarations would simulate the 'T' of FLEGT.

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
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- 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
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People to contact:

Tropenbos International: Henk Hoefsloot – henk.hoefsloot@tropenbos.org

Tropenbos Ghana: Mercy Owusu Ansah – mercyowusuansah@yahoo.com

Fern: Julia Christian – julia@fern.org

EcoCare Ghana: Obed Owusu-Addai – obed@ecocareghana.org

Forest Watch Ghana: Samuel Mawutor – smawutor@gmail.com

