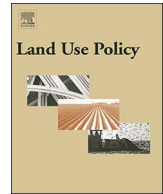




Contents lists available at ScienceDirect

Land Use Policy

journal homepage: www.elsevier.com/locate/landusepol

Illegality and inequity in Ghana's cocoa-forest landscape: How formalization can undermine farmers control and benefits from trees on their farms

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ARTICLE INFO

Keywords:

Ghana
Cocoa
Forest
FLEGT VPA
Timber
Formalisation

ABSTRACT

Schemes to promote sustainable forest management have increasingly focused on addressing widespread informalities in timber production, based on the presumed links between formalisation, the maintenance of forest cover and local welfare. This trend is typified by the EU Forest Law Enforcement, Governance and Trade (FLEGT) initiative and associated Voluntary Partnership Agreements (VPA) aimed at eradicating the trade of illegal wood between partner countries and the EU. Yet there is concern that such initiatives might have detrimental impacts on the largely informal rights of local resource users. In order to inform the formalisation agenda, more detailed analysis of the operation of local rights, and how they might be affected by particular schemes is required.

This paper focuses on Ghana as a country with a largely informal wood sector that has signed a VPA with the EU for the express purpose of rapid formalisation. Our analysis is guided by a framework for assessing which types of rights might be transformed by particular approaches to formalisation and the subsequent effect this might have on forests and people in particular local contexts. We then apply this framework to an in-depth local case study of on-farm timber governance within a cocoa-forest landscape in Ghana's Central Region to examine how the operation of formal and informal and substantive and procedural rights shape who controls, and benefits from, on-farm timber production. We then analyse the content of the VPA in light of these local realities and assess its potential impacts.

Our findings highlight how the substantive rights the state grants to companies are presumed to be balanced with the granting of procedural rights to farmers via the mechanisms of right of refusal to harvest on-farm timber, compensation for damage to cocoa crops and the negotiation of community-level Social Responsibility Agreements with private companies. Yet a comparison of these formal rights with farmers' existing informal rights reveals that farmers' control and access to benefits from trees on their farms are notably higher in the 'illegal' chainsaw dominated informal sector than in the 'legal' state-based system. Farmers choose to maintain trees on farms both to shade cocoa and in anticipation of benefits from their informal sale. The VPA, however, aims to eradicate all informal on-farm timber production and thus threatens existing local rights and benefit capture while diminishing incentives to maintain trees on farm. Rather than further criminalising local systems of timber governance, the maintenance of tree cover and local benefit-sharing would be better served by 1) phasing out timber concessions on farmland, 2) abandoning the distinction between planted and native trees on farms and, 3) understanding, recognizing and respecting the existing informal rights of farmers, traditional authorities and chainsaw loggers to negotiate among themselves patterns of access and control of on-farm trees and timber. In general, the case study challenges the assertion that formalisation is requisite for sustainable forest management and mandates a more nuanced and contextually informed assessment of the assumed costs and benefits associated with particular forms of legal and policy reform.

1. Introduction

Widespread concern for global forest loss has fuelled international demand to formalize forest governance and tenure, based on a

presumed link between legal formalisation and sustainability (McDermott, 2014). This equation of legality with sustainability is particularly evident in the European Union's Forest Law Enforcement Governance and Trade (FLEGT) Voluntary Partnership Agreement

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<https://doi.org/10.1016/j.landusepol.2018.02.014>

Received 12 October 2017; Received in revised form 15 December 2017; Accepted 9 February 2018
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(VPA) programme, which calls for the prohibition of trade in illegally produced wood as a means to promote environmentally and socially responsible forest governance (Lesniewska and McDermott, 2014). Despite growing support for formalisation, however, the literature sends mixed messages as to its likely impacts. On the one hand, formalisation has been promoted as a means to support productive investments and sustainable land management practices, protect fragile rights, enable economic engagement and prevent over-exploitation of resources (De Soto, 2000; Hansen et al., 2015; Kishor and Lescuyer, 2012; Soule et al., 2000). On the other hand there are significant concerns regarding the increasingly intense pursuit of formalisation in a natural resources context, particularly regarding the ability of local users to control and benefit from those resources (McBarnet and Whelan, 1991; Putzel et al., 2015). For example, concerns have been raised about the criminalisation of legitimate but informal livelihood activities (Cerutti et al., 2013; Hauck, 2008; Marfo, 2010; Tschakert and Singha, 2007), the marginalisation of poor resource users who are unable to meet the financial and bureaucratic costs associated with formalised systems (Hilson and Potter, 2005; Lagos, 1995; Maldonado, 1995), and issues of elite capture at different levels (Meinzen-Dick and Mwangi, 2009; Platteau, 2004; Pritchard, 2013; Sjaastad and Cousins, 2009).

Given the diverse and conflicting evidence on formalization, the assessment of its likely impacts calls for a more nuanced analysis that examines how existing governance arrangements shape patterns of control and access to benefits, and identifies precisely what types of rights are affected by formalization, and how. For such purpose, this paper draws on three components of governance systems, which are often examined separately, to frame an analysis of the governance of on-farm timber in Ghana's central region. These are 1) formal versus informal¹ rights, 2) substantive versus procedural rights and 3) the contextual and multi-level nature of how different types of rights are translated into local patterns of control and benefit.

The impetus for legal reform of Ghana's forest sector is rooted in concerns about the impact of ongoing timber exploitation and the expansion of cocoa on the long-term benefits flowing from intact forests, including carbon storage and sequestration, provision of climatic conditions suitable for cocoa and biodiversity conservation (Benhin and Barbier, 2004; Ghana, 2005; Gockowski and Sonwa, 2011; Hansen et al., 2009; Obiri et al., 2007; Ruf, 2011; Wade et al., 2010). In addition to the management of forest reserves, considerable attention is focused on the informal timber harvest on cocoa farms, which hold a significant portion of the country's remaining tree cover, and also serve as important sources of wood supply for domestic and local markets (Hansen, 2011; Hansen et al., 2012; Marfo and Acheampong, 2011; Marfo and Schanz, 2009).

In light of these concerns, Ghana has signed a Voluntary Partnership Agreement (VPA) with the EU with the express aim of ensuring law enforcement both in forest reserves and on farms (Community, 2009). Given the strong international and national pressures to address informalities, it is critical to examine how efforts at formalization interact with existing patterns of forest control and access. This paper therefore draws on a detailed case study of a Ghana cocoa-forest landscape to identify how actors currently control on-farm trees, and the associated distribution of benefits. We then critically reflect on the implications of the case study for efforts to formalize forest governance through international initiatives such as FLEGT.

The paper is organised as follows. The next section outlines the analytical framework employed in the paper and is followed by a description of the methods used in Section 3. Section 4 provides a national-level overview of tree and land tenure governance in Ghana. Section 5 focuses on our case study area, examining how the formal,

informal, and substantive and procedural rights to timber influence the patterns of control and access to benefits of on-farm timber at a local level. Section 6 then briefly details Ghana's EU FLEGT-VPA and considers its implications for on-farm timber governance. The paper then summarizes the findings and identifies top priorities for action to deliver more effective and equitable governance reforms.

2. Assessing the impact of formalisation on access to on-farm trees - a framework

Historically, the term 'formalisation' has referred to the codification of informal or customary rules concerning natural resource rights, including ownership, access, use and trade, usually for recognition by the state. However, with the growth of illegal logging initiatives in the 2000s, the term has increasingly been used to refer more generically to the eradication of all activities not sanctioned by the state (Putzel et al., 2015; Weng, 2015). We argue that under both understandings, assessing the impacts of formalisation requires distinguishing between informal activities that are governed locally, from the complete absence of social order. This is particularly important in contexts where the imposition of state rules may override local norms, which may have evolved alongside formal policy agendas.

This study recognises that ownership and related rights to natural resources are characterised by bundles of rights such as access, management, exclusion and alienation (Schlager and Ostrom, 1992). But rather than map out all of these rights in their full complexity, this paper focuses on two distinctions that we argue are critical for assessing the local impacts of formalisation. The first is between formal or statutory rights and informal or customary rights. Formal or statutory rights refer to those recognized in State laws, while customary rights refer to rights rooted in 'anteriority and alliance' (Cotula and Chauveau, 2007).² The latter are considered 'informal' because they operate separately from state institutions. These informalities may be legal, where they operate in unregulated spaces, or illegal. However, it is important to consider the legitimacy and equity of any given practice, since widespread regulatory biases against small-scale operators has meant many of them have found themselves operating illegally but according to arrangements that are widely held to be legitimate (IUFRO, 2016). These illegalities are qualitatively different from other illegalities such as the payment of bribes for concessions or forgery of documents. We refer to such rights as 'informal' or "customary", to avoid conflating them with other types of illegality that lack local legitimacy, i.e. that are not well aligned with local perceptions of fairness or shared local objectives (Osei-Tutu et al., 2014).

This position aligns with the work on legal pluralism that addresses how multiple systems of rule-making may co-exist within the same territorial jurisdiction (Hamilton-Hart, 2017; Tamanaha, 2008). In light of this, interrogating the interactions between statutory and customary rights is central to understanding how formalisation and related natural resource governance reforms are likely to influence patterns of benefit and control. For example, as Tamanaha (2008) notes, formal legal systems may lack the resources necessary to accomplish the desired changes accompanying formalisation processes, in which case customary rights embedded in 'lived norms will continue to govern social action'.

The second distinction in our framework, is between substantive and procedural rights. Following Ituarte-Lima and McDermott, 2017 we define substantive rights as those which refer to the allocation of rights, in this case to the ownership of, or access to, natural resources, while

¹ In this paper the terms formal/statutory and informal/customary are used synonymously.

² This conceptualisation of informal rights is closely related to the concept of access (Ribot and Peluso, 2003), which refers more broadly to the ability of social actors to benefit from natural resources. The structural and relational mechanisms that determine access can include, but are not limited to, formal and informal rights. To retain conceptual clarity, this analysis focuses on how rights are commonly interpreted at the local level, but we highlight where relevant how the enactment of those rights are negotiated through relationships, for example, between landlords and tenant farmers.

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