

Researching the possible and likely implications of Ghana's REDD+ and VPA plans on land and tree tenure reform

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Introduction

It is widely understood that the existing land and tree tenure arrangements in Ghana hinder improvements in forest management and protection, and limit more equitable benefit sharing. Ghana is currently undergoing reforms related to the FLEGT VPA process and the REDD+ processes, both providing the opportunity to address the current problems related to tenure. This study aims to assess the problems and possibilities presented by both processes to ensure meaningful reform of land and tree tenure, and to suggest how best to use these processes to advocate for effective reform.

This report is organized as follows:

Section 1 sets out the problem by briefly describing the existing land and tree tenure arrangements in Ghana and the current problems concerning lack of clear land and tree tenure.

Section 2 examines the texts of the EU-Ghana VPA, FCPF R-PP, FIP, ER-PIN, and REDD+ National Strategy draft, and describes the plans set out in these documents for addressing the tenure situation. This part of the analysis is based purely on what the official documents describe regarding tenure.

Section 3 describes what has happened/is planned to happen in terms of follow up or implementation of the VPA and REDD+ processes concerning land and tree tenure, as informed by interviews with relevant stakeholders in Ghana. It examines how planned and ongoing activities match up to those laid out in the planning documents, and how they do or do not address the tenure problems at hand.

Section 4 analyses these stakeholder interviews to provide insight on how different stakeholder groups envisage a locally relevant and just tenure reform.

Finally, Section 5 outlines some recommendations for civil society organizations on how they can best engage in VPA and REDD+ processes to advance tenure reforms that will effectively address the problems at hand.

Section 1 – Land and tree tenure arrangements in Ghana

The tenure system in Ghana is a complex mix of statutory and customary law. Customary owners (stools, families or clans) hold allodial title¹ over about 80% of total land area, and 20% is owned by the State². Forest and wildlife on-reserve areas (10% of Ghana's land base) are vested lands – held by customary authorities (stools and skins) but vested in the State in trust for the people of the stool or skin or family from which it was vested. Customary law varies by location and even within ethnic groups. Customary laws are also somewhat fluid, passed on from generation to generation orally, allowing for flexibility to accommodate local realities, making it more difficult to harmonize with statutory law. In addition to this, overlapping claims of tenure exist throughout the country; individual landholders typically do not have documentation for the land they occupy and a small proportion of land is formally registered with the Lands Commission. Formal registration of land with the Lands Commission occurs after it has gone through the proper procedural customary arrangements at the local/village level, where the traditional head ensures that payment of the appropriate fees and other traditional requirements have occurred at the local level. The uncoded nature of traditional laws introduces additional lack of clarity of ownership, undermining particularly the rights of vulnerable groups at the local level, as tenure is further complicated by local power dynamics, where gender, race, age, status, wealth and kinship result in nested tenure rights within someone else's ownership rights (Rocheleau & Edmunds, 1997).

In Akan regions, where most of the High Forest Zone is located, allodial title is held by chieftaincies (the stools), while the proprietary title (customary freehold) is often held by sub-chiefs and prominent families³. In Ewe land, land is often owned by families and it is common to have freehold lands that have been bought and sold; in contrast, leaseholds are common in Akan lands, where the owner could be the stool, family or clan, with varying degrees of tenure security. Conflicts between land owners and tenants in Akan are increasingly reported, with debate focusing on terms and length of the transfers of leaseholds. Since 2003, the Land Administration Project has been attempting to develop a coherent, streamlined and sustainable land use planning and management system, but it is unclear how far this process has come in defining and regularizing land claims.

¹ Allodial title is recognized as being held or vested in traditional stools of skins. The stools/skins in which the allodial title is vested has complete and absolute freedom in dealing with the land (formal

² State lands have been acquired by the government through the invocation of appropriate legislation and are held in trust for the entire people of Ghana

³ In these situations, the paramount chief exercises paramouncy as a sort of sovereign oversight which does not carry with it ownership of any particular land (Djokoto and Opoku 2010). Day-to-day management of, and benefits from, the land falls to the sub-chiefs or families, who have the customary or common law freehold, an interest transferable to successors.

Tree tenure

While approximately 80% of land in Ghana is customarily owned, rights to all naturally occurring trees in the country are vested in the President in trust for the people. This decoupling of land from the resources on the land, as stated in the Constitution of 1992, means it is illegal for farmers and other land users to harvest any naturally growing trees for commercial or domestic purposes, even if they are growing on their land. Farmers are however allowed to remove trees when clearing for cultivation (Hamilton Resources and Consulting, 2008), and have rights to trees they have planted, provided that they are able to prove that they have planted it.

The Forestry Commission has management rights over naturally occurring trees, and issues timber rights permits for their exploitation (Marfo *et al.*, 2012). The Forestry Commission Act states that the Forestry Commission is meant to actively manage the Forest Reserves, but the Forestry Commission allocates concessions in both on-reserve and off-reserve forests (the latter with the consent of the landowner) to formal logging and sawmilling companies, regardless of land ownership. While this is meant to occur with the consent of the landowner, in practice this is often not the case (Hansen, 2011).

Revenues from timber production are distributed according to a constitutionally enshrined formula: following a deduction for the Forestry Commission's fees (50% for both forest reserve and off-reserve lands). The remaining 50% is converted to 100% and the Office of Administrator of Stool Lands (OASL) retains 10% of this for administrative purposes. The remaining 90% is converted once again to 100% and shared as follows: 20% to the chief (stool land chief on whose land the trees were harvested), 25% to the Traditional Authority (mostly paid to the Traditional Council – each paramountcy usually has a traditional council and the paramountcy is made up of several chiefs including stool land owning chiefs and others who do not own lands), and 55% to District Assemblies (local government authority relevant to where the trees were harvested). In absolute terms, the sharing arrangements are as follows: 50% to the Forestry Commission; 11.25% to the Traditional Authority; 24.75 to the District Assembly, 9% to the Chief, and 5% to OASL. In addition, timber operators enter into social responsibility agreements (SRA) with communities; these include financial compensation, and agreement on performance, code of conduct and a working relationship between the company and the community. In reality, very little of the revenue trickles down to the farmers managing the resource and nurturing the trees, providing little incentive to manage and protect trees on farmland (Owusu, Nketiah, Aggrey, & Wiersum, 2010). Furthermore, farmers are often left with damage to crops once timber extraction machinery has been through their lands. While the law stipulates that farmers are meant to be compensated for any damage, studies have shown that very little is paid in terms of compensation, if at all (Hansen, 2011). For this reason, it is not unusual for farmers to routinely destroy timber trees on their property, and to actively prevent trees from naturally regenerating on their lands (Nketiah *et al.*, 2009). Farmers do, however, often illegally sell trees on their land to chainsaw millers, in order to directly benefit from the timber. This forms the base of the informal timber supply chain (see Hajjar 2014), which supplies approximately 80% of the domestic market with illegal harvested timber.

A Constitution Review Commission produced a report in 2011 that takes into account nation-wide consultations on the operation of the 1992 Constitution and on any changes that need to be made to it. On tree tenure, the report notes that the following emerged at the National Constitution Review Conference: ownership of forestry resources should be vested in the communities which will be responsible for its management, with the Forestry Commission providing regulatory services and the State remaining concerned with policy; and, natural trees should be vested in the communities where the trees are found and farmers who cultivate these trees should enjoy the benefits from the proceeds of the sale of these trees (Constitution Review Commission, 2011 p. 598).

Why this is particularly relevant for REDD+

It is widely recognized that these tenure complexities are contributing to unsustainable forest management practices. Much academic literature discusses the link between environmental degradation and access to and control over land, particularly in agricultural settings, with farmers more likely to make investments in land improvement when they have secure tenure (Place & Hazell, 1993; Lawry et al. 2014). Tenure security also seems to be important in determining forest degradation (Robinson *et al.*, 2011), although it can be less about formal tenure rights and more about perceived security (Bugri, 2008), whether formally or informally bestowed (Gibson, Lehoucq, & Williams, 2002). In Ghana, many studies have linked the strong possibility of expropriation of trees with the lack of long-term investment in forests or lack of incentive to keep trees around or plant new ones (many of these studies are cited in the documents reviewed below). Instead, farmers often sell trees on their land illegally and indiscriminately, to avoid damage from timber extraction machinery and to make some personal profit. There is little investment in long term timber management, and explicit avoidance of natural regeneration. Clearly, REDD+ would not work in a situation such as this.

Farm tenancies become particularly problematic in a REDD+ context: those who technically hold the land rights are not necessarily the ones who are nurturing and managing tree resources (such as the case in Akan areas or other regions where migration for agricultural purposes (Volta or Northern Region) has resulted in much land where landowners and farmers working that land are often not the same). This will have important implications for carbon rights, benefit sharing, and the prospects of REDD+. Furthermore, land disputes increase risk levels for carbon projects (Asare et al., 2013). Thus, questions about the allocation of tree and carbon rights, and resultant benefit sharing, need to be resolved before REDD+ could work in Ghana.

Community Resource Management Areas (CREMAs) and Dedicated Forests were identified early on in REDD+ discussions⁴ as having high potential for solving, at least temporarily, tenure and management barriers for REDD, as they increase farmer or landowner rights over trees, and possibly over carbon, enhance community participation in natural resource management, and create equitable benefit-sharing mechanisms (Katoomba, Forest Trends, NCRC, 2010). The CREMA concept is a recent tenure

⁴ An expert workshop was held in 2009 on a scoping exercise for REDD opportunities in Ghana

modality where the Wildlife Division of the Forestry Commission fully devolves legal management authority and responsibilities for wildlife management to community institutions in important wildlife or biodiversity areas. It officially came about from the 1994 Forest and Wildlife Policy, but took about a decade to properly enact the programs locally and secure legal empowerment within the District via by-laws. As of 2010, 26 CREMAs were in existence, eight were in the process of being created, and 18 had been inaugurated (Asare et al. 2013). In developing a CREMA, District Assembly by-laws, local monitoring activities, and benefit-sharing mechanisms are developed by the communities involved. The decentralized rights do not include commercialization of timber products. CREMAs are able to become legally-incorporated bodies under Ghanaian law and control their own revenue. They must have defined boundaries agreed to by all stakeholder communities and traditional leadership, establish long-term vision, goals, management plans and regulations. To establish a CREMA, the Ministry issues a certificate of devolution of rights over natural resource management, for “a specified period” (Wildlife Resources Management Bill, 2014). Following this, the Wildlife Division no longer regulates hunting in the CREMA, which falls to the community in accordance with national legislation. The CREMA is held accountable for protection and conservation of wildlife in its jurisdiction, and reports to the Wildlife Division on wildlife population trends and levels of off-take. Permits are still required for trading in wildlife, benefits from which are divided between the CREMA, the District Assembly, and the Wildlife Division (Wildlife Division 2000). The CREMA is an existing institutional structure for landscape planning, democratic decision-making by local leadership, and benefit sharing with stakeholders. For these reasons, it is an attractive mechanism that could be a good solution to the tenure issue within existing legislation, but the CREMA concept has yet to be backed by legislation. A Wildlife Bill, which is the first document to aspire to establish a CREMA legislative framework, is currently on the table in parliament.

Dedicated Forests present more scope for increased community rights over trees, including commercialization rights, and have been used to protect sacred groves or otherwise locally valued forests, and to receive economic benefits through community forest management. Like CREMAs, they are backed by district level by-laws but not by legislation. In practice, they have had an even lower uptake rate than CREMAs: in 2010 there were only two dedicated forests in the country (Katoomba, Forest Trends, NCRC, 2010).

Section 2 - Plans for tenure reform in VPA and REDD+ documents

In light of the importance of tenure reform for improvements in forest governance, conservation, and livelihoods, this section examines how far the planned reforms related to the VPA and REDD+ contribute to addressing Ghana’s tenure reform needs. This section will describe what the text of the VPA and the various REDD+ documents mention and require in terms of land and tree tenure reform and how this does or does not

relate to the tenure reform problem. Documents, presented in chronological order, will be examined for their:

- 1) depth of discussion of tenure and problems associated with it
- 2) recognition that clarifying rights is an essential part of a strategy going forward
- 3) proposals for a way forward or implementation of a plan or next steps to address this problem.

Voluntary Partnership Agreement (VPA)

The EU-Ghana VPA, signed in 2009, aims to provide a legal framework to ensure that all imports of timber into the European Community from Ghana have been legally produced (in compliance with a list of legality requirements – 7 principles and 22 criteria). The VPA also states that “Ghana shall endeavour to verify the legality of timber sold on domestic markets and of imported timber,” using, where possible, the legality verification system used for export as well (Ghana and European Community 2009, p. 19).

The VPA document contains some mention of tenure, mostly in the Annex. The legality definition’s principles and criteria—which must be met in order to export Ghanaian timber to Europe, and are encouraged for domestic timber trade) do require timber operators to hold the legally-granted rights to the timber, and obtain the written consent of landowners.

Annex II of the VPA, “Forest Policy and Legislative Reform Aspirations,” also lists areas where Ghana intends to carry out further law and policy reforms in the spirit of good forest governance. For domestic market development, areas of intended reform include, *inter alia*:

- resource allocation (which may entail reforming who has the rights to timber – *although this is not listed explicitly*); and,
- “affirmation of local forest tenure and of different stakeholder rights, particularly farmers in different types of forests and clarification of the respective scope of local (including customary) and national institutions in forest management” to sustain, develop and exploit forests.

Annex II, as well as a subsequent VPA progress report in 2012 (Joint Monitoring and Review Mechanism, 2012), highlighted these intended reforms listed in Annex II as “second-tier reforms” that would require extensive consultations and possible constitutional amendment, and thus the time frame for such reforms was estimated at 3-5 years.

While the VPA goes a long way to bringing broader issues of forest governance to the fore, it does not make tenure reform a central piece of VPA implementation. Nor does it explicitly delve into problems associated with tenure as the REDD+ documents later do; however this is not surprising as it is unlikely for negotiated text to go into the same

depth as such documents that detail problem scoping and program development. What is surprising, though, is the lack of concrete recognition that the current tenure situation will hinder VPA implementation; a finding that is later reinforced with stakeholder interviews on actual VPA implementation (see Section 3), and supported by previous research. Hajjar (2014) also found that, despite multiple entry points of intervention for enhancing legality of forest activities associated with VPA reform implementation in the last few years (including procurement policies, capacity building in alternatives to chainsaw milling, and education), measures to incentivize farmers to manage their trees and forests more sustainably are conspicuously absent, despite wide agreement that this is what is needed.

It is worth noting, however, that one of the reforms to follow the VPA was the revision of the Forest and Wildlife Policy, which was finalized in December 2013. The language on tenure reform is quite strong in this policy. In it, Strategic Direction 4.1 (Institute transparency, equity and legalize public participation in sustainable forest and wildlife resources management) includes the following:

Government will [...] b) enact the legislations that will enable communities and individuals to benefit from trees on their farms and fallow lands, provide off-reserve tree tenure security, authority to legally dispose of resources and allocate greater proportion of benefits accruing from resource management to community members individually or collectively. (p.27).

The process of feeding this into a comprehensive Forest and Wildlife Act that consolidates forest wildlife sector laws is ongoing; it is also expected that a forestry “master plan” will be developed from this policy.

FCPF R-PP and R-PP Annex

Ghana’s Readiness Preparation Proposal (R-PP), approved in 2010, resulted in the World Bank supporting Ghana’s REDD+ agenda through a FCPF Readiness Grant of US\$3.4 million, effective in October 2011. This document represents Ghana’s ongoing and planned efforts to get ready for REDD+ implementation, laying out a three-step approach to developing a National REDD+ Strategy and establishing the technical, policy, legal, management and monitoring arrangements necessary for the country to participate in REDD+.

Discussion of tenure: The R-PP Annex describes in depth the rural property rights system in Ghana, noting how it can be problematic for REDD+, outlining regional variations in land tenure regimes, explaining the nature of tree tenure, and highlighting ongoing conflicts over overlapping tenure claims and the problematic nature of leaseholds. It notes that the lack of incentives to farmers in the off-reserve area is leading to a rapid decline in off-reserve forest quality. Importantly, it underlines that ongoing conflict not only occurs between state and community, but also within communities in many cases. It further discusses the need to act cautiously in linking tree tenure to land tenure in Ghana, and notes the challenge of dealing with farm tenancies (particularly considering the undocumented nature of most tenancies, leading to a lack of clarity or

uniformity in defining rights and responsibilities of tenants, and in particular for carbon rights and revenues).

Recognition of tenure reform as necessary strategy: The R-PP states that tree tenure reform is widely viewed as a necessary precondition for restoring off-reserve forest quality, and “will be addressed in the REDD+ strategy” (p. 40), and that tree and land tenure regimes “merit urgent review” (p.42). It states that the National REDD+ Strategy development will consider the need to directly incentivize farmers and land owners to conserve trees on their land – for both timber production and carbon stock enhancement.

Intended action: The R-PP calls for stakeholder consultations on land use rights and land tenure systems (p.29), to look at the potential implications of the current tenure system on REDD+ functioning, with a focus on how the current arrangements would affect allocation of carbon rights. Pilots such as CREMAs will be reviewed by a sub-group, with special consideration of the situation with regards to gender and derived rights holders, to assess options *with and without* major tenure reforms, and to make proposals for legislative changes to operationalize carbon rights allocation. This is interesting to note, as later REDD+ documents acknowledge that the current system will not work for REDD+, and needs much greater reform. The R-PP Annex outlines Terms of Reference for a national expert consultation on the Timber Supply, which closely links to the tenure issue (particularly through the possibility of increasing CREMAs as a management option), as well as one on Allocation of Terrestrial Carbon Rights, to clarify how carbon rights will relate to underlying land rights and tree tenure, including derived rights and their allocation (for tenant farmers and share-croppers) and mechanisms to disseminate revenues to the immediate forest users.

Several of the proposed strategies listed in the R-PP Annex relate to tenure; the most directly linked is the strategy to “Clarify rights regime” under the Forest Sector Policy, Legislation & Governance theme, although strategies addressing unsustainable timber harvesting and mitigating effects of agricultural expansion all link back to the core tenure problems and the need for reform. Also mentioned is the “most radical” option of ceding control of off-reserve trees right down to the farmers and landowners so that they are able to sell timber directly to mills or small enterprises (p. 57). CREMAs are frequently mentioned as potential pilots.

The 2014 mid-term R-PP progress report states that preliminary findings from the consulting team highlight the rights regime as a high priority, as clarity of title is a fundamental requirement for determining carbon rights. It also notes that several studies conducted in Ghana favour devolution of management rights to communities, justifying a major policy shift. The report highlights work by Forest Trends, Nature Conservation Research Centre (NCRC), the Katoomba Group, Forestry Research Institute of Ghana (FORIG) and an ITTO project, which reviews existing arrangements and “identif[ies] promising platforms for ensuring secure rights and equitable benefit sharing to individuals, families, communities and traditional authorities responsible for generating carbon benefits” (although these platforms are not discussed in the document). The progress report points to work on pilots being undertaken under the Forest Investment

Plan (FIP) program, discussed below. The document called for additional funding for a consultancy on appropriate benefit sharing mechanisms.

The R-PP process also resulted in the selection of seven national REDD+ pilots, but later documents indicate that these had not received funding.

FIP

Ghana's Forest Investment Plan, approved in 2012, is built on the readiness work done through the R-PP, providing "bridging and catalytic finance" in moving along the REDD+ process. The aim of the FIP for Ghana is to address the underlying drivers of deforestation, focusing on the High Forest Zone of Western and Brong Ahafo Regions, and catalyzing long-term, transformational change and legal reforms with the ultimate aim of reducing GHG emissions. The FIP supports the implementation of the National REDD+ Strategy with upfront funding, and generates information and experience for policy and regulatory changes. Three projects were envisaged as part of this: 1) reducing pressure on natural forests through an integrated landscape approach; 2) engaging local communities in REDD+ and enhancing carbon stocks; and 3) engaging the private sector in REDD+.

Discussion of tenure: The FIP reiterates previous REDD+ documents' discussions of tenure, and does not present any new analyses or thinking on the matter. It acknowledges extensive work that has already been done on this in general, and aims to use REDD project pilots to generate evidence to support eventual policy and legal change on the matter "so that the debate trap in which policy reform is stymied can be avoided." It acknowledges that given the current political economy (discussed in Hansen and Lund 2011; Lund, *et al.* 2012 (not cited in the FIP)), only validation through trial of alternative models can provide the necessary evidence and impetus to overcome the status quo (p.75). Individual documents for the proposed projects also have extensive discussions of the complicated nature of tenure in their Annexes and scattered throughout the body of the document.

Tenure reform a recognized strategy: The FIP clearly states that to achieve the goals it has set out, major transformations are needed in policies on tree tenure and benefit sharing, especially regarding naturally occurring trees in off-reserve areas. One of the major transformations it will introduce is to reform tree tenure and benefit sharing regimes in order to provide incentives to plant, retain and manage trees, particularly those off-reserve. Pilot activities will explicitly focus on land tenure and benefit-sharing arrangements, in order to find alternatives to the current incentive framework and better target groups or individuals who actually manage forest resources. It lists CREMAs as a potential solution path, noting that they can contribute to more local ownership and responsibility for natural resource management, offering potential for greater uptake by communities ("particularly if accompanied by tree tenure reform") and improving outcomes on the ground. Better consultation with communities is also listed as a way to

better demarcate and enforce boundaries of forest reserves, serving to reduce encroachment and forest degradation.

The FIP states that major aspects of tree tenure, including formulas for benefit sharing expressed in the Constitution, are likely to be difficult to change in the short term. “The challenge is to devise mechanisms *within the available* policy, legal and administrative framework [italics added for emphasis], and to revise the policies and the regulatory framework that can be addressed...” (p.37). This makes it unclear how transformational the FIP will end up being.

Intended actions: FIP actions go beyond just setting up national consultation committees to study the issue; they also set up plans and request funds for pilot activities. The document states that FIP will engage in testing innovative tree tenure, including pilots on testing alternative management models for forest reserves and climate-smart cocoa farming systems, to provide the necessary experience and evidence to support policy and legal reforms. Community-based planning and management will be piloted, as well as testing alternative models for devolving more rights and responsibilities to communities and farmers. CREMAs are extensively mentioned in the FIP, with key activities including establishing CREMAs and inaugurating CREMA Resource Management Committees, as well as building capacities within CREMAs for tree planting and management. The FIP will also fund the Dedicated Grant Mechanism for local communities, a separate funding mechanism from the projects described below, which aims to enhance grassroots engagement in the design and management of projects. Two other mentioned activities also include piloting Modified Taungya System (an agroforestry system involving a partnership between government and local communities, usually employed on-reserve) in off-reserve areas, and reforestation under the Community Forestry Management Project (including contract farming, outgrower schemes, MTS, and public-private partnerships). However, neither of these two activities particularly adhere to community governance principles, nor do they necessarily involve tenure regime changes.

The FIP outlines three projects: *Securing and enhancing carbon stocks in natural forests through improved forest reserve management*; *Engaging local communities in REDD+/enhancement of carbon stocks*; and, *Engaging the private sector in REDD+*; with the first two having particular relevance to tenure. On improving forest reserve management (including off-reserve ecological corridors), activities include:

- policy reforms and creating an enabling environment for sustainable forest management activities (including further analysis of options and review of legal frameworks, and policy pilots to test the effectiveness of intended tree tenure, benefit sharing and carbon rights)
- pilots on a) enhancing trees and climate-smart agriculture on-farm, building on CREMAs, and b) on-reserve forest management (with no mention of tenure as an issue for this one). These will be accompanied by the provision of locally desirable tree species and technical assistance. There is also mention of farmers registering and gaining formal ownership rights to trees in order to have a stake in their management and nurturing.

The project on Engaging Local Communities intends to engage communities in land management approaches that generate direct financial and environmental benefits, through: community restoration of degraded off-reserve forests and agricultural landscapes, promoting climate smart cocoa and agroforestry systems, and alternative livelihoods and capacity building. It includes a component of reviewing existing governance systems for carbon, tree and land tenure, and piloting intended tree tenure, benefit sharing and carbon rights for REDD+. Interestingly, tenure issues and actions are brought up considerably more often in the project document for Integrated Landscape Approaches than for Engaging Local Communities.

ER-PIN

FCPF countries that have made significant progress toward REDD+ readiness are eligible to submit an Emission Reductions Program (ER Program) for consideration for potential emission reductions payments (ERPA) under the FCPF Carbon Fund. Ghana submitted an ER-Program Idea Note (ER-PIN) in March 2014, for its Cocoa Forest REDD+ Program, managed by the Forestry Commission and the Cocoa Board of Ghana. The ER-PIN describes Ghana's intention to implement the Cocoa Forest REDD+ Program in the High Forest Zone, reducing emissions driven by cocoa farming and other key drivers.

Tenure discussion: The ER-PIN reiterates and describes the complexities and resulting difficulties involved with Ghana's current land and tree tenure system, noting that numerous studies and assessments have been done on the topic in Ghana. It also states that there are "no known ongoing conflicts of significant scale" in the proposed Cocoa Forest REDD+ Program area.

It further notes that there is no legislation to date pertaining directly to carbon rights, meaning that ownership rights and transaction rights are uncertain, presenting a risk for REDD+. It states that the need to address carbon rights is being formally explored by the Ministry of Land and Natural Resources (MLNR), civil society partners and consultants, in order to articulate a benefit sharing system as part of the readiness process. REDD+'s success requires deciding whether carbon will be characterized as an ecosystem service of storage/sequestration or as a natural resource – which, under current legislation, would affect how ownership rights are assigned. It notes that as the CREMA mechanism is being piloted, it is in essence trialing the transfer of carbon rights to communities as well.

The ER-PIN also lists ownership by chiefs and families as a major challenge to the ER Program, as they (and not individuals and governments) have control over decisions regarding what use the land is put to, making it "critical to engage with landowners and sensitize them to embrace more sustainable land management approaches" (p.37).

Tenure reform as recognized strategy: The ER-PIN acknowledges that lessons from the Cocoa Forest REDD+ Program can feed into the national REDD+ strategy currently being developed, and lists clarification of the rights regime as one of seven strategy options to tackle the main drivers of degradation and deforestation in the High Forest

Zone. The ER-PIN notes that Ghana has yet to formally articulate a benefits sharing system for emissions reductions, but that stronger recognition of land tenure claims or reforms to tree tenure is thought to be important in enhancing security to natural resources and claims to benefits, and that benefits would need to be shared in a way that incentivizes better tree management.

The ER-PIN states that, along with the FIP, the ER Program “creates the needed momentum and political will to catalyze tree tenure reforms” (p.64) so as to incentivize farmers and forest users to manage trees and forests more sustainably, for financial (timber and non-timber forest products) and non-financial (ecosystem services) benefits.

Intended actions: The ER-PIN states that the Natural Resources and Environmental Governance program (NREG) is already working on tenure reform and the FIP will pilot new policies within the ER Program area. The ER Program will collaborate with the FIP and the MLNR to test policy reforms that would keep trees growing on farmlands, leveraging and likely expanding planned FIP pilots to other target areas.

The ER Program will also use the CREMA mechanism to open dialogue and local decision-making in order to combat illegal logging, piloting community-based forest monitoring systems and PES/performance based schemes that would pay communities and leaders when deforestation and degradation is reduced in their CREMA. The ER-PIN anticipates that mapping of farms and implementation of land-use planning (parts of the ER Program) will help strengthen land tenure.

Importantly, the ER-PIN recognizes the risk that the process of tenure and benefit sharing reforms may take longer than expected, and thus may not be implemented in the High Forest Zone within the time frame needed for the program to reduce emissions. It is relying on the FIP to have the funding and motivation needed to pilot policies and facilitate broader reforms efficiently.

It states that a number of CREMAs are now exploring the possibility of realizing emissions reductions payments. Many CREMAs are attuned to supporting communities to structure their own localized benefit-sharing arrangements, making them more relevant to local people and reflecting their ideas of fairness. Thus the concept of CREMAs is envisioned as moving from their original intention of wildlife management and habitat protection to one that includes management of forest and tree resources for climate mitigation and livelihood objectives.

Steps towards a benefit-sharing mechanism are outlined in the ER-PIN:

- conducting an in-depth literature review and assessment of experiences in benefit sharing, exploring the link between carbon rights and land and tree tenure, and learning lessons from other sectors (already begun by FORIG)
- developing options on REDD+ benefit sharing mechanisms and social accountability structures

- undertaking consultations on potential benefit sharing options with key stakeholders and preparing a final report with a proposal for a national benefit sharing architecture for REDD+

The ER-PIN also describes results of consultations conducted by IUCN-Ghana on benefit sharing, listing three proposed mechanisms (individual payments, community managed revolving credit scheme, and a hybrid).

REDD+ National Strategy

At the end of 2013, Ghana began work to define its national REDD+ strategy. In February 2015, Price Waterhouse Coopers (PWC) delivered a report to the Forestry Commission on “The Development of the Ghana National REDD+ Strategy”. While there was a finalization workshop in November 2015, I was not able to determine how this report will be treated within the Commission or if it indeed will be the basis of a final REDD+ National Strategy (future interviews will hopefully clarify this). Regardless, I include it briefly in this analysis.

Discussion of tenure: In contrast to the REDD+ documents analyzed above, there is very little mention of tenure in the report. The perverse incentives created by land and tree tenure regimes are listed at the bottom of a long list of direct and indirect drivers of deforestation. The report discusses the need for Ghanaians to change the way they think about forests, without explicitly linking this to a discussion of rights.

The report notes the lack of formal dispute settlement procedures in the forest service, highlighting that this can be critical for REDD+ implementation as questions of carbon rights, tree tenure and benefit sharing remain largely unanswered.

A recognized strategy: The report highlights a number of studies on governance interventions for REDD+ implementation, and states that there is a need to: 1) clarify carbon tenure and develop an equitable benefit flow mechanism; 2) mainstream gender issues into REDD+; 3) institutionalize and sustain multi-stakeholder consultation and engagement in the sector; and 4) institutionalize dispute resolution mechanisms.

Intended action: On clarifying carbon rights (p. 34), it states that, following the recommendations of the Constitutional Review Commission⁵ and the Government’s white paper position, the preferred approach is to implement tenure reforms that tie carbon rights to land or tree ownership, and vest carbon ownership with the holder of allodial or freehold land title [Note: this is still undecided]. Holders of derived rights such as tenant farmers should negotiate any REDD+ benefit with the allodial/freehold rights owner and have contractual documentation to cover the agreement. It however acknowledges that this issue is by no means settled, and the broader stakeholder

⁵ As explained in the background section, the Constitution Review Commissions Report outlines that forestry resources ownership should be vested in communities, and farmers who cultivate natural trees should benefit from them. Carbon rights are not mentioned.

consultations are needed – the final mechanism will continue to evolve through expert reviews and multi-stakeholder dialogues. A multi-stakeholder expert working group will be formed by the NRSC to facilitate this process until a national consensus is achieved. No timeline for this process is provided.

Surprisingly, there is no mention of CREMAs other than noting that CREMAs are included under FIP actions, and that they are part of national development policy (in the section describing the policy and institutional environment), and that Collaborative Resource Management Committees exist.

Overview of above documents

While discussion of tenure is somewhat limited in VPA plans, it is clear that the REDD+ documents devote a lot of space to the recognized problem of tenure, and state that REDD+ cannot succeed without changes to the current tenure system. The discourse evolves somewhat as newer documents and plans are drawn up, in terms of moving from figuring out if REDD+ can work within the current system, to acknowledging that the system will have to change. Newer programs seem to take these considerations more seriously than previous ones, except for the draft National REDD+ Strategy. Yet, the documents go back and forth on how transformative their actions aim to be. For example, the FIP first states that transformative reforms are needed, then talks about working within existing policies. Thus the question remains, how transformative are these reforms going to be? Will making adjustments to existing legislation be enough to truly influence the status quo power dynamics and change perverse economic incentives, or will this require a proper overhaul of the tenure system and a re-writing of the constitutional benefit sharing formula?

While discourse on tenure in the documents is extensive, nowhere are promises made or concrete actions in terms of legal reform proposed beyond further pilots, testing and reviews. The FIP says it will “address the tree tenure regime and carbon rights issue,” but beyond setting up pilot projects and contemplating the devolution of more rights to communities and farmers, it is unclear what concrete actions will be taken. Given that this has been such a longstanding and extensive problem in the country (which the government had in fact started addressing in the early 2000s), it is understandable that this needs to be a long and comprehensive process, with the need for input from various entities, stakeholders and experts. It is not something that should be rushed. But we are left with a degree of uncertainty as to what the proposed solutions might be, or how the reforms might take shape, likely without an expected answer prior to the first disbursements of REDD+ performance-based payments. At least REDD+ has provided the impetus needed to put this discussion at the forefront of the national agenda, after many years of wide acknowledgement that tenure was problematic.

Newer plans and documents seem to become more comfortable with the idea of rights devolution as a necessary step forward for REDD+ implementation. The option of CREMAs is given serious consideration throughout the REDD+ documents, with more discussion of CREMAs appearing in newer documents (with the exception of the PWC

report on the National Strategy), and as noted in Section 4, this is seen as a viable and important option for resolving the tenure issue in many localities, if it were to move from conservation to forest management. The questions become, is there the political will to move CREMAs from a conservation mechanism to one where communities are actively managing forests? Can CREMA-related community institutions easily adapt to a slew of new functions and goals associated with an emissions reductions program? Is the government really envisaging an integrated landscape littered with CREMAs, or is this something to implement in particular locations? What processes will be put in place to scale-up and support this concept?

Dedicated forests are also mentioned in some places in the documents, but not as extensively as CREMAs. It would be interesting to explore why this is, as while both CREMAs and dedicated forests involve devolution of rights and benefits, the origins of CREMAs (a heavy emphasis on conservation) are quite different from those of dedicated forests (active management/harvesting) – why has one proved to be more popular? Is this foretelling that REDD will place a heavier emphasis on conservation rather than active management/harvesting?

Surprisingly, after the extensive discussion of tenure issues in all previous documents, the PWC report on a National REDD+ Strategy has barely anything on tenure, neither in terms of discussion nor action points. It seems more concerned with dispute resolution mechanisms that will likely be needed to deal with problems arising from the tenure situation, rather than trying to addressing the problem itself. It does, however, focus on carbon rights, presenting an option that seems to have come out of previous processes – that carbon rights could be vested with the holder of allodial or freehold title, and any nested rights would be negotiated with the owner of the carbon rights. While clarifying carbon rights is undoubtedly important for REDD+, it is not the only problem with the tenure system, and it is unclear whether carbon payments (linked to those carbon rights) will in fact be enough incentive for sustainable management. Rights to forests and trees as a resource (financial or otherwise), beyond carbon, are still left unclear. Clarifying carbon rights is an important but insufficient strategy for ensuring a more sustainable management of forested landscapes. It is surprising that the REDD+ strategy would be so narrowly focused on carbon, given how previous documents have been more holistic in their approach and understanding of the problem. This is further reflected in the lack of mention of CREMAs or other community-based natural resource management options in the strategy proposal.

Section 3 – What has happened so far

The following two sections review information gathered from interviews with government and civil society stakeholder, conducted between 12-20 October, 2015 in Accra and Kumasi, Ghana (for a list of interviewees, see Appendix 1). Interviews revolved around: the geography of the various processes; what has happened in terms of follow-up or implementation, specifically regarding tenure, of the various VPA and

REDD+ programmes reviewed above; parallel activities happening outside the formal government REDD+ process; effectiveness of various actions; and descriptions of various stakeholders' interests in tenure reform.

As could be guessed from the evolving discourse on tenure throughout the documents reviewed above, interviews with key government and civil society stakeholders in Ghana revealed that there was broad agreement that the farmer, or whomever is nurturing naturally occurring trees off-reserve, should have a stake in the trees and gain some benefit from it, in order to reduce felling of trees on-farm/off-reserve. Off-reserve forests and trees are clearly the focus of tenure discussions, although there was some mention from a government interviewee of problems with landowners in the forest reserves; demarcation of forest reserve boundaries in consultation with farmers would also be a priority.

Here I briefly review activities specifically linked to tenure reform occurring under each of the programs reviewed above.

VPA As indicated in the VPA agreement and subsequent progress reports, tenure is indeed being considered a “second-tier reform” for the VPA, as in, not directly linked to its implementation. Interviewees confirmed that the tenure issue is a step removed from the VPA implementation – an issue for wider policy to look at – and out of the hands of the Forestry Commission (FC) that has been purely focused on a wood tracking system for legality compliance. It was commented that the FC’s focus was on the supply chain, and they do not consider tree tenure (the root of the supply chain and source of the timber) to be in their purview.

Despite this, the VPA annex’s statement on tenure was seen as the first push (along with REDD) that has gotten the government to look at tenure. The statement in the VPA annex may be broad, but it is clear, and provided the impetus to get the nation thinking about tenure reforms. Language in the VPA on committing to reviewing existing laws also resulted in the revised Forest & Wildlife Policy (FWP), where language on tenure is much clearer (however, the policy has yet to affect law). It will be contributing to a consolidated FWP, which would be a product of the VPA, but that process has slowed. The finalization of the FWP at the end of December 2013 meant that REDD documents that came out after this were derived from the FWP, which helps to explain how the language on tenure became stronger in the latter REDD documents. Civil society (CS) considers the language in the FWP as a remarkable improvement on previous policies.

VPA negotiation and implementation has also played an important role in opening up the space for civil society and communities; communities have been increasingly involved in monitoring of social responsibility agreements, and in this way community rights have been enhanced. Improved governance is an important part of the solution, even if it does not directly address tenure reform.

R-PP The R-PP lists a number of actions on tenure, including stakeholder consultations, reviewing of CREMAs, compiling proposals for legislative changes to operationalize carbon rights allocation, and a consultancy on appropriate benefit sharing mechanisms. National expert consultations were also expected for these issues. All these activities seem to be subsumed by the national tree tenure study currently taking place (see FIP in next paragraph), rather than being undertaken as separate activities under the R-PP. In addition, the seven pilot projects envisaged by the R-PP never took off in an official capacity because of lack of direct funding, so the subsequent REDD+ documents did not have these to build upon.

FIP was recently launched (last half of 2015), with the steering committee having recently had a couple of meetings. The different strands of the program had not yet moved forward in terms of implementation. But it is hoped that the FIP will reign in various disjointed REDD and tenure efforts (most if not all of which are not part of the formal REDD process – see section on previous pilots and studies) by looking at landscape projects with potential for reducing emissions and enhancing carbon stocks. Two projects are being rolled out for now:

- FIP 1, focusing on forest reserves in Brong Ahafo and the corridors between them, will include establishing 5 CREMAs (10,000 ha each) in the corridors and working with 55 forest fringe communities. Activities include climate-smart agriculture and plantation development. As part of the project, the government wants to demarcate forest reserve boundaries in consultation with farmers where land boundaries are somewhat contentious.

- FIP 2, focusing outside forest reserves, in Brong Ahafo and Western Region, will support plantation development and woodlots for charcoal and firewood production, and small-scale enterprises and other alternative livelihood activities. They have commissioned a study to look at alternative livelihood activities in the area, including using cocoa husks for soap making. They are still doing the reconnaissance work for this project.

A third project, on supporting the private sector in REDD+ activities, is being handled by the International Finance Corporation (IFC).

The main advance associated with the FIP was the commissioning of a tree tenure and benefit sharing study, using resources from the World Bank through NREG (Natural Resources and Environmental Governance group). This study is discussed in further detail in the sub-section below. The options that the study will come up with will be piloted in the FIP project areas described above. Results of those pilots would then feed into a legal review.

It was hoped that the FIP would have benefited from the R-PP pilots, but these never took off. FIP proponents say they “didn’t have the luxury of time” in coming up with the FIP program. Similarly, despite the fact that preparations for the FIP were lagging behind, ER-PIN approval process was not delayed and so could not really build on any FIP activities.

ER-PIN implementation had not yet begun. The ER-PIN document did indicate that NREG and FIP would be working on tenure reform, and that the FIP would pilot new policies in the emissions reductions programs – interviewees confirmed the expectation that the FIP pilots would include results-based payments for emissions reductions (but the details of this this did not seem to be clearly laid out). It would thus make sense for ER-PIN activities to be on hold pending the tenure study results.

Some interviewees noted the hastiness with each of the REDD+ documents has been put out, without necessarily considering or waiting for implementation of the previous one. One interviewee commented that there even seemed to be a rivalry between programmes within the World Bank umbrella that were working separately rather than in conjunction. Despite much discussion of clarifying rights regimes and such in all the REDD+ documents, it seems all the proposed actions, studies and consultations are converging onto the one tenure study – indicating that all action on this topic is on hold pending the government-sanctioned study.

National REDD+ strategy The National REDD Strategy’s failure to address tenure was explained by interviewees as a result of the Strategy coming from the Forestry Commission, which has intentionally left the tenure question to higher levels of government – the Ministry of Land and Natural Resources and their implementation of FIP activities. In essence, it was not addressed in the Strategy because tenure has been taken up elsewhere. It was, however, repeatedly noted that creating the Strategy document was all in all a poor process; a disjointed amalgamation of consultants’ reports without stakeholder consultations, and a process that was undertaken before the Ministry started with the FIP. There were many criticisms and some aspects were reviewed and presented at a finalization meeting in November 2015. It remains unclear [to the consultant] what the revisions were, and what the FC plans to do with this.

On the NREG tree tenure study

The oft cited tree tenure study (cited in many documents, and referred to constantly by all interviewees) is a government-commissioned, NREG-funded (through the World Bank) consultancy conducted by PAB Development Consultants LTD (a Ghanaian consultancy group). The several mentions of studies and piloting of tenure reforms and benefit-sharing arrangements in the REDD+ documents seem to converge on this one study – this study is the action that will be taken to fulfill many of the action points listed above regarding tenure. It was also clear from the interviews that all hopes and actions seemed to be pinned on this one study, focusing on tree tenure (although some had lobbied to have it look at both land and tree tenure), which will then feed into the FIP pilot implementation strategy, and subsequently feed into a legal review on tree tenure.

The study will develop options for tree tenure and associated mechanisms for benefit sharing, and design tree tenure pilots, for different ways that tenure can be arranged in

different regions around the country. The consultant was asked to focus on four types of forest/wildlife management systems:

1. Modified Taungya System
2. Commercial plantations
3. Trees on farms (off reserve options)
4. CREMAs and Dedicated Forests

The study is expected to build on the significant existing literature, extensive consultations, and in-depth legal and socio-economic analysis of tree tenure and benefit sharing arrangements of different activities. According to interviewees, the goal would be to have a national workshop following the report, followed by which the Ministry of Land and Natural Resources will hold consultations around the entire country to collect views on the options prior to even starting with the piloting. Upon approval by the government, these options will then be piloted under the FIP, to see how these can be backed by legislation. It is hoped that, since this is the first time the government is leading the process, it should be accompanied with some commitments in terms of clear policies or cabinet memos on tenure, or should fit into the consolidated wildlife act.

It was stressed by some interviewees that this was not intended to be yet another study on the topic, but a way to collate and analyze existing studies, find some options on which the Ministry will run a series of consultations to reach consensus, as much as possible, on the way forward. This would be the first of its kind, in terms of building a national consensus and having the political will to do so.

Some initial reactions to the study were expressed at an IUCN workshop held in Accra in October, 2015. Several CSO participants stated that more studies and pilots were not needed; the topic has been studied and piloted extensively, and everyone understood the problem at hand. They said that the least the government could have done was to look at existing REDD pilots run by a number of NGOs, including existing CREMAs and other pilot initiatives, rather than committing to more pilots. Other CSO representatives, however, stated that while all CSOs agree that rights of vulnerable communities need to be strengthened, there still is no consensus on the way forward – on how to do it. They saw the idea of this study as getting to that point of consensus, or at the very least, making the government aware of all that is already happening on the ground on piloting tenure arrangements.

Others expressed disappointment that the study would not also look at land tenure. Some thought that the 3-month window for the study was not feasible, and called for civil society to raise the flag on this study before the results come out. Others noted that the consultants chosen for the study were highly competent and had a deep understanding of the issues and dynamics, having worked on these issues in the past for government, donors, and civil society. Yet others thought that something being done was better than nothing.

There was also the worry that the process of negotiating the TOR and awarding of the contract was not consultative enough, considering that all parties should be agreeing on

this process from the start – one said, “we need to agree on a road map for this as a nation.” It was commented that although the TOR were on the government website for close to 6 months, the call for inputs into the TOR was not clear or accessible. Getting civil society and other stakeholders on board with this process from day one is key to the success of this process, particularly if the government plans to take this study as the final word on tenure reform.

Ultimately, this study is the first of its kind commissioned by the government, which gives it the legitimacy that the government has been seeking to be able to move forward on the issue of tenure. It also means that the government can be held accountable for the outcomes of the study, as it would be harder for them to disagree with their own study. Delaying tactics – pushing back the thorny issue of tenure repeatedly over the years – will have run out by the end of this study; the government will have little choice but to actually move forward on the issue following this study. This is likely why everyone is waiting eagerly for the results of this study, and are waiting for a massive national effort on this front following delivery of the results (the first of which were expected in mid-December 2015⁶).

It is hoped that the results of this study will put the country on the right track to solving at least the tree tenure issue that has led to forest degradation and loss. The solutions voiced by all interviewees was to push for farmers and landowners to have a stake (or greater stake) in maintaining trees on farms, and/or for decentralization of some or all management responsibility of trees and forests off-reserve in some cases. They see that, with the right kind of support from the FC and CS, such actions would reduce forest degradation and loss, including technical backing and incentives of alternative livelihoods from standing trees (although a recent systematic review of the alternative livelihood concept casts doubt on the effectiveness of these types of projects (see recent work from Francesca Booker at IIED)). The precise mechanisms for, and end results of, re-doing tenure and benefit sharing arrangements are still being developed, but they are expected to require a “tweaking” of existing laws – as described by a civil society respondent. While perhaps not transformational in the sense of overhauling the current system, just this tweaking of the law is expected to take considerable time and effort.

It is still unknown which tenure options will be most effective, or what benefit sharing formulae will be sufficient to have the intended result of reducing forest loss; this is in part what the tree tenure study and piloting intends to find out. However, there are already many existing examples of similar studies and pilots that have already taken place that can hint towards the effectiveness of reforms, should they be brought to scale. A few of these are reviewed in the following sub-section.

⁶ Note: Data gathering for this consultancy report was finalized prior to dissemination of the results of the tree tenure study.

Previous/current pilots and studies not specifically linked to formal REDD programs

This section briefly reviews some of the projects and pilots that CS interviewees brought up when discussing “previous work” on tenure, work and experiences that they felt should be taken into account in the NREG study.

CREMAs. CREMAs have been in existence since 2005. The process of establishing a CREMA is lengthy: a stakeholder analysis is conducted, along with lengthy awareness raising on the value of resources and management options, area is demarcated, and agreement of at least 80% is sought in the communities. Benefit-sharing is agreed upon at the local level. No one loses title to their land; rather patches are brought together. It is estimated that 30 CREMAs are in existence around the country, although perhaps half of them are actually active, with the support of NGOs. A Rocha, a Ghanaian NGO, has been highly involved in the CREMA concept in the Northern Region of Ghana. They still work with CREMAs, but are looking for long-term financing for this – which is where REDD could come in. They have been engaging communities with CREMAs to reduce deforestation, have collected baseline carbon data, and have lobbied for including savannah ecosystems (where most CREMAs are located) in REDD programs. But tree tenure and carbon rights are still not clarified even within a CREMA. It was noted that while CREMAs enhance vertical equity, horizontal equity is still in question; gender and ethnic dynamics are less often considered in setting up of CREMAs.

Many in civil society saw discourse on moving CREMAs from its initial purposes of conservation to community forestry as a positive direction. As mentioned in the background section, a Wildlife Bill is currently before parliament, which would provide the legislative backing for CREMAs. However, it was commented that the language used in the Bill so far does still tend to see CREMAs as conservation institutions, and does not discuss management of trees. It is hoped that a revised Forestry Act would expand the powers of CREMAs to include tree management rights.

There was some confusion about why the REDD documents spoke of setting up more CREMA pilots- several interviewees stated that plenty of pilots already exist – that the proof of concept is already there. It is not unreasonable to think such a process can be replicated elsewhere. Given that 30 of these arrangements are or were in existence, there seems to be plenty of room for working with what already exists, and figuring out how to improve on the model and scale it up, and also how to adapt such a model to respond to potential carbon markets, requiring an exploration of new sets of rights beyond even timber (which CREMAs are just starting to deal with). The large proportion of failures indicates a requirement for follow up with technical and financial capacity.

Dedicated forests. People are less confident with dedicated forests, as they are less comprehensive in scope (focused on trees) and were never upscaled beyond 1 or 2 pilots. Now that people are pushing for CREMAs to be broader in scope, there is little traction for dedicated forests. This is likely the reason why dedicated forests appear to be less

prominent in the REDD+ documents examined above. However, they are still an option to be explored in the tree tenure study.

Registering trees. There was a pilot project around Kakum National Park where they are “registering” trees using GPS and tagging them as trees nurtured by a specific person. Registration and identification is a first step; the second step (not yet implemented) is negotiation with landowners, so that when the time comes for the government to devolve its rights in any anticipated tenure reform, rights holders will have been identified, and benefit sharing arrangements clarified. Such registration at district offices is already happening with trees that are planted, but only in a few areas have farmers been able to register their trees and receive a certificate. It was commented that the awareness of the need to register planted trees is there; the challenge has been with the registration process. The hope is to extend this registration system to nurtured trees as well.

Registering land. IUCN is supporting the Customary Land Secretariat to educate people in Wassa Amenfi to register their land for future security, encouraging documentation of land transactions to be validated by the traditional council. In this way, IUCN is emphasizing documentation of existing systems rather than advocating changing systems, as perhaps the best way forward for land tenure discussions.

Community based land agreements (CBLA). CARE had some very successful pilots in 2003/04 for planted timber that could work in a similar way for naturally occurring trees. They created a platform for landowners and farmers to discuss and negotiate benefit sharing in 25 communities in 5 districts (and other NGOs expanded this to other areas). Benefit-sharing was usually negotiated as follows: 75-85% to farmers, 5% to the community, 10-20% to landowner. The landowners were content as they had many tenants. Farmers were happy to have documents proving their tenure. These community based land agreements (CBLA) are simple agreements that spell out rights and expectations, with maps attached to the agreement, signed by both parties, and deposited with the traditional council. NGOs helped map land claims, obtain land title, and register planted trees. They were 50-year, renewable leases. 5 years after the pilots, farmers were still taking care of trees and happy with agreements. CARE had brought this up with government in a national stakeholder workshop in 2009/10, with farmers and landowners testifying to the credibility of the process; government did not act on this.

Tenure and benefit sharing studies. IUCN has produced a number of reports examining the feasibility of various benefit sharing mechanisms for REDD+ implementation. Assessing existing arrangements based on their *readiness* and *feasibility* for REDD benefit-sharing (which, I would argue, would always favour the most established mechanisms and not necessarily the most desirable ones - their findings do not speak to issues of equity or long-term effectiveness). Civic Response also produced a tenure study (which apparently the government had initially requested them to do, but then did not provide them with the funds). A principal finding of the study was that Ghana should aim for a legal framework at the national level that would allow for communities to negotiate their own land and tree tenure arrangements. Following consultations and interviews around the country, they found that the preferred arrangement was for farmers and

landowners to negotiate their rights to own trees and benefit sharing with each other. The least favoured was the option of having government and/or traditional authorities give rights to dispose trees on farmland.

Other institutions are looking at the tenure issue from different angles and piloting different schemes. IUCN is also piloting tenure and benefit sharing arrangements in relation to CREMAs. UNDP and the Ghana Cocoa Board (COCOBOD) are implementing a CREMA project in 7 districts, including looking at tree tenure arrangements. This is not an exhaustive list of examples.

Despite all these projects that have studied tenure and provided recommendations, these projects were dismissed by government interviewees. One government interviewee stated:

“What did they do? I don’t call it piloting. At the end of the day, it has no practical implications and won’t inform government in adopting it. Why not? Because we, the government, the ministry, will have to get all the ideas and actually do our own stakeholder consultation. What ever they have done, will go into the consultation – it can be that whatever they propose will be part of the system. But we are not bound by anything they have done. We will do our own thing [...] we will do the proper piloting.”

Given that the government is not coordinating these different initiatives, the tree tenure study can be seen as an opportunity to at the very least collate these in order to build on them, and expand the pilots to a much larger, more diverse area. The lessons learned from these larger pilots is intended to then inform legislation or policy.

Section 4 - Types of reforms different stakeholder groups want

This section provides a brief description of the kind of land and tree tenure reform the different stakeholder groups want to see, as gleaned from the conducted interviews.

Communities [No community members were interviewed for this report; the following opinions were presented by other stakeholders.] Farmers want documents to prove their tenure. They stand only to gain from any tenure reform, as lack of clarity works in the favour of the establishment (chiefs/government). There is the hope that landowners and tenants will discuss amongst themselves for final agreement on tenure and benefit sharing. As mentioned earlier, a previous study by Civic Response found that the preferred management arrangement by communities was that the farmer and landowner negotiate their rights to own trees and benefit sharing with each other. A potential complication with non-permanent tenants on land (leaseholds) was brought up by one interviewee: As non-permanent tenants would still need to be incentivized to maintain trees on farm, their contributions to nurturing trees would need to be recognized even during the short term that they would be nurturing it. So somehow tenants would need to register that they had previously worked on a piece of land, so that when it comes time

for benefit sharing they will also get a share, despite only working the land for a few years.

CSOs Several CSO interviewees called for allowing communities to define their own way of negotiating rights and benefits rather than deciding this centrally: a form of decentralized land titling and tree registration. However, they also recognized the need for providing some minimum guidelines and safeguards to protect more vulnerable groups. Thus they indirectly supported the findings of the Civic Response study (which I do not think was released beyond a small group). They agreed that a one-size-fits-all solution for the whole country would not be possible; rather, some general framework, acceptable to all, with clearly defined principles, would need to be upheld in the regions.

They saw that a just tenure reform, if following CREMAs, would give management authority to communities covering all resources, including trees, so that the community can decide what to do with it, but would include support and monitoring. Vertical and horizontal equity will need to be incorporated into any mechanism. Equity, it was commented, should be defined by effort; the bundle of rights (access, use, management, exclusion and alienation rights) should be examined to identify the relevant stakeholder for each of these rights and responsibilities.

CSOs had misgivings about the traditional authority system which vests a lot of power in chiefs and family heads with little accountability, particularly with the allocation of lands. They saw that greater social accountability by chiefs would greatly enhance the tenure reform agenda. They also saw that requirements to set up a company before commercializing trees on farmland was overly burdensome for communities and should be removed. Several also commented that the FC's mandate (as in fact already stipulated by the Forestry Commission Act) was limited to the forest reserves; they should only be involved in regulation off reserve (instead of management and regulation, as is the case on-reserve), thus they should also not be taking 50% of benefits. FC's services should be available for hire by communities.

Several saw that nurtured trees should be considered in the same way as planted trees, particularly since many trees on farms were planted in the 1980s as part of government agroforestry programs. It was suggested that this could be used as a benchmark: if the tree is less than 35 years old, it is likely that the farmer has nurtured it. Others thought that all off reserve trees and forests should be removed from government control and given to the traditional landowners, without any reference period.

While all CSOs agreed on strengthening rights of communities, there seemed to be some difference in the angles used to approach the issue - a rights-based approach versus a market-based approach. On the one hand, some CSOs approach this from a social justice stand point, where community rights to make their own decisions, and benefit-sharing based on these rights, are paramount, in order to create the conditions for reducing degradation that will also enhance economic benefits flowing to communities. On the other hand, other CSOs are pushing for communities to organize themselves to engage in

emerging carbon markets, involving the private sector and enhancing commercialization. Ultimately, the goal for either approach is strengthening community rights.

Government While all agreed that those nurturing the trees on the land should have a stake in the trees, one government interviewee wondered why we are so focused on off-reserve forests; by the time tenure is re-negotiated, it will all be gone – “there will be a natural death.” Instead, the interviewee advocated that farmers should just focus on establishing woodlots, for which tree rights are clear: “REDD should be geared more towards plantations. It’s more productive.” In a sense there is some truth to this, given current trends in forest loss and the length of time it would take to undertake local tenure negotiations and registrations. But this disregards natural regeneration, current sacred groves and other forest areas already in the hands of the communities (albeit not legally-recognized). One government official shared concerns that the complexity of handing over rights to communities would entail farmers being able to treat timber trees any which way, thus needing heavy regulation of how individuals deal with timber contractors.

The government would be losing substantial revenues by handing over rights to communities in the off-reserve, but this did not seem to be a major concern for interviewees. One CS interviewee noted that the government has always come up with a way of getting its share, for example through taxes or levies. It was commented that it is feasible to cut the government from off-reserve management and benefit-sharing, instead just receiving fees for its work should it be involved in management (community capacity for management was repeatedly questioned). One government interviewee suggested that the government would divest itself from any ownership or economic interests of trees outside reserves. This would leave room for other relevant stakeholders in benefit sharing, with the government’s share going to the tenants. In this situation, the Forestry Commission would only provide the technical backstopping to communities who are managing their own affairs for off-reserve trees. They saw this tenure reform as a basis to start to plant the seed of responsibility and management with the communities. This will help resolve the ongoing debate of whether the FC can be a manager as well as regulator.

In fact, it was seen as more important to the interest of the government that a fair process was ensured, one that satisfies all key stakeholders, in order to avoid potential political backlash if the process is not properly negotiated.

Traditional authorities [No traditional authorities were interviewed for this report; the following were presented by other stakeholders.] Interviewees stated that traditional authorities would have the most resistance to changing the off-reserve system or any threat to their portion of benefit-sharing. They would not be happy with tenant farmers having a stake, and that if the government will be giving up any of its interest in benefit sharing, they believe this should automatically come to them. It was also stated that most of the delicateness of this reform process lies with the government not wanting to upset this stakeholder group, which is seen as very powerful. Others stated that “the so called landowners will have to give up something,” and that they should be willing to let go of a bit for the benefit of the wider community. All agreed that this would be a delicate

process, and that the only way to move forward would be to involve them at every stage of the consultation process.

In the Civic Response study on tenure, interviews with 17 chiefs from different places revealed that the chiefs' opinions are varied. Some chiefs believe that they do not have the capacity to manage trees on their own and prefer centralized control; others say that communities should manage the resources, as they have tried and tested customary norms that prevent forest destruction; other chiefs thought they would still need some technical capacity from the FC, which they would acquire through paying a management fee.

Private sector This stakeholder group was not brought up much in discussions, except to say that clarifying tenure is to their advantage, as it will minimize any arbitrary charges or excessive procedures and negotiations with various stakeholders. Instead, it would be advantageous to them to know which communities to deal with directly. They are not expected to angle for a share in land rights.

Section 5 - Recommendations to CSOs on how best to engage

This section provides some recommendations to CSOs on how best to engage in REDD+ and FLEGT VPA processes to ensure that land and tree tenure reform will effectively address the problems that are associated with the current system. I present these recommendations as an outsider to these organizations, thus lacking in-depth prior knowledge of CS agendas. The following, however, are informed by the interviews conducted for this report, and are a mix of opinions from interviewees and my own conjectures.

There are many opportunities for CSOs to insert themselves at all levels, from the community to the national level. A generic assessment is that CS needs to pay more attention to the REDD process in general. By their own admission, CS has been much less engaged in REDD, instead focusing efforts on VPA implementation. However, considering the limited attention to tenure that VPA implementation has had, strong involvement in the REDD process is likely a principal way to shape the tenure reform process, particularly since it seems that even the FWP revisions will wait for results from the REDD tree tenure process. To do so, **CS will need to be more proactive**, particularly as CS interviewees indicated that the government is slow to share information. One interviewee commented that CS has little knowledge of what is happening in FIP.

The FIP pilots are pivot points in the tenure debate. Considering that the government does not seem to trust anyone else's work on the matter, there does not seem to be much point in working in parallel without the government leading the way. The government will still want to run their own pilots/consultations, so the best way forward for CS is to engage in the government-led process. This can be done a number of ways and at different stages. The first opportunity, as things stand, is to **engage with the consultation**

process that will happen following the release of the tree tenure study results. While the government has ploughed ahead with this consultancy with only some consultation, the government has committed itself to a consensus building process following the study. Thus at that time, CS will need to raise the flags it wants to raise, regarding recommendations for the next steps of the process, particularly future consultations and their representativeness, pilot project methodologies, the process of incorporating findings from the extended process and integrating them into law, etc.

In addition, it is important to question the assumptions that the report are based upon, namely, the limited choices of arrangements that the consultancy was meant to study which has effectively limited the debate to already existing tenure arrangements and benefit sharing mechanisms. In terms of advocacy, CS could be **pushing to expand the debate and options on the table**. The choices of tree tenure reform being studied aren't transformational; they are already-existing benefit-sharing mechanisms, some of which have not been negotiated at the local level – modified taungya system (MTS) and community plantation development (CPS) arrangements have been imposed by the Forestry Commission. This is not entirely surprising, given that a complete overhaul of the system would be too difficult, considering how political the subject is and how reluctant those in power would be to change the system. But it is important for CS in its advocacy, and particularly within the upcoming consultations, to **make sure that any past pilots that have been successful** (such as arrangements in the CARE project) **be incorporated in the final results of the study and the pilots**. Doing so could also re-open the discussion on land tenure, rather than just tree tenure. In essence, throughout the national and regional consultation processes that the government is committing to, CS will need to ask the right questions and raise flags where need be. They could also be **asking how the REDD money is being spent**.

At the second, piloting stage that will follow the tenure study, there is room for CS to **get involved in the FIP pilots**. CS strengths have been in building local capabilities for both participation and management. One interviewee noted that rather than just focusing on advocacy, CS could be **building local capacity to avoid the reoccurring problem of non-representative representatives** always being called to the table. CS are usually the only ones interacting with communities that have their trust; government will need to recognize this in implementing any pilots. The Dedicated Grant Mechanism (DGM) is set up specifically for the purpose of helping communities to mobilize and building capacity among local actors. This is a direct financing mechanism for CSOs to work with (although it does not seem to be up and running yet as the implementing agency has yet to be chosen – one government interviewee said that the DGM is behind because of infighting amongst NGOs; this wasn't verified by other interviewees). But, apparently a great deal of money is available through the DGM for capacity building – NGOs would have the opportunity to present proposals for funding to **engage communities in the policy process and FIP activities or work with them on farm/forest management**. CS can use the money to organize key focal groups, educate or create awareness on the outcomes of the study, explain implications of the benefit sharing options, and/or translate literature into local dialects.

For the VPA process, it is surprising that there is no talk of piloting new tenure arrangements alongside VPA implementation, particularly while piloting artisanal milling projects. CS is already leading the way in piloting artisanal milling, which seems to have come to a halt due to lack of raw material – this seems like a fine opportunity to combine artisanal milling pilots with CREMAs or other such arrangements that can provide millers with legal timber from communities so that they are less dependent on the whims of current timber rights holders. If CS would **insert the tenure discussion within current VPA implementation**, this would play to the existing strengths of CS, having been heavily involved in multiple aspects of VPA implementation.

It is also clear that several NGOs are working in isolation (particularly those taking the different approaches described above). There is plenty of room to **have a more coordinated and coherent front from the CSOs working on REDD and climate change**. This worked well for the VPA with Forest Watch Ghana, where CS was able to create a common and strong front to successfully advance their agenda. It may also be useful to set up a knowledge platform of sorts to share lessons on approaches that have been piloted, in order to share on-the-ground implementation experiences amongst CS actors (as it seems that government will pay limited attention to this anyway).

In terms of further studies needed (or things to make sure the NREG study considers), it is also interesting to note that the tree tenure studies that have been conducted to date have mostly mapped out existing benefit sharing arrangements, whether statutory or customary, by region or ethnicity. It is assumed by most stakeholders that if farmers have a stake in trees on farms, they will take better care of them – indeed much literature on tenure in Ghana has pointed to that as well. But how much of a stake would actually change behavior? Or is it just a matter of recognition and ownership, regardless of the ‘how much’? Nobody has a magic formula, and I am not sure that anyone is looking beyond the difficult process of negotiating interests to better understand specific benefit sharing arrangements (financial formulas, but, importantly, also *non-economic* incentives and motivations) that would actually be the most effective in keeping trees on farms. CS could get involved in providing more nuanced detail to the tenure reform discussion by **showing the type and extent of tenure reforms that would be needed to see a change in behavior** and thus impacts on forests and trees on farms. Perhaps studies such as this can be incorporated into the FIP pilots. It will also be interesting to see how **gendered dynamics in the use and nurturing of trees** are considered in the NREG study and moving forward. As one interviewee put it, the bundle of rights may need to be disaggregated when thinking about how different groups benefit from trees and forests. It will be important for CS to keep an eye on who, or which groups, are the target of devolvement of rights and benefits, to **ensure horizontal equity as well as vertical**.

Interviewees additionally brought up the following suggestions for CS involvement:

- get the government to agree on minimum standards for consultation and participation across all government activities related to the environment and natural resources;

- strengthen ties with organizations in the Global North, so that the government is accountable to both local and international actors in achieving a high standard of consultations;
- partner with government to develop a road map;
- keep an eye on policies and legislation coming up to ensure equity, and get involved in testing tenure pilots; and,
- “the fight for civil society is the fight off-reserve;” focus efforts there.

This research report has also pointed out that there are many activities that have been put on hold pending the tree tenure study. CS should be wary of the government 1) putting too many eggs in this study’s basket; and 2) ignoring other promised activities, reviews, and policy actions. There will continually be room for CS to be paying attention to what is not being implemented in the FLEGT and REDD documents reviewed here. CS could be **holding the government accountable for the various activities, committees, and studies listed in the documents** (particularly in the REDD documents), as everything listed in the documents is something the government has committed to doing.

Timing, and the rushed nature of overlapping REDD+ programmes, seems to be a weak point for the REDD process in Ghana (and likely elsewhere): the speed with which new programs and strategies seem to get approved does not allow for sufficient time for initial programs to inform new ones. The envisaged tenure reform process and piloting will take a while; it is thus important for CS to **call for pushing on the brakes in the REDD+ process**, to let the changes to the system catch up with the nation’s REDD+ and emissions reductions ambitions. Pushing forward with an emissions reductions payment program before sorting out the tenure situation may make it more difficult to change the tenure situation in the long run – stakeholders that start receiving REDD+ funds may be even more reluctant to give up any of their share at a later time. The urgency of reducing deforestation and receiving REDD+ payments in Ghana will need to be balanced with patience to get the system right to avoid further entrenchment.

Section 6 – Conclusion

Existing land and tree tenure arrangements in Ghana are problematic for forest management, are not conducive to reducing deforestation, and pose difficulties for equitable benefit sharing among stakeholders; this has been widely understood for many years. The VPA and REDD+ processes that Ghana is currently undertaking have brought the tenure issue to the national stage in an unprecedented way. Particularly for REDD+, government plans fully acknowledge the problematic nature of existing tenure arrangements, as well as the need to make changes to it. Interviews of key government and civil society stakeholders in Ghana revealed that the dominant view on the way forward for off-reserve/on-farm trees and forests is to give farmers who have nurtured those trees a stake in the resource (which they currently do not have). While there is wide agreement on this approach, there is no national consensus (or even within stakeholder

groups) of how to go about doing this; there is just a commitment to do it — though this is already a big step forward. All national efforts to move forward with this issue converge on a tree tenure study commissioned by the government, which aims to gather lessons learned from the various studies and pilots that have already occurred (mostly through civil society actors), hold national level consultations on the options being discussed, and then implement pilots of tenure arrangements as part of ongoing REDD+ work. Opinions are mixed on the utility of yet another tenure study, but it seems like the only way the government will move forward on the issue. Until results of this study are released, and are validated by stakeholders in regional and national consultations and by the government itself, it is difficult to say what the tenure reform will look like in practice, or if the reforms will be sufficiently transformative or effective in reducing forest degradation, making benefit sharing more equitable, and protecting the most vulnerable groups. It is the job of civil society to engage in the government-led process, to: continually question assumptions made in the study and raise flags, where appropriate; build local capacity so that local stakeholders can effectively participate in the government-led consultations following the tenure study; monitor the progress of any piloting; and make sure that momentum is not lost in this process, while also ensuring that REDD+ activities are not rushed before satisfactory reforms can take place.

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Appendix 1 – List of interviewees

The following stakeholders were interviewed, in Accra, Kumasi, and Paris, in October and November 2015. Besides G. Allison, all interviewees were selected in conjunction with Civic Response.

Gaia Allison, Department for International Development, UK
Tabi Agyarko, Ministry of Land and Natural Resources
Alex Asare, Forestry Commission, Resource Management Support Centre (RMSC)
Wellington Baiden, Portal Forest Estates Limited
Chris Beeko, Forestry Commission, VPA Division
Kingsley Bekoe, UN Development Programme
Gene Birikorang, Hamilton Consulting
Saadia Bobtoya Owusu Amofa, IUCN
Daryl Bosu, A Rocha Ghana
Richard Gyimah, Forestry Commission, VPA Division
Albert Katako, CARE Ghana
Samuel Mawutor, Civic Response
Sam Nketiah, Tropenbos International Ghana