



ROOTED IN THE GROUND REFORMING GHANA'S FOREST LAWS TO INCENTIVIZE COCOA-BASED AGROFORESTRY BRIEF

The government of Ghana claims state ownership of all “naturally occurring” trees, including on land privately held under customary title. The lack of tree tenure and inability to capture economic benefits from trees is a major driver of tree loss and disincentivizes cocoa agroforestry. This brief analyzes tree tenure law and policy in Ghana, including the proposed tree registration policy and justifications for state ownership of naturally occurring trees based in the 1992 Constitution. The authors propose an alternative interpretation of the 1992 Constitution based on customary law and usage that allows devolution of all tree rights to customary landowners without a constitutional amendment and removes the need for a tree registry. Evidence from devolution of tree tenure in the Sahel and China show that devolution can lead to increased tree cover. Based on this analysis a series of recommendations on tree tenure reform are posed for government, the cocoa sector, donors, and civil society.

COCOA AND FORESTS

Ghana is the world's second largest cocoa producer, and cocoa plays a critically important role in the economy with an estimated 30 percent of Ghana's population dependent on cocoa for part or all their livelihoods. However, the cocoa sector is in trouble and smallholder cocoa production does not provide a reliable livelihood or ensure a healthy and sustainable ecosystem.

Traditional cocoa farms retained large shade trees which preserved many economically and environmentally important trees within the landscape. In the late 1950s the government inserted itself into the timber market and claimed rights to naturally occurring trees on cocoa farms. This led to increased timber harvesting from cocoa farms that was exacerbated in the 1980s when Ghana's cocoa marketing board changed its policy and advocated removing shade trees and switching to more sun tolerant cocoa varieties to increase productivity. The new cocoa board policy produced short-term yield gains, but also increased susceptibility to diseases and shortened cocoa trees' productive life. The combined pressures from forestry and cocoa led to deforestation and fragmentation of forest landscape in Ghana's high forest zone and widespread removal of shade trees from farms. An average of 138,000 hectares of forest was lost per year from 2000 to 2015 and in 2007 it was estimated that 72 percent of cocoa farms across Ghana had "no to light" levels of shade.

Integrated Land and Resource Governance (ILRG)

The report *Rooted in the ground: Reforming Ghana's forest laws to incentivize cocoa-based agroforestry* was prepared as part of the ILRG task order's Supporting Deforestation-Free Cocoa in Ghana activity. The purpose of the activity is to design and then scale up a financially viable smallholder farmer rehabilitation and tenure strengthening model for the Ghana cocoa sector. This is combined with land use planning activities that aim to reduce deforestation and greenhouse gas emissions, increase carbon sequestration and cocoa farm productivity and resilience, diversify farmer incomes, and improve livelihoods.

The government of Ghana and cocoa industry actors acknowledge the vital role of improved cocoa production systems to mitigate and adapt to climate change, maintain biodiversity, conserve and enhance ecosystem services, and improve the livelihoods of cocoa farmers and their families. They recognize that increasing the diversity of shade tree species in Ghana's cocoa-growing landscape is critical to improve the health and sustainability of cocoa production and diversify income and resilience for cocoa households.

TREE TENURE: A KEY CHALLENGE TO RESTORING COCOA FOREST LANDSCAPE

A leading challenge to planting more shade trees is government ownership and control of all naturally occurring timber trees – even on privately held land. State ownership of naturally occurring trees is widely considered a strong disincentive for landowners and smallholders, regardless of land tenure, to nurture trees on their cocoa farms. In part this is because the benefits of harvesting naturally occurring trees are shared between loggers, traditional authorities, and the government, while landowners are excluded. Numerous government policy documents over the last decade have advocated for vesting title to naturally occurring trees with communities and farmers that cultivate and tend these trees.

TREE REGISTRATION IS NOT EFFECTIVE TREE TENURE REFORM

The current tree tenure reform efforts are focused on establishing a national tree registry where farmers can register title to trees on their land. Early tree registration policy allowed farmers to register planted trees as proof of ownership but maintained state ownership of naturally occurring trees. More recent policy allows farmers to register both planted and naturally occurring trees and separates rights to trees from rights to the land. This proposed separation of rights to land and trees changes customary tenure norms and creates the potential for conflict on many cocoa farms if tree tenure rights are used to claim *de facto* land rights beyond customary practices.

There are other problems with the proposed tree registration policy. If a farmer fails to register a planted tree, the default determination is that the planted tree is naturally occurring and owned by the state. It is also unrealistic and unsustainable to successfully establish and maintain a national tree registry.

Tree registration is estimated to cost from US\$27 - US\$40 per farm, which scales to a cost of between US\$47.5 million and US\$86.4 million to register all the trees on Ghana's cocoa farms. This does not include the Forestry Commission's costs to process 1.7 million to 2.1 million individual records from cocoa farmers, the costs of tree registration in other parts of Ghana, or the costs to establish and maintain the registry over time. It also does not consider the cost of farmers' time to work with someone to map their farm, participate in an audit, or follow up to maintain their registration over time. Costs to maintain the registry especially for inter-generational succession would far outweigh the costs of initial first-generation registration.

THE 1992 CONSTITUTION: A BARRIER TO REFORM?

Government-sponsored policy reforms that argue cocoa farmers should have rights over all trees growing on their farms are a significant and positive step in the right direction. However, these calls for reform are accompanied by arguments that the current law is based on the 1992 Constitution, and that any law reform requires constitutional amendments. There are two key issues under the 1992 Constitution: i) how natural resources and rights to naturally occurring trees are interpreted, and ii) how revenue from these resources is allocated.



Cocoa farm abutting Bura River Forest Reserve, Western Region, showing large trees felled to establish the farm

INTERPRETATION OF THE 1992 CONSTITUTION THAT PROTECTS VESTED INTERESTS

The government claims that naturally occurring trees on cocoa farms are a natural resource, and ownership of these trees is not separated from ownership of the land. However, stool lands are vested in the stool who own them “on trust” for the stool subjects, with government involved in regulation and management. While customary rights to stool land can be passed down to farmers, the stool and state have retained rights to natural resources to exercise their fiduciary responsibilities as trustee. As naturally occurring trees are part of the stool's resources, the stool and government divide up the proceeds from timber revenue according to the constitutionally mandated split. This poses a major challenge as farmers are excluded from the revenue. Planted trees, on the other hand, are treated the same as crops, which can be owned separately from the land. Farmers possess all ownership, management, and use rights to crops and planted trees – and the subsequent benefits.

ALTERNATIVE INTERPRETATION THAT SUPPORTS DEVOLUTION

The authors analyzed the 1992 Constitution, customary tenure practices in the cocoa-growing regions, and literature on tree tenure in Ghana and propose an alternative interpretation with two parts:

- First, the main customary land rights of usufruct, *asidɛɛ*, and *abunu* that support rural farmland holdings are created by clearing the natural resource of the primary forest. As a result, there is no remaining natural resource associated with usufruct, *asidɛɛ*, or *abunu* farmland.
- Second, all trees that are currently considered “naturally occurring” (and therefore argued to be a natural resource owned by the government and the stool) should more correctly be understood as farmed trees. As a result, they should be treated the same as planted trees and therefore owned by the landowner.

This alternative interpretation eliminates the distinction between naturally occurring and planted trees on customary land with all rights to all trees derived from these family or individual rights to the land. This view suggests that policy makers could avoid the need to register trees, which would allow tree tenure policy reform to move ahead without a constitutional amendment. This proposed interpretation of the 1992 Constitution and recognition of farmers' rights to all trees on their land should incentivize farmers to cultivate more timber and shade trees on their lands as they would be the legal and beneficial owners of these trees.

LESSONS FROM OTHER COUNTRIES

It can be difficult to establish a cause-and-effect relationship between tenure systems and sustainable forest systems. Evidence of how tenure security can change farmers' tree planting behavior exists in other countries and can help inform policy reform in Ghana. The most instructive cases for Ghana on devolution of rights are the innovative and impactful policy reforms that have been implemented in Sahelian West Africa and northern China. In both examples the devolution of rights to individuals led to increased forest cover. China's experience had a further key lesson: devolution of rights on its own may not be sufficient to incentivize tree planting. Devolution must be coupled with landowner access to markets and benefits. Ghana can also look to neighboring Côte d'Ivoire, which has gone through rounds of forest law reform in 2014 and 2019 that has resulted in provisions to explicitly state that natural or planted trees belong to the landowner. However, uncertainty and conflicts over underlying land tenure in Côte d'Ivoire highlight the need to look at both the land and tree governance framework together, along with the needs and motivations of end users and other stakeholders.

Other countries have experimented with tree registration systems with contrasting results. In Thailand, a government bank invested US\$1 billion as part of a corporate responsibility initiative to establish a tree bank to help farmers access loans and income, and through this program successfully registered over 11 million trees. The Philippines shares more similarities to Ghana; the registry was established to differentiate ownership of naturally occurring and planted trees and has not been successful.

RECOMMENDATIONS

The government of Ghana and USAID recognize that strengthening land and tree rights is critical for Ghana to achieve its development goals both within the cocoa sector and more broadly. However, forest resources in Ghana represent an important source of revenue for the government, so bold reforms that limit or remove the state's control have met strong resistance from the Forestry Commission and customary powerholders, including the stool and chiefs. As a result, years, even decades, of tweaking and modifying the legal and policy frameworks have been largely ineffective as the focus has been on enforcing and adjusting an inherently unenforceable and unfair legislative framework rather than tackling core issues.

Bold reform to devolve tree tenure to customary landowners without any need to register each individual tree is needed. To help achieve this aim, a series of recommendations is spelled out below.

RECOMMENDATIONS FOR THE GOVERNMENT OF GHANA

1. Enact law reform to devolve all tree rights to landowners. The law should be clear that all rights to all trees flows with rights to the land and this applies to customary rights holders. Rights to emission reductions can be separated from tree tenure and should not prevent devolution.
2. Implement and enforce existing permit regimes to generate revenue for the Forestry Commission. Active enforcement would go far to replace lost revenue from the devolution of tree tenure.

3. Establish a fit-for-purpose rural land registry to secure customarily held land rights. This should replace the proposed tree registration system.
4. Engage in public consultation and outreach during and after the reform process.

RECOMMENDATIONS FOR THE COCOA SECTOR

1. Re-direct funds away from tree registration pilots to focus on other priorities.
2. Expand tree planting programs. This could be coupled with other policy innovations such as a payment for ecosystem services scheme or a tree bank like in Thailand.
3. Support customary land rights registration.
4. Work with industry associations to support tree tenure reform including outreach to farmers.

RECOMMENDATIONS FOR DONORS

1. Develop a unified response to Ghana's tree registration policy to ensure donor support is aligned.
2. Help Ghana finalize the necessary legal and policy reforms to devolve tree tenure, including how devolution can comply with the sale of emission reductions to the Forest Carbon Partnership Facility. This may include supporting some of the communication and outreach needed to inform the public of policy changes around tree ownership.
3. Support additional research on devolution of tree tenure. For example, ILRG plans to carry out further analysis to help identify new sources of Forestry Commission revenue emanating from the proposed reforms.
4. Support registration of customary land rights, including through use of cost-effective mapping technologies and digital databases.
5. Support public communication and outreach on tree tenure.

RECOMMENDATIONS FOR CIVIL SOCIETY

1. Conduct outreach and engagement with all stakeholders to help push for reform.
2. Support tree planting programs, particularly once reform has been enacted.

For more detailed information, please see:

The full report – Fischer, J. E., O'Sullivan, R., Antwi, Y. A., & Freudenberger, M. (2021). *Rooted in the ground: Reforming Ghana's forest laws to incentivize cocoa-based agroforestry*. Washington, DC: USAID Integrated Land and Resource Governance Task Order under the Strengthening Tenure and Resource Rights II (STARR II) IDIQ. Available at <https://www.land-links.org/document/rooted-in-the-ground-reforming-ghanas-forest-laws-to-incentivize-cocoa-based-agroforestry/>

The summary for policymakers – <https://www.land-links.org/document/rooted-in-the-ground-reforming-ghanas-forest-laws-to-incentivize-cocoa-based-agroforestry-summary-for-policy-makers/>

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