

Legal Timber in Ghana: A Search for a Definition

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Abstract: For many years, the concept of legal timber has attracted the interest of academics, industry players, governmental officials, and policymakers on a national and international scale. It is a well-known fact that there are numerous definitions of what constitutes legal timber. However, these definitions frequently fall into one of two categories—too broad or too narrow—and are constrained by a variety of variables including political, economic, geographic, and other concerns. This proliferation of definitions and the obfuscation that attends it is problematic. The result is a legal system that is unable to fully address the phenomenon of illegal logging. In the end, these inadequacies and deficiencies of the legal regime are exploited by operators in the timber sector for all the wrong reasons. In light of this, this study explores the numerous definitional issues surrounding legal timber, both locally and globally, and pontificates on what may constitute legal timber in Ghana. The study concludes that adopting a thorough definition of legal timber is essential for tackling the issues of deforestation and the threats posed by climate change.

Keywords: Ghana, Definition of Legal Timber, Forest Management

1. Introduction

Ghana became the first African country to enter into the Voluntary Partnership Agreement (VPA) with the European Community (EC) in September 2008, and the agreement was subsequently ratified by the Parliament of Ghana in June 2009. By virtue of this agreement, Ghana is now party to global regulating standards and schemes resulting from various international climate change and environmental initiatives. A significant limb of the agreement focuses on defining legal timber in the Ghanaian context. The definition is expected to provide the standard for measuring the legality or otherwise of timber products that are traded under the partnership agreement. Consequently, timber products that do not measure up to the standard will not make entry into the EU market space.¹ Thus, the legality definition provides a criterion that aims to enable external actors to check compliance with and enforcement of the laws governing the transactions involving timber products generally.

It should be mentioned that the issue of the legality of timber is not entirely new. The Ghana Certification Standard, which has now been accepted as a national document, has undergone extensive development and consultation. Additionally, a supporting study on the topic of the legality of timber in the context of the VPA was carried out as part of the “*Moving Ghana to Legal Timber*”² project by CARE International. As Ghana has signed a trade agreement with the EU, a combination of various efforts to define legality is now even more necessary.

2. Evolution of the Legal Regime on Timber Governance in Ghana

Growing interest in other export goods started after the slave trade was abolished in the first half of the 19th century. One of the first things that was looked into was the potential wealth that the forests and minerals appeared to offer. European commercial interference in the use of land in the moist forest zone began with British and later French companies who harvested African mahogany at the end of the 19th century.³ The first African mahogany stems were sold in Britain around 1833, and their significance started to rise around 1878.⁴ By 1897, timber was the thirdmost important export good in the nation thanks to this trade’s steady growth.⁵ Europeans’ use of wood for construction increased significantly since then.

Since the late 19th century, Europeans’ rapid expansion in the extraction of timber created an urgent need to control these indiscriminate activities.⁶ A. Moloney, Governor of Lagos, captured this need for regulation in his book *Sketch of the Forestry of West Africa* in 1887 thus: “It can be stated without fear that in our possessions on the coast of Africa the timber is rapidly and visibly diminishing, and that ... replanting and preventing waste, has become worthy of early consideration.”⁷ The establishment of institutional mechanisms to stop environmental degradation will result from this awareness.

The Land Bill of 1897⁸ was the first piece of legislation to attempt to establish a legal framework for Ghana’s timber concessions. The Bill proposed the creation of a concessions court which was clothed with the authority to conduct investigations and interpret the terms of timber concessions

³Orwa C., Mutua A., et al (2009) Entandrophragma utile. Agroforestry Database 2.0

⁴Orwa C., Mutua A., et al (2009) Entandrophragma utile. Agroforestry Database 2.0

⁵Orwa C., Mutua A., et al (2009) Entandrophragma utile. Agroforestry Database 2.0

⁶OduroK.A. &Gyan K. (2007) *Draft Document on Definition of Legal Timber in Ghana* (Unpublished manuscript on file with the author)

⁷Moloney C.A. (1887). *Sketch of the Forestry of West Africa with Particular Reference to its Present Principal Commercial Products.*

⁸The Land Bill of 1897.

¹OduroK.A. &Gyan K. (2007) *Draft Document on Definition of Legal Timber in Ghana* (Unpublished manuscript on file with the author).

²OduroK.A. &Gyan K. (2007) *Draft Document on Definition of Legal Timber in Ghana* (Unpublished manuscript on file with the author).

or wood usage contracts under the requirements of the Land Bill, 1897.

Due to the fierce opposition it faced, the 1897 Land Bill had to be abandoned.⁹

However, some of its fundamental ideas were included in the Concessions Ordinance of 1900,¹⁰ which gave the Concessions Court comparable authority to interpret, decide, and enforce the terms of concession contracts.

The Concessions Court could also examine the rates for royalties.

The Gold Coast Government made the decision to focus its efforts on taking control of the means of production after failing to secure total land control.¹¹

The Timber Protection Ordinance (Cap. 96)¹² was passed in 1907 to prevent felling of young trees of specific types. A Forest Officer was designated in accordance with this Ordinance to examine trees before they were felled, and all individuals involved in the timber export trade were required by Cap. 96 to register their property markings.¹³

H.N. Thompson, the Conservator of Forests in Southern Nigeria, was invited to travel to the then Gold Coast in 1908 as a result of the growing need for timber exploitation.¹⁴ The study tour lasted six months, and a thorough report on the southern savanna woodland and high forest zone was submitted. Thompson's research recommended passing forest legislation, safeguarding timber trees, and instituting property markers for woodcutters.¹⁵ To enable the governor to designate specific properties as subject to a forest reservation, the Forest Ordinance¹⁶ was created in 1910. This Ordinance had the purpose of reserving 1.5 million acres of moist forest. However, the Ordinance was not put into effect until 1927 because the Government dared not do so in the face of local opposition.¹⁷

Under the Timber Protection Rules, property markers were first introduced in 1921. The Concessions Ordinance of 1900 was amended in 1925 and 1926, giving the Chief Conservator of Forest the authority to control activities

within concessions, establish guidelines and restrictions before work began, and establish sanctions for violations.¹⁸

The Forest Ordinance (Cap 157)¹⁹ passed in 1927 granted the State the authority to create and manage reserves while also recognizing the power of Native Authority by-laws to do so. In both cases, title to the land is retained by the landowner while management is carried out in trust for the landowner. The 1927 Ordinance also provided the option of management of the forest reserves by the landowners under the supervision of the State. The Forest Ordinance also specified the circumstances under which the State could issue timber leases or permits.

To control the activities of wood contractors, a Concessions Ordinance (Cap 136)²⁰ was enacted in 1939 as the 1930s saw a rise in the harvesting of timber.²¹ The Concessions Ordinance established a framework of revenues and rights for timber harvesting. The Ordinance also required the Chief Conservator of Forests (CCF) to establish guidelines for concession operations, including the acceptable level of logging-related forest destruction, the construction of logging roads and landing areas, diameter restrictions, and permitted tree species.²² Additionally, it stipulated indigenous land rights, agreements pertaining to rights to resources like lumber and, to a limited extent, gave chiefs the authority to make concessions on their territories.²³

The Trees and Timber Ordinance (Cap 158)²⁴, promulgated in 1950, and the Forest Offenses (Compounding of Fines) Act²⁵, promulgated in 1959, both dealt with the regulation of the timber trade. By compounding fines in some circumstances, these two regulations set general rules for safeguarding and dealing with offenses connected to trees and timber in forests and reserves.

The Trees and Timber Lands Act²⁶, 1959 and other regulations and amendments to this Ordinance were passed between 1950 and 1961 to ensure that timber was exploited sustainably. In addition, a Trees and Timber Ordinance (Cap 158)²⁷ was promulgated in 1950 to control the felling of any trees of small girth and to provide for the registration of property marks prior to exploitation of timber.

Low royalty rates were negotiated with the chiefs and the low export duties imposed on timber by the Government

⁹Oduro K.A. & Gyan K. (2007) *Draft Document on Definition of Legal Timber in Ghana* (Unpublished manuscript on file with the author).

¹⁰ Concessions Ordinance, 1900 (No.14).

¹¹Oduro K.A. & Gyan K. (2007) *Draft Document on Definition of Legal Timber in Ghana* (Unpublished manuscript on file with the author).

¹² The Timber Protection Ordinance, 1907 (Cap. 96)

¹³Douglas, H.F. (1955). Report on the Gold Coast. In Gordon, W.A. (ed.), *The Law of Forestry*, pp. 435–442.

¹⁴Douglas, H.F. (1955). Report on the Gold Coast. In Gordon, W.A. (ed.), *The Law of Forestry*, pp. 435–442.

¹⁵Douglas, H.F. (1955). Report on the Gold Coast. In Gordon, W.A. (ed.), *The Law of Forestry*, pp. 435–442.

¹⁶Forests Ordinance (Cap 157) –This Act provided guidelines for constitution of forest reserves and the protection of forests.

¹⁷Taylor, C.J. (1960). *Synecology and silviculture in Ghana*. Accra, Ghana, Legon University; Edinburgh, U.K., Thomas Nelson and Sons Ltd., 418 pp.

¹⁸Oduro K.A. & Gyan K. (2007) *Draft Document on Definition of Legal Timber in Ghana* (Unpublished manuscript on file with the author)

¹⁹ Forests Act, 1927 (Cap 157) –This Act provided guidelines for the constitution of forest reserves and the protection of forests.

²⁰Concessions Ordinance, 1939 (Cap 136) — This Act provided for the regulation of the granting of timber felling rights by stools or “natives” and the endorsement of such grants by the issuance of Certificate of Validity by the courts.

²¹Oduro K.A. & Gyan K. (2007) *Draft Document on Definition of Legal Timber in Ghana* (Unpublished manuscript on file with the author).

²²Concessions (Amendment) (Cap 136A).

²³Concessions (Amendment) (Cap 136A).

²⁴ Trees and Timber Ordinance No. 20 of 1949 (Cap 158).

²⁵ Forest Offenses (Compounding of Fines) Act, 1959 (No. 83).

²⁶ Trees and Timber Lands Act, 1959.

²⁷ Trees and Timber Ordinance, 1950 (Cap 158).

further encouraged the European prospectors, which led to the colossal post-war expansion of the timber industry. To counter-balance these dramatic developments, the Protected Timber Lands Act (Act No.39 of 1959)²⁸ was enacted.

A Concessions Act, 1962 (Act 124)²⁹ that revised the Concessions Ordinance was also passed in an effort to tighten the regulation of the wood sector. Act 124 created concessions for the exploitation of timber in forests and other protected areas. Forest licenses, leases, and fees were also covered. The President was given timber rights to all forest land under the Concessions Act of 1962 (Act 124) in trust for the owners.³⁰ The relevant Ministers having jurisdiction over land and forest issues (often the Minister of Land and Forestry) are to implement the Act's provisions under the President's trusteeship. On behalf of the Stool and the Government, the appointed Ministry negotiates the contracts of concession applicants for the use of the forest.³¹

The Concessions Act of 1962 shifted the powers and duties of concession administration from the judiciary (Concessions Court) to the Government by requiring the designated Ministry to negotiate, regulate, and enforce concession terms and obligations.³² The State now controls the administration and distribution of all timber resources and forest reserves according to the Concessions Act (124) and the Administration of Lands Act (123).³³ Taken collectively, the Acts gave all wood trees and forest reserves to the President in trust for the time in question. This has continued up until now, when the Forestry Services Division (FSD) of the FC has been in charge of concession management and the collection of timber royalties and taxes in both forest reserves and off-reserve regions.

The 1974 Trees and Timber Decree (NRCD 273)³⁴, however, altered Act 124. The order was intended to control economic use of both restricted and unreserved lands. In addition to this, the Timber Industry (Government Participation) Decree, 1972 (NRCD 139)³⁵ and the Forest Improvement Fund Act, 1960³⁶ were both passed to ensure that forest resources were used wisely.³⁷

The Protected Timber Lands Act of 1959 was repealed in order to ensure forest communities' access to non-timber forest products (NTFPs). The Trees and Timber Decree of

1974 (NRCD 273), which established a regulated access system and made it illegal to farm or fell trees without a permit in Protected Areas, was supported by the Forest Protection Decree of 1974 (NRCD 243),³⁸ which increased the penalties for conviction of forest offenses.

Unfortunately, further concessions were given, and political favoritism increased as a result of the implementation of all these decrees.³⁹ Concessions from forest reserves spread into regions outside such reserves as a result. The Decrees declared it illegal to carry out logging operations without a valid property mark and forbade any activity in woods without the Forestry Department's approval.

The Economic Plants Protection Decree, 1979 (AFRCD 47)⁴⁰ was passed to forbid the granting of rights to fell timber trees located particularly in cocoa farms in order to curb the increased activities of concessionaires, especially in areas outside forest reserves and its attendant conflicts of interest between forest communities and concessionaires. Although the Economic Plants Protection Decree forbade the cutting of trees on farms growing cocoa, it did not expressly and officially offer a similar level of protection for farms growing other crops. Additionally, the Decree did not prohibit the establishment of farms inside of wood concessions.

The "Interim Control Measures" restricting the removal and transportation of trees outside of the reservation were put in place in 1995. In order to ensure the sustainability of wood supplies from off-reserve regions, these procedures, which included local community engagement in monitoring and management, were designed to make sure that social responsibility, environmental, and ecological issues were addressed.⁴¹ The second "Interim Control Measures" step involved changing the "liquidation" policy to one of ongoing control of off-reserve regions.⁴² Communities, District Assemblies, and some FC officials severely misused the resulting chainsaw permission system, and some scholars have argued that it is still possible to consider it out of control today.⁴³ In order to rein in system abuses, "Interim Measures" were put in place in 1995 and Task Forces

³⁸ Forest Protection Decree of 1974 (NRCD 243).

³⁹ Oduro K.A., Marfo E., Agyemang V.K. and Gyan K. (2011). One Hundred Years of Forestry in Ghana. A Review of Policy and Regulatory Discourses on Timber Legality. Available at: https://www.fornis.net/sites/default/files/documents/forestry_in_Ghana.pdf. (Accessed: 5 May 2023).

⁴⁰ Economic Plants Protection Decree, 1979 (AFRCD 47).

⁴¹ Oduro K.A., Marfo E., Agyemang V.K. and Gyan K. (2011). One Hundred Years of Forestry in Ghana. A Review of Policy and Regulatory Discourses On Timber Legality on. Available at: https://www.fornis.net/sites/default/files/documents/forestry_in_Ghana.pdf. (Accessed: 5 May 2023).

⁴² Oduro K.A., Marfo E., Agyemang V.K. and Gyan K. (2011). One Hundred Years of Forestry in Ghana. A Review of Policy and Regulatory Discourses On Timber Legality on. Available at: https://www.fornis.net/sites/default/files/documents/forestry_in_Ghana.pdf. (Accessed: 5 May 2023).

⁴³ Oduro K.A., Marfo E., Agyemang V.K. and Gyan K. (2011). One Hundred Years of Forestry in Ghana. A Review of Policy and Regulatory Discourses On Timber Legality on. Available at: https://www.fornis.net/sites/default/files/documents/forestry_in_Ghana.pdf. (Accessed: 5 May 2023).

²⁸ Protected Timber Lands Act (Act No.39 of 1959).

²⁹ Concessions Act, 1962 (Act 124) – This Act vested in the President on behalf of the stools, all timber or trees on any land identified as concessions and also granted the State the power to allocate timber felling rights. It has been substantially amended.

³⁰ Concessions Act, 1962 (Act 124), section 16.

³¹ Concessions Act, 1962 (Act 124), section 13.

³² Concessions Act, 1962 (Act 124), section 13.

³³ Concessions Act, 1962 (Act 124), section 16.

³⁴ Trees and Timber Decree, 1974 (NRCD 273) – This law prescribed guidelines for participation in the logging/ timber industry and provided for the payment of fees as well as sanctions for non-compliance with the guidelines for participation.

³⁵ Timber Industry (Government Participation) Decree, 1972 (NRCD 139).

³⁶ Forest Improvement Fund Act, 1960 (No. 12).

³⁷ Agyemang V. K. (1993). Land, tree and forest tenure systems: Implications for forestry development in Ghana. Report submitted to the African Development Foundation, USA. 132pp.

established in 1996 but have had little to no effect. As a result, chain-sawing was prohibited in 1997 due to the passage of the Timber Resources Management Act, 1997 (Act 547)⁴⁴ and the accompanying LI 1649.⁴⁵

The Timber Resources Management Act (Act 547) of 1997 and the related Timber Resources Management Regulations (LI 1649) of 1998 initiated the legislative overhaul of the concessions system. The 1994 Forest and Wildlife Policy for the industry is currently supported by Act 547 and the Forestry Commission Act (Act 571).⁴⁶ In both forest reserves and off-reserve areas, timber concessions or rights are distributed. Timber Utilization Contracts (TUCs) have taken the place of timber concessions in both forest reserve and off-reserve areas.⁴⁷ TUC is a new legal agreement between the State, the person in possession of the timber rights, and the landowner. The agreement allows the State more power to impose rules on previously agreed-upon terms and conditions, such as compliance with auditing requirements for forest management and the right to terminate the agreement in the event of non-compliance.⁴⁸ The Act formalizes other parties' rights to consultation. Additionally, according to Social Responsibility Agreements, applications for timber rights must include "proposals to assist in addressing social needs of the communities who have interest in the applicant's proposed area of operations".⁴⁹ The Timber Resources Management (Amendment) Act, 2002 (Act 617)⁵⁰ and the Timber Resources Management (Amendment) Regulations, 2002 (LI 1715)⁵¹ amended the Timber Resources Management Act and the Timber Resources Management Regulations in 2002. The

⁴⁴Timber Resources Management Act, 1997 (Act 547) – This repealed the Concessions Act, 1962 (Act 124) and provided for the grant of timber rights in a manner that secures the sustainable management and utilization of timber resources.

⁴⁵Timber Resources Management Regulations, 1998 (LI 1649) – This

Regulation prescribed the procedures for the granting of timber felling rights on competitive allocation basis based on a prescribed set criterion. See (sections 32 (1 and 2)).

⁴⁶Forestry Commission Act, 1999 (Act 571) – This Act repealed Act 453 and re-established the Forestry Commission as a semi-autonomous corporate body and also brought under the Commission, the forestry sector agencies implementing the functions of protection, development, management and regulation of forest and wildlife resources.

⁴⁷Oduro K.A. & Gyan K. (2007) *Draft Document on Definition of Legal Timber in Ghana* (Unpublished manuscript on file with the author).

⁴⁸Oduro K.A. & Gyan K. (2007) *Draft Document on Definition of Legal Timber in Ghana* (Unpublished manuscript on file with the author).

⁴⁹Ayine, D. (2008). Social Responsibility Agreements in Ghana's Forestry Sector. Developing Legal Tools for Citizen Empowerment Series, IED, London. Page 2; Oduro K.A. & Gyan K. (2007) *Draft Document on Definition of Legal Timber in Ghana* (Unpublished manuscript on file with the author).

⁵⁰Timber Resources Management (Amendment) Act, 2002 (Act 617) – This Act amended Act 547 to exclude from its application land with private forest plantation, to provide for maximum duration and maximum limit area for timber rights and to provide for incentives and benefits for investors in the forestry and wildlife sector.

⁵¹Timber Resources Management (Amendment) Regulations, 2002 (LI 1715).

forementioned amendments were done to prohibit the granting of timber rights on land with private forest plantations and land with any timber grown or owned by individuals or groups of individuals, and to institute competitive bidding for timber rights. At the same time, the replanting requirement was removed. The current framework for forestry in Ghana is comprised of forest reserves that were established under the Forest Ordinance, 1927 (Cap.157), safeguarded under the Forest Protection Decree, 1974 (NRCD 243), and governed by the Timber Resources Management (TRM) Act of 1997 (Act 547), Timber Resources Management Regulations, 1998 (LI 1649), TRM (Amendment) Act of 2002 (Act 617), TRM (Amendment) Regulations (LI 1721) and the Land Act, 2020 (Act 1036).

To comply with the VPA's demand for the formation of a "Forest Law Enforcement, Governance and Trade (FLEGT) Licensing Scheme", the Timber Resources Management (Legality Licence) Regulations⁵² were also drafted in 2012. The L.I. aimed to establish a set of procedures and regulations to check and attest, through FLEGT licenses, that timber products exported to the Community from Ghana are produced legally, as required by the VPA.

A Forestry and Wildlife Bill⁵³ was also created, which codifies Ghana's forestry and wildlife legislation and transforms the Forest and Wildlife Policy's overarching policy goals into statutory requirements. The Bill also considers the VPA and gives the Minister the authority to issue rules on a variety of topics, such as defining the requirements for the issuing of legality (FLEGT) licenses. Part I, which is divided into four parts, outlines how to create a Forestry and Wildlife Commission in accordance with article 269 of the 1992 Constitution, along with its purpose, duties, and administrative framework. The management of wood resources is covered in Part II while the management of wildlife resources is covered in Part III. Part IV covers climate change and biodiversity in addition to other Bill provisions. Sadly, neither of these two pieces of legislation ever made it past the writing stage and into actual law.

3. The EU's Forest Law Enforcement, Governance and Trade Action Plan

The EU's Action Plan for Forest Law Enforcement, Governance and Trade (FLEGT), which outlines a procedure and a set of measures through which the European Commission (EC) proposes to address the growing issue of illegal logging and related trade, serves as the cornerstone of Ghana's negotiations with the EU.⁵⁴ One of the top priorities for the EU in the World Summit on Sustainable Development (WSSD) follow-up is the Action Plan.⁵⁵

⁵² Timber Resources Management (Legality Licence) Regulations, 2012.

⁵³Forestry and Wildlife Bill, 2012.

⁵⁴Oduro K.A. & Gyan K. (2007) *Draft Document on Definition of Legal Timber in Ghana* (Unpublished manuscript on file with the author).

⁵⁵European Union.(2003) "EU Forest Law Enforcement, Governance and Trade Action Plan" and Bueren, E.L. (2004).

The Action Plan outlines a fresh and cutting-edge strategy for combating illicit logging by tying good governance in developing nations to the permissible trade tools and power provided by the EU's internal market. The Action Plan marks the beginning of a process that will give special attention to capacity building and governance changes. It will be backed by steps to foster multilateral collaboration and complement demand-side initiatives aimed at lowering EU use of illegally harvested wood. The Plan lists six potential areas for action: Development Co-operation Partnership Agreements, trade in timber, public procurement, private sector initiatives, financing and investment safeguards, and implementation.⁵⁶

An obstacle to the FLEGT action program's implementation is reaching consensus on a practical definition of legality.⁵⁷ The European Commission intends to reach specific legality agreements with each partner nation. The Partnership Agreement for that country will then include the definition. Another consideration is that the Action Plan's suggested licenses would initially only apply to a small selection of solid wood products (roundwood and rough sawnwood). This is due to the challenges and complexity involved in determining the provenance (and subsequently the legality) of processed timber products.⁵⁸

4. Voluntary Partnership Agreements (VPAs)

Voluntary Partnership Agreements with nations that produce wood that want to stop trading illegal wood with the EU form the basis of the Action Plan. These agreements call for the implementation of a licensing system to guarantee that only legal timber from exporting nations (referred to as "Partner Countries") is let into the EU.⁵⁹ That is, a legality license ensuring the legality of the timber will be included with exports of timber products from partner nations. Under the plan, unlicensed consignments from Partner Countries would not be allowed entry into the European market.⁶⁰ In many circumstances, the FLEGT Partnerships may call for capacity building to develop wood tracking systems, audit/monitoring skills, and support for legal and forest governance reform in addition to increasing transparency and accountability.⁶¹

Introduction to the legal timber issue and the Keurhout Protocol for the validation of claims of legal timber. ISAFOR, Scherpenzeel, The Netherlands; Netherlands Timber Trade Association, Almere, The Netherlands, 21 pp.

⁵⁶European Union. (2003) "EU Forest Law Enforcement, Governance and Trade Action Plan".

⁵⁷OduroK.A. &Gyan K. (2007) *Draft Document on Definition of Legal Timber in Ghana* (Unpublished manuscript on file with the author).

⁵⁸OduroK.A. &Gyan K. (2007) *Draft Document on Definition of Legal Timber in Ghana*(Unpublished manuscript on file with the author).

⁵⁹OduroK.A. &Gyan K. (2007) *Draft Document on Definition of Legal Timber in Ghana* (Unpublished manuscript on file with the author).

⁶⁰OduroK.A. &Gyan K. (2007) *Draft Document on Definition of Legal Timber in Ghana*(Unpublished manuscript on file with the author).

⁶¹OduroK.A. &Gyan K. (2007) *Draft Document on Definition of Legal Timber in Ghana* (Unpublished manuscript on file with the author).

A definition of "legal timber" and a method to confirm that wood products made for the EU have been manufactured in accordance with this definition are necessary for each Voluntary Partnership Agreement. The verification process and definition of legality should both be suitable for the Partner Country's conditions.⁶² The VPA will need to take into account the inherent disparities in national forest governance concerns, legislation pertaining to forests, the nature of forest and land rights, nature of the timber trade, existing activities in the forest sector, and the ability to carry out agreements in each country.⁶³ Each Partner Country and the EU will discuss the specifics of these. Where necessary, the EU will offer development support to aid in the creation of licensing programs.⁶⁴

The FLEGT partnerships represent a delicate balancing act between various interests: a mechanism to ensure that only legally harvested timber enters the EU; a mechanism to promote improved forest governance and management; an opportunity to address gaps and controversies in legal and regulatory frameworks; an appreciation of the sovereignty of partner governments to determine their law; and recognition that credibility with the public depends on the VPAs including an agenda.⁶⁵

5. Defining Illegal Logging and Illegal Activities

First, it is important to distinguish between "illegal logging" and "illegal activities" in the forestry industry. The phrase "illegal logging" is used to describe "*timber harvesting-related activities that are inconsistent with national (or sub-national) laws.*"⁶⁶ Illegal logging, according to the Confederation of European Paper Industries (CEPI) (2004), occurs "*when timber is harvested in violation of national laws.*"⁶⁷ Also, "*Illegal logging occurs when timber is harvested, transported, bought, or sold in violation of national laws.*"⁶⁸ The act of harvesting itself may be unlawful, including the use of dishonest means to acquire access to forests, extraction without authorization or from a protected region, the axing of protected species, or the taking of more timber than was permitted. However, during the Sixth Conference of the Parties of the Convention on

⁶²OduroK.A. &Gyan K. (2007) *Draft Document on Definition of Legal Timber in Ghana* (Unpublished manuscript on file with the author).

⁶³OduroK.A. &Gyan K (2007) *Draft Document on Definition of Legal Timber in Ghana* (Unpublished manuscript on file with the author).

⁶⁴OduroK.A. &Gyan K (2007) *Draft Document on Definition of Legal Timber in Ghana*(Unpublished manuscript on file with the author).

⁶⁵OduroK.A. &Gyan K. (2007) *Draft Document on Definition of Legal Timber in Ghana* (Unpublished manuscript on file with the author).

⁶⁶ Smith, W. (2002) The global problem of illegal log ITTO Tropical Forest Update 12 (1): 3-5.

⁶⁷CEPI (2004) Report on FLEGT and illegal logging UNECE/FAO Workshop 16-17 September 2004. Available at: https://unece.org/fileadmin/DAM/timber/docs/sem/2004-1/full_reports/CEPI.pdf. (Accessed: 07 May 2023).

⁶⁸ FERN (2002) FERN Annual Report and Brack D. and Hayman G. (2001) Intergovernmental Action on Illegal Logging

Biological Diversity, the phrase “unauthorized harvesting” was adopted instead of “illegal logging” since it was too contentious for some nations to accept.⁶⁹

A broad term, “illegal forest activities”, is used to describe activities other than harvesting, transport, processing, and trade.⁷⁰ Brack and Hayman note that illegalities may also occur “during transport, including illegal processing and export, misdeclaration to customs, and avoidance of taxes and other monies.”⁷¹ Illegal forest activities are also linked to the inability of governments to enforce the law.

The first step in developing a specific legality policy is to define the issue that the policy is intended to solve. The problem identified should eventually be the focus of the policy’s substance and the supporting procedures. Numerous studies have described the spectrum of definitions, or legal and practical definitions, of unlawful logging and illicit commerce in timber. Illegality in the forestry industry can encompass the entire supply chain, from the stump to the final consumer, and has a very broad range of potential applications. In this section, we include the definitions that are generally used. Most firms strive for complete legal compliance from all parties involved in the creation and delivery of the traded goods.

Examples of how various groups have defined the issue of unlawful logging are given by Miller et al.⁷² The range of definitions reveals the complexity of the problem. When anything crosses the line into illegality, it usually reflects the organization’s guiding principles as well as any regional considerations.

American Forest and Paper Association (2004)⁷³

Theft of timber or logs; cutting in parks, reserves or similar areas; and cutting where government approvals are obtained by corrupt practices.

European Commission (2004)⁷⁴

⁶⁹Tacconi, L., Boscolo, M., and Brack, D. (2003). National and international policies to control illegal forest activities. A report to the Ministry of Foreign Affairs, Government of Japan. Center for International Forestry Research, Bogor, Indonesia.

⁷⁰Smith, W. (2002) The global problem of illegal logging ITTO Tropical Forest Update 12 (1): 3-5. Available at https://www.itto.int/files/user/tfu/back_issues_pdf/TFU.2002.01.English.pdf?v=1235114329. (Accessed: 07 May 2023).

⁷¹Brack D. and Hayman G. (2001). Intergovernmental Action on Illegal Logging. Forest Law Enforcement and Governance Conference. Available at: https://www.researchgate.net/publication/237479334_Intergovernmental_Actions_on_Illegal_Logging. (Accessed: 07 May 2023).

⁷²Miller, F., Taylor, R. and White, G. (2006). Keep it legal. Best practices for keeping illegally harvested timber out of your supply chain. Global Forest & Trade Network (GFTN), WWF International, Gland, Switzerland.

⁷³American Forest and Paper Association (2004) ‘Illegal Logging and Global Wood Markets: The Competitive Impacts on the US Wood Products Industry’. Commissioned by American Forest and Paper Association. Prepared by Seneca Creek Associates. November 2004.

⁷⁴European Commission (2004) Briefing Note Number 03. FLEGT Briefing Notes, European Commission, April 2004.

Harvesting timber in violation of national laws is illegal. Illegal harvesting may include not only using harvesting practices that contravene the regulations but also using corrupt means to gain harvesting rights, extraction without permissions or from protected areas, cutting protected species or extracting timber in excess of agreed limits. Beyond harvesting, illegal practices may also extend to transport infringement, illegal processing and export, non-payment of taxes or charges, and mis-declaration to customs.

Greenpeace (2005)⁷⁵

Illegal logging takes place when timber is harvested, processed, transported, bought or sold in violation of national laws. Laws can be violated at many different stages of the supply chain and can include: obtaining concessions illegally (for example, via corruption and bribery); cutting protected tree species or extracting trees from a protected area; taking out more trees and more undersized and oversized trees than is permitted or trees outside an agreed area; illegal processing and export; fraudulent declaration to customs of the amount of timber being exported; nonpayment or underpayment of taxes and use of fraudulent documents to smuggle timber internationally.

Forest Stewardship Council (FSC) (2006)⁷⁶

Wood that has been harvested and does not comply with national regulations including the acquisition of the harvesting rights from the rightful owner, the harvesting methods used and payment of all relevant fees and royalties.

Malaysian Timber Council (2004)⁷⁷

In Peninsular Malaysia, three categories are used to classify forest offences:

Category 1 covers offences involving logging without license, logging outside licensed area and unauthorized construction of infrastructure and forest roads.

Category 2 covers encroachment of forest reserves for agricultural activities and settlement.

Category 3 covers other forest offences that involve felling of unmarked trees, cutting trees below the cutting limit, unlicensed workers, contractors with no valid sub-license, unregistered machinery plus other breaches of

⁷⁵Greenpeace (2005) Lawless: How Europe's Borders Remain Open to Trade in Illegal Timber (Greenpeace Fact File, October 2005) Available at: www.greenpeace.org/raw/content/international/press/reports/lawless-illegal-timber.pdf. (Accessed: 07 May 2023).

⁷⁶Forest Stewardship Council (2006) FSC Standard FSC Controlled Wood Standard for Forest Management Enterprises. Available at: <https://us.fsc.org/preview.controlled-wood-standard-for-forest-management-enterprises.a-199.pdf>. (Accessed: 07 May 2023).

⁷⁷See the Malaysian Timber Council. Available at: www.mtc.com.my. (Accessed: 08 May 2023); See also GaniI.Q.L (2013) Current Situation of Illegal Logging in Peninsular Malaysia. Available at: <https://www.ijsciences.com/pub/pdf/V2-201306-04.pdf> page 13. (Accessed: 08 May 2023).

rules and regulations committed within and outside the forest reserve.

Supreme Court Decision in Russia. Resolution No.14, Russian Federation Supreme Court 1998. The definition is related to the application of Article 260 of the Criminal Code of the Russian Federation.⁷⁸

An illegal forest felling operation (cutting) is cutting of trees, bushes and lianas without a harvesting license or authority, cutting with a harvesting license or authority issued with abuse of the existing cutting-practice rules, cutting carried out at the wrong site, beyond a site's borders or exceeding the set quantities cutting of species or of trees, bushes and lianas that are not covered by the harvesting licence or authority, cutting before and after the logging period fixed in the harvesting licence or authority, cutting trees, bushes and lianas that are forbidden by Resolution No. 155 of the Government of the Russian Federation June 1, 1998, cutting after the announcement of a temporary prohibition, restriction or complete discontinuation of forest user activities or the right to use a forest area.

World Business Council on Sustainable Development (2005)⁷⁹

Sourcing of illegal wood takes place when unprocessed wood is procured in the absence of the seller's legal right to sell or harvest. Illegal logging takes place when timber is harvested in violation of relevant forestry and environmental laws and regulations. Illegal forest products trade involves the procurement, processing, distribution and marketing of products made from wood that has been obtained by illegal sourcing or illegal harvesting and/or are not in compliance with relevant national and international trade laws.

Convention on International Trade in Endangered Species (CITES) (2006).⁸⁰

CITES has particularly powerful text in its articles relating to the legality of trade in species of Fauna and Flora listed in its Appendices I, II and III, stating that:

...the export of any specimen of a species included in Appendix [I, II or III] shall require the prior grant and presentation of an export permit. An export permit shall only be granted when.....a Management Authority of the State of export is satisfied that the specimen was not

⁷⁸ The Criminal Code of the Russian Federation, 1996, NO-63-FZ, article 260.

Supreme Court Decision in Russia. Resolution No.14, Russian Federation Supreme Court 1998. (The definition is related to the application of Article 260 of the Criminal Code of the Russian Federation).

⁷⁹World Business Council on Sustainable Development (2005). WWF/WBCSD Joint Statement on Illegal Logging for The Forest Dialogue. Available at : www.wbcsd.org/plugins/DocSearch/details.asp?type=DocDet&ObjectID=13627.(Accessed: 08 May 2023)

⁸⁰Convention on International Trade in Endangered Species (CITES) (2006), article III.

obtained in contravention of the laws of that State for the protection of fauna and flora.....

6. The Struggle for a Definition of Timber Legality in Ghana

In most definition-related works, the definition for sustainable forest management has been the primary focus.⁸¹ Based on the criteria of the nine regional and worldwide indicators and criterion projects, seven common areas of sustainable forest management have evolved.⁸² The seven subject categories are as follows: the size of the forest resources; biological variety; the health and vitality of the forest; the productive and protective functions of the forest resources; the socioeconomic functions; the legal, policy, and institutional framework.⁸³

This agreement on shared subject matters serves as an effective, implicit definition of sustainable forest management. However, there is no exhaustive explanation of what constitutes legal timber. The intricacy of the problem itself is to blame for this lack of definition. In a few studies, the phrase "timber legality" has been used to refer to the fulfilment of conditions relating to the origin of wood resources, land tenure, rights to access forests, logging permits, harvesting activities, transportation, processing, fiscal regime, and trade and export procedures.⁸⁴

How do we define legality in the context of reducing illegal timber? This question comes up with every step of the FLEGT policy implementation and tool development processes. The world is battling against this issue, as correctly stated by van Bueren.⁸⁵ The idea of legality has expanded to include all legislation relating to forests and forest operations. It originally arose out of concern over massive amounts of trees being cut down arbitrarily and without permission in productive forests and even in protected regions. Consequently, legal timber is widely defined, particularly by NGOs, *astimber that has been logged, transported, processed, purchased or sold in compliance with national, regional and local laws and regulations.*⁸⁶

⁸¹ FAO. (1993). Forestry Policies of Selected Countries in Asia and the Pacific. FAO Forestry Paper 115. FAO, Rome; TTO. 1993. ITTO Guidelines for the Establishment and Sustainable Management of Planted Tropical Forests. ITTO Policy Development Series No. 4. International Tropical Timber Organization, Japan; United Nations (1992) United Nations Conference on Environment and Development. Rio.

⁸²OduroK.A. &Gyan K. (2007) *Draft Document on Definition of Legal Timber in Ghana* (Unpublished manuscript on file with the author).

⁸³OduroK.A. &Gyan K. (2007) *Draft Document on Definition of Legal Timber in Ghana* (Unpublished manuscript on file with the author).

⁸⁴OduroK.A. &Gyan K. (2007) *Draft Document on Definition of Legal Timber in Ghana* (Unpublished manuscript on file with the author).

⁸⁵Bueren, L.E. (2004). Introduction to the legal timber issue and the Keurhout Protocol for the validation of claims of legal timber. ISAFOR, Scherpenzeel, The Netherlands; Netherlands Timber Trade Association, Almere, The Netherlands, 21 pp.

⁸⁶Bueren, L.E. (2004). Introduction to the legal timber issue and the Keurhout Protocol for the validationof claims of legal timber.

The first step towards standardising a definition of legality has been the work carried out by The Nature Conservancy (TNC) based on the memorandum of understanding (MoU) between the governments of Indonesia and the UK.⁸⁷ The MoU contained the following draft definition:

*Timber is legal when the validity of its origin, logging permit, logging system and procedures, administration and transport documentation, processing and trade or transfer are verified as meeting all applicable legal requirements.*⁸⁸

Such a definition is thorough since the laws of the nation of origin are regarded as the gold standard for the legal proof of actions taking place before the timber is exported. However, it is also typical to see inconsistent and unfair legislation in many nations.⁸⁹ Mutual agreements between importing and exporting countries are being formed to address these shortcomings and clarify the legality. Definitions frequently undergo translation to ensure complete conformity with legal and sustainable forest management criteria (SFM certification). Due to their broad reach, these definitions are less suitable to distinguish between wood harvested in accordance with legal licenses and wood that does not come from a legal source. In order to distinguish between the legal requirements for SFM and the legal requirements for timber verification, for example, the Keurhout Protocol⁹⁰ distinguishes between two levels of legal compliance. Each level has its own set of criteria and indicators.

Dijkstra et al. provide an insightful analysis.⁹¹ The extent of the users' potential concerns must be determined by the system's designers, who must then decide which legality-related elements should be included. Systems to check legality must therefore strike a compromise between the breadth of issues that different stakeholders are concerned about and the practicality of building a system that makes the right difference and is both practical and inexpensive.

There are a number of projects in the Ghanaian environment that have attempted to define a standard for establishing timber legality and are pertinent to the reflection on how to define legality. Below is a discussion about them.

The policies and laws now in effect that are connected to Ghana's concept of legal timber were examined by Agyeman et al. in 2007. They developed the following tentative definition after reviewing the Acts, Legislative Instruments (LIs), and other legal documents that govern forestry and the timber industry:

*Timber is legal in Ghana when it meets certain criteria covering (1) the source, (2) timber rights allocation, (3) timber harvesting operations, (4) transportation, (5) timber processing, (6) marketing, and (7) fiscal regulatory systems.*⁹²

The requirements for defining legality in the numerous Acts and LIs that govern forestry and the timber business are well summarized by this definition. However, the long history of non-compliance in the nation presents a significant challenge to this concept. The Government's incapacity to enforce the law and the corruption that exists among some officials, forestry company employees, lawmakers, and civil servants are also contributing factors to the current lack of compliance.⁹³ The causes of the Government's incapacity to combat corruption and enforce adherence to the law are numerous and will not be covered in this paper.

The fact that the laws establishing the standards for determining legality of timber are dispersed among various Acts and Lis makes it challenging for the industry to comply, which is another issue with this definition. Major issues about ownership of the resource, benefit sharing, and access rights also remain unresolved by the current legislation.

7. Care International's Work on Moving Ghana to Legal Timber

In its 2005 report, "Legal Timber in Ghana", Care International examined definitions of legality found in Ghanaian laws and regulations. It also facilitated a workshop for early stakeholder and decision-maker consultation to help develop consensus on a national definition of legality for timber. The paper listed the current legal requirements for harvesting, processing, shipping, and exporting timber or wood products in Ghana as well as the additional legal requirements that timber enterprises must follow in accordance with general application statutes. These were then examined in light of the timber industry's process flow.

ISAFOR, Scherpenzeel, The Netherlands; Netherlands Timber Trade Association, Almere, The Netherlands, 21 pp.

⁸⁷Chen, H.K. (2006). The role of CITES in combating illegal logging ~ current and potential. TRAFFIC Online Report Series No. 13. TRAFFIC International, Cambridge, UK, 47 pp; Jurgens, E. (2006). Learning lessons to promote certification and combat illegal logging in Indonesia: September 2003 to June 2006. CIFOR, Bogor, Indonesia, 50 pp.

⁸⁸See Chen, H.K. (2006). The role of CITES in combating illegal logging ~ current and potential. TRAFFIC Online Report Series No. 13. TRAFFIC International, Cambridge, UK, 47 pp.

⁸⁹Oduro K.A. & Gyan K. (2007) *Draft Document on Definition of Legal Timber in Ghana* (Unpublished manuscript on file with the author).

⁹⁰Keurhout (2006). Keurhout Protocol for the validation of claims of legal timber with a view on legal origin. Third Working Edition. Netherlands Timber Trade Association, Almere, The Netherlands, 15 pp.

⁹¹Dijkstra D.P., Kuru G, et al, (2002) "Technologies for wood tracking: verifying and monitoring the chain of custody and legal compliance in the timber industry". Available at <http://documents.worldbank.org/curated/en/134971468762625582/Technologies-for-wood-tracking-verifying-and-monitoring-the-chain-of-custody-and-legal-compliance-in-the-timber-industry>. (Accessed: 08 May 2023)

⁹²Agyemang V.K., Oduro, K.A. and Gyan, K. (2007). Review of Existing Policy and Legislative Documents on Definition of Timber Legality in Ghana. VLTP Background Paper No. 4. Validation of Legal Timber Programme, Forestry Commission, Accra, Ghana.

⁹³Oduro K.A. & Gyan K. (2007) *Draft Document on Definition of Legal Timber in Ghana* (Unpublished manuscript on file with the author).

The report points out that establishing timber legality will support at least three more general policy goals, all of which call for the adoption of the legality concept. These include maximizing the contribution of forestry to national development goals; transparent and accountable sector governance; sustainable management of forests; poverty reduction and equity, particularly for communities who own and depend on forests; and poverty reduction and equity.

The research offers two alternatives for defining the legality of timber in Ghana. The first choice is the “crude definition” of legality for timber based on all pertinent laws thus:

*Timber is legal when the validity of its origin, logging permit, logging operations, transportation operations, processing operations, trade or transfer are verified as having met all applicable legal requirements.*⁹⁴

The second definition is the “narrow definition” of legality for timber, which refers to a set of regulations that only apply to the behavior of forestry firms and only refers to particular articles of the Trees and Timber Decree and the forestry Resources Management Act. This description states:

*Timber companies are operating legally when their logging permits, logging operations, transportation operations, processing operations and trade or transfer processes meet all applicable legal requirements.*⁹⁵

The dual definition falls short of Ghana’s demands under the VPA discussions by failing to establish a single set of unambiguous criteria for determining timber legality.⁹⁶ Since some of the criteria and indicators are too far removed from timber and related issues, Ghana is placed on a slippery slope by the “crude definition” in material respects, especially when it comes to ensuring compliance.

8. Recommendations and Conclusion

The call for the definition of the concept of legal timber has never been louder given that the world is faced with life threatening issues of climate change, deforestation, hunger, and associated problems. Thus, there is an urgent need for a comprehensive definition on both domestic and international fronts on what may or may not constitute legal timber.

This article demonstrates that any plan to define legal timber for Ghana should build on already-existing initiatives. Choosing which provisions of the current rules and regulations should be used when determining conformity is now a challenge. In order to address the concerns of both the EU and Ghana’s stakeholders, the criteria for establishing

legality must be defined together. To begin with, it is critical to create a set of minimal standards that the EU and Ghana might utilize as the foundation for their agreement. However, Ghana should be able to add other criteria as she advances.

Growing additional forest and wildlife resources, ensuring effective management and protection of the remaining permanent estate of forest and wildlife reserves, moving toward an African model of wildlife management that incorporates both the non-utilitarian and utilitarian values of wildlife, and more accurately reflecting the social, cultural, and economic conditions of Africa are all tasks that the forest and wildlife sector will need to complete.

The following guidelines should be taken into consideration while creating Ghana’s final definition of legal timber. Instead of penalizing or limiting the production and trade of lumber, the emphasis should be on strengthening supportive incentives for sustainable forest management. Therefore, the criteria must avoid becoming trade obstacles and consequently hampering the ability of Ghana’s timber industry to compete internationally. These should be addressed in the step-by-step approach to implementing the scheme: the standards developed should be based on an understanding between Ghana and the EU; adequate capacity building in testing and verifying standards and indicators; free flow of information; and participation of all stakeholders in the consultation process.

⁹⁴Care International (2005) “Legal timber” in Ghana. Ghana Land and Forestry Policy Support Facility. Sub-Project Number 1. GLFPSF, Accra.

⁹⁵Care International (2005) “Legal timber” in Ghana. Ghana Land and Forestry Policy Support Facility. Sub-Project Number 1. GLFPSF, Accra.

⁹⁶Oduro K.A. & Gyan K. (2007) *Draft Document on Definition of Legal Timber in Ghana* (Unpublished manuscript on file with the author).