

The Role of the Parliament in the Implementation of REDD+ in Ghana



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Abbreviations

FCPF	Forest Carbon Partnership Facility
MDA	Ministries, Departments and Agencies
MPs	Members of Parliament
OASL	Office of the Administrator of Stool Lands
REDD+	Reducing Emissions from Deforestation and forest Degradation, the sustainable management of forests, and the conservation and enhancement of forest carbon stocks
R-PIN	REDD+ Project Idea Note
R-PP	Readiness Preparation Proposal
SPA	Social Responsibility Agreement

1 Introduction

The implementation of the REDD+ programme in Ghana has since its commencement in 2008 seen some significant progress as indicated in the country's twenty (20)-year plan to champion emissions reduction from deforestation and forest degradation and address the threats to the ecosystem services and environmental integrity to maximise co-benefits from forests.¹ This initiative shows the country's commitment to implement REDD+.

¹Ghana REDD+ Strategy 2016-2035, p. 16.

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However, a successful implementation of REDD+ in Ghana would be dependent on the country's capability to effectively address the drivers of deforestation and forest degradation which are agricultural expansion, logging, fuel-wood harvesting, charcoal production, wildfires, infrastructure development, mining and sand winning.² Second, an examination of the national laws and policies governing this initiative, shows the lack of clarity on natural resources rights particularly carbon rights³ which could have provided incentives to farming communities and land users for supporting REDD+ initiative thereby reducing deforestation and forest degradation. Third, there is a weak enforcement of existing laws to ensure an effective implementation of the REDD+ programme.⁴ This chapter therefore attempts to find solutions to the above challenges through the Parliament of Ghana. It argues that by means of its legislative and oversight powers the Parliament can amend inadequate laws, enact new ones where necessary and monitor their enforcement for a successful implementation of the REDD+ programme in Ghana. This chapter is presented in four Sections. Following this introduction (Sect. 1), Sect. 2 focuses on the gaps in the existing laws and challenges related to their enforcement. Section 3 deals with potential role of the parliament in implementing REDD+. Section 4 is the conclusion.

2 REDD+: Legislation and Implementation Gaps

Ghana joined the REDD+ in 2008,⁵ a year after the REDD+ readiness plan was provided in 2007 by the Bali Action which was later confirmed at Copenhagen in 2009.⁶ In 2008, Ghana submitted its REDD+ Project Idea Note (R-PIN) under the auspices of the Forest Carbon Partnership Facility (FCPF) of the World Bank and since then the country has been making remarkable progress. Besides, between 2013 and 2015, Ghana has developed a National REDD+ Strategy to ensure smooth and effective implementation of the REDD+ project.⁷ In fact, as a key participant in the FCPF, the Government of Ghana is executing its Readiness Preparation Proposal (R-PP) concerning the REDD+ Readiness phase, and has solicited FCPF Readiness Preparation Grant to support the design of its REDD+ Strategy. This strategy seeks to remedy deforestation and degradation to ensure the reduction of greenhouse gas emissions into the atmosphere.⁸ Ghana's attempt to implement REDD+ involves

²Ghana REDD+ Strategy 2016-2035, p. 18.

³Ghana REDD+ Strategy 2016-2035, p. 64.

⁴Ghana REDD+ Strategy 2016-2035, p. 65.

⁵Arhin (2015).

⁶Abbey (2015), p. 11.

⁷Hajjar (2015).

⁸Forestry Commission of Ghana, 'Environmental and Social Management Framework for the REDD+ Mechanism in Ghana' (2016).

several stakeholders which are the ministry of lands and natural resources as the main responsible stakeholder with the forestry commission as the lead agency. They work in collaboration with the Environmental Protection Agency, the Districts/Municipal and Metropolitan Assemblies as well as other actors and partners.⁹ However, there are challenges which exist regarding issues such as land and tree tenure, benefit sharing, carbon rights and weak forest law enforcement which are analysed. The challenges hinder the effective implementation of REDD+ in Ghana.

2.1 Land and Tree Tenure and Benefit Sharing

The forests of Ghana are classified into forest reserves, off-reserve forests, and plantations – state, communal, private and institutional plantations.¹⁰ Tenure rights over all trees or forest that naturally occur whether in forest reserves or outside forest reserves are vested in the Head of State in trust of the people. Naturally occurring forests are managed as resources on vested lands where the state has management rights whereas customary owners remain owners of the lands and its resources.¹¹ This makes the regime of land and tree tenure arrangements complex in Ghana as they distinguish between rights (use, ownership) associated with land and those over the resources on it (timber trees).¹² However, for non-state plantations and communal forests outside forest reserves, management is undertaken by the respective owners of the resources.¹³ The foregoing is reinforced by the Constitution of Ghana which though allows management of stool lands by customary laws,¹⁴ gives the state a considerable influence over the administration and management of those lands.¹⁵ Indeed, Article 267 section 1 of the 1992 Constitution of Ghana stipulates that customary lands in Ghana should be managed under customary laws. Article 267 sections 2 to 9 offer the widest influence in the administration and management of customary lands and even provide a formula for the collection of revenues that accrues from customary lands by state institutions.¹⁶ According to Henry et al., land and tree tenure issues are an obstacle to the implementation of REDD+ in Ghana.¹⁷ Regrettably, the legal framework underpinning this management framework is unclear as perceived by Asare et al. to be stumbling blocks for

⁹Forestry Commission of Ghana (2016), pp. 7–8.

¹⁰Agyei (2012), p. 29.

¹¹Agyei (2012), p. 29.

¹²Foli and Dumenu (2013), p. 12.

¹³Agyei (2012).

¹⁴Article 267(1), Constitution of Ghana.

¹⁵Articles 267(2)(3)(4)(5)(6)(7)(8) & (9), Constitution of Ghana.

¹⁶Articles 267(1)(2)(3)(4)(5)(6)(7)(8) & (9), Constitution of Ghana; see Agyei (2012), pp. 29–30.

¹⁷Henry et al. (2011), p. 131.

forest carbon projects in Africa.¹⁸ Apart from public lands where the state wields exclusive control over any benefits, with lands held by stools/skins (traditional authorities), or families or clans, timber trees that occur naturally belong to the state whether in reserves or areas outside reserves as established by section 16 of the Concession Act, 1962. However, a planter holds exclusive rights over the trees (access/use, management, alienation, exclusion) as espoused in the Timber Resources Management (Amendment) Act.¹⁹

Furthermore, the constitutional benefit-sharing arrangement excludes farmers and forest-dependent communities whose involvement is critical in reducing the rates of degradation.²⁰ The law does not recognise farmers as beneficiaries, a development which excludes them from harvesting revenue. Also, their consultation by the Stool in the off-reserves when concessions are being given over the trees on their farms, hardly happens.²¹ This situation is a disincentive to people to manage lands and contribute to REDD+ since efforts are not generally recognised.

2.2 *Deficit of Carbon Rights Protection*

According to Streck, ‘governments, indigenous and local communities, as well as private landowners can all earn carbon income for managing their land sustainably, but the carbon rights that they transact vary widely depending on the legal context’.²² Contrary to this, the existence of carbon rights in Ghana remains a myth. Carbon rights seem to be of less concern to authorities. The National REDD+ Secretariat has commissioned a working paper to assist the parliament with the legislation on carbon rights coupled with the efforts of the Ministry of Environment, Science, Technology and Innovation to address carbon rights as part of the National Climate Change Policy,²³ however, there is presently ‘no legislation in Ghana which pertains directly to carbon, meaning that ownership rights or exploitation rights cannot be stated with any level of certainty’.²⁴ Generally, the law does not specify rights that are associated with REDD+ projects including the rights of those who

¹⁸ Asare et al. (2013).

¹⁹ Timber Resources Management (Amendment) Act, 2002; Asare et al. (2013), p. 12.

²⁰ Osafo (2012) <<https://openknowledge.worldbank.org/handle/10986/27165>> (accessed on 18 February 2021), pp. 3–4.

²¹ Osafo (2012), p. 4.

²² Streck ‘Shades of REED+, The Right to Carbon, the Right to Land, the Right to Decide’ <<https://www.ecosystemmarketplace.com/articles/the-right-to-carbon-the-right-to-land-the-right-to-decide/>> (accessed on 17 February 2023).

²³ Ghana REED+ Strategy (2016-2035), p. 64.

²⁴ Asare (2013), <[http://www.itto.int/files/itto_project_db_input/3046/Technical/RED-PD093-12_Rev.3\(F\)_Progress-Report%2031-Jan-2014%20Annex2-Carbon-Rights-Ghana.pdf](http://www.itto.int/files/itto_project_db_input/3046/Technical/RED-PD093-12_Rev.3(F)_Progress-Report%2031-Jan-2014%20Annex2-Carbon-Rights-Ghana.pdf)> (accessed on 11 February 2023).

may be eligible for incentives for forest conservation or restoration.²⁵ Rights in this context can only be inferred from the law on land, forests and natural resources.²⁶ In this case, claiming the right to carbon in Ghana raises the question of carbon ownership which by law entitles the state with this right. The state owns public lands, and resources from both public and private lands (naturally occurred) belonging to it. By this, the rights to forest resources especially the deriving commercial rights and their effective management are entitled to the state.²⁷ Despite the distinction between naturally occurring trees and planted trees, the state is entitled to commercial rights on the former. It remains, however, a statutory offence to harvest in the reserves or off-reserves without the state's authorisation. On the other hand, there has been a reform on the rights to planted trees to ensure afforestation, reforestation and private plantations.²⁸ Moreover, the amendment of section 4(3) of the Timber Resource Management (Amendment) Act, 2002 (Act 617) has scrapped the timber rights of the state over privately owned forest plantations and land with grown trees.²⁹ For a successful implementation of REDD+, such benefits should be extended to indigenous communities and farmers whose buy-in is critical to the success of REDD+ implementation in Ghana.

2.3 *Weak Enforcement of Laws*

Weak enforcement remains a key challenge that hinders the implementation of REDD+ in Ghana. In fact, there is 'weak enforcement of forest policy and governance, including poor regulatory mechanisms, excessive central control, rights regimes and conflicting government policies'.³⁰ In the case of REDD+ implementation, the role of the Ghana Forestry Commission appears crucial. It is tasked with regulating the utilisation of forest and timber resources, managing forest reserves and protected areas, providing assistance to the private sector; developing forest plantations to help restore degraded forests and expanding national forest cover and increased production of industrial timber.³¹ Indeed, these core functions of the Commission are critical to help reduce emissions from deforestation and degradation, emissions through the role of conservation, sustainable forest management and enhancement of carbon stock.³² Regrettably, deforestation and degradation are

²⁵ Agidee (2011).

²⁶ Ibid.; see also Ghana REDD+ Strategy (2016–2035), p. 64.

²⁷ Osafo (2012).

²⁸ Osafo (2012).

²⁹ Timber Resources Management Act 617 (Amendment) Act, 2002.

³⁰ Ministry of Environment, Science, Technology and Innovation 'Ghana National Climate Change Policy' (2013), pp. 4–8.

³¹ Ayine (2008); Section 2(2) (a)–(d) Forestry Commission Act.

³² Asare and Kwakye (2013).

caused by low enforcement of regulations on off-reserve timber harvesting, farmers' rights as well as farmers' share of financial benefits.³³ According to Bamfo, the failure of logging companies to adequately compensate owners of farms make the latter illegally fell the trees before they are harvested by the former who also damage their farms.³⁴ This runs parallel with the view of Magdy Martínez-Solimán, the Assistant Secretary-General of the United Nations who posits that the provision of incentives, including fiscal incentives, can positively influence behavioural change to address systemic challenges caused by drivers of deforestation and forest degradation.³⁵ Besides, the legal requirement by the state through the Social Responsibility Agreement which enjoins logging companies to allocate 5% of the revenue accrued from harvested timber for the provision of social amenities such as schools, clinics and facilities for the concerned communities,³⁶ has not been fully and effectively enforced.³⁷ This does not discourage farmers from illegally felling trees since they receive no incentives. In instances where funds were given to Stools for the above provisions, they were misused by the Stool and not spent on the communities.³⁸ Moreover, the consultation of farmers by the Stool in the off-reserves when concessions are being given over the trees on their farms, rarely takes place.³⁹ Besides, proceeds from exploiting natural resources from state managed forest reserves as well as the off-reserve forests are distributed between the state and beneficiaries, namely the Stools and the Traditional Authorities, Office of the Administrator of Stool Lands (OASL) and the District Assemblies.⁴⁰ The monopoly of the state over the commercial rights from harvesting natural resources does not only increase carbon emission but discourages individuals whose actions can cause more degradation. This state of affairs coupled with the failure of logging companies to honour their contractual obligations and provide the needed social amenities by way of incentivising farmers and indigenous communities is tantamount to the failure of the Forestry Commission which is mandated to ensure that the above obligations are met.

³³ Hansen et al. (2009), p. 439.

³⁴ Osafo (2012), p. 4.

³⁵ Opening Remarks by Magdy Martínez-Solimán: Launch of National REDD+ Strategies for Ghana, Nigeria and Uganda, COP23, November 17, 2017 <<https://www.undp.org/content/undp/en/home/news-centre/speeches/2017/launch-of-national-redd%2D%2Dstrategies-for-ghana%2D%2Dnigeria-and-ugand.html>> (accessed on 23 February 2021).

³⁶ Section 13(1) (b), Timber Resource Management Regulation, 1998.

³⁷ Osafo (2012), p. 4.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Article 267(6), Constitution of Ghana.

3 The Parliament as a REDD+ Agency

Parliaments play a key role in democracies. They are governmental bodies in which the will of the citizens is metamorphosed into the will of the state through laws with greater legal force next to the Constitution.⁴¹ By this, the parliament translates the demands of the citizens into authoritative laws/statutes. Central to the functions of the parliament are lawmaking, representation, budgetary control and executive oversight which sustain the life of a democracy.⁴² While these functions are crucial to the functioning of democracy, this chapter focuses on the lawmaking and oversight functions of the parliament and the extent to which they can help implement REDD+ in Ghana.

3.1 *The Lawmaking Powers of the Parliament and REDD+*

Lawmaking is a process through which the parliament attempts to find solution to societal problems. Indeed, the parliament weeds out social problems and issues, examines them, considers views from experts and the general public which help them formulate or approve policies, which policies are implemented within the framework of the law designed to solve the problems.⁴³ By virtue of its lawmaking functions, the Parliament of Ghana can make legislation on natural resources rights to encourage communities, individuals or entities whose actions and inactions can help reduce emissions from deforestation and forest degradation. This will not only end illegal logging but help preserve forest reserves to reduce emission of carbon and mitigate climate change. This ability of the parliament is critical to the realisation of REDD+ in Ghana since it will allow legislators to come up with natural resources rights including carbon rights for the best interest of their constituents and the entire country. Such a law should be accompanied by a clear-cut benefit-sharing formula which will empower beneficiaries of this right to know and claim what would be due to them.

Legislating on natural resources rights will therefore compel the state to determine whether carbon is a natural resource or an ecosystem service of storage. The parliament can in this case legislate on carbon rights for massive participation of farmers and communities to ensure effective implementation of REDD+ in Ghana. The parliament may consider the views of scholars who think that the lack of legal and regulatory clarity will jeopardise any REDD+ activity or transaction. To them, ‘clarifying carbon and the rights attached to carbon-based assets is critically

⁴¹ Bogdanovskaia ‘The Legislative Bodies in the Law-Making Process’ <<https://www.nato.int/acad/fellow/97-99/bogdanovskaia.pdf>> (accessed on 28 January 2023).

⁴² Beetham (2006); Nxele et al. (2014) Hudson & Wren (2007).

⁴³ Saiegh (2005) <https://www.researchgate.net/publication/228471685_The_Role_of_Legislatures_in_the_Policymaking_Process> (accessed on 25 January 2021); Sebastian (2005).

important to the implementation of REDD+'.⁴⁴ For instance, Osafo and Abrokwa propose two ways by which carbon can be potentially characterised, namely as an ecosystem service of storage or sequestration or a natural resource.⁴⁵ According to the authors, qualifying carbon as an ecosystem service gives value to the carbon stored in the forest and tree biomass or sequestered from the atmosphere through photosynthesis (sequestration). In this register, the state could vest the right to carbon in the owners of the trees that generated the carbon to encourage afforestation and forest conservation.⁴⁶ The right to carbon may be associated with the right to the tree and allocate to either the landowner or to the tree owner, depending on whether it naturally occurred or was planted.⁴⁷ On the other hand, carbon can be defined as a natural resource where it will be treated like commodities such timber or minerals and benefit from rules on ownership and benefit-sharing.⁴⁸ Although as a natural resource the state would be vested with the rights to carbon, since it enjoys commercial rights of natural resources on both public and private lands, other stakeholders such as farmers and land users will support the REDD+ project. Passing a legislation of this nature will increase the rights of the beneficiaries to their natural resources. In fact, this can be championed by the Parliamentary Sub-committee on Natural Resources which is well acquainted with matters of natural resources rights that may be associated to them.

However, not only should there be a new legislation which ensures carbon rights but enforcing agencies particularly the Forestry Commission should be strengthened. This, according to Hansen et al., will help protect farmers' rights and their resource claims.⁴⁹ In performing its lawmaking duty, the parliament can ensure that bills or legislation on forest management that enter the House for review and approval reflect the interest and wishes of Ghanaians in general and particularly their constituents to elicit their contributions for the implementation of REDD+.

In this case, the parliament can make the lawmaking process participatory by engaging their constituencies or the public in the consideration and review of draft laws that are before the House for consideration.⁵⁰ Since a draft law within the parliament normally goes through many stages of review including 'readings' or debates within the plenary sessions of the House, parliamentary committees may organise a public hearing for interested people, stakeholders, subject experts and civil society to make inputs on specific aspects of the entire content of a draft law.⁵¹

⁴⁴ Asare (2013), p. 10.

⁴⁵ Osafo and Abrokwa (2012).

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Hansen et al. (2009), p. 439.

⁵⁰ Deveaux and Rodrigues 'Parliament's Role in Implementing the Sustainable Development Goals' 48. <<http://www.cpahq.org/cpahq/cpadocs/SB%20Session%204%20Parliament%20and%20SDGS.pdf>> (accessed on 5 February 2021).

⁵¹ Deveaux and Rodrigues.

This process demonstrates the participation of Ghanaians in decisions that affect their lives which can facilitate the implementation of REDD+ in Ghana. It will allow communities whose actions can cause deforestation and forest degradation and who can also support REDD+ implementation express their concerns. This unique and critical ability of the parliament is postulated as a means to support the implementation of REDD+ project in Ghana for it permits the House to amend laws that are unclear particularly natural resources rights and specifically carbon rights. This critical ability of parliament is complemented by its oversight powers.

3.2 The Oversight Powers of the Parliament and REDD+

The exercise of executive oversight is another critical role of the parliament which can be used to make significant impact on society especially with the implementation of the REDD+ project in Ghana. Pelizzo and Stapenhurst distinguish between effective oversight and oversight potential. The former denotes the ability of the parliament to oversee the government's actions and activities to impact not only the political system but the government's behaviour while the latter points out the formal existence of powers and tools of the parliament to undertake its oversight functions.⁵² This makes parliamentary oversight an 'eye witness' of the executive's actions outside of their discretion. The Parliament of Ghana does not only have potential oversight but effective oversight as well. An effective use of oversight tools would therefore help implement the REDD+ project in Ghana.

The oversight powers of the parliament can, therefore, be used to ensure that the laws of Ghana related to the management of forests, the rights of farming communities and land users are respected and their due benefits given to them and the associated rights protected. Second, the parliament can put in place an accountability mechanism through its oversight powers. This will keep the Forestry Commission on its toes as far as management of any forest in Ghana is concerned. The relevant parliamentary committee can also monitor the work of the Forestry Commission and ensure that their constitutional duties are discharged to ensure the benefits of the state without affecting the interests and benefits of the people.

The oversight of the parliament over the Executive appears crucial in realising REDD+ project. Given that the implementation of policies and legislation remains a prerogative of the Executive, the parliament in its oversight role is to ensure that the monies released to Ministries, Departments and Agencies (MDAs) for the implementation of REDD+ projects are spent on the intended projects to fight climate change. In addition, the parliament can monitor and evaluate the financial activities of the MDAs in relation to REDD+ and ensure that projects and programmes undertaken by the MDAs towards promoting REDD+ are done within the law.

⁵²Pelizzo and Stapenhurst (2006) <http://ink.library.smu.edu.sg/sooss_research/130> (accessed on 5 February 2021).

Furthermore, the parliament can see to it that farmers are consulted by the Stool in the off reserves when concessions are being given over the trees on their farms. They can also monitor and ensure that logging companies comply with the Social Responsibility Agreement (SPA) which enjoins them to allocate 5% of the revenue accrued from harvested timber for the provision of social amenities such as schools, clinics and facilities for the concerned communities. This intervention of the parliament appears critical in realising REDD+ in that, it can ensure that the projects for which funds have been approved and released to promote REDD+ and climate change are physically executed to create a safe and conducive environment. Besides, Members of Parliaments (MPs) can undertake site visits to monitor the progress of activities of the MDAs regarding REDD+ and ascertain that all actors whose actions promote REDD+ are treated fairly.

4 Conclusion

This chapter sought to explore the role that can be played by the Parliament of Ghana in the implementation of REDD+. It argued that by means of its legislative and oversight powers, the lawmaking institution can significantly help implement this initiative to mitigate the effect of climate change in Ghana. It was evidenced by the fact that the lack of natural resources rights particularly carbon rights and the weak enforcement of forest laws in Ghana are problems that can be solved by the parliament through their above-mentioned powers. As far as its legislative power is concerned, it exclusively falls under the purview of the parliament to make new or amend existing laws. Thus, by its lawmaking powers, the parliament can make legislation on carbon rights or amend existing laws on forest management in Ghana to include these rights. This power of the parliament is critical to the implementation process of REDD+ because it allows the institution to legislate on natural resources rights which will not only clarify eligibility criteria to benefits or incentives associated with these rights but will encourage farming communities and land users to help reduce carbon emission and preserve forest reserves. To this end, it can be precise whether carbon is a natural resource or an ecosystem service of storage by clearly making a distinction between naturally occurring trees and planted trees. On the other hand, the parliament's oversight power allows the institution to complement government's efforts to strengthen forest laws and protect natural resources rights. By means of its oversight powers, the parliament can use its relevant committee to monitor the work of the Forestry Commission, hold the Commission accountable to ensure an effective implementation of forest laws in Ghana.

The role of the Parliament of Ghana cannot be underestimated. It is therefore recommended that the parliament be included as one of the key stakeholders in charge of the implementation of REDD+. The parliament should therefore be proactive regarding what it can do to facilitate REDD+ implementation. First, the parliament in the performance of its legislative function should make provision for

carbon rights to ensure that all benefits due to farmers and land users are given to them. This will discourage them from illegally using the forest. Second, the relevant parliamentary committee should serve as an accountability mechanism to check on the work of the Forestry Commission and ensure that their constitutional mandate is discharged within the law. Third, parliament should create an avenue for land users, farmers and other potential beneficiaries of carbon rights to channel any complaints.

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