

*Handbook for Paralegals in*  
**FOREST COMMUNITIES  
IN GHANA**

Prepared by Center for Public Interest Law  
(CEPIL), Accra, Ghana

With assistance from:

International Institute for Environment and  
Development (IIED) London, United Kingdom  
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# CONTENTS

Acknowledgments	4
Introduction	5
Chapter 1 Understanding the Work of a Paralegal	7
Chapter 2 Institutions Responsible for the Management of Forestry Resources	17
Chapter 3 Legal Framework on Forestry	20
Chapter 4 Procedure for Obtaining Timber Rights By Timber Firms	25
Chapter 5 Rights and Responsibilities of Forest-Fringe Communities	26
Chapter 6 Social Responsibility Agreements (SRAs)	32
APPENDIX	38

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## INTRODUCTION

The primary object of this handbook is to provide the paralegal in forest fringe communities with the basic knowledge and practical tools needed for effective work output.

The handbook also aims at serving as the basis for the training of advocates and stakeholders in the field of forestry in affected communities in Ghana to provide opportunity for these advocates to share experiences and ideas expanding their professional network.

A paralegal's capacity to effectively deliver services to his or her community depends, to a large extent, on the availability of resources, including the requisite legal and paralegal tools necessary to fix identified problems. This handbook is designed to provide a broad overview of the legal regime of forestry in Ghana, adopting a largely non-technical summary. The book is to serve as an everyday guide to the work of paralegals—a kind of reference book that assists the paralegal to function effectively and efficiently.

In order to achieve the main objective of equipping the paralegal with basic knowledge in this field, the language of the handbook is very simple, graphic and as much as possible devoid of legal terms so as to make it user friendly. The structure of the handbook is as follows:

Chapter 1: Covers the work of a paralegal. Topics treated include the definition of the term “paralegal”, the duties and responsibilities of a paralegal and the tools of a paralegal.

Chapter 2: Examines the mandates, functions and benefits of the various governmental agencies that oversee the forestry sector.

Chapter 3: Discusses the various laws affecting the management of the forestry sector.

Chapter 4: Deals with the procedures and processes one needs to go through in order to obtain timber rights to exploit timber resources in Ghana.

Chapter 5: Discusses rights and duties of communities living in and around forest zones and how they can take advantage of those rights and more especially protection of the forest.

Chapter 6: Deals with Social Responsibility Agreements.

Forests and wildlife are important factors in income generation and the sustenance of livelihood in Ghana. The country derives substantial income from the exploitation of timber and other forestry resources, including the aspect of eco-tourism. The importance of forests and forestry resources is signified by the attention accorded the sector under the Constitution, 1992.

The forestry sector refers to forest zones and wildlife. The forest zones of Ghana are estimated to cover 30% of the country's land surface while the wildlife areas cover approximately 6.2%<sup>1</sup>. There are 216 forest reserves across the country spanning an area of 17,000 square kilometers. Out of this, 12,000 square kilometers is mainly used in sustainable wood production. Then also, about 4,500 square kilometers is held as purely protective reserves.

Outside the high forest zone, it is estimated that there are about 8,000 square kilometers of protected savannah/woodlands meant for soil protection and community support.

Forested lands that fall outside the reserves are not subject to such restriction as in the case of the forest reserves. Therefore, activities such as game hunting and fuel wood collection and picking of non-timber forest products are carried out.

<sup>1</sup>[www.ghanatimber.org](http://www.ghanatimber.org) and [www.wildlife-gh.org](http://www.wildlife-gh.org)

The wildlife estate is made up of seven (7) national parks, six (6) resource reserves, two (2) wildlife sanctuaries, one (1) strict nature reserve and five (5) coastal Ramsar (wetlands of international importance) sites, all occupying approximately 13,489 km<sup>2</sup> (6.2% of Ghana's land surface)<sup>2</sup>.

Concerns have been expressed about the rate at which Ghana is losing its forest cover due to human activities. It is reported that in less than 50 years, Ghana's total forest cover has reduced from 8.2 million hectares to 1.6 million hectares as at 2003<sup>3</sup>. This has been attributed to indiscriminate felling of trees especially by illegal operators (popularly referred to as chainsaw operators) and even licenced timber companies and their failure to replant depleted lands. Bush-fire, mining and quarrying have also contributed to the high degradation of forest reserves.

<sup>2</sup>Wildlife Division's Tourism Facility Portfolio in Ghana or [www.wildlife-gh.org](http://www.wildlife-gh.org)

<sup>3</sup>[www.newsfromafrica.org/newsfromafrica/article](http://www.newsfromafrica.org/newsfromafrica/article)

# Chapter 1

## Understanding the Work of a Paralegal

### Introduction

#### Objectives

The basic objectives of this chapter are to help the reader understand:  
who paralegals are and their importance to their communities;  
the duties and responsibilities of paralegals;  
the knowledge and skills required by paralegals to effectively assist their communities;  
the social, economic, political and legal environments within which paralegals work or should work; and  
the legal and paralegal tools required to work effectively.

#### Definition of a Paralegal:

The term "paralegal" refers to a person educated, trained and equipped with basic knowledge of and skills in the law and who then provides legal assistance to his or her community through organizing the community to fight for their rights and who monitors human rights violation in his/her area of operation, be it at the national or local level.

Therefore, a paralegal works to promote and protect the basic human rights of individuals and the community as a whole.

Paralegals are NOT Professional lawyers and cannot offer professional legal services to their communities. The services they offer are intended to be basic and non-professional.

#### Summary

*A paralegal person is one who is*

- educated*
- trained*
- equipped*
- with basic knowledge and skills in the law;*
- to provide legal and other assistance to communities.*

- *Paralegals work in and with communities.*
- *They also organize communities to promote and protect their rights.*

## The Duties and Responsibilities of a Paralegal as a Human Rights Activist

In general a paralegal serves sections of the society that have little or no access to basic legal services. In essence, such a paralegal targets groups in society that cannot afford to seek the services of lawyers. Specifically, the duties and responsibilities of a paralegal include the following:

### 1. Legal Advice

Since paralegals are community-based persons, one of their fundamental duties and responsibilities is to offer basic legal advice to persons in their communities. The emphasis is on the word "basic". As noted already, paralegals are not lawyers and cannot offer professional legal advice. The advice they offer is and should be limited to the provision of rudimentary of legal information about what rights people have and where they may seek professional assistance.

Paralegals should not risk behaving as lawyers. Such behavior may attract criminal sanctions and may even also raise questions about the integrity of the paralegal when community members 'discover' that the paralegal is a fraud.

#### Summary

##### *Legal Advice:*

- *Paralegals are expected to provide basic legal advice to their communities.*
- *Paralegals are not lawyers.*

### 2. Public Education

Paralegals also carry out public education programmes focusing on the law and basic human rights in their communities through the explanation of legal issues and the distribution of legal materials and literature (e.g. pamphlets simplifying important aspects of human rights law for laypersons) to literate community members. Also, at the community level, well-trained paralegals can organize workshops to train fellow community members on their fundamental human rights. In that regard, the paralegals tend to serve as resource persons.

#### Summary

##### *Public Education*

- *Paralegals are to carry out public education programmes focusing on the law and the basic rights of the communities:*
- *by explaining basic legal issues*
- *by distributing basic legal materials to the community members.*
- *by organizing workshops to train community members of their rights.*
- *by serving as resource persons*

### 3. Human Rights Monitoring

Paralegals are members of their communities and are usually either witnesses to or have easier access to information about human rights violations within their communities. This enables them to monitor closely and track developments relating to violations. The duties may also include taking statements, interpreting and following up on cases. Paralegals also track cases being handled by other human rights activists or paralegals. Any person or institution interested in information about these violations can contact the paralegals for it.

In his or her role as a monitor of human rights abuses, the paralegal has a responsibility to be aware of developments and changes in the community and any broader problems that the community is experiencing. These problems might not be directly related to specific human rights cases he or she is handling, but may be useful in providing important background knowledge for understanding the problem being handled.

#### Summary

##### *Monitoring:*

- *Paralegals are required to conduct human rights monitoring in their communities:*
- *By tracking human rights violations in their communities.*
- *By following up on cases handled in court, or by human rights activists or institutions.*

### 4. Networking

Paralegals also engage in networking. They serve as links between their communities and individuals or institutions that 'matter', such as lawyers, state officials or organizations with a mandate to protect and promote human rights and civil society organizations working on human rights issues.

#### Summary

##### *Networking:*

- *Paralegals serve as a link between their communities and individuals and institutions (e.g. Lawyers and organizations that promote and protect human rights).*

### 5. Awareness

Paralegals also have a duty to create awareness and bring human rights issues to the attention of the public and the authorities by assisting in making contact with the press and in publicizing events and problems in their community.

#### Summary

##### *Awareness Creation:*

- *Paralegals have the responsibility of creating awareness in their communities.*
- *By bringing human rights issues to the attention of the public and the authorities.*

## 6. Dispute Resolution

A key function of paralegals is the provision of dispute resolution services to their communities. These services include negotiation, mediation and arbitration as well as the provision of counseling services to community members in situations of conflict.

### Summary

#### *Dispute Resolution:*

- *Paralegals are expected to provide dispute resolution services in their communities. (negotiation, mediation and arbitration)*

## 7. Information Gathering/Documentation

Paralegals also gather and document information on human rights cases within their communities. They follow up and keep track of and document cases in court, Human Rights Commission etc.

### Summary

#### *Information Gathering /Documentation*

- *Paralegals are required to gather and document information on human rights violations/cases within their communities.*

## Knowledge and Skill Requirements of Paralegals

Generally, a paralegal needs the following skills and knowledge to function efficiently:

### 1. Basic Principles of Law and Legal Procedures

A paralegal needs some basic knowledge of the substantive law and the procedures involved in enforcing those laws especially in the area of human rights. Example: what is the position of the law on arrest and detention, bail and the rights of the citizens as against the duties of the police? What is a civil claim? and what are the rights of a farmer whose farm has been destroyed for purposes of mining?

### Summary

#### *Basic Principles of law and legal procedure:*

- *A paralegal must have basic knowledge of the substantive law and procedures involved in enforcing the law in the area of human rights (e.g. laws governing the forestry sector and how to enforce them)*

## 2. Practical legal skills

A paralegal must possess the skill and knowledge on how to take statements or interview clients, e.g. victims of human rights violation; how to collect evidence for cases, how to write simple and basic legal letters. He or she must possess the skill for analyzing legal issues in order to give proper advice as a way of resolving problems.

## 3. Working with lawyer

A paralegal must possess the skill needed to prepare a client/the community to take an issue to a lawyer, follow up on lawyers in respect of a client's case, acting as a link between lawyers and the community, doing preparatory and follow-up work on behalf of lawyers and taking up legal cases in a community.

## 4. Dispute Resolution and Problem-Solving Skills.

A paralegal ought to be equipped with the art and skill of negotiation, mediation and arbitration which may be used to resolve problems in the community rather than resorting to court suits.

## 5. Monitoring Skills

A paralegal must also have the knowledge and skill for monitoring human rights activities within the communities in which he/she operates. A monitor is someone who watches and records what is happening - often when there is conflict between two sides. A monitor must be independent, and not take sides. A monitor must also be reliable and truthful. When there is conflict between different groups, for example in a community, or between the police and civilians, it helps to have monitors to give evidence about what happened from a neutral perspective. In any conflict each side will tell a different story. Monitors can help to ascertain the truth.

Monitors can also refer person who need help to lawyers and so on. In some situations monitors can mediate between the two sides. This must be done carefully so that monitors as mediators are not accused of bias.

A paralegal can also monitor situations in his or her community on an on-going basis. For example, on-going monitoring of human rights abuses will help the paralegal build up a broader picture of the human rights situation in his or her community or country. He/she can use the information gathered while monitoring to challenge decision-makers in the different areas of government. So, for example, a paralegal could monitor:

- prisons (has the person been given access to a lawyer, has s/he appeared in court within 48 hours/ what are the conditions in prison / what ages are the prisoners / are children in a separate cell etc.)
- trials (who was the accused / what was the charge / who was the magistrate or judge / did the accused have a lawyer / what was the final judgment / was there an appeal application and so on)
- hospitals (what types of illnesses or injuries are people suffering from / are medicines available/ are patients given proper treatment by doctors / nurses etc)
- vulnerable groups, such as refugees, women, children, the disabled and minority groups.

### Summary

#### *Monitoring skills:*

- *A paralegal must have the skill on how to monitor rights violation in his/her community.*
  - must be independent*
  - must be neutral (not take sides)*
  - must be reliable and truthful*

#### 6. Advocacy Skills

Paralegals also need advocacy skills in order to lobby appropriate human rights institutions and to convince institutions such as parliament, Human Rights Commission, on the need to accommodate the interests of communities or groups on human rights issues.

#### 7. Public Relations/Media

Also a paralegal must have basic skills in public relations. This involves how to produce easy-to-read human rights pamphlets and booklets, how to speak to the media on human rights cases and how to collaborate with journalists and newspaper publishers to advocate and enforce human rights.

#### 8. Networking Skills

A paralegal must also develop good networking skills with other partners in the field, such as law firms, legal resource centres, advice offices and community organizations, in order to compare notes, learn from others about strategies and collaborate with them to obtain justice for victims of human rights abuses.

### The Environment for Paralegal Work

Paralegals work within defined environments. Social, political and economic factors largely define the environment within which paralegals work. These factors can affect the effectiveness of paralegals in assisting to redress the human rights problems of their communities.

#### Social Environment

The social environment refers to the network of social relationships within the community including the family as a social unit, power relations between community leaders such as chiefs and ordinary community members as well as how that community relates to the rest of society (e.g. the country).

Social perception of right and wrong can, for instance, affect how effective certain human rights issues are dealt with by society as a whole.

A paralegal working in Ghanaian communities ought to be mindful of the social conditions or environment in order to be effective as a human rights advocate.

#### The Economic Environment

The economic environment can also affect the work of a paralegal in the sense that lack of economic development causes people to be much more concerned about basic necessities of life.

Because they live in poverty, they do not have the financial means to take cases which violate their rights to court simply because they cannot pay for the legal services that would be provided by a lawyer.

Against this background, the poor rural Ghanaian is likely to be preoccupied with finding what to eat, than to be concerned with human rights. A paralegal must be prepared to educate and encourage the community about the importance of their fundamental rights and freedoms.

As a result of lack of economic empowerment of the ordinary Ghanaian, a paralegal must not expect to be paid by the community or an individual client when services are rendered to them. Indeed, in some circumstances, a paralegal may have to pay out of their own pocket or seek financial assistance some of the fees required to enforce a human rights case.

#### The Political Environment

Politics concerns how power is exercised and managed in a given society. Power relations can affect the extent to which human rights are respected in a community. Those who have political power can either exercise such power to uphold human rights or abuse such rights. In a political environment in which powerful persons do not uphold human rights, there is likely to be a high rate of rights abuse. On the other hand, if politicians respect the basic rights of citizens, there is likely to be a general culture of respect for human rights.

#### The Legal Environment

The work of a paralegal may also be affected by the kind of legal environment in which he/she operates. For example, the fact that the legal and judicial systems do not formally recognize paralegals may raise questions about the legitimacy of the work that paralegals do in Ghana. The problem of lack of legitimacy may arise not only from the point of view of those served by the paralegal but also the formal legal and judicial institutions that paralegals work with.

Also, the constitutional and legal provisions relating to the enforcement of human rights in the formal courts in Ghana may affect the work of a paralegal. Under the Ghanaian Constitution, it is only the High Court which has the original jurisdiction to handle human rights cases. This means that access to the Court is severely limited. Cases brought before the Court may also delay for a long time and costs to ordinary people become high. This will discourage a paralegal and clients as they cannot get the formal legal system to address human rights issues immediately when such cases are taken to court.

In the particular case of Ghana, the fact that there is inadequate number of qualified professional legal practitioners can also adversely affect the work of paralegals. This is because a paralegal is likely to be overloaded with work to the extent that he/she may eventually become ineffective.

### Summary

- *Poor economy affects the work of a paralegal in the sense that people do not have the financial means to go to court.*
- *Poverty among rural dwellers makes them more concerned about what to eat and less about values such as human rights.*
- *Rule by big men and their disrespect for the law: This makes it difficult for paralegals to enforce human rights through the appropriate state institutions which do not function as expected.*
- *Non-recognition or lack of accreditation of paralegals by the justice system may affect the way a paralegal works.*
- *Overloading of High Court with human rights cases may result in delays when cases are filed and this could serve as a disincentive to a paralegal.*
- *It is only the High Court which has original jurisdiction to address or deal with human rights issues.*
- *Inadequate number of lawyers.*

### Legal and Paralegal Tools Needed to Work

Paralegals require the following tools to effectively perform their functions:

#### 1. National Constitution:

The Constitution is the supreme law of the land. This means that any law which is inconsistent with any provision of the Constitution cannot be enforced as valid law. Most constitutions usually contain Bills of Rights, provisions on the Judiciary and other institutions for the enforcement of human rights. For instance, the Constitution of the Republic of Ghana contains the following relevant provisions relating to human rights:

- Chapter 5 contains provisions on fundamental human rights and freedoms from articles 12-13;
- Article 33(1) of the 1992 Constitution gives the High Court original jurisdiction over matters of human rights;
- Chapter 18 also covers provision on human rights and administrative justice (CHRAJ) Articles 216-230.
- Chapter 11 establishes the judiciary (articles 125 -161).

The Constitution should be the first point of call when a paralegal wishes to know whether a particular human right is recognized in Ghana and what its limits are.

#### 2. Statutes:

These are laws passed by Parliament during constitutional regimes and are referred to as decrees when passed by military regimes. It is the Constitution that gives Parliament the power to make laws. Statutes also include laws made by institutions empowered by Parliament and even the Constitution itself to make such laws. They are subordinate to the national Constitution, therefore if there is a provision in a statute which is contrary to a provision in the Constitution, it cannot have the force of law. Statutes must always be

consistent with the Constitution. Some of these laws affect the enforcement of human rights. Examples of statutes which affect human rights enforcement are:

- Commission on Human Rights and Administrative Justice Act, 1993 (Act 456): This law was passed by Parliament and came into operation in 1993. Act 456 establishes the Commission and prescribes its functions. The primary function of the Commission is to protect and to promote human rights.
- The Timber Resource management Act
- The Forest Protection Act
- Tree and Timber Act

### 3. International Covenants, Conventions and Treaties on Human Rights:

These are international laws which affect members of that particular international body. These international laws usually come from the United Nations, regional bodies like the African Union and sub-regional bodies like ECOWAS. When these laws are ratified by a member state that member state must take steps to implement or see to the realization of the provisions of the law. These covenants, conventions, and treaties are usually targeted at promoting, protecting and fulfilling human rights starting from the international level. These laws are enforceable both at the national level by going to court or at the international level by going to the appropriate international court or tribunal. Failure to comply with the provisions of international law by a member state may attract sanctions from other members. Examples of these international laws are:

- The Universal Declaration on Human Rights, 1948;
- The International Covenant on Civil and Political Rights of 1966 which contains virtually all the provisions in the Universal Declaration of Human Rights;
- The International Covenant on Economic, Social and Cultural Rights, 1966;
- The Convention on the Elimination of All Forms of Discrimination Against Women, 1979. This international convention prohibits all manner of discrimination against women including cultural practices which discriminate against women. There is an obligation on state parties to take measures to prevent all forms of discrimination against women.
- The Convention on the Rights of the Child also contains provisions which seek to protect the rights and freedoms of children.
- The African Charter on Human and Peoples' Rights, 1981 also protects both individual and group rights.

Paralegals can make reference to these international legal instruments or "tools" when monitoring or advocating against human rights violations.

### 4. Paralegal Tools:

These are published materials or manuals that will help paralegals in the performance of their work. They usually contain information on the methods, skills, knowledge and strategies required in order to be effective as a paralegal. They are only to be used by the paralegal to help him/her in the performance of his/her duties and not as legal documents.

## Summary

### *National Constitution:*

- *A paralegal must have as a tool some important provisions of the constitution (e.g. chapter 5 on fundamental human rights)*

### *Statutes:*

*-These are laws passed by Parliament.  
(e.g Timber Resource Management Act, Forest Protect Act,  
Tree and Timber Act etc)*

*-Laws passed by institutions established by the Constitution and  
Parliament (e.g Timber Resource Management Regulations).*

- *International Covenants, Conventions and Treaties on Human Rights:*
- *These are international laws passed by international bodies e.g. United Nations, African Union, ECOWAS etc (e.g Universal Declaration on Human Rights).*
- *Paralegal Tools:*
- *These are published materials to help in the work of paralegals.*

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3. *D. J. Harris, Cases and Materials on International Law, 5th edition (200..).*
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## Chapter 2

# Institutions Responsible for the Management of Forestry Resources

### Introduction

Institutions are agencies or organisations created at the national, regional, and district levels and vested with power and authority to manage and protect forestry resources. The Forestry Commission and its allied departments, that is, Forest Services Division, Forest Products Inspection Division, Wildlife Division, and Timber Export Development Division are responsible for regulating activities in the sector.

### 2.1 Forestry Commission

The Forestry Commission was established under the Forestry Commission Act, 1999 (Act 571) as amended by the Timber Resources Management (Amendment) Act, 2002 (Act 617). It is responsible for regulating the use of forest and wildlife resources, the protection and management of those resources, and the coordination of policies related to them.

The Commission is made up of the following members:

- a chairman;
- the Chief Executive;
- a representative of the National House of Chiefs;
- a representative of the timber trade and industry;
- a representative of the wildlife trade and industry;
- a representative of the Ghana Institute of Professional Foresters;
- a representative of non-governmental organisations involved in forest and wildlife management;
- a representative of the Lands Commission; and
- three other persons (at least one of whom should be a woman) with financial, commercial or managerial experience nominated by the Minister responsible for forestry

The members of the Commission are appointed by the President in consultation with the Council of State.

The Commission performs the following functions:

- protecting and managing permanent forest reserves and protected areas
- regulating the harvesting of timber, wildlife and other non-timber forest products. e.g tracking the movement of timber, wood and wildlife products;
- vetting and registering contracts and issuing permits for export of forest and wildlife products;
- creating wildlife protected areas and regulating the harvesting of wildlife resources in the various ecological zones of the country;
- promoting the optimal use of Ghana's forest and wildlife products through value addition and promotion of lesser known species; this includes developing and enforcing appropriate industrial standards and trade guidelines for timber and wildlife products;
- monitoring the harvesting and marketing of forest and wildlife products, e.g providing market intelligence to inform both Government and industry on pricing, trade and product trends;
- preparing and implementing forest and wildlife management plans that maintain the quality of the environment.

The Commission may sue and be sued in court in the performance of its functions. In addition, it is empowered to compulsorily acquire any piece of land in line with its functions.

### 2.1.1 Forest Services Division (FSD)

The Forest Services Division (FSD) is responsible for calculating the annual allowable number of timber to be cut.

The Division also provides advice and technical services for the protection of forest and wildlife products.

FSD has the responsibility to ensure that the collection of non-timber forest products is in accordance with the guidelines agreed for each management zone and to stop excessive cutting or damage to forests.

The Division has the right to warn, restrain or take legal action against anyone who infringes the forest laws and willfully damages the forest in this zone.

The Division is also in charge of reviewing of operations of timber utilization contract holders to determine whether there is enough grounds for the termination of contract of a particular timber utilization contract holder.

### 2.1.2 Timber Industry Development Division (TIDD)

This Division focuses on the logging and wood processing sector. The TIDD's commitment is to ensure that Ghana maintains and increases its wood resources through sustainable management of its forest reserves, the establishment of industrial wood plantations, the development of a high bamboo industry and commitment of forest-fringe communities to the protection and responsible use of their own forested lands.

TIDD performs, among others, the following functions:

- Adding value and minimizing waste – TIDD performs this function by way of encouraging the use of non-traditional tree species that abound in the natural forest in order to ease the pressure on the known traditional species. It also helps the industry by creating value in the form of additional processing in the form of machined and shaped timber as well as finished products
- Seeking Partnerships – TIDD, in collaboration with the Ghana Investment Promotion Centre and other institutions, seeks to help Ghanaian timber processing companies by creating technical and investment arrangements with their overseas counterparts. These arrangements enhance incomes and abilities of local companies as well as cost saving benefits
- Promotion of Ghana's Timber Interest Overseas – TIDD also promotes Ghana's timber product worldwide through various promotion methods including publication of technical leaflets, publications about Ghana and its forest industry, one-to-one consultation with timber businesses, attending seminars and trade meetings and exhibition at trade fairs
- Monitoring – The division monitors all export contracts in terms of price, species, specification and quality, linked with physical inspection at the two ports of exit - Takoradi and Tema. They also mount strategic roadside checkpoints where inspectors check vehicles carrying logs for property, tree and species reference marks to ensure that logs have been legally sourced

### 2.1.3 Wildlife Division

This Division is responsible for all wildlife in Ghana and administers all wildlife protected areas as well as the development and promotion of economic potentials of wildlife. It is also responsible for wildlife conservation and the, management and protection of wildlife reserves, as well as conservation of wetlands.

The division also performs the following functions:

- protecting and developing Ghana's permanent reserves and wildlife-protected areas (PAs) as well as management of wildlife outside wildlife-protected areas;
- developing eco- tourism potentials of the protected areas;
- promoting the development of wildlife - based enterprises and fostering cordial relationship with other agencies and NGOs whose activities affect wildlife;
- assisting local communities to develop, manage own reserves and above all foster closer collaboration with communities closer to PAs through the promotion of community resource management areas (CREMA);
- promoting public awareness and education on wildlife management issues e.g publication of leaflets, manuals on wildlife, appearing on media discussion programmes to educate the citizenry on the dos and don'ts of wildlife areas.

### 2.1.4 Resource Management Support Center

This is a wing of the Forest Services Division and it is mainly responsible for forest management systems in Ghana. It has its operational base in Kumasi and it performs the following duties:

- monitoring and reporting on the state of Ghana's forest and wildlife resources at any particular point in time;
- helping forest districts to prepare management plans for all forest and wildlife resource areas as well as monitoring the implementation of forest and wildlife management plans;
- developing effective, efficient, and affordable forest and wildlife management systems and also assisting the Operations Departments of the Commission to implement coordinated forest and wildlife management systems;
- supporting the putting together of forest and wildlife programs;
- providing training support to the divisions of the Commission and other organizations within the sector;
- participating in the sharing of technical expertise locally and internationally; and
- generating revenue to support the Forestry Commission.

## Chapter 3

### Legal Framework on Forestry

#### Introduction

Apart from the establishment of institutions, several laws, in the form of Acts of Parliament and Regulations, have been passed to govern the management and protection of forestry resources and the relationship between and among the institutions, individuals, and commercial entities engaged in the exploitation and utilization of forestry resources. These laws are as follows:

Forestry Commission Act, 1999 (Act 571) as amended by the Timber Resources Management (Amendment) Act, 2002 (Act 617).

The purpose of Act 571 is to re-establish the Forestry Commission and to bring under the Commission, the main public bodies and agencies responsible for the protection, development, management and regulation of forests and wildlife resources.

It sets out the membership, divisions, and functions of the Commission as well as its administrative and financial regime.

The Act also states the functions of the Commission as:

- regulating the use of forest and timber products;
- managing the country's forest reserves and protected areas;
- assisting the private sector and other bodies in implementing forest and wildlife policies;
- restoring degraded forest areas and expanding the forest cover of the country e.g. growing of trees.

The Act also establishes the various divisions of the Commission as:

- i. Forest Services Division
- ii. Forest Products Inspection Division
- iii. Timber Export Development Division; and
- iv. Wildlife Division

The Act also makes provision for the establishment of units as part of the Commission's Secretariat;

- i. Planning, monitoring and evaluation Unit
- ii. Legal Unit
- iii. Internal Audit Unit
- iv. Finance and administration Unit
- v. Research and information management Unit

Finally, very significant to the performance of the functions of the Forestry Commission, the Act establishes a fund with its sources to include the following:

- i. Moneys from Parliament
- ii. Loans taken for the Commission
- iii. Moneys the Commission is entitled to

The Act also empowers the board of the Commission to determine fees to be charged if the Commission provides services such as technical advice, plantation development and other services.

The Act requires the board to submit an annual report of its financial situation and its activities to the Minister in charge of the sector.

Timber Resources Management Act, 1998 (Act 547) as amended by the Timber Resources Management (Amendment) Act, 2002 (Act 617).

This Act regulates the grant of timber rights in a manner that seeks to secure the proper management and use of timber resources. It provides for qualification and requirements for the grant of timber rights and the processes for the application of same. It specifies land that is subject to timber rights. Thus, timber rights cannot be granted in respect of land with private forest plantation or land with timber grown or owned by an individual or group of three (3) individuals. Timber rights may be granted in respect of lands with farms or land that may be sold, but it should be with the written authorization of the owners.

The Act also establishes a Timber Rights Evaluation Committee that considers applications for timber utilization contracts.

The Act prohibits the cutting of timber without timber rights. Application for timber rights should first be made in the form of writing to the Forestry Commission which will also refer it to the Timber Rights Evaluation Committee.

This application must be sent with the following:

- harvesting plan;
- the likely environmental effect;
- proof of financial ability;
- proof of ability to operate the area; and
- plans for addressing the social needs of the affected communities.

It is not every land in respect of which timber rights may be granted. Therefore, the Act lists lands that are subject to timber rights as follows:-

- i. lands which timber rights have been granted before and are still suitable for harvesting of timber
- ii. public or stool lands in timber production areas which have not been already allocated
- iii. land given to a person subject to the written consent of the owner
- iv. lands with individual privately grown forests.

The Act also provides for the minimum duration and limits within which timber rights can be granted as not more than 40 years and 125 square kilometers.

Under the Act, the content of timber contract must include the following:

- a. the land size of the contract area
- b. period of the contract

- c. assurance by the contractor to undertake reforestation plan
- d. assurance of payment of rent, royalties, compensation and other charges promptly
- e. rent to be paid to the owner of the area under contract
- f. review of the activities of the contractor from time to time.
- g. grounds on which the contract could be suspended or terminated

A breach of any of these terms may lead to suspension or termination of the contract.

Timber rights holders are required under the Act to pay annual rent, fees, royalties and charges to be determined by the Minister, to the appropriate land owners, stool or government agency.

There is a provision that allows private individuals and firms to invest in the forestry and wildlife sector, these investments are protected against any governmental take-overs except where the taking is in the interest of Ghana and fair and adequate compensation is paid without delay.

The Act lists offences under the Act to include the following:

- i. harvesting timber without a valid contract
- ii. operating a vehicle to carry or transport timber that has been cut without contract or licence
- iii. Selling or buying timber cut without a valid contract
- iv. Causing a vehicle to be operated in transporting timber cut without a valid licence

Timber Resources Management Regulations, 1998 (L.I.1649) as amended by L.I 1697(2002) and L.I 1721(2003)

In compliance with section 30 of Act 571 as amended and section 18 of Act 547 these regulations have been made as supplement to the two major legislations in terms of the grant of timber rights and timber utilization contracts.

Forest Plantation Development Fund Act, 2000 (Act 583) as amended by the Forest Plantation Development Fund (Amendment) Act 2002, (Act 623)

This Act establishes the Forest Development Fund to provide financial assistance for the development of forest plantations and for research and technical advice to persons in commercial forest plantation.

The sources of the fund include:

- moneys from timber export levy that may be imposed
- moneys given by government in the form of grants and loans given to encourage investment in forest plantation
- grants given by international environmental bodies and other bodies to assist forest plantations
- moneys allocated for private forest plantation by Parliament.

There is established under the Act a board responsible for managing the fund.

Payment from the fund must be used for special size of plantation, the cost of managing that plantation, training of staff etc.

Payment must also be made to qualified forest plantation growers and firms and other incidental expenses.

Forests Protection Act, 1974 (N.R.C.D. 243) as amended by Forest Protection (Amendment) Law 1986 PNDCL 142

This law sets out the functions of forest officers and provides for a long list of offences relating to forest reserves. Therefore, it does not apply to non-reserved forested land.

It empowers forest officers to arrest without warrant any person whom they reasonably suspect to have committed or to have been concerned in any offence under the Act, if such person fails to give his name and address or gives a name or address which is believed to be false, or if there is reason to believe that he may abscond.

A forest officer also has power to seize forest produce, instruments, or vehicles in respect of which an offence has been committed.

Under this law, it is an offence to enter any forest without the written permit of, at least, an assistant district manager for any of the following activities:

- felling, uprooting, lopping, girdling, tapping, damaging by fire or otherwise damaging any tree or timber
- making or cultivating any farm or erecting any building
- causing any damage by negligence in felling any tree or cutting or removing any timber
- setting fire to any grass or herbage, or kindling a fire without taking due precaution to prevent its spread
- making or lighting a fire contrary to any order of the Forestry Commission
- obstructing the channel of any river, stream, canal or creek
- hunting, shooting, fishing, poisoning water or setting traps or snares
- subjecting any forest produce to any manufacturing process or collecting, conveying or removing any forest produce
- pasturing cattle or permitting any cattle to trespass

The punishment for committing any of the above offences is a fine not exceeding 500 penalty units or to imprisonment not exceeding 2 years or to both. However, for a second or subsequent offence, the offender shall be liable to a fine of not less than 250 penalty units or to imprisonment not exceeding 1 year or to both.

In addition, it is an offence to engage in any of the following acts:

- knowingly counterfeiting or fraudulently using upon timber or standing tree a mark or indicating that the timber or tree is the property of any person
  - defacing or obliterating a mark placed on any timber or tree without the written consent of a forest officer
  - altering, moving, destroying or defacing any boundary mark of any forest reserve
- The punishment for any of these offences is a fine not exceeding 750 penalty units or to imprisonment not exceeding 3 years or to both. In the case of a second or subsequent offence, the offender is liable to a fine of not less than 250 penalty units or to imprisonment not exceeding 3 years or to both.

A person convicted of any of the above offences may forfeit the forest produce, instruments, vehicles in respect of which the offence was committed.

Trees and Timber Act, 1974 (N.R.C.D. 273) as amended by The Trees and Timber (Amendment) Act, 1994 (Act 493)

This law provides for the registration of locality marks, which are distinctive marks of the various forest areas of Ghana. A person cannot cut or fell a growing tree for export in log form or for conversion in a mill unless that person has registered a property mark endorsed for the locality in which that person proposes to cut or fell the tree. Also, a person cannot export a log unless it is marked with the cutter's property mark registered with the Forestry Commission.

## Chapter 4

### Procedure for Obtaining Timber Rights By Timber Firms

#### Introduction

The procedure for obtaining timber rights is regulated by the Timber Resource Management Act, 1998 (Act 547) and the Timber Resources Management Regulations, 1998 (L.I. 1649). The steps are as follows:

#### 4.1 Identification of Land

The Chief Executive of the Forestry Commission identifies land suitable for the grant of timber utilization contracts (TUC) by instructing the Forestry Services Division to undertake an inventory of forest and timber on existing forest reserves, stool lands and other lands.

After the land is identified, an inspection team is formed comprising:

1. Two(2) members of the District Assembly
2. One(1) representative of the Traditional Council
3. Two(2) representatives of the land owners

The District Chief Executive must also help to identify the owners and the farmers in the area for the purpose of the inspection.

The inspection team then inspects the land and submits its report to the regional Forestry Officer for onward submission to the Chief Executive Officer of the Commission.

If the report is approved by the Chief Executive for the grant of a TUC, he must inform the District Chief Executive and the District Forestry Officer to inform the people living in the area about the grant of timber rights to fell timber.

Where the land involved is not government land or forest reserve, written consent and agreement of the owner must be sought by the Commission before the grant of timber rights. The owner shall be informed through the by posting of notices at the District Assembly offices, Traditional Councils, Unit Committee areas and District Forestry office.

Within 21 days of posting the notice, any person who believes he has an interest in the demarcated area must notify the District Forest Officer of the nature of his interest in the land. The notification may be in writing or by word of mouth but which must be reduced into writing.

It is important to note that in off-reserves, agriculture is the primary activity and it is forestry that has to fit into the farming system of the area and not the other way round. Regional and District staff of the forestry department ought to bear in mind that the Forest Service has no ownership rights over the off-reserve resources. Landowners have absolute right of veto on timber utilization contract identification.

#### 4.2 When Consent is Given

Where the owner's consent is given within the 21 days and nobody challenges him/her within that time, the District Forest Officer must accept the consent and submit a copy with a report to the Regional Forestry Officer to be forwarded to the Chief Executive of the Commission for the approval of the grant of right.

#### 4.3 Owner's Objection and Conflicting Interest

Where there is an objection to the grant of timber right or there are conflicting claims to the land, the District Forest Officer must set up a committee to look into the matter. The committee must submit its report within 14 days of its formation. The report shall be submitted to the Chief Executive.

Where there are conflicting claims or the owner refuses to give consent, the timber permit shall not be given unless in respect of forest reserves and government lands.

Timber operations including transportation shall be carried out between be carried the hours of 6am and

6pm on working days unless the permission of the Chief Executive of the Forestry Commission has been sought.

Timber shall not be moved or transferred from any forest area unless accompanied by a conveyance certificate and no such certificate shall be issued for lumber produced by chainsaw.

#### 4.4 Terms and Conditions of TUC

One of the most important conditions for the grant of timber rights is an undertaking by the contractor to provide social facilities and amenities for the inhabitants in the area and the value of such amenities must be 5% of the value of the stumping fee from the timber harvested.

#### 4.5 Chainsaw Operations

##### 4.5.1 Registration of Chainsaws by District Assemblies

Within 14 days after the purchase of a chainsaw, the owner must apply to the District Assembly in the area for registration. The licence/registration is valid for only one year which may be renewed depending on the circumstances.

##### 4.5.2 Registration at District Forest Office

When a chainsaw is registered at the District Assembly, it must also be registered at the District Forest Office of the area where it is to be used. The application must be made at the same time the Assembly registration is made and no chainsaw shall be used to fell or convert any timber unless registered at the District Forest Office.

Section 17 of the Regulation prohibits the use of a chainsaw, be it registered or not, to convert timber into lumber for any commercial purpose or exchange and no one is to sell or buy such a product.

Whenever a chainsaw is used to fell a tree, the stump shall be marked by the owner of the chainsaw with his timber registration number. Section 19 prohibits landowners from permitting the use of unregistered chainsaws to fell trees on their land.

##### 4.5.3 Abandoned Timber Products

Any abandoned timber, whether marked or unmarked, may be seized and disposed of by the Chief Executive or any officer authorized by him as an inspection officer and the inspector who seizes the timber shall within 24 hours report the seizure to the nearest Forest Services Division.

Notice of 14 days shall be given in the locality where it was seized of the intention to sell and if the owner is not found it shall be sold. The proceeds of the sale shall be put in a bank account to be determined by the Minister and the Commission, which shall be used to support activities in the community that are beneficial to the protection of the forest.

##### 4.5.6 Salvage of Timber Products

The Commission may issue permit for the felling of timber during road construction, expansion of town or village or cultivation of farms.

Where a contractor has completed operations and there are left-overs in the form of standing trees, branches and off-cuts, it may be disposed off by the Commission for the benefit of the people living in the area.

#### 4.5.7 Timber Utilization Permit

The District Assemblies, town committees, rural community groups or NGOs, may apply for the grant of timber utilization permit to harvest timber in a land not subject to TUC which shall be used solely for social or community purpose.

#### 4.5.8 Offences and Penalties

The following constitute offences in relation to the grant of timber rights:

- hindering forest officer from performing his legal duty
- possession of timber product not well marked or unmarked
- carriage or possession of timber without a conveyance certificate
- failure to register chainsaw with the District Assembly
- use of unlicensed chainsaw to fell timber
- failure to mark a stump of a tree felled by chainsaw with timber registration number
- sale of lumber cut with chainsaw
- landowner allowing the use of unregistered chainsaw on his land

Upon conviction of any of the above offences the offender shall pay a fine of GH¢500 or a term of imprisonment not exceeding 12 months or both.

The Court may confiscate and dispose of both the chainsaw and the tree or lumber felled or sawn by an unregistered chainsaw.

#### 4.5.9 Suspension and Termination of TUCs

TUCs may be suspended or terminated on the following grounds:

- breach of the terms or conditions of the contract
- loss of means to manage the resource
- when area of contract is under review
- area of contract not suitable for timber utilization
- review by Forest Service Division indicating grounds for termination
- holder charged or convicted of a forest offence

A timber firm whose right has been suspended may petition the Minister after rectifying or redressing the breach which occasioned the suspension.

A timber right shall not be transferred or given to another person without the written consent of the Minister and such consent of the Minister shall not be unreasonably delayed or withheld.

## Chapter 5

# Rights and Responsibilities of Forest-Fringe Communities

### Introduction

Under this chapter, we will focus on the rights and duties of communities, their role in protecting forests within their areas, and their entitlements under the law and Constitution of Ghana.

### 1. Rights

- Land owners or farmers have a right to claim compensation from timber contractors for the destruction of their crops as a result of the operations of timber contractors. The farmers are entitled to know within 30 days of putting in a claim from the Forestry Commission the steps being taken to ensure the processing of payment.

The application for compensation should be made to the timber rights holder and copied to the Minister responsible and the Land valuation Board.

The amount of compensation is to be determined through negotiation between the parties but if negotiation fails either party can refer the matter to the minister responsible. The minister in consultation with the Land Valuation Board, determines the amount payable as compensation by the timber rights holder.

If the landowner is still dissatisfied with the amount proposed by the government, he/she may apply to the High Court for review.

- Land owners whose lands are identified by the Chief Executive of the Forestry Commission as suitable for timber utilization contracts are entitled to be compensated under Article 20 of the Constitution, 1992.
- Admitted farms- these are farmers or cultivators who had their farms in reserve areas before their designation as reserves and they are entitled to continue to farm in designated areas.
- Admitted rights are customary rights enjoyed by communities and individuals living close to forest reserve lands at the time of reservation when they are not seen as harmful to the forest. These rights include cultural and religious rights such as entry into the reserve to perform some cultural rites.

Asociacion de Comunidades Aborigenes Lhaka Honhat. Caso No 12.094

Argentina decided to build an international bridge and to carry out an urban development plan in a particular area which would significantly change the life style of the communities around the area. The Aboriginal Communities Association in Lhaka Honat sued the State of Argentina at the Inter-American Commission on Human Rights for violation of their right to ancestral land, to cultural integrity and to a safe environment. They demanded a report on the relevant social and environmental impact and a survey among those who had historically occupied, used and owned the land.

As a result of the law suit, the government suspended the project and a working group was formed with the aim of preparing a proposal for a land handover. Several agreements were reached all aimed at settlement.

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- They are also entitled to benefit from the proceeds from seized timbers from their area sold for the support of development in their communities
- The Contractor must ensure unhindered access to the area for landowners to harvest non-timber forest products for domestic consumption or use except where there is direct physical danger from logging activities.
- Traditional Councils and Stool Land Owners are entitled to be paid their share of income collected from both reserve and off reserve areas before the end of the next quarter.
- They are also entitled to receive free information on forest wildlife fees and charges.
- Fringe communities are also entitled to be issued with timber utilization permit within one month of application for community projects. Whenever fringe communities require trees or timber for a community project such as roofing a market store, KVIP, Community Centre etc they have a right to be issued with timber utilization permit one month after they have applied to the Chief Conservator of Forests. And they must be prepared to adhere to conditions or terms upon which the permit would be issued.(refer to appendix B)
- As part of their social responsibility and in accordance with section 13 of the Timber Resources Management Regulations, fringe communities are entitled to the provision of social facilities and amenities such as schools, boreholes, and to employment provided by the timber rightsholder.

Forest-fringe communities also have the constitutional right to go to court on any activity that affect their culture, land use, their means of survival and above all that has deep environmental consequences. The following cases may provide useful guidelines to Ghanaian forest-fringe communities in pursuit of legal action.

#### Case of the Indigenous Community Yakye Axa v Paraguay

The indigenous people brought an action at the Inter-American Court of Human Rights alleging that Paraguay had failed to acknowledge its right to property over ancestral land.

The court held that Paraguay had violated the property rights of the indigenes as well as the right to life, since it had prevented the community from access to its traditional means of livelihood and failure on the part of the state to adopt positive measures to ensure that the community lived under dignified conditions during the period they had to do without their land.

The Court ordered the state to demarcate the traditional land, to submit it to the community at no cost, and to provide basic goods and services necessary for the community to survive until they recovered their land.

[www.escr-net.org/caselaw/caselaw](http://www.escr-net.org/caselaw/caselaw)

#### Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua

A leader of the Mayagna ( Sumo ) Tingni Community in the Atlantic coast of Nicaragua, filed a complaint against the State of Nicaragua at the Inter-American Commission on Human Rights. It was alleged that the State had failed to demarcate the community's communal land and to take the necessary measures to protect the community's property rights over its natural resources and ancestral lands. The petitioner also complained that the state failed to guarantee access to an effective remedy for the community's claims regarding the concession of 62,000 hectares of tropical forest to be commercially developed by a company in the communal land.

The Court held that the right to property guaranteed under the laws protected the indigenous people's right to property and therefore the state had no right to grant concession to third parties in their land.

The Court decided that the state had to adopt the necessary measures to create an effective mechanism for demarcation and titling of the indigenous community's territory, in accordance with their customary law, values and customs.

The Court also held that, until such mechanism was created, the state had to refrain from any acts that might affect the existence, value, use or enjoyment of the property located in the geographic area where the members of the community live and carry out their activities.

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#### Oposa et al. v. Fulgencio S. Factoran, Jr. et al (G.R. No. 101083)

Several minors represented by their parents brought an action against the Department of Environment and Natural Resources to cancel existing timber license agreements and to stop issuance of new ones. They contended that the result of the deforestation and the damage to the environment violated their constitutional rights to a balanced and healthful ecology and health as well as the generations yet unborn.

The Court held that the constitutional right to health is fundamental, judicially enforceable and it imposes the correlative duty to refrain from impairing the environment.

[www.escri-net.org/caselaw/caselaw](http://www.escri-net.org/caselaw/caselaw)

## 2. Responsibilities

1. Section 19 of the LI 1649 cast upon the landowner a responsibility not to allow the use of unregistered chainsaw for cutting trees or sawing timber on his land. This means that forest-fringe communities must monitor and report the activities of chainsaw operators especially those who cut timber or tree without registering their chainsaw.

### Environmental Aspects of Forest Resources Extraction

The exploitation of timber resources be it on-reserve or off-reserve has the following environmental effects on the communities in and around the contract area. Therefore, both the timber contractor and the communities have the obligation to control the extent of forest exploitation:

1. It encourages deforestation. Continuous extraction of forest resources without control may lead to depletion of our forest and thereby lead to deforestation.
2. It may also lead to destruction of the ecology. If extraction of forest products is not checked it may

lead to destruction of the whole environment- the life of plants and animals whose activities are necessary for human survival.

3. It causes soil, wind and water erosion. Forest cover checks the effect of rainwater flowing on lands and erosion of the soil nutrients, the speed of the wind and its effects on human habitation. Therefore, if forest resource extraction is not checked it may affect the life of human beings.
4. It affects procreation of wildlife (birds, monkeys etc.) since their habitat is destroyed and thus game as a source of food is reduced.
5. It may also affect rainfall patterns. Continuous depletion of forest reserves may change the pattern of rainfall i.e. rains may not come at the right time and in right volumes as the community may have expected. This may affect production levels of their farming activities.
6. Finally, forest resource extraction destroys medicinal plants. Most forest-fringe communities rely heavily on herbal treatments for their medical care which are usually extracted from the forest. Also, most orthodox medicines have their raw materials from herbs and barks taken from forests. Therefore, an unchecked extraction of forest resources may affect negatively this very important role forest resources play.

## Chapter 6

### Social Responsibility Agreements (SRAs)

#### Definition of SRA

- A social responsibility agreement may be defined as an agreement capable of being enforced in a court of law which imposes a duty on a timber contractor to provide certain acceptable social amenities to the communities whose forest the contractor operates to the tune of 5% of the annual royalties payable by the contractor.
- These agreements are ways of ensuring that all Timber Utilization Contract activities are done in a more socially responsible way that respect the rights of the landowners. It is usually attached as a schedule to the contract, which is legally binding.

SRAs are negotiated by the Forest Service with the affected communities in advance of the contract being advertised.

#### SRA Negotiation Processes

- District Forest Manager in consultation with landowning communities and traditional leaders locate and define the boundaries of the TUC area.
- Communities are educated on SRAs and asked to propose conditions and their priorities for local development.
- Conditions are annexed to the initial document for advertisement on tender for TUC.
- Successful bidder may go into further negotiation to fine-tune the terms of the SRA with the landowning communities through their chiefs or traditional rulers.

#### Historical Background to SRAs in Law and Policy

- Before the enactment of the Timber Resources Management Act (TRMA), there was no concrete policy on social responsibility of timber firms to local communities affected by their activities.
- In practice local communities demanded and, in some cases, were provided with social amenities through 'negotiations' with timber firms.
- The value of social amenities provided by the timber firms was not predetermined as timber firms could provide as much as they wished.
- Also the ways of negotiating benefits to the affected communities were not guided by any structured procedures and rules.
- In view of lack of structured procedures powerful chiefs took advantage of the situation to negotiate 'private' deals with timber firms to the detriment of the communities.
- Overall, access to benefits depended on the assertiveness of the affected communities and the generosity of the timber firm involved.

#### Current Legal Basis of SRAs

- The Timber Resources Management Act, 1998 (Act 547) was enacted to serve as a framework for the grant of timber rights and sustainable use of forest resources in Ghana.
- Timber rights granted to timber firms are based on a contract (Timber Utilization Contract) entered into between the timber firm and the Forestry Commission.
- Timber Utilization Contract entitles timber firms to harvest timber up to the value of the contract.
- Section 3(e) of Acts 547 imposes an obligation on the holder of Timber Utilization Contract to present "proposals to assist in addressing the social needs of the communities who have interest in the applicant's proposed area of operations."
- Under the Timber Resources Management Regulations (L.I. 1649) the proposal by the timber firm is an

- undertaking by the holder of the Timber Utilization Contract to provide specific social amenities for the benefit of the local community living in the proposed contract area.
- Regulation 13 of LI 1649 states that the holder of the Timber Utilization Contract shall spend not more than 5% of the annual royalties accruing from its operations to provide social amenities to local communities in its area of operations.
  - Under the current laws affected communities cannot demand benefits in excess of the maximum of 5% of royalties payable.
  - However, holders of Timber Utilization Contract can provide benefits in excess of 5% of its royalties payable but not out of legal obligation.

### Negotiating SRAs: Issues and Strategies

#### Negotiation

Negotiation is a very popular ADR method – we unconsciously negotiate a lot in our daily transactions with other individuals, for example in deciding on what to eat for supper as a family and where to visit as a couple on holidays.

Negotiation is a shared effort to solve a problem and it involves the parties themselves interacting directly with each other to resolve a dispute. Negotiation is suitable for use in all cases in which the parties want to resolve their dispute with the aim of achieving a result that is acceptable to all concerned. There is no involvement of any neutral third party who would decide on the dispute at the end of the interaction.

Negotiation is a voluntary process – that is to say, the other party must be willing to negotiate. It involves a great deal of compromise (“give and take” and “live and let live”) and there is no need for formal procedures.

Communication is key to a successful negotiation and confidentiality of the process and the issues discussed is guaranteed. In the business world, lawyers often take part in negotiation discussions. The parties to a negotiation also very often actively take part in the discussions.

#### Definition Box

Negotiation comes from two ancient Latin words: nec for “not” and otium for “ease”. Negotiation means a situation of “not ease”.

#### Summary Box

- Negotiation involves the direct interaction by the parties to solve a dispute.
- There is no neutral third party who decides on who the “winner” or “loser” is.

### Common Negotiation Approaches

- Competitive Negotiation – the negotiation is treated as a competition that must be won or lost. There must be a winner and a loser at all cost. One person gets what he/she wants and the other person loses everything. Here, the relationship between the parties is unimportant as they do not care about each other. Under this approach negotiators have to be tough, powerful and skillful in the negotiation process. This involves;

1. Opening high
2. Make few concession
3. No trouble in area of deadlock

- Collaborative Negotiation or Problem-solving approach – here negotiation is treated as a joint effort at problem solving to allow both parties to benefit. The relationship between the parties is regarded as important especially if it is an on-going one. This is the win-win approach to conflict resolution. Each party wins something and loses something. The best possible solution is the main goal.

### Basic Principles of Problem Solving approach:

- a. Avoid taking positions and concentrate on interests. Negotiators must not take hard stance during negotiation but must rather be more concerned about the interest of the community they are representing without unnecessarily compromising on the interest.
  - b. Kick away personality differences– let the problem take center stage. Negotiators must shelve their personal interest or differences and rather focus on the problem at hand.
  - c. Examine as many options as possible. It is important that negotiators approach the negotiation with open minds and consider other available options.
- Balanced Negotiation – this is a combination of the competitive and collaborative styles. Therefore, there are elements of both the win-win and the win-lose approaches.

### How to Conduct a Successful negotiation

In the conduct of negotiations, the negotiator must pay attention to the following four (4) factors:

People/issues – separate the parties from the problem (placing too much emphasis on the parties instead of the problem may lead to wrong conclusions)

Interest – people are motivated by their interests although they may not voice them out – self interest is often the most important factor of most conflicts (it is important to identify the interests of the parties in order to make a headway)

Options – one must develop options in the negotiation process to assist one in deciding the best course to take because it is highly likely to bring benefits and the course to avoid because it is likely to have negative consequences.

External Factors – outside influences that may harm the negotiation process should be carefully considered – examples are national laws, tradition and custom and natural events

### The process of negotiating involves a number of steps:

1. The negotiator must plan. In preparing to negotiate, you must--
  - ask yourself what you want to negotiate and set out your goals
  - ask yourself how much you are willing to sacrifice to achieve a solution
  - know what the other party wants and whether it is workable

2. The negotiator should approach the other party directly
3. Dates and time for negotiation must be negotiated and not forced on the other party
4. The negotiator must portray confidence and have an ability to influence
5. Keep the negotiation in your control – within your limits
6. Be flexible, fair and open minded
7. When negotiating on behalf of a group you must consider
  - The interests of the parties
  - The relationships that exist between and among the parties
  - The best alternative to negotiation for the parties
  - Commitment of the parties
  - Communication between and among the parties.

#### Summary Box

- The negotiator must pay attention to people/issues; interests; options; and external factors
- The negotiator must plan and this involves preparation
- The other party must be approached directly
- Confidence and ability to influence is important

Content of SRAs: What is in and what is out?

- What you get is what you bargain for
- Successful negotiations are the result of a number of factors:
  - Preparation- understand needs/wants, perceptions and options
  - How you start the process of negotiation
  - Management of the process
  - How you end the process

The content of SRA may be categorized into (a) a code of conduct (b) social obligation and (c) resource development.

(a) Code of conduct:

This part of the SRA states the way in which the timber contractor must operate to ensure that all timber activities are done with due respect for the rights of the fringe-communities. At the meeting of the community for consultation and discussion of the SRA, the community must be asked to review their previous experience with contractors, come out with problems and bad practices. The code must state how the contractor should operate and more especially recognition by the code that in off-reserves areas timber production is not the primary activity but rather farming is the main activity. The following terms may be included in the SRA:

- i. ensure that the company's staff are courteous in their interactions with the local people;
- ii. respect customs and beliefs of the communities e.g. taboo days;
- iii. respect the rights of the communities to be consulted and informed during the planning of felling operations e.g. where the access trucks of the contractor would be sited;

- iv. ensure that all activities of the contractor are done in such a timely manner so as to minimize if not avoid disruption of agricultural activities of the community;
- v. respect community's existing infrastructure. Roads and bridges;
- vi. respect all sacred sites, water collection points and non-timber forest products collection areas;
- vii. agree on compensation for damage to agricultural crops which were in existence before the contractor started its operations and make good payment to farmers for compensation for crop damage on the spot;
- viii. recognition that timber rights holder cannot collect non-timber forest products or to limit the community from doing their lawful activities; and
- ix. landowners must also make sure that inhabitants within the contract area respect the right of the contractor to work without any hindrance so long as they work within the terms of the contract

(b) Social Obligation of the Timber Contractor:

This part contains assistance from the contractor on infrastructure development. This may include:

- i. construction of access roads, schools, clinics and roads in particular the communities may make contribution on the width of road so that after the operations of the contractor the community may use it.
- ii. Provision of beams to communities for the construction of community centres, schools etc.
- iii. The need for the contractor to provide employment for a number of local workers.

(c) Resource Development

Contractors must help communities which are interested in having a viable resource in tree planting.

Issues in SRA Negotiations:

- Who negotiates, i.e. who represents the community at the negotiation must be decided long before the negotiation begins.
- The community must be sure that the negotiator chosen possess the necessary negotiating skills.
- There must be a clear guideline by which the representative chosen would account to the community e.g. what happens if the negotiator compromises the interest or position of the community.
- The community ought to be clear on what to do in case negotiations break down

Enforcement

SRA is a contract and may be enforced in a court of competent jurisdiction.

- The court to choose depends on the amount of the claim
- Who sues?
- community by its lawful representative

Name of TUC Holder	No. of SRAs	Type of Social Benefit	Beneficiary Community
Samartex Timber & Plywood Ltd	4	Potable water supply Schools and scholarships Clinics Construction of palace Construction of roads Electricity poles	Amuni Aowin Wassa-Amenfi  Gwira Banso
Mondial Veneer (Gh) Ltd	1	Construct and equip clinic Provide water storage facility Furnish school building Build community center	Bonsahun
Cashwood Processing Ltd	1	Provide social amenities to community	Buaku and Abrofakrom
Suntex Ltd	2	Construct palace Build police station & community center Construct access road Environmental education	Akim Abuakwa traditional area

# APPENDIX

## APPENDIX- A: SAMPLE SRA

### SOCIAL RESPONSIBILITY AGREEMENT

This social responsibility agreement ("this agreement") is made this day, the \_\_\_\_\_ 20\_\_\_\_ between the \_\_\_\_\_ acting by its lawful attorney \_\_\_\_\_ (the "stool") \_\_\_\_\_ and the attorney, district chief executive of \_\_\_\_\_ (the "assembly") of the one part and \_\_\_\_\_, acting by its lawful attorney, \_\_\_\_\_ (the "contractor") of the other part.

#### RECITALS

- A. whereas the minister of state responsible for lands and forestry (the "minister") has granted the contractor the right to harvest timber ("the grant") in \_\_\_\_\_ which area is situated within stool's traditional area, \_\_\_\_\_
- B. whereas it is a condition of the grant that the contractor execute this agreement with the stool and the assembly in order that communities and inhabitants of \_\_\_\_\_ represented herein by the stool and assembly (the "community") shall be assisted with certain social and economic amenities, services or benefits (the "services").
- C. Whereas the contractor desires to provide the community with such services and the stool and assembly desire to receive such services on behalf of the community.
- D. Whereas the parties hereto desire to be bound by this agreement pursuant to the terms hereof.

Now, therefore, the parties hereto agree as follow:

## ARTICLE I PROVISION OF SERVICE

1.1 nature of obligation: the contractor acknowledges and agrees that it is executing this agreement and providing the relevant service as a condition of, and in consideration for, the grant by the minister of the concession and further acknowledges and agrees that the contractor's obligation to provide such services shall be binding on the contractor and inure to the benefit of the stool and the assembly, for and on behalf of the community.

1.2 Service to be provided: subject to the terms and conditions of this agreement, during the term of this agreement, the contractor agrees to provide the following services to the stool and the community:

1.2.1 clinic: the contractor shall construct and equip a modern clinic to provide medical services to the community. The contractor agrees that the size, dimensions and structure of such clinic and the type and specifications of equipment procured for use in such clinic shall conform in all respects to acceptable standards.

1.2.2 water pump /storage system: the contractor shall install a water pumping and storage system (the "system") for potable water in the community. The contractor shall install a system which has, in all material respects, acceptable specifications.

1.2.3 other types of service or amenity to be provided. E.g furnished school building; electric generator; library plus supply of books; community center; lump sum payment to educational endowment fund.

1.3 Selection Of Service: the selection of the services to be provided hereunder and of the place(s) in the community where such services will be located shall be determined jointly by the stool and the district chief executive, acting in consultation with the assembly.

1.4 Use Of Local Inputs And Resources: to the fullest extent possible, where any input or supplies used in or required for the provision of the service or a component thereof, including labour, can be obtained readily at a competitive price and quality from suppliers or their agents located within the community, the contractor shall use or employ such locally available input or supplies in the provision of the services.

1.5 Limitation On Investment: the contractor hereby specifically covenants and undertakes to assist the community with the [services] identified and set forth in clause 1.2 hereof to the extent and degree required hereunder; provided, however, that the actual annual cost to the contractor of providing the [services] shall equal 5% of the annual stumpage fees (the "Annual Investment Amount").

## ARTICLE II PERFORMANCE STANDARD

2.1 Performance: the contractor shall be responsible for, and shall fully and completely perform and discharged, any and each obligation the contractor now has or may hereafter have under or with respect to this agreement punctually as and when due, in accordance with the terms hereof; provided however however that, notwithstanding section 6.5 of this agreement, the contractor may hire a contractor or sub-contractor to undertake the provision of the service on behalf of the contractor.

2.2 Duty Of Care; Good Faith Business Judgment: the contractor shall perform the services with the care, and to the standard, respectively, that a prudent company experienced in providing such services would take for itself or others, and in any event with a standard of care and performance not less than the standards applied to other amenities owned, managed or controlled by the contractor, it being understood that in order to do so, and in so doing, the contractor (i) shall be entitled to such cooperation and assistance from the stool and the community as the contractor may reasonably request and (ii) shall not be liable to the stool for its reasonable reliance on the advice of its professional advisors and agents selected by it in good faith beyond the contractor's obligation to cure, contained in clause 2.6 hereof.

2.3 Right Of Inspection: the contractor shall subject itself to examination with respect to the performance of the services and shall cooperate fully with all supervisory authorities having jurisdiction over any part of the activities of the contractor (including the stool) and shall make available to representatives of such authorities all such information and such rights of inspection in respect of the performance of the service pursuant to this agreement as shall be required by any applicable law or as they shall reasonably request.

2.4 No Encumbrance: the contractor covenants and agrees that where the amenity or other service to be provided in the performance of the services is capable of being encumbered, until such time as such amenity or other service is transferred to the ownership of the stool and community (the "completion") it shall not direct or indirectly create, incur, assume or suffer to exist any encumbrance attributable to it that attaches to the amenity or other service arising as a result of (i) claims against the contractor that are not related to or contemplated by this agreement or (ii) claims against the contractor with respect to taxes or expenses associated with the performance of the services.

2.5 Completion Timetable: notwithstanding, the contractor covenants and agrees that it shall use its commercially reasonable efforts to ensure that the performance of the services shall be rendered in a timely manner and, in particular, the contractor shall adhere to completion timetables.

2.6 General Guarantee: notwithstanding anything to the contrary contained in clause 2.2 hereof, the contractor shall remedy or cause its agents or contractors performing the service on its behalf, as the case may be, to remedy any defect in the services provided due to faulty material or workmanship and pay for any damage to other work resulting therefrom which shall be brought to the notice or attention of the contractor within the period of two years the completion date.

2.7 Change Orders: the contractor agrees not to make any changes in the schedule of work, design, or of the specifications set forth on schedule and attached hereto and made a part of this agreement without the written consent of the assembly and the school.

2.8 Further Assurances: without prejudice to the express provisions of this agreement, each of the contractor, the stool and the assembly agree to consult with each other from time to time to develop a framework appropriate to the performance by the contractor of the service, including without limitation, due consideration of the types and amounts of expenses to be incurred and standard of performance to be achieved by the contractor. The parties further agree to do all things reasonably necessary to carry out the purposes of this agreement.

## ARTICLE III DISPUTE RESOLUTION

4.1 Negotiation: the parties hereto shall in the first instance exert their best efforts to arrive at an amicable settlement of any dispute which may arise between them with respect to this agreement.

4.2 Suits For Enforcement: in case negotiation (as required in clause 4.1 hereof) does not result in the settlement of a dispute, either party hereto may proceed to protect and enforce its rights either by suit in equity and/or by action at law, or by other appropriate proceedings, whether for the specific performance of any covenant or agreement contained in this agreement or for an injunction against a violation of any of the terms hereof, or to recover damage for the breach thereof, or in aid of the exercise of any power granted herein or to enforce any other equitable or legal right of such party.

4.3 Remedies Cumulative: no right, power or remedy herein conferred is intended to be exclusive of any other right, power or remedy and each and every such remedy shall be cumulative and shall be in addition to every other right, power or remedy shall be cumulative and shall be in addition to every other right, power or remedy given hereunder, or now or hereafter existing at law or in equity or by statute or otherwise.

4.3 Remedies Not Waived: no course of dealing among the parties hereto or any delay or omission on the part of any of the parties hereto in exercising any rights hereunder shall operate as a waiver of any rights of any party hereto.

**ARTICLE IV  
LAWS AND REGULATIONS**

The contractor shall observe and abide by all applicable laws and the rules and regulations of any lawful regulatory agency with authority to act hereunder or in connection with the services to be provided hereunder. The assembly shall notify the contractor of any such legal and/or regulatory requirements in connection with this agreement.

Governing Law: this agreement will be governed by and construed in accordance with the laws of the Republic of Ghana, excluding that body of law related to choice of laws.

WITNESS WHEREOF, the duly authorized representative of each of the parties hereto have executed this agreement effective as of the day and year first written above.

THE [CONTRACTOR]

[TRADITIONAL STOOL]

BY-----  
Name-----

BY-----  
Name-----

Title-----

Title-----

[DISTRICT ASSEMBLY]

By:-----  
By:-----  
Name:-----  
Title:-----

## APPENDIX- B FELLING PERMIT TO FELL TREES OFF-RESERVE

Applicant ----- Registration No-----  
 Machine Operator Machine No -----  
 Chainsaw Operator Registration No -----  
 Pre-felling Inspection ref. No. -----  
 Purpose of the permit -----  
 Contract No -----  
 Location -----  
 Forest District -----

### SUMMARY OF TREES AUTHORISED TO FELL ON PERMIT

Tree Numbers	Stool(Landowner)	Community (Unit Committee)	District Assembly
Total Number of Trees			

Ref numbers of attached forms -----  
 (detailing each tree authorized to fell)  
 Royalty/deposit paid ----- Cedis Receipt No. -----  
 Other fee ----- Cedis Receipt No. -----

THE TREES DESCRIBED ON THE PERMIT HAVE BEEN INSPECTED BY THE FOREST SERVICE AND COMMUNITY REPRESENTATIVES AND APPROVAL FOR FELLING IS HEREBY GRANTED.

Issued by ----- Reference No. -----  
 Date issued ----- date permit expires -----  
 Date permit collected by the Forest Service from the operator -----



