

**Developing Legal Tools
for Citizen Empowerment:
Social Responsibility
Agreements in Ghana's
Forestry Sector**



Dominic M. Ayine

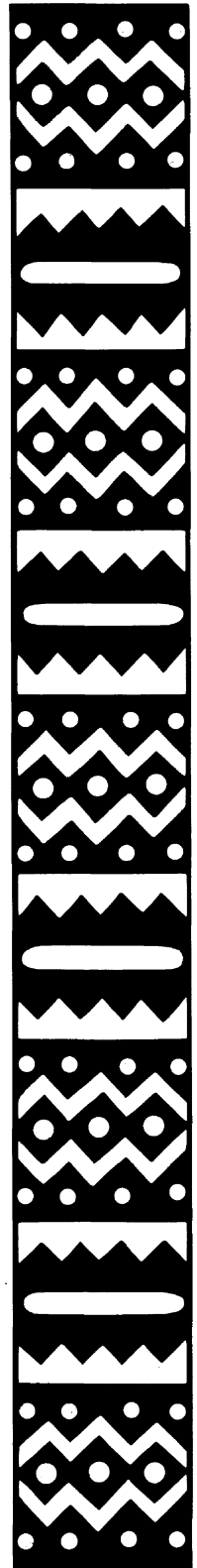


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Dominic M. Ayine

Series editor: Lorenzo Cotula



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ABOUT THE AUTHOR

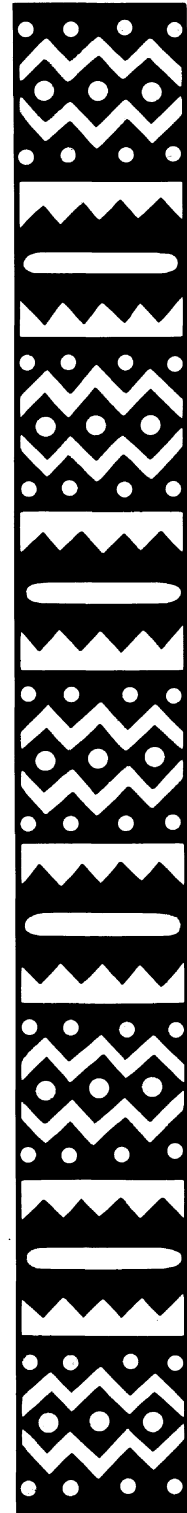
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ACRONYMS

CEPIL	Centre for Public Interest
FC	Forestry Commission
GTA	Ghana Timber Association
IIED	International Institute for Environment and Development
SRA	Social Responsibility Agreement
TIDD	Timber Industry Development Division, Forestry Commission, Ghana
TREC	Timber Rights Evaluation Committee
TUC	Timber Utilisation Contract

CONTENTS

I. INTRODUCTION	1
1.1. OVERVIEW	2
1.2. RATIONALE AND CONTEXT OF THE STUDY	4
1.3. OUTLINE OF THE REPORT	5
II. GHANA'S TIMBER INDUSTRY IN PERSPECTIVE	7
2.1. THE POLITICAL ECONOMY OF THE TIMBER SECTOR	8
2.2. THE LEGAL FRAMEWORK	12
III. SOCIAL RESPONSIBILITY AGREEMENTS AS TOOLS FOR BENEFIT SHARING	19
3.1. NEGOTIATION AND CONTENT	21
3.2. IMPLEMENTATION	24
IV. CONCLUSION	27
REFERENCES	29
APPENDICES	31



I. INTRODUCTION



1.1. OVERVIEW

This report is about a legal arrangement for enabling forest communities in Ghana to participate better in the benefits generated by timber activities. In Ghana, legislation requires logging firms to commit a portion of their financial resources towards the provision of social amenities to local forest communities. Logging firms must perform this legal obligation by signing and implementing “Social Responsibility Agreements” (SRAs) with forest communities. This report assesses strengths and weaknesses in the design and implementation of SRAs, and the extent to which they have made a difference to forest communities.

Under the Timber Resources Management Act 1997 and its subsidiary legislation, prospective investors are required to present “proposals to assist in addressing social needs of the communities who have interest in the applicant’s proposed area of operations” (Timber Resources Management Act 1997). The proposal constitutes an “undertaking to provide specific social amenities for the benefit of the local communities that live in the proposed contract area” (Timber Resources Management Regulations 1998). The proposal forms part of the documentation to be evaluated by the competent authority (the Timber Rights Evaluation Committee, TREC) before the award of a Timber Utilisation Contract (TUC) to an investor. Once the TUC has been awarded, the investor assumes an obligation to spend not more than 5% of the annual royalties accruing from its operations to support the development of local communities.

Before the enactment of the Timber Resource Management Act in 1997, there was no formal mechanism for the participation of local forest communities in the benefits generated by timber operations. This does not mean that in practice timber firms did not provide such amenities to communities; most forest communities demanded and in some cases were provided with clinics, roads, schools and community centers by timber firms.

However, according to a Member of Parliament and Ranking Member of the Committee for Lands and Forestry, the situation prior to the passage of the Act was highly chaotic. It operated to the disadvantage of local forest communities for a number of reasons. First, timber firms had no legal obligation to provide financial or economic benefits to communities

beyond their legal obligations to land owners and farmers whose crops were damaged in the process of timber operations. Consequently, they had legitimate reason to, and often did, resist demands from local communities to undertake social responsibility projects. Even in situations where timber firms undertook to provide social and economic projects, there were no standards regarding the economic value of such projects. Second, because no social responsibility was legally owed to the communities, many chiefs took advantage of the situation and negotiated deals that benefited them rather than the entire community.¹

The Social Responsibility Agreement thus emerged as a tool to rationalise an existing practice of resource allocation by timber firms to local communities. That practice was *ad hoc* and depended on the goodwill of timber firms: these firms decided what to give, how much to give and to which community. The principle underlying the social-responsibility provisions of the Timber Resources Management Act was to put this *ad hoc* approach to rest and to streamline the processes for transferring resources from timber firms to local communities.

This legislation has its roots in Ghana's 1994 Forest and Wildlife Policy. This policy recognised the "rights of people to have access to natural resources for maintaining a basic standard of living and their concomitant responsibility to ensure the sustainable uses of such resources" (Government of Ghana, Forest and Wildlife Policy Document, 1994) Further, the policy aimed to ensure, among others, the "perpetual flow of optimum benefits to all segments of society" (*Id.*) and to institutionalise decentralised and participatory decision-making processes that involve local communities in matters relating to their welfare (*Id.*).

Enacting a policy into law is one thing; ensuring proper implementation is quite another. If a law is not properly implemented, it is of no or little value to those who stand to benefit from it. Yet little research has been conducted since the passage of the Timber Resources Management Act to determine the extent to which local forest communities have benefited under the 'social responsibility' provisions. Are investors in the forestry sector living up to their commitments under SRAs? If not, to what extent are they being

1. Interview, Accra, May 31, 2007 with Hon. Collins Dauda, MP (NDC- Asutifi). Hon Dauda is the former Chairman of the Parliamentary Committee on Lands and Forestry.

held accountable by the Forestry Commission and other agencies? Do local communities have the capacity to monitor and enforce the obligations of investors under existing SRAs? And, more generally, do SRAs serve as effective vehicles for the sharing of benefits between local forest communities and investors? In order to answer these questions, there is a need to review experience with Social Responsibility Agreements, and to assess what difference – if any – they have made to forest communities.

1.2. RATIONALE AND CONTEXT OF THE STUDY

This report responds to that need. It assesses the design, implementation and outcomes of Social Responsibility Agreements in the forestry industry in Ghana, drawing on a number of SRAs concluded between timber firms and local communities.

The study is part of a broader multi-country programme coordinated by the International Institute for Environment and Development (IIED) and involving partners in Ghana, Mali, Mozambique and Senegal, as well as the Foundation for International Environmental Law and Development (FIELD). The programme (“Legal Tools for Community Empowerment”) develops innovative ways of using the law for local empowerment and positive change (on the concept of legal empowerment, see Cotula, 2007). It helps local groups have greater control over the natural resources on which they depend, particularly within the context of investment projects in sectors as diverse as agribusiness, forestry, mining and tourism. The programme involves:

- Identifying innovative legal tools to secure local resource rights, developing ways to sharpen these tools, and engaging with policy processes to change legal frameworks as needed.
- Developing, testing and implementing legal literacy training and other tools to build local capacity to make use of the opportunities offered by the law, targeting selected sites while developing innovative approaches that can be replicated elsewhere.
- Facilitating cross-country exchange of experience and wider lesson sharing to enable project participants to learn from each other, and others to learn from the tools developed by the project (Cotula, 2007).

In line with overall approach of the “Legal Tools” programme, the study is the first step of a country-specific project to help local forest communities have greater control over their lives – a project led by the Centre for Public Interest Law (CEPIL).

The study contributes to the first component of programme activities in Ghana – namely, the identification of legal entry points for community empowerment, and of ways to improve them. Rather than providing definitive answers on the merits and demerits of SRAs, the study provides a basis for in-country policy debates on how to sharpen this legal tool.

Programme activities in Ghana also entail building local capacity to monitor decision-making on the grant of timber utilisation rights, to negotiate more effectively Social Responsibility Agreements with timber companies, and to enforce such agreements where necessary through the use of legal remedies and processes.

1.3. OUTLINE OF THE REPORT

Beyond this introduction, this report is divided into four chapters. Chapter II provides an overview of the forest sector in Ghana, through an analysis of the political economy of the industry. It also provides a review of the legal and regulatory framework governing that sector. Chapter III analyses SRAs as a tool for benefit sharing. Chapter IV presents recommendations for sharpening this tool through legal reform and better implementation.

**II. GHANA'S TIMBER
INDUSTRY IN PERSPECTIVE**



The state of the timber industry in Ghana has been shaped over the years by a number of factors. Political and economic conditions influence government policy towards the industry, while the legal and regulatory framework influences the overall behavior of industry actors as well as the performance of the industry. An overview of the timber industry is thus necessary in order to appreciate the context within which Social Responsibility Agreements operate.

2.1. THE POLITICAL ECONOMY OF THE TIMBER SECTOR

The forest sector plays an important role in the economy of Ghana. The industry is a significant contributor to GDP and to the foreign exchange earnings of the country. Data from the Timber Industry Development Division (TIDD) of the Forestry Commission indicates that between 2002 and 2006, the country earned an average of €174 million from exports of wood products (see Table 1 below).

Year	Volume (M3)	Value (Euros)
2002	472,427	183,365,836
2003	444,388	162,992,783
2004	455,180	170,487,364
2005	466,155	184,011,323
2006	451,608	170,097,902

Source: TIDD (2007)

Global demand as reflected in the world price of some Ghanaian log species, coupled with enhanced utilisation of installed capacity of timber firms, have resulted in increased exports of logs from the country (ITTO, 2007(a)). During the first quarter of 2007 alone, the Forestry Commission approved and issued 2,061 export permits to cover shipments of various wood products to foreign markets. This constituted a marginal increase of

3.52% over the number of export permits issued during the previous year (ITTO, 2007 (b)).

The leading importers of Ghanaian timber products for the first quarter of 2007 have been India, the United States of America and Nigeria. In terms of value, India was the single largest importer of timber products worth €8.8 million, followed by the USA at €6.6 million and Nigeria at €5.8 million. The largest exporting firms were John Bitar Company Ltd, Naja David Veneer, Logs and Lumber Company Ltd, Samartex Timber and Plywood Ltd and Fortuna Timbers Ghana Ltd. Together these firms accounted for 44% of the value of total timber exports (ITTO, 2007a).

One of the key economic benefits from the timber industry is the revenue derived from the payment of timber rights fees and stumpage fees. Timber rights fees are paid to the Forestry Commission when a firm is awarded a TUC. Stumpage fees are a proportion of the value of logs harvested, and are in essence economic rent that the Forestry Commission and other institutional stakeholders and landowners derive from the operations of timber firms.

Political factors have shaped the nature and character of the timber industry in Ghana for decades. The ideological predispositions of various governments, both colonial and independent, have significantly influenced forest policy (Kotey *et al*, 1998).

The colonial administration's ideology of indirect rule underlay its efforts to effectively implement forest reservation policy through native authority by-laws. As Kotey *et al* (1998:9) put it: “[T]he choice of forest reservation under native authority by-laws was fully in accord with the then prevailing political doctrine of “indirect rule” – in which chiefs and “traditional authorities” were “given” considerable land and resource allocation powers”. Staunch resistance to colonial land policy by the African elite, including chiefs, partly accounted for the shift from direct to indirect control of land and natural resources.

In post-independence Ghana, forest policy changed depending on the ideological orientation of governments, and on the balance of power among political forces with vested interests in the sector. Ideology determined the orientation of state institutions vis-à-vis the industry, while

the balance of political power determined how effectively the state controlled and managed the sector as a whole.

Historically, there has been a fairly consistent pattern of growing central government control and regulation of the forest sector, as well as of government collection and distribution of timber revenues. As the analysis of the legal framework in the following section will make clear, government institutions such as the Forestry Commission have the legal authority to regulate and control the use of forest resources, including timber. However, the ability of such government institutions to affect the behavior of other stakeholders (particularly timber firms) depends not only on the legal authority they command, but also on the financial, human and technological resources they can garner for their work.

On the other hand, timber companies tend to combine political and financial clout. Through political connections, they have been able to “influence policies, stall legislation, and modify some working plan prescriptions, and [have been] largely responsible for the tardy revision of royalties” (Kotey *et al*, 1998:79). In other words, the industry is able to lobby to affect the way it is regulated. In addition, the capital-intensive nature of timber operations means that those already in the industry control a critical resource – capital equipment – without which the exploitation of timber would be suboptimal. This provides leverage to the industry in terms of how it relates to other industry stakeholders, particularly local communities and government agencies.

The considerable economic and political power wielded by the timber industry has raised concerns as to the effectiveness of sectoral regulatory institutions in protecting the public interest. Civil society groups working on forestry issues have warned against the dangers of regulatory capture by the industry. Some have argued that regulatory institutions have virtually turned a blind eye to the environmental and ecological impacts of over-logging, deforestation and wasteful milling practices indulged in by the timber industry.

The recent litigation brought by the Ghana Timber Association (GTA) against the Forestry Commission and its out-of-court settlement (see box 1 below) show that the industry continues to be a “powerful protector of its interests”(Kotey *et al*, 1998:79). According to some civil society

BOX 1: GTA CHALLENGES FC'S ROYALTY CALCULATION

In April 2005, the Ghana Timber Association (GTA) sued Forestry Commission (FC) before the High Court, challenging its formulae for computing stumpage fees. Under relevant legislation, the Minister responsible for forestry has discretionary power to fix stumpage fees, in consultation with the FC and the Administrator of Stool Lands.

The GTA challenged the stumpage fees determined by the Minister on several grounds. It claimed that their determination was illegal, as no guidelines regulating the exercise of the Minister's discretion had been formulated or published; and as the Minister did not consult the FC and the Administrator of Stool Lands as required. In addition, as the fees were also charged on trees that are not commercial logs, GTA claimed that its members had to pay higher-than-acceptable stumpage fees, which significantly affected their business operations. Therefore, the GTA also sought a court declaration that the FC's system for the calculation of stumpage fees is defective and has resulted in the GTA's members being overcharged.

While the FC denied that the stumpage fees were illegal and threatened to publish in the media the names of the timber companies not paying stumpage fees as required, it eventually settled the case amicably out of court.

Source: *Ghana Timber Association v. Forestry Commission*, Suit No. E1/39/05, High Court of Ghana, Sekondi, unpublished court documents.

organisations, this experience also constitutes “a formal affirmation of [the Forestry Commission’s] subservience to the GTA” (Forest Watch Ghana, Press Release, October 13, 2005). In the view of Forest Watch, the court action provided a “perfect opportunity for the FC to reassert its authority over and sanitise the timber industry” (Forest Watch Ghana, 2005). Instead, the “settlement agreement” made substantial concessions to the industry, including the postponement by the Forestry Commission of the collection of outstanding stumpage fees for a period of six months, and the suspension of publication of the names of defaulting timber firms.

Besides affecting relations between timber industry and regulators, power asymmetries significantly shape relations between these and other stakeholders – particularly local forest communities. Power asymmetries between a large timber company and a local cocoa farmer, for instance, are huge. Overall, local forest communities and, to some extent, local government agencies have been marginalised in decision-making processes

involving the forest sector. Legislative attempts to ensure collaborative management of forest resources through participatory decision-making have not yet yielded the desired results – mainly due to existing structural imbalances that favor the industry.

Relations within local communities are themselves shaped by power asymmetries. Within their communities, chiefs and traditional authorities have the power to control the use of forest resources, including the power to determine how royalties paid to them by timber firms are utilised. This power derives from custom, but has been reinforced by various constitutional and statutory enactments. The Constitution and the Timber Resource Management Act not only recognise the power and authority of chiefs, but also give them specific rights relating to the control and distribution of the rents flowing timber resources. For instance, traditional authorities are entitled to a percentage of all revenues accruing from the exploitation of natural resources found on stool or skin lands (article 267 of the Constitution).²

As the empirical analysis of social responsibility agreements presented in chapter III below demonstrates, chiefs and traditional leaders constitute a powerful constituency in the processes leading to the conclusion of these agreements – and often benefit directly from them.

These asymmetries in power relations between timber companies, government agencies and local groups, and the differentiation within groups and strategic behaviour of chiefs all have implications for the implementation and outcomes of Social Responsibility Agreements.

2.2. THE LEGAL FRAMEWORK

The Ghanaian Constitution provides a regime for the management of natural resources such as forestry, minerals and water. Chapter 21 of the Constitution elaborates the regime on “Lands and Natural Resources”. It provides for the establishment of Natural Resource Commissions, including

2. The term “stool land” or “skin land” is used in the Constitution and other laws to refer to lands held by traditional authorities in trust for the citizens of the particular traditional area.

the Minerals Commission, the Forestry Commission and the Fisheries Commission.

Each of these Commissions is constitutionally mandated to provide regulatory oversight over “the management of the utilisation of the natural resources concerned and the coordination of the policies in relation to them” (Article 269 of the Constitution). These Commissions thus have power to authorise the grant of rights, concessions or contracts relating to the exploitation of the natural resources over which they preside.

Pursuant to this broad constitutional mandate, Parliament enacted legislation spelling out the functions, responsibilities and competences of the various Commissions. Such legislation is supplemented by sectoral legislation governing the natural resource in question. In the case of forest resources, the Forestry Commission Act sets up the Commission, while the Timber Resource Management Act provides the regulatory framework for the management of timber resources.

The Forestry Commission has four principal functions under its establishment legislation. These are the regulation of the utilisation of forest and timber resources; the management of forest reserves and protected areas; the provision of assistance to the private sector; the development of forest plantations in order to ensure the restoration of degraded forests; and the expansion of national forest cover and increased production of industrial timber (Forestry Commission Act, Section 2(2)(a)-(d)).

The performance of these legislative functions involves, among other things, determining the market entry requirements for timber and wildlife firms, the monitoring of production and marketing of forest products, planning for protection and consumption of such products and the provision of technical advisory services on matters of resource protection, management and development.

The Commission is governed by a board comprising representatives of government institutions, traditional authorities and civil society organisations. The members of the board are appointed by the President in consultation with the Council of State (Forestry Commission Act, Section 4). Ministerial responsibility for the Commission rests the Minister for Lands and Forestry.

As noted above, the Timber Resources Management Act was enacted to make legislative provision for the grant of timber rights and the sustainable management of timber resources. Timber rights are granted to investors, both local and foreign, on the basis of a contract between the investor and the Commission.

The content of the contract is broadly outlined in the Act, but the detailed contract provisions are negotiated between the investor and the Commission. Timber contracts must state the size of the area subject to the contract and the duration of the contract, and must clarify the investor's undertaking to comply with relevant regulations, to make prompt payment of rents, royalties, compensation and management and service charges, and to execute a reforestation plan during the contract period. Timber contracts cannot be executed for a period in excess of forty years and the size of the area covered under the contract cannot be in excess of 125 kilometers square.

A critical innovation of the Timber Resources Management Act is the introduction of a competitive bidding process for the grant of timber rights. Prospective investors are required to apply for the right to harvest timber and to indicate in their application their plans to manage the timber resources in a sustainable manner, the likely environmental effects of their operations and plans to redress such effects, evidence of financial capability to undertake timber operations and a social responsibility proposal.

The investor's application is then evaluated by the Timber Rights Evaluation Committee (TREC). The TREC uses the above statutory criteria as well as detailed evaluation criteria set out in the Timber Resources Management Regulations 1998 to evaluate applications for timber rights. On this basis, it ranks applicants on the basis of merit.

According to the Regulations, timber rights must be awarded to the investor "who offers to pay the highest annual timber rights fee". In other words, the TREC must recommend the highest bidder to the Commission for the grant of timber rights; the Minister for Lands and Forestry then issues the notice of grant of timber rights. This notice must specify the activities to be completed by the winner of the bid before the grant of timber rights.

The most important of these activities, for the purpose of this report, is “the conclusion of a Social Responsibility Agreement with local communities, which shall include an undertaking by the winner of the bid to assist communities and inhabitants of the timber utilisation areas with amenities, services or benefits, provided that the cost of the agreed amenities, services or benefits shall be 5% of the value of stumpage fee from the timber that is harvested” (Timber Resources Management Regulations, Section 13 (12)(b)).

In light of this provision, the conclusion of a Social Responsibility Agreement with local forest communities is a legal requirement, and a precondition for the grant of timber utilisation rights. In other words, SRAs differ from the benefit-sharing agreements concluded in many other countries, in that they are legally required and enforceable (Mayers and Vermeulen, 2002).

Social Responsibility Agreements usually cover two main areas – a “code of conduct” and social obligations (Mayers and Vermeulen, 2002). The “code of conduct” regulates the activities of the timber company in order to ensure that timber operations respect the rights and interests of local forest communities. For instance, it may regulate issues such as timing of harvesting, harvesting techniques to minimise crop damage, compensation rates for crop damage, protection of drinking water sources, and other aspects (Mayers and Vermeulen, 2002). On top of these safeguards, local farmers have a right to veto logging operations in the fields under the Timber Resource Management Act – although the SRA may waive this right through explicit provisions (Mayers and Vermeulen, 2002).

Besides defining this code of conduct, Social Responsibility Agreements commit the timber company to contribute to community development through supporting initiatives such as the construction of schools, clinics and other facilities. This study focuses on these aspects of SRAs, and tackles them in greater detail in chapter III below.

The regulatory framework created under the Timber Resource Management Act and its subsidiary regulations have shifted the regime for the allocation of timber rights towards a more market-oriented approach. This is a significant shift compared to the previous regime, which emphasised “command and control” in the allocation of timber resources. The main

objective of the current regime is to minimise political and bureaucratic discretionary power in the allocation of timber rights. In addition, the regime adopts the “contract” approach, as opposed to an earlier approach characterised by administrative fiat. It provides a legislative “floor” for the grant of timber rights, while leaving the details to negotiation between investors and the Forestry Commission. In the case of social responsibility agreements, the negotiations occur between the investor and the representative(s) of local forest communities.

A weakness still affecting this legal framework relates to the limited opportunities for citizen participation in decision-making processes leading to the allocation of timber rights. Timber rights awarded by the Minister must be approved by Parliament before they can be exercised. Parliamentary ratification sometimes offers an opportunity for citizen input – namely, when the relevant parliamentary committee exercises its discretion to invite memoranda from the general public. However, the use of this power is in practice rare. In addition, in the absence of freedom of information legislation,³ it is difficult for citizens to obtain the kind of information necessary to make a meaningful input into the process.

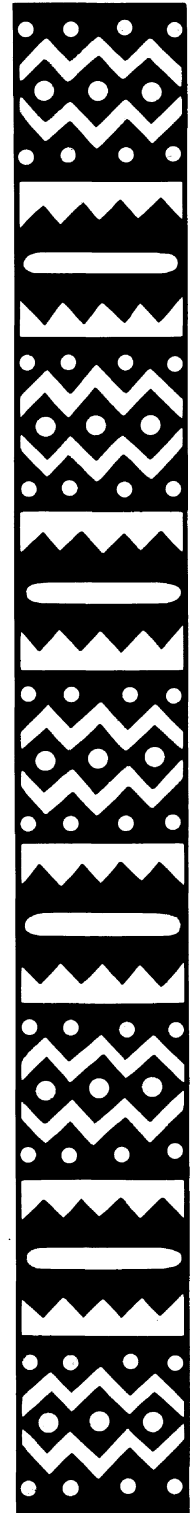
Representatives of traditional authorities and land owners are by law part of the team that conducts field inspections prior to the decision by the Forestry Commission to grant timber rights. The purpose of such inspection is usually to determine the quality, quantity and value of timber as well as any peculiarities of the land subject to the proposed grant (section 2(3)(a)-(b) of the Timber Resources Management Regulations). Legislation also requires providing notices to the relevant District Assembly, and to “the people of the area of the land that it is proposed to grant timber rights” of the decision to grant timber rights (Timber Resources Management Regulation, section 2(6)). However, broader consultations with local forest communities are not a precondition for the grant of contracts for timber exploitation. Legislation makes no provision citizens’ access information and input on such vital issues as royalties, scope and duration of the contract, and the projected social, cultural and economic impacts of the project on forest communities.

3. The Freedom of Information Bill has been over three years in making and is yet to be passed.

The information asymmetries and limited opportunities for citizen input resulting from the weakness of these arrangements reinforce the asymmetries in the negotiating power discussed in the previous section.⁴ While the timber investor possesses most or all of the information necessary for the negotiation of social responsibility agreements, local communities possess little or no relevant information.

4. For a study that relates asymmetries in legal entitlement to a power and stakeholder analysis in investment projects, see Cotula (2007).

III. SOCIAL RESPONSIBILITY AGREEMENTS AS TOOLS FOR BENEFIT SHARING



TIDD data (TIDD, 2007) shows that there are currently 286 registered timber firms in Ghana. Of these, 173 firms are licensed to operate, while the remaining 113 are not (TIDD, 2007). As Social Responsibility Agreements constitute a precondition for the grant of timber rights, this means that there must be 173 SRAs in force.

In the course of this study, it was not possible to gain access to the Social Responsibility Agreements of most firms. Most of the firms we contacted cited reasons of confidentiality for not permitting access to their SRAs. Only five firms made their Social Responsibility Agreements available to us. These firms together control significant portions of forest land. They concluded a total of nine Social Responsibility Agreements, which benefit over 20 local communities. The analysis undertaken in this chapter is based on these nine SRAs.

Samartex Timber and Plywood Ltd signed four agreements covering over ten communities, and is the firm with the largest number of SRAs examined by this study. Suntex Company Ltd provided us with two agreements, while Mondial Veneer (Ghana) Ltd, Cashwood Processing Ltd and Yaa Ago Memo Co. Ltd all gave us one agreement each. Table 1 below provides broad

TABLE 1: SUMMARY OF SOCIAL RESPONSIBILITY AGREEMENTS OF SELECTED FIRMS			
Name of Investor	No. of SRAs	Nature of SRA Benefits	Beneficiary Communities
Samartex Timber & Plywood Ltd	4	<ul style="list-style-type: none"> • Potable water supply • Schools and scholarships • Clinics • Construction of palace • Construction of roads • Electricity poles 	<ul style="list-style-type: none"> • Amuni • Aowin Traditional Area • Wassa Amenfi Traditional Area • Gwira Bansa
Mondial Veneer (Ghana) Ltd	1	<ul style="list-style-type: none"> • Construct and equip clinic • Water pumping and storage facility • Furnish school building • Community center 	Bonsahun
Cashwood Processing Ltd	1	<ul style="list-style-type: none"> • Provision of social and economic amenities 	Buaku and Abrafakrom
Suntex Company Ltd	2	<ul style="list-style-type: none"> • Construct palace • Building of police station • Community center • Construction of access roads • Environmental education 	Akim Abuakwa Traditional Area
Yaa Ago Memo Co. Ltd	1	<ul style="list-style-type: none"> • Provision of social and economic amenities 	Kumawu Traditional Area

details of the firms, the nature of their Social Responsibility Agreements and the beneficiary communities.

3.1. NEGOTIATION AND CONTENT

An examination of the nine Social Responsibility Agreements covered by this study reveals a number of common structural features as well as common substantive provisions. A common structural feature is that most of the agreements were concluded between the firms and traditional leaders. Seven out of the nine agreements were signed with traditional leaders, while two were signed with local governments (District Assemblies). Five of the nine SRAs examined had no mechanism for the representation of community interests otherwise than by the traditional authority of the contract areas involved.

In the SRAs concluded by Samartex Timber and Plywood Ltd, the approach to representation differs markedly. The four Samartex agreements contain provisions establishing a “development committee” tasked with administering the services or benefits to be provided for the beneficiary communities. This committee has the duty to accept requests for development projects from local communities and to deliberate on, prioritise and approve proposed development projects. The committee then has to forward all approved projects to the firm for final approval and implementation.

The nature and value of benefits to local communities under the Social Responsibility Agreements studied do not differ significantly. Almost invariably, the social amenities to be provided by the investor involve schools, health facilities, the provision of water and electricity, and the construction of palaces for traditional rulers and of community centers. In some cases, provision is made for marginal side-payments to chiefs and other community leaders. One Social Responsibility Agreement for instance makes provision for a monthly payment of USD 600 to the paramount chief of the traditional area as “living expenses”. In terms of value, all the firms limit their financial commitments to communities to the statutory maximum of 5% of stumpage fees; this is a key term of each of the agreements.⁵

5. It is doubtful whether any logging firm can exceed this statutory ceiling given the language of the legal provision: “...at a cost not more than 5% of the annual royalty accruing from the operations under the timber utilisation contract.” See Section 13(1)(b) of the Timber Resources Management Regulations.

The remarkable similarities in the substantive provisions of the agreements examined may be due to a number of reasons. The first one is that the Forestry Commission has developed a model Social Responsibility Agreement to guide timber firms and communities in shaping the terms of their contractual relationship. As firms have to demonstrate that they concluded a Social Responsibility Agreement before the grant of timber rights, most firms simply fill in the gaps in the model SRA, in consultation with chiefs and/or District Assemblies.

As a parliamentarian interviewed for this study observed, the model Social Responsibility Agreement may be an effective tool for promoting benefit sharing; but, at the same time, it masks important differences in social and economic contexts among forest communities.

In addition, similarities in the choice of social amenities to be provided by timber firms may be related to similarities in the needs for basic services in the communities concerned – namely, the need for education and health facilities. It may also be related to attempts by community leaders to obtain benefits similar to those obtained by other communities. That is, in order to be seen as obtaining parity of treatment for their own communities, local leaders may be under pressure to demand from timber firms what others have demanded.

Negotiations leading to the conclusion of the nine agreements examined followed a rather top-down approach, whereby community leaders purported to *represent* the interests of their communities (on the process for negotiating SRAs, see Box 2 below). In none of the cases examined were wider community consultations held to solicit the views of community members at large in order to identify local priorities before negotiations with timber firms. According to Friends of the Earth (Ghana), most local forest communities which concluded Social Responsibility Agreements with timber firms were ironically unaware of the existence of these agreements, and most saw whatever social amenities the firms provided to their communities as acts of benevolence by the firms and not as entitlements deriving from the law (Interview, Friends of the Earth Ghana, June 15, 2007).

In at least one case, local community advocacy groups challenged Samartex's approach to Social Responsibility Agreements. In the Aowin-Suaman District, Samartex initiated negotiations with the paramount chief

BOX 2. THE PROCESS TO NEGOTIATE SOCIAL RESPONSIBILITY AGREEMENTS

The process used for the negotiation of SRAs has been described by Mayers and Vermeulen (2002:80) as follows. “First the local District Forest Manager (a government employee) locates and defines the boundaries of the TUC area, in consultation with traditional leaders and land-owning communities. During such meetings the purpose of SRA as part of TUC is explained and the community as a whole is asked to propose particular conditions for a future logging company’s operations and their priorities for local development.

These conditions and development objectives are incorporated into a preliminary document called the Timber Operational Specifications, which is included in the advertisement for tenders for the TUC, and also forms the subsequent basis for SRA negotiations.

Logging companies then submit bids for the TUC. These are evaluated by a governmental Timber Rights Evaluation Committee, which short-lists the five best proposals. The successful candidate is chosen via a non-financial selection procedure based on the applicants’ proposals for provision of social amenities and reforestation.

The company that wins the TUC must then negotiate the terms of the SRA with the appropriate land-owning community or communities. At present the stool chiefs are the official representatives of the land-owning communities and have the authority to sign the agreement with the TUC holder, though the law stipulates that benefits are to go to the people of the land-owning communities and not to the office of the stool chief. A common feature of emerging SRAs is in fact the establishment of a new committee to represent the various stakeholder groups involved in the TUC.”

Source: Mayers and Vermeulen (2002).

of the entire traditional area and with the district assembly. The SRA resulting from these negotiations provided that social responsibility funds should be paid into a central pool to be used for the provision of social amenities to all local forest communities in the contract area. No negotiations were conducted with individual communities to determine the choice of community development projects. The local advocacy groups contested this approach, arguing that it was in all respects a top-down approach to decision-making and thus denied communities the right to choose their own development projects. The advocacy groups petitioned the District Assembly. This resulted in Samartex renegotiating its Social Responsibility Agreements with the communities individually (Interview, Devascom Foundation, June 2007).

Shortcomings also affect the ability of local groups to negotiate SRAs with timber companies. In none of the cases reviewed was the local community represented by a lawyer. Less than optimal negotiating skills on the part of representatives were mentioned in several interviews conducted for this study.

3.2. IMPLEMENTATION

With respect to the implementation of Social Responsibility Agreements, there was no evidence of default on the part of the timber firms whose agreements were made available for the study. Even though no visits were paid to these communities to verify the existence of the agreed projects, interviews conducted with individuals and groups working within and with the communities confirmed that the firms largely complied with their commitments. These Social Responsibility Agreements suggest that local forest communities are deriving some benefits from investors in the timber industry. The social amenities provided consist of schools, clinics, the provision of potable water and electricity and the building of community centers and traditional palaces for local chiefs.

However, this fact alone does not say much about the significance of implementation problems in SRAs in the country as a whole. The very fact that these companies made their agreements available to us suggests that they may have a more open attitude towards community relations and SRA issues than other timber companies. In other words, in this respect our sample of SRAs suffers from a self-selection bias.

A study (cited in Mayers and Vermeulen, 2002) in three areas (Diaso, Central Region; Nkoranza, Brong Ahafo Region; and Offinso, Ashanti Region) found that local groups saw little positive impact from timber operations. “A common opinion was that any profits returned to the area, through ad hoc agreements with the company, had gone to the stool chief or elders rather than to ordinary residents” (Mayers and Vermeulen, 2002). However, some people interviewed in that study did state to have benefited through receipt of building materials like cement, roofing sheets and electricity poles, construction of roads, and access to employment (Mayers and Vermeulen, 2002).

In addition, evidence suggests that failure to honour the promises made in SRAs is rather common. For example, there have been reports that local groups in Omanpe (Western Region) managed to prevent a timber company from continuing to log timber in their forest due to the company's failure to pay the amounts due under its Social Responsibility Agreement. The money was meant to fund street lighting for the community (Interview, Devascom Foundation, June 2007). In another case, a chief squandered money meant for the provision of a mechanised borehole for the Jeman community in the Aowin-Suaman District. A petition was filed with the judicial committee of the District Assembly against the chief and he was compelled to refund the money to the project (*Id.*).

Part of the problem of implementation stems from the lack of local capacity to properly monitor compliance. In some of the cases reviewed here, local forest advocacy groups have monitored compliance but often lacked accurate and reliable information relating to the financial benefits that communities were entitled to. This is because SRAs are treated as confidential by the parties, that is the chiefs, the district assemblies and the timber firms.

In addition, problems in accessing crucial information make it difficult to establish whether local forest communities are deriving *optimal* benefits from the implementation of SRAs. For instance, inaccessibility of data prevents an assessment of whether timber companies actually contribute 5% of the stumpage fees towards the implementation of their Social Responsibility Agreements. More field research is needed in order to establish the extent to which forest communities are satisfied with the benefits provided by SRAs.

At the central government level, there is no evidence to suggest that the Forestry Commission or other government agencies conduct regular monitoring to ensure that SRAs are diligently implemented by timber firms. Since 1997, the Parliamentary Committee on Lands and Forestry has not reviewed the implementation of the social responsibility provisions of the Timber Resources Management Act. According to a parliamentarian interviewed for this study, Parliament lacks the capacity to conduct effective monitoring of compliance by timber firms.

Finally, although SRAs are annexed to the investor's application for the allocation of timber rights, notwithstanding that the Minister responsible for forestry may suspend or even terminate a TUC granted to a timber firm on the basis that the firm has not complied with a term or condition of the grant, including breach of the SRA agreement (see Section 15, TRM Act, 1997), there is no evidence that this power has been or is being used to sanction investors for non-compliance with their SRA obligations.

V. CONCLUSION



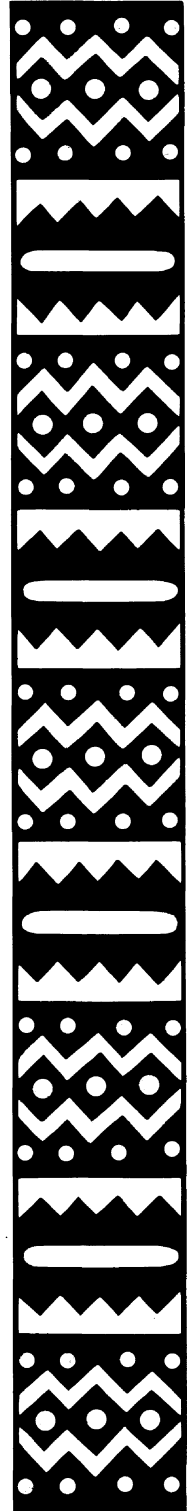
Ghana's forestry legislation has developed an innovative tool for promoting benefit sharing in the commercial logging sector – the Social Responsibility Agreement. This entails legally requiring timber companies to negotiate benefit-sharing agreements with local forest communities as a condition for the grant of timber utilisation contracts.

Ghana's experience may provide interesting lessons for other countries that are looking into developing arrangements to promote benefit sharing in forestry or in other sectors. As noted by Mayers and Vermeulen (2002), the positive features of SRAs include clearly laid out minimum standards, explicit legal backing, and consideration for the conditions laid out in SRAs in the selection process for competitive TUC bids.

At the same time, this study identified several areas where the negotiation, content and implementation of Social Responsibility Agreements may be further improved. While the legal framework provides an enabling environment for the negotiation of SRAs, the actual practice of negotiating and implementing these agreements leaves much to be desired.

Social Responsibility Agreements may become a more effective tool if local groups are better equipped to negotiate them. This requires establishing mechanisms to broaden community representation, so as to minimise local elite capture of SRA benefits. It also requires providing legal assistance and training to local forest communities negotiating such agreements, and action to improve the capacity of local communities and of central and local governments to monitor compliance and sanction non-compliance.

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APPENDIX A: MODEL 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 “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 1

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 of 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 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 care, 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 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 a 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 IV

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.

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

ARTICLE VI

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 authorised 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-----

BY-----

Name-----

Name -----

Title-----

Title-----

[DISTRICT ASSEMBLY]

By:-----

Name:-----

Title:-----



Developing Legal Tools for Citizen Empowerment: Social Responsibility Agreements in Ghana's Forestry Sector

Dominic M. Ayine

The study is part of a broader multi-country programme coordinated by the International Institute for Environment and Development (IIED) and involving partners in Ghana, Mali, Mozambique and Senegal, as well as the Foundation for International Environmental Law and Development (FIELD). The programme Legal Tools for Community Empowerment develops innovative ways of using the law for local empowerment and positive change. It helps local groups have greater control over the natural resources on which they depend, particularly within the context of investment projects in sectors as diverse as agribusiness, forestry, mining and tourism.

This report is about a legal arrangement for enabling forest communities in Ghana to participate better in the benefits generated by timber activities. In Ghana, legislation requires logging firms to commit a portion of their financial resources towards the provision of social amenities to local forest communities. Logging firms must perform this legal obligation by signing and implementing "Social Responsibility Agreements" (SRAs) with forest communities. This report assesses strengths and weaknesses in the design and implementation of SRAs, and the extent to which they have made a difference to forest communities.

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