



## **SYNTHESIS REPORT**

### **ADDITIONAL LEGAL REVIEW FOCUSED ON ASPECTS OF THE HIGH CONSERVATION VALUE (HCV) AND HIGH CARBON STOCK (HCS) APPROACHES IN GHANAIAN LAW.**

Submitted by  
**TaylorCrabbe Initiative (TCi)**  
P. O. Box LG 1293  
Accra – Ghana  
Office Location: Hse No. 1  
Abidjan Avenue, East Legon  
Accra-Ghana

Submitted to  
**Proforest Initiative**  
South Suite, Frewin Chambers  
Frewin Court, Oxford OX1 3HZ  
United Kingdom

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## CHAPTER ONE

### INTRODUCTION AND BACKGROUND

#### **Introduction:**

This document is a synthesis report summarising the key findings and high-level conclusions reached on a legal review of aspects of the High Conservation Value (HCV) and High Carbon Stock (HCS) approaches in Ghana. The goal of this 'HCV & HCS' review is to "Conduct a focused legal review to assess the extent to which legislation in focal countries already safeguards natural ecosystems, biodiversity and community rights".

The document is structured into two (2) Chapters. Chapter One (I) deals with the Introduction, Background and Methodology; Chapter Two (II) discusses the key findings and conclusions on the broad thematic questions.

#### **Project Background and Methodology**

Proforest, under The Africa Responsible Production and Sourcing Programme (ARPS), aims to promote the uptake of sustainably best practices in forestry and agricultural commodity supply chains. As part of this, Proforest is leading on a sub-component that seeks to build on legal compliance to promote responsible commodity supply chains.

As evidenced from the terms of reference, the legal review would cover all the applicable mandatory requirements that businesses have to meet in Ghana. This would include, but would not be limited to, relevant laws, policies, conventions/treaties, guidelines and other relevant mandatory requirements.

The review involves the answering specific questions of relevance to HCV & HCS, and some broader questions about the wider legal framework in Ghana.

#### **Deliverables**

The deliverables under this assignment are:

- i. Completed excel template providing detailed answers to included questions, and
- ii. A synthesis report in word, summarising the key findings and high level conclusions.

## CHAPTER TWO

### KEY FINDINGS AND CONCLUSIONS

#### 1. THEME: GENERAL LEGAL CONTEXT – SOURCES OF LAW, TYPES OF LAND AND OWNERSHIP AND MANAGEMENT

##### i. Key Findings

Ghana has a pluralist legal system that comprises constitutional provisions and statute law, common law principles and customary law. The 1992 Constitution provides, in Article 11, the sources and hierarchy of law. This hierarchy aids in resolving vertical and horizontal conflict in laws. Higher norms have superiority over lower norms, and Acts of Parliament later in time are presumed to have repealed earlier Acts. At the apex of this hierarchy is the Constitution. Article 1 (2) states that:

*This Constitution shall be the supreme law of Ghana and **any other law found** to be inconsistent with any provision of this Constitution shall, to the extent of the inconsistency, be void. (Emphasis Mine).*

The above provision means that ALL laws – Statute, Common Law and Customary - must be consistent with the provisions in the Constitution. The next highest norm after the Constitution are Enactments made by or under the authority of parliament; Orders, Rules or Regulations made by any person or authority under powers conferred by the Constitution; the existing law; and then, the common law.

Some legislation give power to Agencies to make guidelines and manuals for the regulation of specific areas of their operations. These manuals and guidelines are enforceable to the extent that the power to create it can be traced to an Act of Parliament or Subsidiary Legislation. Otherwise, they remain administrative procedures. For instance, the Logging Manual of the Forestry Commission (FC) is a creation of legislation. However, the Manuals of Procedure of the FC are a set of administrative rules used by the FC in the discharge of their functions. Sometimes, the provisions in these manuals are made part of the terms of contract for the grant of timber rights. Once this happens, it becomes binding on the parties to the contract and enforceable against them.

Also, Article 11 (3) of the Constitution defines customary law as “*the rules of law which by custom are applicable to particular communities in Ghana.*”

With this hierarchy in Article 11 of the Constitution, where there is conflict between Statute law and Customary Law, Statute law being the higher norm will trump custom. Also, customary law cannot be promulgated to regulate a subject matter that is already being addressed by Statute. However, where Statute is silent, rules of customary law may become binding to the extent that it is consistent with the Constitution. It is also instructive to note that the definition of customary law is limited by geography. Thus, there is no universal customary law in Ghana. The custom for the ownership and acquisition of land will vary depending on location. For instance, whereas the concept of family land appears to be practiced in the Volta Region, this type of ownership is alien to some other location in the southern part of Ghana.

The review showed that there exist clear institutional arrangements and decision-making bodies in Ghana that deal with land use and the allocation of land for various sectors. These include: Ministries – Agriculture and Lands and Natural Resource; Commissions – Land Commission and Forestry Commission; Agencies – Environmental Protection Agency (EPA), and the Office of the Administrator of Stool Lands (OASL). There are also specific Agency Committees and Secretariats that are decision-making bodies in the allocation and use of land in Ghana. For instance, the Timber Rights Evaluation Committee of the Forestry Commission established under Section 5 of the Timber Resources Management Act, 1998 (Act 547). This Committee is a cross-sectoral committee made up of representatives from the Forestry Commission, Lands Commission, and Office of the Administrator of Stool Lands; and tasked with the primary function of evaluating applications for Timber Utilisation Contracts in accordance with qualifications and criteria provided by the Regulations. There is also the Customary Land Secretariat (CLS), which are specialized offices established by local landowning communities with support from central government under the auspices of the Land Administration Project of the Ministry of Lands and Natural Resources to improve land management and administration at the local level.

Finally, the review found that there are number of land ownership regimes in Ghana. Land ownership in Ghanaian law exists in varying forms, as determined by the incidents surrounding their possession and management. These include:

a. *Public/State/Vested Lands –*

Article 257 of the 1992 Constitution provides that all public lands in Ghana shall be vested in the President on behalf of, and in trust for, the people of Ghana; and defines public lands to include any land which, immediately before the coming into force of this Constitution, was vested in the Government of Ghana on behalf of, and in trust for, the people of Ghana for the public service of Ghana, and any other land acquired in the public interest, for the purposes of the Government of Ghana before, on or after that date. Under the Land Administration Act of 1962 (Act 123), and the State Lands Act 1962, (NRCD 332), the State is empowered to acquire land in the public interest and pay the appropriate compensation. According to Section 23 of the Lands Commission Act (Act 767), the functions of the Public and Vested Lands Management Division are to facilitate the acquisition of land for Government and the Management state acquired and vested lands in conformity with approved land use plans.

b. *Customary/ Communal Lands –*

A customary land is characterized largely by its unwritten nature, based on local practices and norms that are flexible, negotiable and location-specific. Customary land tenure is usually managed by a Traditional Ruler, Traditional Priest, Council of Elders, Family or lineage heads. Its principles stem from rights established through first clearance of land, conquest or settlement. The chief or the head of family has the authority to allocate the land to an individual, a local or foreign enterprise, community or family members in consultation with family elders as and when necessary. Matrilineal and patrilineal lines of descent differentiate land tenure arrangements within the cultural system.

The Office of the Administrator of Stool Lands, together with the Customary Land Secretariat, the Regional Lands Commission, and the Traditional Authority are responsible for taking decisions concerning this type of land.

c. *Private/Individual/Family Lands* –

Some individuals or families have purchased land outright from the communal stocks. Such purchases normally involve the overlord chief and/or head of the family. The land sold was not immediately occupied or utilized by community/family members and is usually not within easy reach of settlements of members or the families.

The 1992 Constitution under Article 267(5) of the Constitution makes it impossible for any individual (citizen/non-citizen) to acquire a customary freehold interest in stool land. However, in a decision by the High Court in the case of *Republic v Regional Lands Officer (Ex Parte Kludze)*, the court made a distinction between a stool land and a family land and held that it was possible to hold a freehold in respect of family lands. Private and family property can have formal recognition and documentation where registered at the Lands Title Registry.

Article 266 (1) (2) and (4) of the Constitution provides that:

*“No interest in, or right over, any land in Ghana shall be created which vests in a person who is not a citizen of Ghana a freehold interest in any land in Ghana and that an agreement, deed or conveyance of whatever nature, which seeks to confer on a person who is not a citizen of Ghana a freehold interest in, or right over, any land is void.”*

Further, no interest in, or right over, any land in Ghana shall be created which vests in a person who is not a citizen of Ghana a leasehold for a term of more than fifty years at any one time.

Public Lands have title deeds, and their acquisitions determined by executive instruments. The Ministry of Lands and Natural Resources and the Ministry of Agriculture and Lands and Forestry Commissions have jurisdiction in deciding their use and allocation.

**ii. Conclusions**

From the above, it is evident that there is clarity in the legal framework on the sources of law in Ghana and how to resolve conflicts between Statutory Law and Customary Law. Also, the legal framework addresses issues of ownership of land and decision-making bodies/institutions that must exercise control and management over land use and its allocation. However, there is a lack of coordination in the roles of the various agencies in the discharge of the duties. These agencies appear to be operating in silos with little or no recourse to other agencies in the sector. It is expected that the New Land and Spatial Planning Act, 2016 when operationalized and fully implemented will bring further clarity in the demarcation and allocation of land use in Ghana.

**2. THEME: SPECIES PROTECTION**

**i. Key Findings**

The review found that there is a legal framework for the protection of flora and fauna. The Forest Act, the Trees and Timber Act, and the Wild Animal Preservation Act lay a foundation for the protection of plant and animal life. These laws also create the basis for the delineation of areas as forest reserves and protected areas.

Section 2 of the Forest Act 1927 (CAP 157) empowers the President, by executive instrument, to constitute forest reserves on public lands stool lands (at the request of the relevant authority), and private lands (at the request of the owner). The law also mandates the President, on the advice of the Forestry Commission to delineate areas as reserves to be protected from injury or destruction, or from further injury or destruction or that forest growth should be established on those lands in order to safeguard the water supply of the district, or assist the well-being of the forest and agricultural crops grown on those lands. Where areas are demarcated as forest reserves or protected areas, the Forest Protection Act proscribes certain activities in those areas without authorization. Thus with authorization, certain activities such as farming may be permitted in protected areas. Primarily this authorization will be given where the farm existed prior to the creation of the protected area.

Also, in the proposed Wildlife Resource Bill yet to be re-laid before parliament, there is an intention to empower the Minister in establishing a protected area to declare the area to be a National Park, a Resource Reserve, a Wildlife Sanctuary or Ramsar Site. These demarcations are meant to delineate the boundaries and status of these areas for the protection and management of the flora and fauna.

Moreover, fresh water species find protection within Section 43 of the Fisheries Act, 2002 (Act 625). This provision requires the preparation of a fishery plan. This plan must include an identification of the fishery resource and its characteristics, including its economic and social value and interrelationship with other species in the ecosystem and a specification of the conservation measures to be enforced to protect the resources from over-exploitation. The Minister responsible for Fisheries also has the mandate, on the advice of the Fisheries Commission and after consultation with the minister for environment, to declare any area of the fishery waters and the seabed underlying the waters to be a marine reserve. Any fishing, dredging or otherwise disturbance of such a reserve will amount to an offence and will be liable on summary conviction to a fine of not less than \$50,000. The Fisheries Act appears to be the only legislation that expressly mentions protection for the habitat of fresh water species.

Broadly, the Wild Animals Preservation Act, 1961 (Act 43) is cast to protect categories of wild animals, birds and fish from hunting in their natural habitats. Similar to the Wetlands Management (Ramsar Sites) Regulation, 1999 (L.11659), which seeks to fulfil the commitment of the country under the Convention on Wetlands of International Importance especially as Waterfowl Habitat, adopted at Ramsar, Iran, on the 2nd February 1971. The management of these sites is to be done in accordance with the 'wise use concept' of the Ramsar Convention, which requires sustainable utilisation for the benefit of mankind in a way compatible with the maintenance of the natural properties of the ecosystem.

The Legal framework places certain minimum requirements on concession areas, concerning species inventories and surveys as part of Environmental Impact Assessments (EIAs). The list of undertakings requiring an EIA and their thresholds are annexed to the synthesis report.

## **ii. Conclusions**

It can be concluded that there exists legislation for species protection in Ghana by the combined effect of the Wild Animals Preservation Act and the Wildlife Conservation Regulations. These ensure that the protection exists not only for wildlife within protected areas but also Wildlife outside protected areas. Trees outside reserves or trees that lack timber value receive very little protection.

### 3. THEME: ECOSYSTEMS AND HABITAT PROTECTION

#### i. Key Findings

As pointed out in the discussion on Species Protection, the Wild Animals Preservation Act, 1961 (Act 43) and the L.I. 685-Wildlife Conversation Regulation, 1971 protect a category of wild animals, birds and fish from hunting in their natural habitats. This is supported by the Wetlands Management (Ramsar Sites) Regulation, 1999 (L.I1659), which seeks to fulfil the commitment of the country under the Convention on Wetlands of International Importance especially as Waterfowl Habitat.

There are allowable activities that are agreed on, in consultation with District Assembly, on the wise use of the core areas in these Ramsar sites. These sites are exempted from concessions. Also, the Environmental Impact Assessment Regulations states that any activity on a place designated as an environmentally sensitive area requires registration with the Agency and an environmental permit. The list of environmentally sensitive areas in the EIA Regulation include areas declared by law as national parks, watershed reserves, wildlife reserves and sanctuaries including sacred groves, areas which constitute the habitat of any endangered or threatened species of indigenous wildlife (flora and fauna), Hilly areas with critical slopes and areas classified as prime agricultural lands. The Fisheries Act, Act 625 which regulates and demands the protection of marine life and places emphasis on the development of fishery plan. This plan will take into consideration issues of protection of fishery resources. The plan is based on the best scientific information available and ensures the optimum utilisation of the fishery resources but avoids over exploitation. A fishery plan may relate to a specific water area or specified species of fish.

Ramsar sites exists as an internationally recognised ecosystem, finding its protection within the legislative framework of the Wetlands Management (Ramsar Sites) Regulation, 1999 (L.I1659) enacted to give domestic effect to the Convention on Wetlands of International Importance especially as Waterfowl Habitat, adopted at Ramsar, Iran on the 2nd February 1971.

Timber Resources Management Regulations, 1998 (LI 1649), which provides for the Inventory of Timber. It requires that the Chief Conservator of Forests identify lands suitable for grant of timber utilization contracts. For the purpose of identifying lands, the Chief Conservator of Forests is mandated to cause, to be conducted by the Forestry Department, inventories of forests and timber on public lands, existing forest reserves, stool lands and such other lands as he may determine.

The passage of the Land Use and Spatial Planning Act 2016 (Act 925) introduces the much-needed legal framework for land use zones that determine what type of agricultural or forestry development is permitted within specified areas. Act 925 defines Land Use Plan Schemes to mean a plan which proposes the disposition of land by function and purpose, including land for which the purpose has

**Commented [MS1]:** We discussed this previously, I think it is mentioned in the excel doc, but could you extract the relevant legal text that specifies when an EIA is required – maybe add as an annex?

**Commented [AL2]:** How are these defined and identified? Seems to be the only provision with potential to apply outside areas already defined as Pas, on topographical grounds etc

**Commented [TO3]:** These are not defined in the regulations

**Commented [AL4]:** Evaluating a number of such plans may be one way to address the extent to which legislation translates to meaningful action

**Commented [TO5]:** Unclear what the suggestion is here? Are you requesting that we undertake an evaluation of a Fishery Plan?

yet to be defined or to be preserved in its present state, to meet the present and future identified community needs within the time frame for which the plan is valid.

The Land Use and Spatial Planning Act 2016 (Act 925) contemplates a framework for the development of a land use plan. Sections 2 and 4 create a framework for the classification of land uses, the collection of data, revision and consolidation of the laws on land use and spatial planning, provide for sustainable development of land and human settlements through a decentralized planning system, ensures judicious use of land in order to improve quality of life, promotes health and safety in respect of human settlements and regulates national, regional, district and local spatial planning, generally to provide for spatial aspects of socio economic development.

Specifically, Section 3 of Act 925 establishes the Land Use and Spatial Planning Authority as a body corporate with perpetual succession with the power to sue and to be sued in its corporate name.

Section 5 (j) (k) of the Land Use and Spatial Planning Act 2016 (Act 925) provides as a key function of the Land Use and Spatial Planning Authority, the obligation to ensure that the exploitative use of natural resources for agriculture, mining, and other related activities do not go to adversely impact human settlements and that, to collaborate with relevant agencies including the Environmental Protection Agency (EPA), the Minerals Commission and the Forestry Commission, to ensure adequate reclamation or eco-regeneration of natural resource areas which have been exploited. The Authority is expected to liaise with EPA, the Ministries of Land and Natural Resources and the Local Government in the discharge of its mandate. Act 925 also mandates that District Assemblies liaise with the Environmental Protection Agency (EPA) and other relevant agencies regarding matters related to enforcement related to Agriculture and Agricultural Areas and matters related to forestry areas.

**Agricultural concessions** look to Section 42 of the Fisheries Act, 2002 (Act 625) which provides for the preparation of a fishery plan for the management and development of fisheries.

## ii. Conclusions

Concluding on Ecosystems and Habitat Protection, the law guarantees the protection of a list of environmentally sensitive areas. There is, however, no definition of a habitat. The list of these sensitive areas is based on them being demarcated as sensitive. It is early days yet to measure the effectiveness of the Land Use and Spatial Planning Act. The law demarcates various land zones and their effectiveness for which and which activities. Again, it fails as it did with species protection to look at providing laws that regulate the totality of land use. Inadvertently, what it does is provide for the specified zones only.

## 4. THEME: ECOSYSTEM SERVICES

### i. Key Findings

Under this theme, the key findings are in relations to protection of slopes and vulnerable soils.

The Land Planning and Soil Conservation Act, 1953 (Act 32) empowers the President to make Regulations by legislative instrument on breaking up or clearing of land for cultivation or for any

**Commented [AL6]:** Even though, as the author comments, it's early days to evaluate this act, it would be interesting to analyse in a bit more detail the process outlined for the planning, the extent to which different interests may influence etc, in order to make an educated guess of the potential impacts this act may have once more widely implemented

**Commented [TO7]:** The Act in section 198 requires the Minister by a legislative instrument to provide for the procedures and processes for planning including structure plans, zoning, re-zoning and standards applicable to urban and non-urban land use. This legislative Instrument has not yet been passed.

**Commented [AL8]:** Agriculture or fisheries?

**Commented [AL9]:** This is an important conclusion

**Commented [AB10]:** Is this what the LU & spatial planning act seeks to do or is this already existent

**Commented [TO11]:** This is what the Land use Act says.

other purpose, the firing, clearing or destruction of vegetation, afforestation or re-afforestation of land and the protection of slopes, of banks of streams and rivers and of dams. The EIA Regulation's list of environmentally sensitive areas includes hilly areas with critical slopes. The Manual of Procedure A of the Forestry Commission provide rules for the zonation and protection of key areas in the forest reserve. Hill Sanctuaries are areas with slopes of  $\geq 30\%$  are protected using the Ghana Survey scale of 1:50,000 scale contour maps. All areas above the slope criterion are included and all compartments with such slopes are protected.

**Commented [AL12]:** If this works in practice it may cover the steep slope aspect of HCV 4

Incidents and protection of vulnerable soils is provided for by law through Section 7 of the Land Planning and Soil Conservation Act, 1953 (Act 32). Per this provision, there is a requirement for a Committee responsible for the promotion of other land use to alter or improve the use of land by proper methods of land cultivation and soil conservation. There may be an indirect duty on these companies. However, the legislation does not place any direct burden on companies to identify and manage such soils. Paragraph 3.2 of Manual of Procedure A also provide guidance for the protection of vulnerable soils that are found within forestry concessions. The law states that, the overriding objective for the management of forest reserves in High Forest Zones is the preservation of vital soils, conservation of biological diversity and environmental concerns. The demarcation for Hill Sanctuaries also targets the protection of fragile soils.

**Commented [AL13]:** Has this any relevance in practice?

## ii. Conclusions

There are general and sector specific requirements for slope and vulnerable soil protection. The enforcement of these protection standards for the slopes and vulnerable soil appear weak.

**Commented [AB14]:** Is this on the basis that there's no burden on the companies to identify and protect slopes & soils?

## 5. THEME: COMMUNITY LAND AND RESOURCE USE

### i. Key Findings

Customary use rights are well recognised based on the established rights of communities, right to Non-Timber Forest Products and unrestricted access to their sacred groves and cultural sites. These are contained in the preparation of the EIAs for agriculture and management plans for forestry. Regulation 30(2) of the EIA Act on environmentally sensitive areas (which include sacred groves as indicated above).

**Commented [TO15]:** Yes that could be so. Also because the Law doesn't appear to provide strong sanctions for breaches.

It is a legal requirement, that with agricultural concessions, a Social Impact Assessment, be done prior to project development. Regulation 12 of the Environmental Assessment Regulations states that, the draft terms of reference for environmental impact statement on the proposed undertaking should deal with matters including information on potential, positive and negative impacts of the proposed undertaking from the environmental, social, economic and cultural aspect in relation to the different phases of development of the undertaking. There is a requirement for a scoping report on the changes in social, cultural and economic patterns relating to decline in existing or potential use of valued resources among others. The legal framework requires that all undertakings that could potentially affect the environment adversely, be subject to an Environmental Impact Assessment. A Social Impact Assessment is technically, a component of the Environmental Impact Assessment. In the forestry sector, the preparing of an Environmental Impact Assessment is included in the

**Commented [AB16]:** EIA is conducted for a TUC area, not required in the FR mgt plan.

**Commented [CA17R16]:** The EIA Regulations does not exempt FR. It is the FC in its practice that exempts FR because the management plans is expected to address these

**Commented [TO18]:** The import of this comment is unclear

Management Plans of the Reserves. Management Plans which take into consideration, social issues as well.

Regulation 17 of the Environmental Assessment Regulations, 1999 (LI 1652) makes as a requirement for the issuance of an EIA permit a public hearing. The Environmental Protection Agency, for the purpose of conducting a public hearing, appoints a panel composed of not less than three persons and not more than five persons. At least a third of the panel members shall be residents of the geographical area of the proposed undertaking and shall reflect representation of varying opinions, if any, on the subject of the hearing. The chairman of the panel shall be appointed by the Agency from among the members but shall not be a resident of the locality of the proposed undertaking.

For agricultural concessions, Regulation 12(k) of the Environmental Assessment Regulations, 1999 (LI 1652) states that *there should be consultation with members of the public likely to be affected by the operations of the undertaking.* The substantive nature and scope of these consultations are not provided for by legislation however. Even though there should be an engagement of chiefs, individuals and landowners, it satisfying the requirement of FPIC is matter of debate.

Forestry concessions look to Section 13 (b) and Section 14 (1) (v) of the Timber Resources Management (Amendment) Regulation 2003, (L.I 1721), which make provisions for the recognition of a broad spectrum of socially legitimate rights of forest dependent communities (mainly linked to timber and timber forest products). The legal framework provides that no timber right shall be granted without the written authorization of the individual, group or owners concerned and also that the Chief Conservator of Forests in collaboration with the District Chief Executive, seek the written consent of the owners of the land where the land that has been proposed for the grant of a timber right is not a public land or forest reserve. Thus, even though FPIC is not expressly provided for in legislation, there is requirement for consent. Also in the framework for the negotiation of social responsibility agreements, there is an indirect requirement to address the issue of consent.

## ii. Conclusion

There is a respect for identified community and customary user rights. However, although the Environmental Protection Agency makes a requirement of consulting with the community and persons likely to be affected by concession activities of forestry and agriculture, the Environmental Protection Law does not provide details as to which persons are to be consulted whether the chiefs, or a communal gathering of 10 or 100 persons. This creates a situation where the law exists, but the lines are blurred as to how it is to be effectively carried out. These consultations and hearings have the possibility of being captured by the elite and chiefs in the communities. Also, the presence of these chiefs in consultations may make it difficult for dissent against the chief.

## 6. THEME: CULTURAL SITES AND VALUES

### i. Key findings

Companies are required under law to identify archaeological or cultural sites prior to a proposed agricultural or forestry project.

**Commented [AL19]:** I commented on this last time as well – is this panel responsible for conducting the public hearing, and if so, how? Or is the panel the ‘public’?

**Commented [CA20R19]:** Please the EIA is location specific. So the Panel is composed to interact with the “public” of that locality. The Panel is the body that will conduct the hearing.

Regulation 17—Public Hearing.

- (1) The Agency shall hold a public hearing in respect of an application where—
  - (a) upon a notice issued under regulation 16 there appears to be great adverse public reaction to the commencement of the proposed undertaking;
  - (b) the undertaking will involve the dislocation, relocation or resettlement of communities; or
  - (c) the Agency considers that the undertaking could have extensive and far reaching effect on the environment.
- (2) For the purpose of conducting a public hearing the Agency shall appoint a panel composed of not less than three persons and not more than five persons.
- (3) At least a third of the panel members shall be residents of the geographical area of the proposed undertaking and shall reflect representation of varying opinions, if any, on the subject of the hearing.
- (4) The chairman of the panel shall be appointed by the Agency from among the members but shall not be a resident of the locality of the proposed undertaking.
- (5) The panel shall hear such persons and bodies that will make submissions to it; shall consider all submissions made to it and make its recommendations in writing to the Agency within a period of not less than 15 days from the date it starts hearing representations.

**Commented [TO21]:** Yes. The Panel is responsible for conducting the hearing. The panel is composed of not less than three persons and not more than five persons.

At least a third of the panel members shall be residents of the geographical area of the proposed undertaking and shall

**Commented [AL22]:** This seems another promising candidate for evaluating how things work in reality

**Commented [AL23]:** Are these the owners? Are there parties concerned falling between the chairs here by not being recognized as owners?

**Commented [CA24R23]:** Please concerned here is use in its ordinary meaning “affected owners”

**Commented [AB25]:** Do the SRA requirements not cover these? Or they are not “law”?

**Commented [CA26R25]:** The SRA guidelines are put in place by the FC. The legal requirement is the negotiation of the SRA. The procedure is administrative. The New L.I on Timber Resources Management yet to be passed by Parliament seeks to incorporate these administrative guidelines and code of conduct into legislation.

Regulation 30(2) of the Environmental Assessment Regulations, 1999 (LI 1652) provides that certain areas are environmentally sensitive areas. These include areas of unique historic, archaeological, or scientific interests and areas which are traditionally occupied by cultural communities. These environmentally sensitive areas are isolated in the EIAs and are to be protected by Companies. It is our considered view that for areas to be defined as unique historical and archaeological will depend a lot on customary law and oral tradition. Sometimes the science of archaeology is employed in demarcating such areas. Companies are, under the requirement of the EIA, expected to protect their demarcated areas (communities to be affected) and also grant unrestricted access to community members in accessing their shrine or sacred groves.

Regulation 25 and 26 of the Environmental Impact Assessment Regulation 1999 (LI 1652) ensures the enforcement of the terms and conditions contained in the Environmental Certificate. Regulation 25 places a burden, which is the submission of Annual Environmental Report on said managers. It states that, persons granted an environmental permit under these Regulations shall submit an annual environmental report in respect of this undertaking after 12 months from the date of commencement of operation and after every 12 months thereafter to the Agency. The annual environmental report is used to enforce the standards to demarcating and protecting cultural sites and sacred groves. A breach of any of the conditions of the permit or certificate or failure to comply with mitigation commitments in this assessment report or environmental management plan will lead to a cancellation of the permit or certificate.

#### ii. Conclusion

One the analysis above, it is concluded that the law expressly makes for the identification and subsequent protection of historical, cultural sites and sacred groves. It further mandates that concession managers give full respect to and uphold the cultural rights of the communities. . .

**Commented [AL27]:** How well is this working? Frequency and quality of reports?

**Commented [CA28R27]:** This is out of the scope of this assignment. Legal Benchmarking. It will be good to explore the practice as well.

**Commented [AL29]:** Only for this purpose or... 'environmental' seems to indicate a wider scope

**Commented [CA30R29]:** This is in addition to all the terms and conditions in the EIAR. If the undertaking has no cultural sites or sacred groves then this will not apply

**Commented [AL31]:** May be another example of an HCV (6) relatively well addressed – if this works in practice...

## 7. THEME: ESTABLISHING AND SECURING CONSERVATION SET-ASIDES

### i. Key Findings

The establishment of voluntary conservation areas within production areas, by its very nature (as voluntary), has no legal requirements attached.

However, the Forestry Commission is mandated to assist the private sector and any other bodies with the implementation of forest and wildlife policies by advising and the provision of technical services with regard to matters of **resource protection**, management and development and of market intelligence pertaining to the timber and wildlife industries.

For Agricultural Concessions however, the Company as part of the Social Responsibility standard have the option to establish such areas. It can also be a contractual duty between the companies, the landowners and state, this being an exception to the fact that, there is no legally binding duty to undertake voluntary conservation.

The combined effect of these provisions on the object and functions of the FC, looked at as a whole, can be considered a basis for which the private sector can undertake voluntary conservation and set-

aside protected areas within their concessions, and, can receive assistance from government in undertaking such initiatives.

**ii. Conclusion**

Although voluntary conservation and set –asides are not expressly provided for in legislation, through the FC broad functions in relation to forest such set-asides can receive technical assistance from the FC. Also in relation to agriculture, such set aside can be made part of the contract or concession or as part of the social responsibly undertakings.

**APPENDIX – UNDERTAKING REQUIRING AN EIA**

**SCHEDULE 1**

**(Regulation 1 (1))**

**UNDERTAKINGS REQUIRING REGISTRATION AND ENVIRONMENTAL PERMIT.**

**AGRICULTURAL AND RELATED SERVICES**

**1. Agriculture.**

**Livestock farms**

**Community pastures**

**(a) involving the clearing of land of greater than 40 hectares in area; or**

**(b) involving the clearing of land located in an environmentally sensitive area.**

**Fruit and other vegetable farms**

**Management areas**

**(a) involving the clearing of land of greater than 40 hectares in area, or**

**(b) involving the clearing of land located in an environmentally sensitive area.**

**2. Fishing and Trapping.**

**Fishing—**

**(a) fish or shellfish farming in salt water, brackish water or fresh water, where the proposal includes the construction of shore-based facilities other than wharves;**

**(b) permanent traps or weir fisheries, salt water.**

**Services incidental to fishing—**

**Fish or shellfish breeding and propagating services, or fish or shellfish hatchery services, where the proposal includes the construction of shorebased facilities other than wharves.**

**3. Logging and Forestry.**

**Logging—**

**Management of forested land for the primary purpose of harvesting timber in a contract area.**

**4. Forestry Services.**

Forestry services—

- (a) application of pesticides;
- (b) introduction of exotic species of animals, plants or microbial agents;
- (c) establishment of forests in previously forested and unforested areas.

**MINING (INCLUDING MILLING), QUARRYING AND OIL WELLS**

5. Mining.

- (b) metal mines;
- (a) non-metal mines.

6. Crude Oil and Natural Gas.

- (a) crude oil or petroleum production facilities;
- (b) natural gas production facilities.

7. Quarries and Sand Pits.

Stone quarries—

- (a) where the total area is greater than 10 hectares, or
- (b) where any portion is to be located within an environmentally sensitive area.

Sand and gravel pits—

- (a) where the total area is greater than 10 hectares, or
- (b) where any portion is to be located within an environmentally sensitive area.

**MANUFACTURING**

8. Food

Meat and poultry products—

- (a) abattoirs;
- (b) meat, fat or oil processing facilities;
- (c) poultry processing facilities.

Fish Products—

Flours, prepared cereal foods and feeds—

Feed mills.

9. Beverages.

- (a) distillery products;

(b) brewery products;

(c) wines.

**10. Rubber Products.**

(a) tyres and tubes;

(b) rubber hoses and beltings;

(c) other rubber products.

**11. Plastic Products.**

(a) foamed and expanded plastic products;

(b) plastic pipes and pipe fittings;

(c) plastic films and sheetings;

(d) other plastic products.

**12. Leather and Allied Products.**

Leather and allied products

Leather tanneries.

**13. Primary Textiles.**

(a) man-made fibres and filament yarns;

(b) spun yarns and woven clothes;

(c) broad knitted fabrics.

**14. Textile Products.**

(a) natural fibres processing and felt products;

(b) carpets, mats and rugs;

(c) canvas and related products;

(d) other textile products.

**15. Wood**

(a) sawmill, planing mill and shingle mill products industries;

(b) veneers and plywoods;

(c) other wood products;

(d) wood preservation facilities which use hazardous chemicals or similar chemical processes;

(e) particle board or wafer board production.

**16. Paper and Allied Products.**

- (a) pulp and paper;
- (b) asphalt roofing;
- (c) other converted paper products.

**17. Primary Metals**

**18. Fabricated Metal Products**

**19. Transportation Equipment**

**Shipbuilding and repair—**

Facilities engaged in building and repairing all types of ships above 4,000 tonnes displacement including marine production platforms for petroleum, natural gas or mineral resource extraction.

**NON-METALLIC MINERAL PRODUCTS**

**20. Refined Petroleum Products**

**21. Chemicals and Chemical Products**

- (a) industrial chemicals;
- (b) agricultural chemicals;
- (c) plastics and synthetic resins;
- (d) paints and varnishes;
- (e) soaps and cleaning compounds;
- (f) other chemical products.

**22. Other Manufacturing**

**Scientific and Professional Equipment—**

- (a) photographic films and plates manufacturing;
- (b) floor tiles, linoleums and coated fabrics manufacturing;
- (c) other manufactured products.

**23. Construction**

**Industrial construction (other than buildings)**

(a) construction of pipelines for the transmission of oil, natural gas and other related products from the source to the point of distribution, where—

- (i) any portion of the pipeline is to be located at a distance greater than 500 metres from an existing right-of-way; or

- (ii) any portion of the pipeline is to be located in an environmentally sensitive area;
- (b) diesel electric power generating plants having a capacity greater than 1 megawatt;
- (c) gas turbine electric power generating plants having a capacity greater than 1 megawatt;
- (d) nuclear electric power generating plants.

#### 24. Highways and Heavy Construction

##### (a) roads

##### (b) waterworks and sewage system—

(i) construction of trunk pipelines for transmission of water from the source to the point of distribution;

(ii) construction of trunk sewer pipelines;

(ii) construction of trunk sewer pipeline outfalls.

##### (c) hydroelectric power plants and related structures—

(i) construction of dams and associated reservoirs;

(ii) inter—or intra-basin water transfers;

(iii) construction of hydroelectric power developments.

#### 25. Utilities

(a) establishment of waste disposal sites;

(b) establishment of facilities for the collection, storage or disposal of hazardous waste materials.

#### WHOLESALE TRADE

#### 26. Petroleum Products

Establishment of petroleum products storage facilities

#### 27. Other Products, Wholesale

Waste materials, wholesale—

Establishment of facilities for the purpose of assembling, breaking up, sorting or wholesale trading of scrap, junk or waste material of any type.

#### 28. Services

Economic services administration—

(a) resource conservation and management programmes involving introductions of exotic species of animals or plants for any purpose;

(b) resource conservation and management programs involving introductions of native species of animals or plants into areas where those species do not occur at the time of the proposed introduction;

(c) designation of land for cottage development or other recreational development.

#### **ACCOMMODATION, FOOD AND BEVERAGE SERVICES**

##### **29. Accommodation Services**

Establishment of recreation and vacation camps.

##### **30. Amusement and Recreational Services**

Commercial spectator sports—

(a) establishment of horse racetrack operations;

(b) establishment of racetrack operations for motorized vehicles sports and recreation clubs and services;

(c) establishment of facilities, including trails;

(d) establishment of outdoor firearm ranges;

(e) establishment of marina operations;

(f) establishment of facilities, including trails, for motorized recreational vehicles;

(g) other amusement and recreational services.