



FINAL NARRATIVE REPORT

ON

ASSIGNMENT ON LEGISLATIVE AUDIT AND LEGAL COMPLIANCE TO PROMOTE RESPONSIBLE COMMODITY SUPPLY CHAINS

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CHAPTER ONE

INTRODUCTION AND BACKGROUND

I. Introduction:

This document provides a narrative on assessments undertaken by the consultants to benchmark the requirements of the Ghana National Interpretation on the Round Table on Sustainable Palm oil (RSPO), RSPO Next and the Forest Stewardship Council (FSC) standards against legal requirements in Ghana. The document aims at summarizing the findings of the assessment of these standards, which have already been provided through a matrix designed for the purpose. This document is structured in six parts; Part I deals with the introduction, Part II discusses the sources of Law in Ghana while Parts III and IV discusses the RSPO and RSPO Next and Part V discusses the findings on the FSC national legislation benchmark and Part VI is for the summary of the findings and conclusions.

II. Project Background

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.

This assignment involved a legislative audit of the existing domestic law and international law obligations against the existing principles and standards of the Roundtable on Sustainable Palm Oil (RSPO) and the Forest Stewardship Council (FSC).

III. Objective of the assignment

This assignment primarily aims at benchmarking the requirements of two sustainability standards, that is, the Roundtable on Sustainable Palm Oil (RSPO); and the Forest Stewardship Council (FSC) against the legal requirements in Ghana, with the view of assessing which of the sustainability standard indicators the existing legal/regulatory environment in the country already addresses.

IV. Methodology

The consultants undertook this assignment deploying a four-prong methodology to the assignment. The first was a desk review of the RSPO standard, concepts and requirements. The second process was to do an assessment of domestic laws in Ghana. The domestic laws considered were the 1992 Constitution; Acts of Parliament, Legislative instruments and ratified international conventions. Also assessed were policies and guidelines applicable to the RSPO.

The third methodology was the development of a benchmark Framework enhanced by a colour code for the assessment of the standard. There were four colour codes used in the document. Green, Yellow, orange and Red. Green was used where an indicator was fully and specifically covered by domestic law. Where the criterion was covered by a combination of domestic law, the colour code used was yellow. The colour orange was used where some general provisions in legislation covered the indicator. Finally, the colour red was used in situations where the indicators were not addressed or covered by any legislation at all.

In the fourth methodology, the consultants provided the benchmarking of the indicator along side the existing domestic laws.

CHAPTER TWO

SOURCES OF LAW IN GHANA

The 1992 Constitution of Ghana emphatically provides in its first article its supremacy. All Acts and Laws inconsistent with the constitution are to the extent of the inconsistency a nullity. Article 11 of the 1992 Constitution sums up the sources law in Ghana as: The Constitution; Enactments made by or under the authority of the Parliament established by this Constitution; Any Orders, Rules and Regulations made by any person or authority under a power conferred by this Constitution (Subsidiary Legislation); Customary law; The existing law; and The common law.

Inadvertently, Article 11 indicates the hierarchy of laws in Ghana. As indicated earlier, the constitution is the supreme law of the land and operates as the pantheon of Authority. Article 1(2) of the 1992 constitution emphasizes this where it states that any law found to be inconsistent with the constitution will be declared void (paraphrased). Any law here being the other sources of law provided under Article 11, be they Orders, Rules, Regulations, Customs, International law or the common law.

Next in order of authority after the constitution are the Acts of parliament. Parliament plays the role of legislation making with an eye to the binding nature of the 1992 constitution. These enactments further expound on the constitutional provisions and provide regulations that govern the functioning of some governmental bodies.

Subsidiary legislation falls next in line where the constitution, and in some instances parliament, delegates its function of law making to external bodies.

Ghanaian customary laws are far spread and distinguishable from one part of the country to another. Ultimately these forms of law are regulated by the customary heads of the various parts, sections or ethnic groups. They are not as binding however and where found to be inconsistent with the constitution or other laws above it in order of hierarchy can be held as void.

Ghana identifies as a commonwealth country and a dualist state in terms of its collaborative attempts internationally. In this regard, Ghana is bound only by the international laws and dictates that it has ratified.

For the purposes of benchmarking however, only the more concrete sources of law, that is the sources of law that can be readily identified in writing were utilized by the consultants. The consultants limited the scope of law to The 1992 Constitution, Acts of Parliament, Subsidiary Legislation and International laws ratified by the State. Customary law was excluded primarily because of its complex nature in favor of legal provisions that cover broader aspects of the requirements.

In Ghana, policies provide the framework through which the Executive branch of government indicates its intention in a particular area of national life. They being merely guides to the actions of government, they are generally not enforceable. In that context, therefore, policies do not qualify as a source of law in Ghana and thus was not considered in this assignment. However, in the explanatory notes to the benchmark matrix, the existence of policies are used in explaining some of the conclusions arrived at by the consultants.

CHAPTER THREE

BENCHMARKING THE RSPO

Initiated in 2004, this voluntary industry standard has been deployed to aid in the transformation of the oil palm industry worldwide. This transformation is expected to ensure the sustainability of both the industry and the environment.

The first Principles and Criteria, Indicators and Guidance have been applied since November 2007. After five years of application by the RSPO members, the RSPO Review Taskforce reviewed P&C 2007 in 2012-2013. The RSPO document is divided into principles, criteria, indicators and guidance of national action.

In benchmarking the RSPO to Ghanaian law, the consultant decided to benchmark at the indicators level to ensure a more drilled down assessment of laws. In this narrative summary of the matrix, however, the discussion is provided for at the principle level.

Principle 1. Commitment to Transparency

This principle is directed at ensuring openness in the production and management of palm oil. The consultants found that in total, Ghanaian law partially addressed this principle together with its criteria and indicators. Primarily, its' aspect on the keeping of records on requests and responses were found not to be factually provided for at all, although some inferences could be made.

The indicator required that all stakeholders in the oil and palm sector should have access to information on the activities of growers and millers of Oil Palm. There were however found, no direct laws mandating the provision of said information to stakeholders. The 1992 Constitution, however, provides for the right to access information especially in the event

that the activity for which a permit has been granted will potentially affect the environment adversely.

Additionally, there exists an obligation under law, primarily the Environmental Protection Agency Act, Act 490, on persons seeking to engage in activities that impact the environment to conduct a public hearing that takes into account, the views of persons likely to be affected by such activities. Furthermore, International law as ratified provides for the freedom to expression and right of access to information. This ensures that persons and communities that are likely to be affected by such activities are given an opportunity to stake their claims. Some judicial decisions were cited on the matter, mainly the High Court decision in *Lolan Kow Sagoe-Moses & Ors. v The Honourable Minister & AG (Bus Branding case)*, that the right to access to information by all persons in Ghana is a right which the courts will protect even in the absence of an extensive legal framework. This despite the fact that the Bill on the Right to Information is still before Parliament, and is yet to be passed to law.

On the issue of requests and response records, no laws were found to exist. However, the Environmental Protection Agency Act does provide for an aggrieved applicant to have recourse to the Minister for a review of his application with a view to overturning the earlier decision of the Agency. This could be an indication that some form of records exists, although it must be noted that this is an extrapolation not a fact borne by law.

The issue of transparency has at its core a requirement of moral conduct. Consultants found that, the lack of laws regulating the conduct of growers and millers of Oil Palm in Ghana make it difficult to point to source documents that go to the same extent. This notwithstanding however, the law does place similar obligations on companies registered under the Companies Act, 1962 (Act 179), and this with the appropriate modifications, can be extended to cover growers and millers of Oil Palm in Ghana.

Institutional Assessment

The Courts

The 1992 Constitution establishes the High Court. Article 140 of the constitution gives the High Court jurisdiction in all matters criminal and civil. Furthermore, Article 33 of the constitution gives the High court the original jurisdiction in enforcing the Fundamental Human Rights and Freedom provisions captured in Chapter 5 of the constitution. This includes the right to information stated in Article 21(f).

This right has recently been given impetus by the High Court, when it indicated that it would enforce a request for public information. This has the potential of improving the transparency regime in the country.

The Constitution gives the High Court the authority to issue such directions or give orders in the nature of prerogative writs as it may consider appropriate for the purposes of enforcing any of the provisions on fundamental human rights and freedoms. A person not satisfied with the judgment of the High Court may appeal to the Court of Appeal with a right of further appeal to the Supreme Court.

The High Court has various divisions aimed at promoting specialization. These include the Labour Court and the Human Rights Court. There are currently over 95 High Courts scattered over the country particularly in the Regional Capitals.

The Environmental Protection Agency

The Environmental Protection Agency (EPA) is established by the Environmental Protection Agency Act, 1994 (Act 490). The EPA is the primary state agency for improving and protecting Ghana's environment. It has both regulatory and enforcement functions. The Ministry of Environment, Science and Technology is responsible for giving the agency policy directions.

With respect to the principle of Commitment to Transparency, the EPA contributes by the function it plays by conducting investigations into environmental issues and advising the Minister on these issues and developing a comprehensive database on the environment and environmental protection for the information of the public. In addition, EPA has the power to require a person responsible for an undertaking which is likely to have adverse effect on the environment to submit within a period an environmental impact assessment. Upon such a request, the agency informs the organ or the department of government that has responsibility for the issue of a licence, permit, an approval or a consent in connection with the undertaking that a notice has been issued, and that organ or department cannot grant the licence, permit, approval or consent unless with the prior approval in writing of the Agency after compliance with the notice.

Furthermore, the agency is to ensure compliance with the laid down environmental impact assessment procedures in the planning and execution of development projects, including compliance in respect of existing projects.

The Registrar General's Department

The Registrar General's Department (RGD) is a department under the Ministry of Justice and Attorney General. One of its duties is to ensure compliance with the Companies Act, 1963. The Act requires companies to register with the RGD by filing its regulations and certain particulars prescribed by law. Companies are also required to periodically hold general meetings, keep a register of members and officers of the company, keep books of account, file their annual returns and charges on company assets and file change of principal officers with the department. Where a company fails to comply with some of the provisions, the Act allows members of the company, officers and in some instances third parties to apply to the registrar, who in some instances has the authority to give appropriate direction or fine the principal officers or other officers at fault.

Principle 2. Compliance with Applicable Laws and Regulations

This principle to a large extent is an omnibus principle, requiring growers and millers alike to ensure adherence to the laws in countries of operation.

The absence of a legal regime for the regulation of Oil Palm business in Ghana means that evidence of compliance with legal requirements is not expressly available. However, the law, both domestically and internationally makes some provisions for the potential effects of the activities of growers and millers on the environment. Note was taken of the fact that the law hardly requires evidence of compliance as much as it provides appropriate sanctions upon refusal to comply.

Entities operating in the Oil Palm sector are at the barest minimum obligated to register with the Registrar General's office. This inadvertently places a duty on them to comply with the law, providing, on some regular basis, information on the state of their compliance. To achieve this, the companies often have regulatory systems in place and maintained.

A system for tracking changes in the law is not provided for by any legal source, be it domestic or international. The available laws relate to the framework for ensuring certain standards of compliance, but do not provide for the tracking of changes in that regard, not even in general terms. Beside this, however, notice was taken of the fact that the Minister of Justice may by legislative Instrument make laws for the effective operationalization of an entity. This power accorded the Minister may form the basis for tracking changes in the law although it remains unstated in law factually.

The law provides for, through the Land Registry Act and the Land Title Registration Act, documents showing legal ownership, lease or land tenure being made available as evidence of possession, especially where the party concerned follows through with all the processes required under law to get documented. This is provided for in high levels of detail under Ghanaian law. These laws read together with the Conveyancing Decree again provide substantially for an adequate framework for the demarcation and maintenance of boundaries of land, which would without any constraints, apply to the Palm Oil business.

The Consultants found the requirement on disputes regarding the title to land in respect of the activities of growers and millers of Oil Palm being adequately resolved to be addressed under Ghanaian law. In Ghana the law courts determine the legal ownership by means of documents that evidence the registration of title to that land. This is further solidified when the Constitution which guarantees the right to own property is read together with the Land Title Registration Act and the Land Registry Act which regulate matters concerning the documentation of land ownership.

The law contemplates instances where land is the subject of conflict and provides a means for the resolution of said conflicts. It was found that the Alternative Dispute Resolution technique regulated by the Alternative Dispute Resolution Act 798 is more favored over litigation. Additionally, there is a system set up by the judiciary to address conflicts arising out of land ownership with the establishment of a Land Court Division in the High Court.

Although not so clearly addressed, the laws provided under this principle pointed to the fact that Parcels of land subject to arbitration or litigation are typically marked out and agreed to by both parties. The land Title Registration Act provides that boundaries be ascertained.

Some provisions provided for under the principle addressed customary and user rights of land. Under the 2012 Forest and Wildlife Policy, government demonstrated its intention to address more broadly the issues of land rights, tree tenure and benefit sharing. Also, there exist consultancy reports detailing a new regime for benefit sharing and tree tenure in the country, as well as a recently passed Act of Parliament titled Land User and Spatial Planning Act, 2016. The Act addresses the general framework for land use in the country. There is also available, the National Land Policy of 1999 which provides the framework and direction for dealing with land ownership, security of tenure, land use and development and environmental conservation on sustainable a basis.

The plans for the production and milling of palm oil are done through a participatory process involving the growers/millers and the community wherein the growing and milling takes place. The law ensures that information is made available in appropriate form to these persons, although there might be difficulties with the language requirement, as most of these documents tend to be in English. It again ensures that there is some level of representation for the host communities, although they may not necessarily be lawyers.

Institutional Assessment

1. Registrar General's Department (RGD)

As noted above, one of the duties of the RGD is to ensure compliance with the Companies Act, 1963. The RGD is the state institution responsible for registering and the official liquidation of companies. It plays both regulatory and enforcement functions. The Companies Act, 1963 (Act 179) governs generally the corporate activities and operations of all companies in the country, including oil-palm companies.

The Act places a duty on companies to regularly file documents that indicate the state of their compliance to the provisions of the Act. The Act empowers the Registrar of Companies to fine defaulting companies and in most instances the officers of the companies who are responsible for the default.

Again, in some instance where the company fails to comply with some of the provisions of the Act, the Act permits members or officers of the company and in some instances third parties to apply to the registrar, who in some instances has the authority to give appropriate direction or fine the principal officers or other officers at fault.

2. Lands Commission

The Lands Commission is established by the 1992 Constitution and the Lands Commission Act, 2008 (Act 767). The commission was established with a view to

integrate the operations of public service land institutions under the Commission in order to secure effective and efficient land administration.

The Lands Commission has 10 regional branches and over district offices. The Regional Lands Commission is to perform the functions of the Commission in respect of the region. The Ministry of Land and Natural Resources provides leadership to the Commission on matters of policy in respect of the functions of the Commission. One objective of the Commission is to ensure that land use is in accordance with sustainable management principles and the maintenance of a sound eco-system.

The functions of the Lands Commission includes registering deeds and instrument(including documets provided for through the Land Registry Act and the Land Title Registration Act) that affect land throughout the country. The commission has a specialized unit known as the Survey and Mapping Division which supervises, regulates and controls the survey and demarcation of land for the purposes of land use and land registration and a Land Registration Division which is responsible for the publication of notices of registration, registration of instruments and title to land and the maintenance of land registers that contain records of land and other interests in land.

The registration and documentation of interests in land by the commission thus provide substantially for an adequate framework for the demarcation and maintenance of boundaries of land, which would without any constraints, apply to the Palm Oil business. It is helpful to note that the Lands Commission has the express duty to minimise or eliminate the sources of protracted land boundary disputes, conflicts and litigations and to establish and maintain a comprehensive land information system.

3. The Courts

Under the current legal system, there are three courts with jurisdiction to hear at first instance land disputes with respect to title. They are the High Court, Circuit Court and District court.

The High Court is a court of record created by the 1992 Constitution. Article 140 gives the High court original jurisdiction in all matters civil, including land disputes. To enhance specialization, effectiveness and efficiency, the Lands Division of the High Court has been established. Currently, there are over 95 branches of the High Court in the country. According to the High Court Civil Procedure rules, 2004 (C.I 47) an action in court concerning a landed property must be commenced in the region where the property is located. In such disputes before the court, it has the authority to make declarations as to title, award damages and grant equitable reliefs such as specific performance, restitution and Injunction.

The Circuit Court and District court are lower courts created by the Courts Act, 1993 (Act 459). The Circuit court has jurisdiction to hear matters involving the ownership, possession, occupation of or title to land. However, the District Court has, within the area of its jurisdiction, civil jurisdiction to hear actions relating to ownership, possession or occupation of land, where the value of the land does not exceed five thousand Ghana Cedis.

Like the High Court, the Circuit and District courts have the power to make declarations as to title, award damages and grant equitable reliefs such as specific performance and injunction.

Principle 3. Commitment to Long Term Economic and Financial Activity.

The consultants found no provisions in Ghanaian law to address the existence of commitments to economic and financial activity.

As issues bordering on the development and implementation of management plans of whatever duration are typically administrative, it came as no surprise to consultants that this principle had not been catered for by either domestic or international law.

These economic and financial undertakings are to be decided by business entities themselves in line with their Corporate Governance standards.

Principle 4. Use of Appropriate Best Practices by Growers and Millers

Principle 4 addresses in the main, the issues of sustainability and requires the deployment of practices that will enhance productivity and yet protect the environment.

Principle 4 together with its criterion and indicators were not found to be adequately provided for under Ghanaian law. While some indicators were not addressed many were partially addressed. The documentation of operating procedures and its monitoring and implementation was the only element to have none of its aspects addressed in law, even partially.

Although there was found to exist no direct legal provision for this principle, it could be inferred from law that the environment ought be exploited in such a manner as to ensure that it is protected from adverse effects likely to arise during use. The Plants and Fertilizer Act 803 provides for plant preservation and fertilizer control, which ultimately ensures soil fertility. Additionally, there have been policy strategies developed and designed by the Food and Agriculture Sector Development Policy (FASDEP II) of 2007 to ensure good agricultural practices.

Although neither the land Planning and Soil Fertilization Act nor the Plants and Fertilizer act require records of fertilizer inputs and application, they were found, when read together, to

show to some extent the existence of a framework through which sources of fertilizer imported and applied can be traced.

The consultants found that an inference could maybe be made from the general obligation to safeguard the environment provided for in the 1992 Constitution to mean an obligation to use appropriate methods of farming, to provide maps, provide management strategies.

As regards Growers and Millers making attempts at road maintenance, consultants found that there exists in legislation no obligation to that extent. However there does exist a framework for the funding of routine periodic maintenance and rehabilitation of public roads. This framework does not necessarily provide for a binding road maintenance programme in any sector of the country, however; including areas of palm oil production and growth.

On the question of peat soils, there is no direct legal framework to regulate the subsidence of peat soils. Within the framework of the Land Planning and Soil Conservation Act 1953 (No 32) (as amended), however, there exist provisions, which may form the basis for addressing the subsidence of peat soils. Again, although there is no direct legislation requiring documented water and ground water management programmes, the consultants found there to be some expectation that any use of water in oil palm production will have to comply with the Water Resources Commission Act 1996 (Act 522) and the various regulations and guidelines issued by the Water Resources Commission. In that same vein, the present state of the law has not made any provisions, directly or otherwise, which places a requirement that assessments of the drainability of peat soils be conducted before replanting is done to ascertain the long term viability of the necessary drainage, and in this particular case, for Palm Oil planting.

The law, however, does provide, albeit partially, in the Land Planning and Soil Conservation Act for management strategies to be taken up through the formation of committees to address specific fragile and problem soils.

The Irrigation Development Authority Act, Water Resource Commission Act, Rivers Act and the Drilling License and Groundwater Development Regulations provide for, in broad terms, the requirement of regulation and management of the countries water resources; local water courses and wetlands including maintaining and restoring appropriate riparian and other buffer zones, as well as the co-ordination of government policies in relation to them.

It was noted that, mill effluents are not specifically mandated under law to be given appropriate treatment that conform with national regulations, in terms of the quality of their discharge, particularly that pertaining to Biochemical Oxygen Demand. However, there was found to be a dearth of legislative provisions, specifically the Minerals and Mining Act and its implementing regulations, the Water and Sewage Regulation and under the Environmental Protection Agency Regulation, dealing generally with the treatment and disposal of hazardous waste.

Again the consultants did not find any law pertaining to the monitoring of mill water use per ton of FFB. What was found however, under the Plants and Fertilizer Act was a pesticide and

fertilizer regulatory division, which generally deals with ensuring the monitoring of pests and fertilizers in the country.

The Consultants found that the law in no way dictates that up to date IPM records be maintained, although arguments may be made in construing the constitutions provisions on the right to information to mean same.

The Plants and Fertilizer Act and the Environmental Protection Agency Act provide for pesticide use yet again, although not specific to oil palm, where the RSPO specifies that before any pesticide be used, it be demonstrated first. This is to ensure minimum risk in terms of its use to the environment.

Record keeping remains significant where the EPA and the Biodiversity Act ensures through its provisions that there are proper records of pesticides that are being used, especially in terms of their ingredients, the area treated as well as amount applied per ha. It was noted however that, the use of any pesticide must conform to the integrated pest management plan, a requirement that has been duly catered for by the cited laws, although, as in the previous cases, they are not Oil Palm specific.

The Environmental Protection Agency (EPA) again ensures compliance to the country's obligations towards the issue of chemicals categorized as World Health Organization type 1A or 1B where it ensures that these chemicals are progressively phased out.

Pesticides are required, by the EPA (in the EPA Act), to be handled by persons possessing the requisite skills to do so and are to be kept only in a manner prescribed by the relevant bodies set up by law and that conform to international best practices.

In terms of the application of said pesticides, the EPA Act specifies that pesticides be applied in accordance with proven methods, which further guarantee the minimization of the risk of adverse effects on the environment. An aerial application of pesticide is to be done only where the communities have been given prior notice within a reasonable time to enable them make adjustments where necessary. All employees and associated smallholders in this regard, are obliged to demonstrate acceptable levels of awareness and skills on pesticide handling.

Consequently, a joint reading of the 1992 Constitution on obligations of the State of Ghana towards environmental protection and the EPA Act on the collection and treatment of waste provide that any and all waste relating to the application of pesticides be disposed off in the prescribed manner.

What the law does not provide for, however, in terms of pesticide application and disposal is a specific annual medical surveillance for pesticide operators. A government of Ghana Policy Document on Pest Management Plan by the Ministry of Agriculture (November 2011) concedes to the fact that in most cases of pesticide application, farmers or farm assistants themselves undertake the exercise, most times without the appropriate personal protection equipment (PPE's) such as hand-gloves, overalls etc. 2011 Policy also suggests that though

there exists a Ghana Poison Control Center to address pesticide poisoning and accidents, there is no direct medical programme on pesticide poisoning and accident.

Pregnant and breast-feeding mothers are addressed in law although not directly with respect to their use of pesticides. The combined effects of provisions in the law as relates especially to Labour (The Labour Act and the 1992 constitution on women and children's rights in the workplace) seem to suggest that, a pregnant woman or a breastfeeding mother may not be involved in any assignment that may be detrimental/hazardous to her health and safety. It is therefore the duty of the employer to ensure that his pregnant/breastfeeding mother employee works under satisfactory safe and healthy conditions.

Health and Safety plans are also addressed in law in a detailed manner. The Labour Act makes provisions that ensure that employers put in place health and safety plans in all sectors of the economy, the Palm Oil sector not excluded.

It is worthy of mention the existence of a National Workplace HIV and AIDS Policy in Ghana which among others, provides the framework for the mainstreaming of HIV and AIDS activities in the workplace to combat the spread and effects of HIV and AIDS among Ghana's work force in various sectors of the economy including the Palm Oil sector. The law again provides for provisions that exist to ensure that a risk assessment is carried out from time to time in operations where health and safety are likely to be an issue. This invariably includes operations of the Oil Palm business in Ghana.

Ultimately the Labour Act, with its specific provisions on appropriate farm practices and the Environmental Protection Agency Act which bars employers from mandating employees to handle pesticides in a manner contrary to law combine to place a requirement on employers to ensure that workers are properly trained on safe working practices. However, one cannot overlook the lack of safety and precaution in the application of pesticides and their products by farmers and farm assistants as mentioned in paragraphs above.

The Labour Act provides the leeway to organize regular meetings on issues of health, although not specifically where it recognizes the formation of Unions to discuss among other things a Collective Bargaining Agreement (CBA) addressed in part the issues of welfare of employees.

The law is highly specific when it comes to accident and emergency procedures during work. The Labour Act guarantees that employees that work in places where the likelihood of accidents is present are trained on what to do where there are accidents, and that first aid tools and equipment are placed at their disposal. In this regard, Employers, according to law, are duty bound to provide Health Insurance Scheme for their employees. Employers must as such conform to these legal provisions, which again guarantee that occupational injuries are duly recorded.

The law is, however, not specific on the issue of a documented training programme. While not specific, one can still argue that it is somewhat addressed in law because of the mandatory duties mentioned in the paragraphs above. The keeping of training records

would as well seem provided for, although not specifically as it is required of any effective and efficient administrative set-up.

INSTITUTIONAL ASSESSMENT

1. Environmental Protection Agency (EPA)

In line with the principle of “Use of Appropriate Best Practices by Growers and Millers”, the EPA is mandated to regulate the import, export, manufacture, distribution, sale and use of pesticides. The Act provides that a person who intends to import, export, manufacture, distribute, advertise, sell or use a pesticide must register with the EPA. Furthermore, the Act provides some safety considerations to be borne by the EPA when making considerations whether or not to approve the registration of a pesticide and the classification of a registered pesticide. The Agency may approve and register the pesticide where it is satisfied that the pesticide is safe and effective for the use for which it is intended, and that the pesticide has been tested for efficacy and safety under local conditions.

The Agency has the power to suspend or ban a pesticide or cancel its registration at any time if it is satisfied that the pesticide under the existing conditions is not effective or may cause hazard to people, animals, crops or the environment.

The Agency is also required to maintain a register of pesticides in which the Agency shall record the names and particulars of registered and provisionally cleared pesticides. And this is to be reviewed periodically.

2. Planning committees

The Land Planning and Soil Fertilization Act provide for the setting up of Planning Committees for a Planning Area. According to the Act, the Minister for Agriculture may designate an area to be a Planning area for the purposes of preserving the land, reclaiming the land and protecting water resources. The act provides that a Planning committee shall be a body corporate and the executive instrument that creates it must state in detail the functions of the committee. The Minister may also establish a co-ordinating committee to co-ordinate the work and policy of two or more planning committees.

3. Water Resources Commission

The Water Resources Commission is responsible for the regulation and management of the utilisation of water resources, and for the co-ordination of any policy in relation to them. Its specific functions include proposing comprehensive plans for the utilisation, conservation, development and improvement of water resources, granting water rights, gathering and disseminating data or information on water resources in Ghana, make requests for water

user agencies to undertake scientific investigations, experiments or research into water resources in Ghana. It is also has the mandate to monitor and evaluate programmes for the operation and maintenance of water resources, advise the Government on any matter likely to have an adverse effect on the water resources of Ghana and advise pollution control agencies in Ghana on matters concerning the management and control of pollution of water resources.

The commission has the power to issue enforcement notices where the use of water resources for a purpose at a place poses a serious threat to the environment or to public health. The enforcement notice may either require the user to take the necessary steps to prevent or stop the activities or direct the immediate cessation of the offending activity where it considers that the circumstances so demand. The Act make it an offence not to comply with the directives of an enforcement.

The Commission is also required to make necessary investigations, after an application, including consultations with the inhabitants of the area of the water resources concerned before granting water right. The grant is however subject to ratification by parliament. A water right granted cannot be transferred without a prior written consent by the Commission.

4. Irrigation Development Authority (IDA)

The functions of the IDA includes formulating plans for the development of irrigation, developing the water resources of the country for irrigated farming, livestock improvement and fish culture, executing comprehensive programmes for the effective use of irrigated lands in co-operation with any other agencies involved in providing extension services to farmers. Other functions include to carry out land-use planning in areas earmarked for development in order to conserve the soil and water resources in those areas, to lay out the environs of each project area for housing purposes and for the provision of any other social amenities and to co-operate with any other agencies for safeguarding the health and safety of the population living within and around irrigation project areas.

5. National Labour Commission (NLC)

The NLC is a seven-member commission. Its mandate includes settling of industrial disputes, investigating labour related complaints and performing functions conferred on it by the Labour Act, 2003 (Act 651). The Act gives the NLC power to receive complaints from workers, trade unions, and employers, or employers' organizations on industrial disagreement, and allegation of infringement of any requirements of Act 651 and its implementing Regulations. The NLC also has the power to require an employer to furnish information and statistics concerning the employment of its workers and the terms and conditions of their employment in a

form and manner the Commission considers necessary and notify employers and employers' organizations or workers and trade unions in cases of contravention of Act 651 and the Regulations and direct them to rectify any default or irregularities.

Thus, the NLC has a supervisory and enforcing role in ensuring that employers, including those in the oil palm sector, ensure that their workers work under satisfactory, safe and healthy conditions as prescribed by Act 651. And this includes pregnant and breast-feeding mothers.

Principle 5. Environmental Responsibility and Conservation of Natural Resources and Biodiversity

This principle seeks to encourage environmental protection and sustainability. In benchmarking it was observed that the various indicators were to a large extent addressed in law although for the most part partially. Ghanaian Law addresses aspects of plantation and mill management that have environmental impacts in totality.

On the first issue on the provision of an environmental impact assessment, it was found by consultants that the Environmental Protection Agency Act and its accompanying legislative instruments, mandates any and all persons seeking to perform activities that might have some effects on the environment to provide an impact assessment form. The legal framework also sets up an entity to monitor and regulate the use of land and the requirement of assessment regulations. Although the provisions in laws do not expressly provide for the documentation of an Environmental Impact Assessment, to the extent that the law requires that there be records of Environmental Impact Assessment, then one can assume that these records are documented.

The Environmental Assessment Regulations and the Environmental Protection Agency Act again provide for a plan to monitor the effectiveness of mitigation measures. This management plan is however subjected to yearly reviews so as to maintain consistency with change and not reviews on the average of once every two years.

The provision of a documented HCV report being made available was found by the consultants to not be directly provided for in law. However, its details fit into the general requirement of the 1992 constitution towards the right to information and as such could be arguably implied and imputed into law.

There is again a broad legal framework for ensuring that all rare, threatened and endangered species likely to be affected by the milling of Oil Palm are adequately taken care of. This is evidenced especially in the Wild Animals Preservation Act where there is the regulation of human activities likely to affect animal life. The Wildlife Reserve Regulations work hand in hand with the Wild Animals Preservation Act to enforce the requirement of encouraging the education of persons with regard to such rare species, general wildlife and wildlife protection. It also addresses the issues of punishment of conduct in breach of the law on environmental protection.

Unfortunately, the consultant found that the legal framework in Ghana does not provide for the documentation and reporting of evidence of monitoring and updating of the status of HCVs and RTE species affected by plantation or mill operations. Also not supported in law is the indicator requiring evidence of negotiated agreements that safeguard both HCVs and the rights of local communities where HCV set-asides with existing rights of local communities have been identified.

This principle also requires the identification and documentation of waste products in the country. There is no direct legislation in Ghana on that. However, there is legislation, which places responsibility within the framework of the local government service and the environmental protection agency to broadly undertake such exercises. In addition to that, the Revised 2010 Environmental Sanitation Policy provides the required guidelines to ensure systematic collection of data on waste from all sectors of the economy and to ensure the support to relevant research in the waste sector. Furthermore, the government of Ghana in 2002 brought into force Land Fill Guidelines, which require the classification of waste for the purposes of determining their final dumping site.

There exists, a legal regime created through a joint appreciation of the state's responsibility towards environmental protection in the 1992 constitution, the Local Government Act, the responsibilities owed by the EPA in the EPA Act and the Environmental Assessment Regulations set to ensure the responsible disposal of waste and also waste management plans, albeit documented. These are not directly addressed in legislation. However, in a number of policy documents, the issues of chemical waste and waste management plans are addressed. These are; the Environmental Sanitation Policy, the Land Fill Guidelines, and the Guidelines for the Bio-medical Waste of 2000.

The Parliament of Ghana has also just passed the Hazardous and Electronic Waste Control and Management Bill. The bill when given presidential assent will provide a stronger legal framework for chemical waste control. It is also expected that a full implementation of the Environmental Sanitation Policy will ensure the mandatory development of waste management plans.

The 1992 Constitution, the Petroleum Exploration and Production Act PNDCL 84, the Energy Commission Act and the Renewable Energy Act attempt to address this principle where they jointly provide a framework for improving the efficiency of the use of fossil fuel as well as for the optimization of renewable energy.

Additionally, the Energy Sector Strategy and Development Plan (2010) of the Ministry of Energy identifies fossil fuel as having potential negative effects on climate change and provides a policy framework for its use in Ghana. The 2010 plan identifies renewable energy resources as having the greatest potential of ensuring Ghana's energy security and mitigating the negative climate change impact of energy production and use as well as solve sanitation problems.

The human rights provisions of the 1992 Constitution provide that the enjoyment of rights and freedoms are inseparable from the performance of duties and obligations. It further

goes to restrict the enjoyment of rights to the respect of the rights of others. As such, the law considering these two limitations on the rights and freedoms of its citizens bars the use of indiscriminate fires during land preparation or for activities aimed at providing some profit to the offender.

The requirement that only an authorized person be allowed to set fire to specific areas was found to exist under the Ghana Forest and Wildlife Policy of 2012. The policy which supplements the law on the issue of the use of fire to clear lands as part of its strategic direction for savannah eco-system resource management, requires the existence of a framework to control the start and spread of bushfires. Where fire is used, the law further requires that evidence be provided, indicating that the setting of the fire was authorized by law.

The law provides for the Environmental Protection Agency to, as part of its functions, conduct investigations into environmental issues. This satisfies the requirement of an assessment of all polluting activities including gaseous emissions.

Although plans to reduce or minimize identified significant pollutants and greenhouse gas (GHG) emissions cannot be found in law, the consultants found that Ghana recently made commitments at the 21st Conference of Parties (CoP) meeting of the United Nations Framework Convention on Climate Change (UNFCCC), where it pledged to reduce GHG emissions to a maximum of 2 percent. This was thought by the consultants to be an indication that the country takes the reduction of greenhouse gas seriously, and is likely to in the near future make legislation in that regard.

The same applies for a monitoring system with regular reporting on progress for the significant pollutants and emissions from estate and mill operations being made available. It also does not find meaning in law. The law with regard to the functions of the Environmental Protection Agency however would to a reasonable extent seem to form the bedrock of the framework of a system for monitoring the progress of the mechanisms put in place for the control of pollutants and other emissions arising from the activities of growers and millers of Oil Palm.

Institutional Framework

Environmental Protection Agency

The EPA has the power under law to, require a person responsible for an undertaking which is likely to have adverse effect on the environment to submit within a period an environmental impact assessment. Upon such a request, the agency informs the organ or the department of government that has responsibility for the issue of a licence, permit, an approval or a consent in connection with the undertaking that a notice has been issued, and that organ or department cannot grant the licence, permit, approval or consent unless with the prior approval in writing of the Agency after compliance with the notice.

The EPA also has the duty to ensure compliance with the laid down environmental impact assessment procedures in the planning and execution of development projects, including compliance in respect of existing projects. In addition, the Act gives the EPA the duty to develop a comprehensive database on the environment and environmental protection for the information of the public. And to co-ordinate the activities of the relevant bodies for the purposes of controlling the generation, treatment, storage, transportation and disposal of industrial waste.

Honorary Game Officers

Under the Wild Animals Preservation Act, 1961 (Act 43), the Minister of Lands and Natural Resources has the power to appoint Honorary Game Officers. The Honorary Game Officers have a duty under the Act to carry out the purposes of the Act. The general purpose of the Act is to regulate human activity likely to affect animal life especially rare and endangered species. The Act has offence creating sections and gives Honorary Game Officers the authority to arrest without a warrant a person reasonably suspected to have been concerned in an offence punishable under the Act where that person refuses to give the name and address of that person, or gives a name and address which the game officer reasonably believes to be false, or where the game officer has reason to believe that that person will abscond.

Energy Commission

The object of the Energy Commission is to regulate and manage the utilisation of energy resources in and co-ordinate policies in relation to them.

The 1992 Constitution, the Petroleum Exploration and Production Act PNDCL 84, the Energy Commission Act and the Renewable Energy Act attempt to address this principle where they jointly provide a framework for improving the efficiency of the use of fossil fuel as well as for the optimization of renewable energy.

Bushfire Control Sub-Committees of District Assemblies

The Control and Prevention of Bush Fires Act, 1990 (PNDCL 229) establishes a Bushfire Control Sub-committees in each District Assembly. The membership of the sub-committee is to be determined by the Assembly. The mandate of the Sub-Committee includes the drawing-up for the consideration of the District Assembly the appropriate by-laws to ensure adequate prevention, control and monitoring of bushfires, specifying the periods in the year within which the burning of farm slash, grass, herbage and dead wood shall be prohibited and setting up town, area and unit bushfire control committees which shall direct the

activities of the town, area or unit fire volunteer squads. The Sub-committee is also required to compile data on the bushfire outbreaks and offences within the District.

Director of Agricultural Extension Services / Director of Animal Health and Production Department of Ministry of Agriculture

The Control and Prevention of Bush Fires Act, 1990 (PNDCL 229) gives the Director of Agricultural Extension Services/ Director of Animal Health and Production the mandate to authorise the setting of fire to a specified area other than a conservation area for the purpose of range management or any other agricultural purpose.

Chief Executive of the Forestry Commission

The Control and Prevention of Bush Fires Act, 1990 (PNDCL 229) gives the Chief Conservator of Forests or the Chief Game and Wildlife Officer (CEO of the Forestry Commission) the mandate to authorise any their staff to set fire within an established forest or wildlife conservation area for the purpose of either management of the area or the protection of the area against accidental fire.

Attorney General Department

The Control and Prevention of Bush Fires Act, 1990 (PNDCL 229) states that failure to comply with the provisions of the Act constitutes an offence. The 1992 Constitution in Article 88 provides that the Attorney General shall be responsible for the initiation and conduct of all prosecutions of criminal offences.

Principle 6. Responsible Consideration of Employees and of individuals.

Principle six is targeted at ensuring that persons engaged in the Palm oil industry have adequate protection from the law. This principle is the most detailed with some 13 different criterion and indicators. Most of the indicators are addressed under Ghanaian Law.

The law provides that aspects of planting and mill management that have or are likely to have social impacts should be identified and plans put in place to mitigate their negative impacts and promote the positive. The Environmental Protection Agency Act and Environmental Assessment Regulations provides a framework that allows for the conduct, documentation and implementation of social impact assessments and enforces the

requirement of evidence to the fact that the said social impact assessments have been done with due participation of the affected parties. This is required by law to be documented in the form of an implementation and monitoring work plan to avoid or mitigate impacts identified during the assessment.

The Environmental Assessment Regulations stipulate that, an environmental permit granted to an applicant as authorization for the carrying out of an enterprise likely to have some effects on the environment can be revised where there is a failure to meet all requirements. Ultimately, what the law does is to ensure that the implementation and monitoring work plan presented in an application for a permit is reviewed via this means, thus fulfilling its obligation under the principle. It is not direct on this issue; however, it is partially addressed by inference.

With regard to documented consultation and communication procedures, the 1992 constitution on the right to privacy and the EPA Act's provisions on communication and enforcement procedures as regards the granting of permits give a general perspective to the extent that the freedom of all persons to communication without wanton interruption from anyone unless viably justified to do so by law. This continues in administrative procedures and land acquisition procedures where provision is made for communication in instances where differences may arise or questions raised as to the nature of a particular practice. Consultants found that, the law provides for the best means of negotiation and communication especially in a working environment, which aims at quick dispute settlement to the advantage of productivity where it makes for alternative methods of dispute settlement. These methods aim at addressing disagreements arising out of the consultation and communication procedures.

The nomination of a management official and maintenance of a list of stakeholders was found to be within the ambience of the general framework of an effective and efficient corporate administrative structure and not the law and was as such quoted to as not addressed.

As stated, the requirement of a documented system open to all affected parties which resolves disputes in an effective, timely and appropriate manner was found to be addressed in law through provisions on alternative methods of dispute resolution provided for in the Alternative Dispute Resolution Act (ADR Act). These cited provisions ensure that the settlements of grievances are conducted in a less formal, non-adversarial and yet effective manner. This inadvertently makes for a method by which both the process and outcome by which a dispute is resolved can be documented and made available. The legal framework creates a system open to all affected parties in the resolution of their disputes.

Whether or not disputes are resolved using the formal or informal processes, there is a requirement for a documentation of the outcomes. It is worth noting however, that with respect to the formal dispute resolution systems, it is only the Superior Courts of Judicature that are the courts of record.

As stated in the introductory paragraphs, customary law is recognized by the constitution (1992) as one of the sources of law in Ghana. It is hence recognized as such and has its own incidents separate from the other sources of law except where contrary to the constitution.

The consultants found that the general framework for customary and land user rights is still being developed. The ministry of Lands and Natural Resources is leading in that regard with the tree tenure and benefit sharing processes and the passage of the Land Use and Spatial Planning Act, 2016 (Act 925). These processes may be relied on to augment the framework under this principle. The law here can be interpreted to evidence a commitment towards procedures for identifying legal and customary rights and a procedure for identifying people entitled to compensation.

The law in regard to this principle also supports matters concerning the calculating and distributing of fair compensation to stools where stool lands fall in the way of environmentally sensitive activities. The office of the Administrator of stool lands under the lands commission is responsible for the distribution of all payments by way of rents, dues, royalties, revenues and all other monetary issues. It creates a system open to all affected parties in the resolution of their disputes. Whether or not disputes are resolved using the formal or informal processes, there is a requirement for a documentation of its outcomes under law.

Again the law on alternative dispute resolution is relevant in that its provisions when properly considered can be said to make for the documentation of negotiation agreements and compensations, with evidence of the participation of all affected parties.

The Consultants found provisions supporting the indicator on documented conditions of service. However these are general and not necessarily specific to the Palm Oil industry. The legal provisions are not also detailed on specifics such as adequate housing, water supplies, medical, educational and welfare amenities for growers and millers. These are generally subject to contract and Union negotiations.

The 1992 constitution on the right to work and equal pay for equal work and the Labour Act provide a general framework to ensure the adherence to those minimum standards. Tangentially, the National Pensions Act 766, Health Institutions and Facilities Act 829, the Social Security Law PNDCL 247, the Public Health Act 851 and the Health Professionals Regulatory Act 857 solidify adherence to this principle.

What the law does not however provide for is the monitoring and improvement of workers' access to adequate, sufficient and affordable food by growers and millers.

The law provides for freedom of association, which is protected under the 1992 Constitutions. However, there is no mandatory duty on employers to publish statements to the extent of its recognition. That notwithstanding, however, due to the illiterate protection laws, the employer, where he does decide to publish a document to the extent of expressly recognizing the right to association, is mandated to do so in a language the employee understands.

The requirement to document minutes of meetings is not provided for in law, and falls under the general rubric of administrative practice and corporate governance. Companies are expected to maintain records of their meetings and dealings with trade unions.

A minimum age requirement is however adequately provided for in the Children's Act law although not in a high level of detail. The Children's Act, the Labour Act and the Human Trafficking Act especially work hand in hand with the constitution to ensure that the rights of children are respected. In situations where young persons are hired into an enterprise, the law bars them from engaging in especially threatening forms of work. This affords them certain protections in the workplace.

Ghanaian law was found by consultants to frown on to a substantial degree issues relating to discrimination in the workplace. The requirement of a publicly available equal opportunities policy is met where the constitution and the labour Act make provisions when read from a combined perspective move to ensure that managements in Oil Palm business would make available to the public, equal opportunities policies which would include the identification of relevant/affected groups in the local environment.

The 1992 Constitution and the Labour Act provide evidence of the law being opposed to discrimination. Consultants found the legal provisions when combined ensure that there is evidence that all employees and groups of persons in the employment of businesses owned by Oil Palm growers and millers are not discriminated against, particularly on the basis of their sex or nationality.

The Labour Act, to a small degree places an obligation on employers to, during the process of recruiting/hiring and promotion of employees, act on the basis of the skills, capabilities, other qualities, as well as medical fitness of the employee for the job.

The laws also addresses discrimination on the basis of sex. The Labour Act especially makes a special case for women where it bars them from harassment in the workplace. Where a female worker is forced to resign on the basis of harassment in the workplace, she will be or is entitled to some level of compensation.

Although there was found to be no express legal requirement for there to be specific policies in the workplace concerning sexual harassment, the significance of policies of that nature is inferred. This finds close meaning to the guarantee of reproductive rights (in a small way as well) where pregnant workers are, as per the Labour Act, allowed to upon presentation of a requisite medical report to that extent, be provided with a maternity leave; time off to have and to take care of their babies. Indeed, the law provides that even after the leave period, the new mother is entitled some time outside the normal rest hours of work to breastfeed.

The Whistleblowers Act 720 provides for full anonymity for persons who may want to report grievances to authorities. This was found to be necessary as good citizens are sometimes barred from doing the right thing as a result of fear for their person or property. With the protection of the law, anyone can go under the protection of the legal provisions provided by the consultants (see tabular RSPO report) and account any grievances to the appropriate

quarters without disclosing his or her identity, and would, by so doing, the requirement is adequately met.

Again there exists a voluntary contractual duty placed on growers as can be found in the Contract Act 25, to be fair and transparent in their dealings. This is however not an express legal duty as there is no legal framework regulating it. Yet still, the framework of the Protection Against Unfair Competition Act 2000 (Act 589) and the International Legal Organisation Treaties helps in ensuring fair dealings and transparency between growers and smallholders. The consultant found the law dealing with this particular issue served more as a basis upon which the duty is realized.

Before parties can be said to entered into a contract under law, there is the requirement of the meeting of minds. That is, there should be some evidence that both parties understand the tenets of the contract and have willfully agreed to be bound by it. The Contract Act conveys the sense that parties to a contract understand the terms of the agreements into which they have entered, as well as provides for the fairness, legality and transparency of all contracts.

Although the actual wording of the Contract Act does not state that payments agreed on between parties to a contract should be made in a timely manner. It does give an indication that contractual terms are expected to be respected, the timely payment of agreed prices inclusive.

On the obligation on local growers and millers to partake in some levels of local development, the consultants found this requirement to be more in tune with corporate social responsibility. The performance of corporate social responsibilities by corporate bodies was found to not necessarily be a matter 'open' to be legislated on, but one that borders more on the internal administrative and corporate governance framework of the entities. This is so, although the constitution does provide that the enjoyment of certain rights and freedoms are subject to obligations towards the community as a whole.

Although domestic law is silent on steps to improve smallholder productivity, international law guarantees its sustenance. Note was, however, taken of the fact that there are always question marks hovering around the enforceability of international laws for reasons that are not unconnected with the absence of an international enforcement mechanism.

The 1992 Constitution and the Labour Act cover issues surrounding forced Labour to a large degree. The 1992 Constitution bars forced Labour generally whereas the Labour Act was found to be more specific to the employer-employee relationship. It bars employers from imposing labour under the threat of a penalty or for which the employee has not voluntarily offered to work and sets penalties for employers who breach this legal obligation to desist.

No legal provisions exist on a requirement that there be no substitution of contracts where two or more persons enter into an agreement. However, with a mind on the fact that the common law exists as one of the sources of law in Ghana, the decision in the English case of *Shroeder Music Publishing Ltd. v Macauley* which went to the effect that wherever the terms of a contract are detrimental to a party with less economic power than the other

party, the courts would typically move to protect the interest of the economically disadvantaged party may apply. Although our courts are not necessarily bound by the decisions of English cases, it is hard to fathom how any court in Ghana would not rule in line with the Shroeder decision.

The law was found to make provisions for special Labour policies and procedures for temporary and migrant workers. Migrant workers however have to, as stipulated by the Immigration Act 573, be granted a permit by the Immigrant Quota Committee before they can be employed to any undertaking in Ghana. Where this is satisfied, consultants found that they would fall under the general protections provided by the 1992 Constitution and the Labour Act on the rights of temporal and migrant workers to remuneration, access to health facilities, and also overtime work. This requirement is again guaranteed by the ECOWAS Protocol on the Free Movement of Persons, Residence and Establishments, which Ghana is a signatory to. This aside, the law combines various minor provisions spread through the Constitution, Acts of parliament and subsidiary legislation to provide a framework for a special labour policy that takes the needs of temporary and migrant workers into account.

Indicative of some requirements already discussed, the consultants found human rights to be central to and adequately provided for primarily by the 1992 constitution and also the Commission on Human Rights and Administrative Justice Act and Principle 11 of the Guiding Principles on Business and Human Rights From the UNOCHR 2011 as concerns trade, industry and agriculture especially.

Institutional Assessment

Environmental Protection Agency (EPA)

EPA has the mandate to ensure that Environmental Assessments are undertaken so that plans are put in place by the undertakers to mitigate their negative impacts and promote the positive. The EPA supervises the conduct, documentation and implementation of social impact assessments and enforces the requirement of evidence to the fact that the said social impact assessments have been done with due participation of the affected parties.

Office of the Administrator of Stool Lands

The Office of the Administrator of Stool Lands is established by clause (2) of article 267 of the 1992 Constitution. It is responsible for the establishment of a stool land account for each stool into which shall be paid rents, dues, royalties, revenue and any other payments whether in the nature of income or capital from the stool lands and the collection of those rents, dues, royalties, revenues or the other payments whether in the nature of income or capital and to account for them to the beneficiaries. It is also responsible for disbursement of the revenue.

The office of the Administrator of stool lands provides a mechanism for the distributing of fair compensation to stools where stool lands fall in the way of environmentally sensitive activities. The office forms part of the Lands Commission.

The National Labour Commission

The National Labour Commission provides a framework to ensure the realization of the right to work and the equal pay for equal work. The Labour Act, 2003 in section 10 states the rights of a worker and the Commission has the mandate to receive and investigate complaints from workers, trade unions, and employers, or employers' organisations on industrial disputes and allegations of infringement of any requirements of the Labour Act, 2003 and its implementing regulations.

The Commission also has the power to notify employers and employers' organisations or workers and trade unions in cases of contravention of this Act and the Regulations and direct them to rectify any default or irregularities.

Principle 7. Responsible Development of New Plantings

This principle is for the most part averagely squared between partly addressed and not addressed at all. It covers requirements concerning new plantings and proper developmental practices surrounding them.

The Environmental Protection Agency Act set up as part of the mandated responsibilities of the state towards a guaranteed protection of the environment was found to fully guarantee the documentation of an independent social and environmental impact assessment. This obligation is regulated under law by the Environmental Protection Agency. It was noted by the consultants that this principle especially requires not only the existence of independent environmental assessment but the documentation of such assessments. The EPA Act and international conventions such as the Rio Declaration on Environment and Development, and the International Labour Organization Recommendation 1968 ensures that the government agency (EPA) provides such independent assessments and mandates the documentation of same.

Another requisite documentation was found to be that of an environmental and social management plan and operational procedures to avoid or mitigate identified negative potential impacts. As already stated on the issue of an independent environmental impact assessment, the principle when read in its entirety looks to the existence of comprehensive, participatory and documented impact assessments. The law in the form of the same legal documents stated in the paragraph above, i.e. Rio Declaration, International Labour Organisation Recommendation, the EPA Act and the Environmental Assessment Regulations reflects this and also provides a framework where results of the assessment leads to the mitigation of negative effects.

There exist no domestic legal framework that addresses the giving of particular attention to the impact of the scheme and the implications of its management where the development includes a smallholder scheme. However, international law comes in where articles 4-8 of the ILO convention which deals particularly with the promotion of a progressive and continuing increase in the well-being of tenants, share-croppers and similar categories of agricultural workers while also guaranteeing the protection of the essential right of land owners, provides some basis to ensuring that small holder schemes do not impact the environment negatively.

The provision of soil suitability maps and surveys finds no meaning in law. There is no domestic legal framework to address this particular requirement. However, it was found that the 2012 Forest and Wildlife Policy provides as part of its specific policy objectives (SPO 1.1.1): the management and enhancing of the ecological integrity of Ghana's forest, savannah, wetlands and other eco-systems for the preservation of vital soil and water resource, conservation of biological diversity and the enhancement of oil stocks for sustainable production of domestic and commercial produce.

The consultants found that although the Minerals and Mining (Health, Safety and Technical) Regulations stipulates that a mining operating plan should at least contain a detailed description of geological conditions and mineral reserves and resources with appropriate maps which indicate deposits whether commercial or otherwise, the law does not directly deal with Oil Palm with regard to the provision of topographic information adequate to guide the planning of drainage and irrigation system, roads and infrastructure. What it does however is, it does provide guidance as to how a futuristic oil palm industry can address this requirement. A consensus was reached to the extent that lessons may be drawn from the National Building Regulations 1996 (L.I.1630).

There were found to be no existing domestic laws which address HCV in Ghana. However, the framework of the 1992 Constitution and the Land Planning and Soil Conservation Act can be used to ensure some sort of adherence to HCV values in new plantings. Additionally, there exists The Interpretation of Global HCVF Tool-kits for Use in Ghana; a report that summarizes the output from a multi-stakeholder workshop in may 2006 that outlines the interpretation of the concept of high conservation value forest. This report can assist in the future formulation of legislation in that area. The same was found to apply to the requirement of a comprehensive HCV assessment as there exists no domestic law that aptly addresses it.

The keeping of records on dates of land preparation and commencement, the provision of an action plan describing operational actions, and the requirement of HCV plans were all found to fall under the bracket of aspects of the principle that have no meaning in law.

The requirement of the provision of maps, which will aid in identifying marginal and fragile soils was found to have no direct correlation with law although some legal provisions seem to suggest its facilitation. The 1992 constitution on state obligations towards environmental protection, the Land Planning and Soil Conservation Act on the power of the Minister to designate planning areas where necessary for preservation and the Mineral and Mining

(Health, Safety and Technical) Regulation which mandates a mining operation plan to contain detailed descriptions of the geological conditions of areas, come together to basically provide a broad framework through which it may be addressed.

The development of plans to protect fragile soils is not addressed in law. Although the law does provide for regulations aimed towards the protection of soil, that is regulations against hazardous practices like sand winning and erosion, it is not specific or these plans are not specific to fragile/sensitive soil. However, the Minerals and Mining Regulations and National Building Regulations were considered as seemingly having the mandate to provide guidelines towards a future formulation of legislation that would specifically address plans towards the protection of sensitive soil matter.

The law as it exists (the EPA Act) mandates the Environmental Protection Agency to hold public hearings where a proposed undertaking is likely to have an effect or impact the lives of a certain class of persons usually within a specific area. International law also comes in in the form of the United Nations Guiding Principles on Business and Human Rights, where it mandates business enterprises to respect the rights of persons likely to be affected by their activities. These laws combined and read in detail go to guarantee that affected locals understand they have the right to say “no” to operations planned on their lands before and during initial discussions.

The requirement of user rights for land and the existence of a system for identifying persons entitled to compensation where industrial or agricultural activities affected them was found to be partially addressed in law. The constitution stipulates that where an activity aimed towards the good of the state or an activity with state backing affects individual citizens, said citizens will be entitled to some monies to mitigate their losses. Same applies to issues surrounding the calculation and distribution of fair compensation. The constitution mandates that the compensation be fair with regard given to the level of loss the individual suffers.

Although domestic law is for the most part silent, some forms of provisions have been made under international law through the United Nations Guiding Principles on Business and Human Rights and the International Labour Organisation Convention on Indigenous and Tribal People, both of which Ghana has ratified, for a framework that allows communities that have lost access and rights to land for plantation expansion to be given opportunities to benefit from plantation development.

Documentation of the outcomes of compensation claims are not directly provided for as the wording of these provisions are silent on the twin requirements of 'documentation and publicly available'. However, the 1992 Constitution on issues surrounding the compulsory acquisition of land by the state and the United Nations Guiding Principles on Business and Human Rights provisions on the obligation on companies to track the effectiveness of responses to policies aimed at mitigating harm, seem to form a basis upon which the principle may be complied with.

The law in a combined effect of the 1992 Constitution, the Minerals and Mining Act, Lands Commission Act and the United Nations Guiding Principles on Business and Human Rights provides that there is evidence showing all affected communities and rights holders as having been given unfettered access to independent information and advice on the economic, environmental and social impacts of the proposed operations of growers and millers.

Evidence of land preparation without burning is not expressly provided for in law, however the Control and Prevention of Bushfires Act PNDCL 229 and the Ghana National Fire Service Act 537 go to the start and control of bush fires and the prevention of them. These laws are complimented by two national policies; The National Wild Fire Management Policy 2006, which provides the policy framework for the control and management of bushfires and the 2012 Forest and Wildlife Policy, particularly 1.6.2 and 5.3. The same laws apply to the use of fire in land preparation.

The consultants found that the law, particularly its domestic aspect does not expressly address issues bordering on the reduction of greenhouse gas emissions. However, Ghana, alongside other African countries did make commitments at the December 2015 21st Conference of Parties (CoP21) of the United Nations Framework Convention on Climate Change (UNFCCC) to reduce emissions from green-house gas to a maximum of 2% within the agreed time frame.

The requirement of a documented plan for monitoring GHG emissions falls under the same ambit of Ghana's lack of adequate laws to regulate greenhouse emissions, albeit to a larger extent as it lacks international authority as ratified by Ghana as well. However a consensus was reached on it being aptly safe to assume that the recent commitment made at 21st Conference of Parties (CoP21) of the United Nations Framework Convention on Climate Change (UNFCCC) is an indication that future legislation in this regard will be considered. Again, a look at the Ghana Forest and Wildlife Policy of 2012 admits that the government will be looking at current, global, climate change trends to take full advantage and opportunities that the initiatives under the Climate Change Convention will provide to ensure sustainability of natural resource.

Institutional Assessment

The Environmental Protection Agency (EPA)

The EPA is the primary state agency for the protection and improvement of the environment. Its operations contribute to the principle of Responsible development of new planting by the performance of the the following functions. The EPA ensures documentation of social and environmental impact assessments, management plan and operational procedures through the Environmental Assessment Regulations, 1999. Under the regulations, the EPA is also required to hold public hearings where a proposed undertaking is likely to have an effect or impact the lives of a certain class of persons usually within a

specific area. These roles together ensure that the environment is managed to mitigate the negative impact an undertaking may have on the environment.

Lands Commission

The Lands Commission was established to integrate the operations of public service land institutions under the Commission in order to secure effective and efficient land administration. One of its duties is to provide land and land related valuation services.

The Lands commission has a Land Valuation Division. The functions of the Land Valuation Division include assessing the compensation payable upon acquisition of land by the Government; assessment of stamp duty; determining the values of properties rented, purchased, sold or leased by or to Government; preparation and maintenance of valuation list for rating purposes; valuation of interests in land or land related interests for the general public at a fee and valuation of interests in land for the administration of estate duty.

Principle 8: Commitment to Continual Improvement in Key Areas of Activity.

This principle was the shortest in terms of scope as compared with other principles addressed for the purposes of benchmarking. It was found to be in its totality, partially addressed in law.

The guarantee of a continual improvement in the manner and scope of the activities of growers and millers through regular monitoring and the reviewing of activities, and the development and implementation of action plans that allow demonstrable continual improvement in key operations was found to have elements closely linked with principles 4, 5, 6, and 7 as addressed above. As such, the consultants sought to provide rather, laws that would seem to serve in a complimentary capacity to those already cited in the preceding principles. These pertained to aspects of the 1992 Constitution concerning the obligation on the state to safeguard and ensure the protection of the environment and the responsibility of governmental agencies, evidenced by the Environmental Protection Agency Act to act in the best interest of a continual appreciation of environmental issues and how some activities, be it the activities of growers and millers even, affect it, most often in the negative.

CHAPTER 4 – BENCHMARKING RSPO NEXT

Unlike the RSPO, the RSPO Next deals with the various components necessary for the protection and sustenance of the environment. The consultants categorized these components according to how sufficiently provided for in law they were found to be and

ranged from partially addressed to fully addressed. Similar to the RSPO, most components were found to be provided for in law albeit to a small extent.

Component 1. No Deforestation:

This component dealt with policies and activities companies can and should undertake in order to mitigate the risk of deforestation and general environmental pollution. It was found to be mostly partially provided for in law with two of its elements on carbon emissions from direct land use and a gender centered approach to planning having no provision in law whatsoever.

This component was understood as requiring a mandate on companies involved in oil palm production to have a deforestation policy. The law however was not found to expressly reflect this stipulation although it does through provisions from the Control of Prevention of Bush Fires Act PNDCL 229 and the 1992 Constitutional mandate on the state to ensure environmental sustenance infer a framework within which such companies can satisfy the indicator.

Although the setting up of plantations with due regard to a landscape level assessment is not directly addressed in law, especially as regards the issue of carbon stock, the law does not fail where the 1992 Constitution on both obligations of the individual and the state towards sustenance goes to give an indication of the direction that the government or individuals including companies would maybe one day do in, with respect to the conservation of carbon stock.

Carbon emissions in themselves have no take in Ghanaian law as was briefly explained in the case of the RSPO's. There are no domestic or international laws that directly address issues bothering on carbon emissions. The signing of the agreement by the government of Ghana to reduce emissions from Green House Gases to a maximum of 2%, at the recently concluded 21st meeting of the Conference of Parties to the United Nations Framework Convention on Climate Change (UNFCCC), was found by consultants to be the only indication the country has shown in the possibility of a future legislation.

With respect to the requirement of an obligation on persons involved in Oil Palm business to make a high conservation value assessment of all new plantings, the law was yet again found to be lacking in directly addressing its requirements, although it does provide a framework through the Environmental Protection Agency Act and the Environmental Assessment Regulations, which with necessary modifications may be addressed.

The provision of HCV management & monitoring plans at a landscape level does not find express meaning in law. However, the Wild Animals Preservation Act, the Environmental Assessment Regulations and the Wetlands Management (Ramsar Sites) Regulations L.I.1659 do seem to provide a framework from which the component of deforestation prevention may be achieved.

The law does address though the issue of an independent and participatory SEIA to develop management & monitoring plans to identify, minimize & mitigate the negative and promote the positive indirect or secondary impacts of the development before and throughout

development phases. It does this primarily through the functioning of the office of the environmental protection Agency, as required of by the EPA Act.

No catering was found in law to exist for the requirements that initial planning cover the first cycle of the oil palm development. However, the constitution does place a requirement on persons involved in oil palm production to carry out consultations within communities before engaging in their activities.

A thorough reading of the 1992 Constitution, the EPA Act, and the Environmental Assessment Regulation mandates companies to manage and protect areas deemed unsuitable for oil palm development in areas under their control. The requirement of evidencing such activities was as such found to be substantially complied with. Particularly because the law mandates companies to provide specific frameworks within which the negative impacts of the activities on the environment can be managed.

Institutional Assessment

The Environmental Protection Agency

The EPA has the authority under section 12 of the EPA Act to request, by notice in writing, a person responsible for an undertaking which is likely to have, adverse effect on the environment to submit within the period specified in the notice an environmental impact assessment. Upon issuing the notice, the agency informs the organ or the department of government that has responsibility for the issue of a licence, permit, an approval or a consent in connection with a matter affecting the environment that the notice has been issued, and that organ or department shall not grant the licence, permit, approval or consent unless with the prior approval in writing of the Agency after compliance with the notice.

Per the Environmental Assessment regulations, 1999, some specified undertakings under the regulations require permits from the EPA. This creates a framework within which the negative impacts of the activities on the environment can be managed by the EPA.

Component 2. No Use of Fires

This component was found to be adequately provided in law, averaging evenly between addressed and fully addressed.

The Control and Prevention of Bushfires Act regulates the start and management of bush fires and bars the use of open burning/fire in new or ongoing operations for land preparation, land management, waste management, or any other reason other than is justified under law. It regulates fires mainly through the issuance of permits before any act

involving burning can be undergone on any piece of land or property. It finds express provision in law and is covered on all angles.

The provision of plans, procedures and facilities to prevent, monitor and combat fire on land they manage as well as in the vicinity of estates by companies or industries are given an adequate framework through the Control and Prevention of Bushfires Act. The Act requires some level of planning to combat and manage fire on land. However, it does not fully satisfy the component as adequate provisions have not been made for the WRI Global Forest Watch Tool which are suggested as monitoring aids.

Institutional Assessment

Bushfire Control Sub-Committees of District Assemblies

The Control and Prevention of Bush Fires Act, 1990 (PNDCL 229) establishes a Bushfire Control Sub-committees in each District Assembly. The membership of the sub-committee is to be determined by the Assembly. The mandate of the Sub-Committee includes the drawing-up for the consideration of the District Assembly the appropriate by-laws to ensure adequate prevention, control and monitoring of bushfires, specifying the periods in the year within which the burning of farm slash, grass, herbage and dead wood shall be prohibited and setting up town, area and unit bushfire control committees which shall direct the activities of the town, area or unit fire volunteer squads. The Sub-committee is also required to compile data on the bushfire outbreaks and offences within the District.

Director of Agricultural Extension Services / Director of Animal Health and Production Department of Ministry of Agriculture

The Control and Prevention of Bush Fires Act, 1990 (PNDCL 229) gives the Director of Agricultural Extension Services/ Director of Animal Health and Production the mandate to authorise the setting of fire to a specified area other than a conservation area for the purpose of range management or any other agricultural purpose.

Chief Executive of the Forestry Commission

The Control and Prevention of Bush Fires Act, 1990 (PNDCL 229) gives the Chief Conservator of Forests or the Chief Game and Wildlife Officer (CEO of the Forestry Commission) the mandate to authorise any their staff to set fire within an established forest or wildlife conservation area for the purpose of either management of the area or the protection of the area against accidental fire.

Attorney General Department

The Control and Prevention of Bush Fires Act, 1990 (PNDCL 229) states that failure to comply with the provisions of the Act constitutes an offence. The 1992 Constitution in Article 88 provides that the Attorney General shall be responsible for the initiation and conduct of all prosecutions of criminal offences

Component 3. No Planting on Peat

The law was for the most part found to be silent on matters concerning peat and planting on or farm practices pertaining especially to peat soils. This component was as such predominantly not found in law with only one element being addressed albeit to a very small degree.

As stated in introducing component 3, the law is silent on matters pertaining to new planting on peat soils to any depth. Proper provisions have not been made that expressly forbids planting on peat soil. However, the 1992 Constitution and Principle the Rio Declaration (international law) are indicative of the fact that care should be taken by all stakeholders in exploiting the environment to ensure that adverse effects are reduced to the barest minimum. Same was found to apply to the requirement of plantations on peat soils adhering to the RSPO's best management practices and records of peat drainability being made available.

However, the development of plans in conjunction with affected communities where a company has identified a place unsuitable for oil palm for the appropriate management of such areas was understood by the consultants as placing an obligation on entities involved in oil palm to ensure that plans are in place to discontinue the replanting of oil palm where the soil is unsuitable and was in this regard found to be addressed to some extent. The law only provides a framework for the conservation of unsuitable soils but does not directly address the issue of replanting.

Component 4. Reduction of GHG

The entirety of this component was unfortunately found to be completely absent in the laws of Ghana, be it in domestic law or international law (as ratified).

Consultants came to a conclusion on the entire component that in spite of various commitments made by governments all over the world to reduce green-house gas emissions (the latest being the agreement reached at the 21st COP of the UNFCCC) available municipal and international laws do not directly address this component indicator; especially the requirement of an RSPO approved tool as a monitor. Concerning a management and monitoring plan targeting GHG emissions specifically however, it is necessary to note that although the law provides a framework for the management and monitoring of a plan by means of an environmental impact assessment, this plan does not make provisions for green-house gas emissions.

Component 5. Respect for Human Rights

This component was found to have aspects that span across the various estimations; fully addressed, addressed, partially addressed, and not addressed at all. The most predominant however was again partially addressed as although the law was found to some extent cover the instructional indicators, they lacked substantial detail and demanded high levels of inference.

The law was found to, to some extent, provide for the fair treatment of small holders mainly through the 1992 constitution which places obligations on both the individual and the state to respect the rights of others and the environment and also in international law. International law here was found to be more specific to the issue of smallholders where the International Labour Organisation Recommendation 1968 (No.132) and the International Labour Organisation Convention on Social Policy seek to bar states from engaging in activities that will cause wanton economic frustration and indebtedness to agricultural workers of all categories. (here being smallholders). Additionally, consultants in considering the constitution found that articles 256 and 267 of the 1992 Constitution give a general sense of smallholders being sufficiently taken care of.

The issue of conflict prevention and response to complaints was marked as not addressed in law, although there do exist mechanisms geared towards dispute resolution within the law, they do not cover FPIC. This was found substantial enough to override any demarcation of law to this aspect of the component as it had been specified in the very wording of the requirement to conflict prevention (FPIC) as essential to its crust.

The requirement that land use be free of conflict was understood by consultants to require that the subject matter land for oil palm production be free from disputes of any kind; be they through intimidation and harassment in the workplace, refusal by a community to planned development or any other sensitive issue that could lead to tensed confrontations. The cumulative effect of the 1992 Constitution on the right to own property, the Alternative Dispute Resolution Act on conflict resolution and the Labour Act ensures that there is a proper framework in place for the resolution of any conflict that may arise from the use of land for oil palm production.

The lack of legal provisions concerning FPIC was again reiterated by consultants where the requirement on companies to respect FPIC and its incidents was marked as absent in law.

A framework for parties to resolve conflict by means of alternative dispute resolution (ADR Act) as mentioned in paragraphs prior is provided for in law. Additionally, the establishment of the Lands Division in the High Court provides further means of resolving conflict arising out of land use and ownership. These incidents when read together were found by consultants to adequately satisfy the requirement that growers, through their mechanism to resolve conflicts, show evidence that the necessary action to resolve the conflict with relevant parties has been or is being taken.

The law again provides a framework that ensures that Oil Palm growers do not extend beyond the boundaries of their land illegally, albeit to a small extent and in international law only, domestic being relatively silent on the matter. The International Labour Organization Convention does this where it mandates states to control, by the enforcement of adequate

laws or regulations, of the ownership and use of land resources to ensure that they are used, with due regard to customary rights, in the best interests of the inhabitants of the country.

Fair labour practices are guaranteed in Ghanaian law mostly through the labour Act 2003, which generally regulates all instances covering the employment relationship between the employer and the employee. The requirement on companies to work hand in hand with the workforce to establish and implement a compensation package was as such found to be addressed adequately in law. The minimum wage in Ghana is set by a National Tripartite Committee. Labour Unions and Employers associations are members of the Committee and as such play a role in setting the wage. This satisfies the requirement of a mutually agreed minimum wage. The law is not silent on compensating workers as well where it is required that in the instance of a need to lay off workers due to changes within a company adequate compensation to given out to affected persons.

Ghanaian law does not bar the joining or participation of migrant workers in trade union activities or collective bargaining. The law in fact guarantees its incidents in detail and expressly allows it. The constitution and the labour Act go hand in hand to illustrate a right to join or form a trade union association. The cited laws therefore fully address this aspect of the component (on the participation of migrant workers in union activities). The same applies to citizens as well where the requirement that both employers and employees understand the workers right to collective bargaining and freedom of association finds detailed meaning in law through again the constitution and the labour Act.

On the pantheon of fair labour practices, the 1992 Constitution on the rights of children and the Labour Act's provisions on the employment of women and young children expressly bars persons under the age of 18 from engaging in hazardous work. The law was found by consultants to make provision for minors and children and their protection from particular dangers. The 1992 constitution specifies these forms of special protection as against physical and moral dangers. Children are barred from engaging in certain forms of work and employers are strictly obligated to exercise care and adequate supervision where such young persons are under their employ.

Paraquat was understood by the consultants to be a toxic fast acting herbicide which becomes de-activated in the soil. This definition guided the consultants in taking a view that it can be read to be among the list of prohibited chemicals covered in the Pesticide Control and Management Act. This aspect of the component as regards the use of paraquat was as such marked as being partially addressed in law.

On the requirement of evidence of initiatives geared towards maximizing the education and career opportunities of the children of employees, there was found to exist precedence where employers have set-up schools for the children of all employees. However, this is not expressly regulated by law in Ghana. The right of individuals to set-up schools is an indicator of employers being able to grant educational opportunities to children of all employees. This satisfies this aspect of the component in part.

Article 27 of the 1992 constitution mandates the giving of some special care to mothers during a reasonable period before and after child-birth with paid leave. This provides a base for women to have segregated rights. Article 21 provides a constitutional framework for the requirement of committees created specifically to address areas of concern to women. The Labour Act goes the extra mile to guarantee women extra rights that protect their interests. These include special rights during pregnancy and maternity leave. The cumulative effect of these laws represent a base for the requirement.

The 1992 constitution gives CHRAJ the mandate to investigate complaints of alleged human right breaches, corruption, injustice inter alia and to take appropriate action to address them. This satisfies to an extent the requirement that all complaints, grievances of harassment or abuse are documented and their responses & actions monitored. In addition, constitutional provisions point to a protection of public service workers from victimization and discrimination. This also addresses the requirement.

Institutional Assessment

The Courts

The Supreme Court has the original mandate for the enforcement of the provisions of the constitution. Thus, whenever any act or omission is inconsistent or in contravention a provision of the constitution, the Constitution in Article 2 provides for any person to bring an action to the court for a declaration to that effect. The Supreme court further has the authority to give such orders and directions, which it considers appropriate, to give effect to the declarations so made.

However, the mandate of the Supreme Court to enforce the provisions of the constitution, is subject to the jurisdiction of the High Court to try at first instance breaches of Fundamental Human Rights and Freedoms as provided for in Chapter Five of the 1992 Constitution. The High Court has the authority to issue such directions or give orders in the nature of prerogative writs as it may consider appropriate for the purposes of enforcing any of the provisions on fundamental human rights and freedoms. A person not satisfied with the judgment of the High Court may appeal to the Court of Appeal with a right of further appeal to the Supreme Court.

Besides this mandate, the High Court per Article 140 of the 1992 Constitution generally has jurisdiction in all matters, criminal and civil. And as noted earlier, the establishment of the Lands Division in the High Court provides further means of resolving conflict arising out of land use and ownership.

National Labour Commission

The National Labour Commission was established to implement the Labour ACT, 2003 (Act 651). Its mandate includes receiving and investigating complaints from workers, trade unions,

and employers, or employers' organisations on industrial disputes and allegations of infringement of any requirements of the Labour Act, 2003 and its implementing regulations. The Commission also has the power to notify employers and employers' organisations or workers and trade unions in cases of contravention of this Act and the Regulations and direct them to rectify any default or irregularities. Therefore it ensures a mechanism for redress when the provisions of the Labour Act, 2003 are contravened such as infringement of the right to form or join trade unions or young persons are employed in hazardous work by an employer.

Furthermore, the Commission, in settling an industrial dispute, has the powers of the the High Court in respect of enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise and compelling the production of documents.

Ministry of Children, Gender and Social Protection

The Department of Social Welfare, under the Ministry of Children, Gender and Social Protection has been given the duty under the Children's Act, 1998 (Act 560) to enforce the provisions relating to child labour.

The Act provides in Sections 95 and 96 that a member of the department or a labour officer may carry out an enquiry that s/he considers necessary in order to be sure that the provisions of the Act with respect to labour by children and young persons are being strictly observed. And where the member is reasonably satisfied that the provisions of the Children's Act relating to child labour are not being complied with, the member of the Department shall report the matter to the police who shall investigate the matter and take the appropriate steps to prosecute the offender, subject to the powers of the Attorney-General under article 88 of the Constitution.

Commission on Human Rights and Administrative Justice (CHRAJ)

The 1992 Constitution establishes CHRAJ. The commission comprises of one commissioner with two deputies. As noted above, CHRAJ has the mandate to investigate complaints of alleged human right breaches, corruption, injustice, unfair treatment of any person by a public officer in the exercise of his official duties inter alia and to take appropriate action to address them.

In the performance of such functions, CHRAJ has the power to, inter alia, issue subpoenas compelling the attendance of any person or production of document before it and to cause any person contemptuous of any such subpoena to be prosecuted before a competent court.

The Commission has in each Region and district regional and district branches, with officers appointed by the Commission who head the branches. The representative of the Commission in a regional or district office of the Commission has the duty to receive complaints from the public in the Region or district, make an on-the-spot investigation that

may be necessary, and discharge any other duties relating to the functions of the Commission that may be assigned by the Commissioner. A complaint may be made by person or a body corporate to the national offices of CHRAJ.

Again, the establishment to CHRAJ enhances the satisfaction of the requirement that all complaints, grievances of harassment or abuse are documented and their responses & actions monitored.

Component 6. Transparency

This component was primarily absent in law with only one aspect finding some, albeit mild, meaning in Ghanaian law.

Consultants found that at the heart of the requirement of a documented standard operation procedure (SOP) for responding constructively to stakeholder requests for information was the existence of a documented SOP when information is demanded. Current legislation however does not address this although the 1992 Constitution in article 21(f) gives a right to information.

A cumulative appreciation of the Companies Act, the Economic and Organized Crime Office Act 804, the Labour Act and the United Nations Convention Against Corruption infers a responsibility on companies to institutionalize a code of ethics and integrity in the workplace.

The existence of a traceable system to identify the location of production for all FFB, including percentages, from their own production, associated smallholders, dealers and independent smallholders and any other outgrower or other source of FFB was found to be absent in law. The requirement was found to have no policy, law or regulation (PLR) addressing it primarily because of its more futuristic than present outlook. Same was found to apply to the requirement to source FFB from known and identified sources within 1 year and the provision of verification system within 2 years of the RSPO Next.

CHAPTER 5

SUMMARY OF FINDINGS AND CONCLUSION

The Consultants looked mainly at Ghanaian law in determining whether or not the specified indicators were sufficiently regulated or otherwise: Domestic legislation, which included the 1992 Constitution, Acts of parliament, legislative instruments and case law, that, and, International Conventions signed and ratified by the parliament of Ghana.

Breaking down the 8 principles provided for in the RSPO and their various criterions and indicators, Principle 1 on commitment to transparency was found to be partially addressed. Although its aspect on keeping of records on requests and responses was seemingly absent, consultants found that some inferences could be made, which showed that it was indeed

provided for. The institutions found to govern this principle were The High Court, specifically the lands division of the high court, which has original jurisdiction in all civil matters including land disputes, the Environmental Protection Agency, which is the primary state agency responsible for improving and protecting the environment, and the Registrar Generals department, which exercises both regulatory and enforcement functions.

Principle 2 on compliance with applicable laws and regulations was found to be an omnibus principle, requiring both growers and millers to ensure adherence to enforcement of the laws within the jurisdiction they find themselves in. Institutions necessary for its functioning was said to include the registrar generals department, the lands commission and the lands division of the high court.

Principle 3 titled commitment to long term economic and financial activity contained no provision for in Ghanaian law at all.

Principle 4 however, on the use of appropriate best practices by growers and millers, was found to be inadequately provided for under Ghanaian law. Many of its indicators were partially addressed, with the documentation of operating procedures and its monitoring and implementation, the only element to have none of its aspects addressed in law, even partially. The institutions found to assist this principle included the Environmental Protection Agency, which is mandated to regulate the import, export, manufacturing, distribution and use of pesticides, Planning Committees set up by the Land Planning and Soil Fertilization Act, the Water Resources Commission, the Irrigation Development Authority and the National Labor Commission, all being institutions which regulate activities of farmers and corporations that may harm the environment.

Principle 5 dwelled on environmental responsibility and the conservation of natural resources and biodiversity. It was found by consultants to be to a large extent addressed in law, although for the most part partially. Aspects of plantation and mill management that have environmental impacts was however found to be fully addressed. The institutions responsible for this principle? The Environmental Protection Agency, which has the power under law to, require a person responsible for an undertaking which is likely to have adverse effect on the environment to submit within a period an environmental impact assessment, Honorary Game Officers, as created by the Wild Animals Preservation Act, with the duty to regulate human activity likely to cause harm to the environment, the Energy Commission, Bushfire Control Sub-Committees, formed by the Control and Prevention of Bushfires Act, Director of Agricultural Extension Services / Director of Animal Health and Production Department of Ministry of Agriculture, Chief Executive of the Forestry Commission, and the Attorney Generals Department which is responsible for instituting actions on behalf of the state (where there is an infringement)

Principle 6 on responsible considerations of employees and of individuals was found to have most of its indicators addressed under the laws of Ghana. Institutions responsible for its incidents were stated as the Environmental Protection Agency, the Office of the Administrator of Stool Lands, and the National Labour Commission; which provides a framework to ensure the realization of the right to work and to equal pay for equal work.

The Labour Act, 2003 in section 10 states the rights of a worker and the Commission has the mandate to receive and investigate complaints from workers, trade unions, and employers, or employers' organisations on industrial disputes and allegations of infringement of any requirements of the Labour Act.

On responsible development of new plantings under Principle 7, consultants found its indicators averagely squared between partially addressed and not addressed at all. Institutions responsible for its regulation were found to be primarily two: the Environmental Protection Agency and the lands commission

Principle 8, which had the smallest number of indicators, covered commitment to continual improvement in key areas of activity. It was found to in its totality, be partially addressed. No institutions were specified however.

The consultants then addressed the components of the RSPO Next.

Component 1 dealt with the policies and activities companies should undertake in order to mitigate the risk of deforestation. This component was found to be mostly partially provided for in law with two of its elements on carbon emissions from direct land use and a gender centered approach to planning having no provision in law whatsoever. The institution responsible for its enforcement was identified as the Environmental Protection Agency.

Component 2 had the title, No Use of Fires and was found to be adequately provided in law, averaging evenly between addressed and fully addressed. The institutions with the requisite mandate to address this component were said to be the Bush fire control sub-committees of district assemblies, Director of Agricultural Extension Services / Director of Animal Health and Production Department of Ministry of Agriculture, the Chief executive of the forestry commission, who has the mandate to authorise any staff member to set fire within an established forest or wildlife conservation area for the purpose of either management or the protection against accidental fire, and The Attorney Generals Department, responsible for instituting legal proceedings where there is a breach of the laws governing forest fires.

Component 3 dealt with planting on peat soils. Ghanaian law was found to be for the most part, silent on matters concerning peat and planting on or farm practices pertaining especially to peat soils. This component was as such predominantly not found in law with only one element being addressed albeit to a very small degree. There were as such no institutions specified for its governance within Ghanas territorial borders.

Component 4 on the Reduction of GHGs fared worse, having the entirety of its incidents completely absent in the laws of Ghana, be it in domestic law or international law (as ratified). No institutions were as such provided for.

Component 5 covered the broad title of Respect for Human Rights and was found to have aspects which span accross the various estimations; fully addressed, addressed, partially addressed, and not addressed at all. The most predominant however was partially addressed. Although the law was found to some extent cover the instructional indicators, they lacked substantial detail and demanded high levels of inference. Institutions

responsible for this title were stated to include: The court, National Labor Commission, Ministry of Children, Gender and Social Protection, and the Commission on Human Rights and administrative justice.

Component 6, the last of the RSPO Next, dealt with transparency. Unfortunately, it was found to be primarily absent in law with only one aspect finding some, albeit mild, meaning in Ghanaian law. It had no institutions provided for.

Looking at these laws in perspective, consultants found a staggering 33 indicators not addressed at all in Ghanaian legislation (covering 25%) and 79 indicators only partially addressed (57%). This as compared to the meagre 17 indicators found to be fully addressed (12%) and 8, addressed to an average extent (6%) served as clear evidence of the inadequacy of Ghanaian laws as relates specifically to environmental protection.

75% of the indicators were found to be covered either specifically, generally or as a combination of some legislative provision. Consultants concluded on a position that, although the laws does exist, in not only providing the rules and methods of conduct, but also in establishing institutions to better address environmental issues, their implications do not reflect in a substantive way. The consultants for the most part (57% being its largest margin- partially addressed) had to strain to determine whether certain indicators were indeed provided for under law, in most cases having to rely on a combination of multiple legislations in order to pronounce on good grounds a requirement as met.