Legal Aspects in the Implementation of CDM Afforestation and Reforestation Projects: The Ghanaian Experience

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Executive Summary

There is as yet no DNA in Ghana in the formal or official sense, although proposals for setting up a DNA have been made by the Environmental Protection Agency to the Cabinet. Between the two models put forward, the setting up of a National Climate Change Commission (NCCC) under the Ministry of Environment, proposed under the draft Climate Change Commission Act of 2004, appears to be the favoured option.

The sources of domestic requirements for CDM AR project activities are fragmented and not easily accessible. This situation is a challenge and disincentive to potential investors. When eventually set up, it is hoped that the DNA can help to improve the situation by assisting CDM investors to understand the applicable laws and regulations and facilitating familiarity with national policies and procedures relating to the CDM. The Government of Ghana (GoG) is also working to put in place a “one stop shop” for investors interested in forest plantation development, to guide them in securing various approvals and permits required by law. It is also envisaged that the DNA will seek to ensure that the rights and needs of local community groups in CDM AR project areas are clearly recognised and articulated in CDM AR project agreements.

Potential CDM projects in Ghana would include the rehabilitation of degraded forest areas and the promotion of tree planting in agroforestry systems as positive community-building actions. To accommodate CDM AR project activities, a comprehensive database for plantation development covering site classifications, terms of tenure of various land types, and special site matching needs to be developed.

While Ghana’s forestry development programmes antedate its accession to the Kyoto Protocol, the CDM AR project activities carried out under these programmes are necessarily non-additional, as the GoG will only be able to proceed with the implementation of many of these activities with supplementary, and most likely foreign, funding. Even the Forest Plantation Development Fund created to encourage small-scale/private sector commercial plantation developers and public sector institutions to embark on a sustained programme of afforestation and reforestation is only an instrument for channelling funding, and is not expected to be a significant source of funds. Thus, CDM is seen as a potentially important source of extra funding.

The right to a CER is not specifically defined in any law in Ghana, and there are no known plans to define the right by means of legislation in the immediate future. The hope, however, is that when the DNA is designated and established, the issue of defining the right may be pursued. In the context of the Land Registration Law, CERs are akin to “profit” or the right to go on to the land of another person to take a particular type of object from the land, which is recognised as an interest in land that may be registered, and may be part of the soil or a product of the soil. Theoretically, registration of the right to a CER will generally strengthen the right and give it certainty. The consultant notes, however, that the land registration system is currently underdeveloped and inefficient.

The consultant believes that varying contractual characterizations of the rights to CERs, in the absence of a clear legal definition of the right, would undermine the principle of fairness and equity, as outcomes of negotiations would differ from project to project and agitations may occur in communities where the outcomes of negotiations may not be good in relation to other project areas.

While there are no special requirements that CDM AR project participants need to comply with to become CDM AR project participants, the introduction of a competitive procedure for forest utilization contracts aims to eliminate unnecessary speculators and to ensure that capable and properly equipped processors and entrepreneurs have access to adequate and sustainable resources.
There is as yet no formal legal framework for determining whether a CDM AR project assists in sustainable development. There have, however, been consultations and discussions toward the adoption of a document on selection of sustainable development indicators for Ghana. The draft Climate Change Commission Act of 2004 mandates the DNA to develop procedures and criteria to ascertain if a particular CDM project activity assists in achieving sustainable development and also to ensure that approved CDM project activities continue to meet established sustainable development criteria through monitoring.

The underlying factor underpinning the legal issues raised in the study is essentially one of land rights and its socio-economic and environmental implications. The land sector faces a number of constraints and challenges, including the wide diversity of traditional tenure systems. No CDM AR project can ignore subsisting traditional customary rights, since most of the lands to be used for CDM AR projects (78%) will come from customary lands. The extent of land-related difficulties to be faced, however, will be determined by factors such as the nature and scope of due diligence to be carried out, the depth of prior consultations with interested stakeholders, and the acceptability of the benefits to be derived. The drawing up of a standard land lease agreement to be used for land allocations for CDM AR project activities to enhance land access, strengthen security of tenure and provide mutually agreeable guidelines for resolving issues related to title to carbon may be one concrete action that can be taken. Models for such agreements do exist, e.g., in the case of the African Development Bank-funded Community Forestry Management Project (CFMP, 2003).

Ghana has fairly developed benefit-sharing systems under the Timber Resources Management (Amendment) Act, 2002, the National Forest Plantation Development Programme (2001), and the CFMP. In addition, a Social Responsibility Agreement, which includes an undertaking to assist communities and inhabitants of the timber utilization areas with amenities, services or benefits, needs to be executed by a timber utilization contract (TUC) holder. These schemes are, however, currently being implemented only as policy measures without direct legislative basis. Forestry legislation must address this instability to put the matter beyond doubt and avoid potential legal controversy.

While there is improved compliance with the forestry sector laws and regulations, compliance with laws dealing with land and the environment leaves much to be desired. The CDM framework is expected to enhance compliance and enforcement of some of these legal requirements.
# Acronyms and Abbreviations

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<thead>
<tr>
<th>Acronym</th>
<th>Full Form</th>
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<tr>
<td>BEA</td>
<td>Bureau of Environmental Analysis International</td>
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<td>CBD</td>
<td>Convention on Biological Diversity</td>
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<td>CCSEC</td>
<td>National Climate Change Secretariat</td>
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<td>CFC</td>
<td>Community Forest Committee</td>
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<td>CFMP</td>
<td>Community Forest Management Project</td>
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<td>CII</td>
<td>Country Implementing Institution</td>
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<td>DNA</td>
<td>Designated National Authority</td>
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<td>EIA</td>
<td>Environmental Impact Assessment</td>
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<td>EIAFW</td>
<td>EPA Sector-Specific Environmental Impact Assessment Guidelines for Forest and Wood Industries</td>
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<td>EMP</td>
<td>Environmental Management Plan</td>
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<td>FC</td>
<td>Forestry Commission</td>
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<td>FDMP</td>
<td>Forestry Plantation Development Centre</td>
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<td>FSD</td>
<td>Forestry Services Division</td>
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<td>GHG</td>
<td>Greenhouse Gas</td>
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<td>GHI</td>
<td>Genetic Heat Index</td>
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<td>GIPC</td>
<td>Ghana Investment Promotion Centre</td>
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<td>GoG</td>
<td>Government of Ghana</td>
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<td>GPRS</td>
<td>Ghana Poverty Reduction Strategy</td>
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<td>LAP</td>
<td>Land Administration Project</td>
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<td>LC</td>
<td>Lands Commission</td>
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<td>LI</td>
<td>Legislative Instrument</td>
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<td>MDAs</td>
<td>Ministries, Departments and Agencies</td>
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<td>MES</td>
<td>Ministry of Environment and Science</td>
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<td>MLF</td>
<td>Ministry of Lands and Forestry</td>
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<td>MOFA</td>
<td>Ministry of Food and Agriculture</td>
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<td>MTS</td>
<td>Modified Taungya System</td>
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<td>NCCC</td>
<td>National Climate Change Commission</td>
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<td>NDPC</td>
<td>National Development Planning Commission</td>
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<td>NFDP</td>
<td>National Forest Plantation Development Programme</td>
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<td>NRCD</td>
<td>National Redemption Council Decree</td>
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<td>ODA</td>
<td>Official Development Assistance</td>
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<td>PDD</td>
<td>Project Design Document</td>
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<td>PNDCL</td>
<td>Provisional National Defence Council Law</td>
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<td>SRA</td>
<td>Social Responsibility Agreement</td>
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<td>TUC</td>
<td>Timber Utilization Contract</td>
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<td>VAT</td>
<td>Value Added Tax</td>
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Responses to Questionnaire

A. General Questions

1. Administrative and regulatory set-up

   a. Which government institutions are responsible for:
      i. forestry;
      ii. land; and
      iii. the environment?

Which law(s) is/are the source(s) of the mandates of these institutions? Are these institutions
national or local institutions? In the case of local institutions, please indicate which local
level (e.g., state, provincial or district) they refer to and describe their relationship with
related national institutions (i.e., institutions with related or similar mandates).

a. Lands, forestry and environment governance

The 1992 Republican Constitution of Ghana provided for a regime for the protection of lands\(^1\) and natural
resources.\(^2\) Appropriate Ministries and other institutions of government have been established to formulate
relevant policies for the protection, management and regulation of these resources.

Section 11 of the Civil Service Law, 1993 (P.N.D.C.L. 327) as amended by the Civil Service
(Amendment) Act, 2001 (Act 600) provides the statutory basis for the creation of Ministries and
Departments as the President of the Republic may determine.

In exercise of these powers conferred on the President, the Executive Instrument (E.I.) No. 6 known as
the Civil Service (Ministries) Instrument, 2003 was duly made constituting various Ministries including
the Ministry of Environment and Science and the Ministry of Lands and Forestry on 11 July 2003.\(^3\)

Section 13 of the Civil Service Law, 1993 (P.N.D.C.L. 327) provides for the functions of Ministries as
follows:

- initiate and formulate policies taking into account the needs and aspirations of the people;
- undertake development planning in consultation with the National Development Planning
  Commission; and
- co-ordinate, monitor and evaluate the efficiency and effectiveness of the performance of the
  sector.

These form the statutory basis of the functions of the Ministries mentioned below.

**The Ministry of Lands and Forestry (MLF)**

This Ministry has overall responsibility for sector planning and policy direction and for monitoring and
evaluation of development policies and programmes\(^4\) relating to lands and forestry. Its Mission Statement
stipulates that it “exists to ensure the sustainable management and judicious utilization of the nation’s
lands, forestry and wildlife resources for socio-economic development and equitable growth of Ghana”.\(^5\)

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\(^1\) The 1992 Republican Constitution of Ghana, Articles 257 and 258.

\(^2\) The 1992 Republican Constitution of Ghana, Articles 268 and 269.

\(^3\) The Civil Service (Ministries) Instrument, 2003 (E.I. No. 6) revoked the Civil Service (Ministries) Instrument, 2001 (E.I. No. 18) and instituted
the Ministries of the Civil Service afresh.


\(^5\) See www.ghana.gov.gh/governing/ministries/infrastructure/forestry.php
The stated objectives of the MLF include:6

- to develop and manage sustainable lands, forest and wildlife resources;
- to facilitate equitable access, benefit sharing from and security to land and forest resources;
- to promote public awareness and local communities’ participation in sustainable management and utilization of forest, wildlife and land use management;
- to review, update and consolidate existing legislation and policies affecting natural resource management;
- to promote and facilitate effective private sector participation in land service delivery, forest and wildlife management and utilization;
- to develop and maintain effective institutional capacity and capability at the national, regional, district and community level for land, forest and wildlife service delivery;
- to develop and research into problems of land, forest and wildlife resource and land use; and
- to reduce tensions between Government and customary landowners, foster good governance in land administration by internalizing measures for participatory management, accountability, transparency and to enhance private sector participation.

a. i. The Forestry Commission (FC)

Article 269(1) of the 1992 Constitution empowered Parliament to establish by an Act of Parliament, a Forestry Commission to regulate and manage the use of forestry resources and to co-ordinate related forestry policies. The Commission was established by virtue of the Forestry Commission Act, 1999 (Act 571) as a body corporate (Section 1(2) of Act 571) with the Minister responsible for forestry having ministerial responsibility for the Commission (Section 3(1) of Act 571) and who may give general directions to the Commission on matters of policy (Section 3(2) of Act 571) “for the regulation and management of the utilization of forest and wildlife resources of Ghana and the co-ordination of the policies in relation to them”.7

The object and functions of the Commission are set out in detail under the Forestry Commission Act, 1999 (Act 571), and can be summarised as follows:8

- to regulate the utilization of forest and timber resources;
- to manage the nation’s forest reserves and protected areas;
- to assist the private sector and other bodies with the implementation of forest and wildlife policies; and
- to undertake the development of forest plantations9 for the restoration of degraded forest areas, the expansion of the country’s forest cover and the increase in the production of industrial timber.

To enable the FC to effectively execute its objects and functions, the Act establishes four (4) Divisions of the Commission.10 These are the Forest Services Division (FSD), the Forest Products Inspection Division;

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6 Ibid.
7 See the 1992 Republican Constitution of Ghana, Article 269(i); the Memorandum accompanying the Forestry Commission Bill, 2 March 1999, p.i; the Preamble to the Forestry Commission Act, 1999 (Act 571), and para 2(i) of the Act.
8 See paragraphs 2(2)(a), (b), (c) and (d) of the Forestry Commission Act, 1999 (Act 571).
9 The Forestry Commission Act, 1999 (Act 571) does not define the term “plantation”. Nevertheless the use of the term does not necessarily refer to only commercial plantations in Ghana. The Forestry Plantation Development Fund (Amendment) Bill was proposed to amend the Forest Plantation Development Fund Act, 2000 (Act 583) to ensure that beneficiaries of the Fund were not limited to private sector commercial plantation developers only, but also enable small-scale and public sector institutions to benefit from the Fund. See also the Memorandum to Parliament on the Forest Plantation Development Fund (Amendment) Bill of 18th January 2002; the ambit of this function of the FC is wide enough also for purposes of the CDM AR programmes and activities, although there is no direct reference to the CDM under Act 571. Current forestry policy practice can be adjusted to meet the imperatives of the CDM.
10 Ibid., paragraph 10(1) and (2).
the Timber Export Development Division and the Wildlife Division. All these are answerable to the Commission in the performance of their functions and duties.  

**a. ii. Land administration**

Under the MLF perhaps the foremost land sector agency is the Lands Commission, which is provided for under the 1992 Republican Constitution and established by the Lands Commission Act, 1994 (Act 483) to execute the following functions:  

- on behalf of the Government, manage public lands and any lands vested in the President or any lands vested in the Commission;
- advise the Government, local authorities and traditional authorities on the policy framework for the development of particular areas of Ghana to ensure that the development of individual pieces of land is co-ordinated with the relevant development plan for the area concerned;
- formulate and submit to Government recommendations on national policy with respect to land use and capability; and
- advise on, and assist in the execution of, a comprehensive programme for the registration of title to land throughout Ghana.

The LC has corresponding branches in each Region known as a “Regional Lands Commission” to perform the functions of the Commission in respect of the Region.

**a. iii. The environment**

Pursuant to developments in international environmental policy since 1992 and the obligations arising out of the 1992 Republican Constitution of Ghana the government created a new Ministry of Environment in 1993. This later metamorphosed into the Ministry of Environment, Science and Technology (MEST). Today it is known as the Ministry of Environment and Science (MES), which is responsible for initiating and formulating policies for promoting sound resource management and sustainable development.

The functions of the Ministry include:

- protection of the environment through policy, economic, scientific and technological interventions needed to mitigate any harmful impacts caused by development activities;
- standard setting and regulatory activities with regard to the application of science and technology in managing the environment for sustainable development;

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15 Hitherto, the Environmental Protection Council, established by the Environmental Protection Council Decree, 1974 (N.R.C.D. 239) and subsequently amended by the Environmental Protection Council (Amendment) Decree, 1976 (S.M.C.D. 58) was the body that advised government on matters relating to the environment.
16 See the brochure *MEST: What it is, what it does* (1995).
17 See also Sec.13, Civil Service Law, 1993 (P.N.D.C.L. 327).
- promotion of activities needed to underpin the standards and policies required for planning and implementation of development activities; and
- co-ordination, supervision, monitoring and evaluation of activities that support goals and targets of the Ministry and national sustainable development.

Environmental Protection Agency (EPA)

The EPA came into being by virtue of an Act of Parliament, the Environmental Protection Agency Act, 1994 (Act 490). The EPA was created to be responsible for regulating the environment and ensuring the implementation of government policies on the environment. This became necessary after the creation of a Ministry of Environment which assumed the role of environmental policy formulation. The Act therefore drew a clear distinction between the policy formulation role of the Ministry and the regulatory and enforcement role of the new Agency.

The Environmental Protection Agency Act, 1994 (Act 490) provides for the establishment of Regional and District offices to perform the functions of the Agency in the respective Region or District.

b. Is there a central permitting system for afforestation and reforestation (AR) projects? Otherwise, how would an AR project implementer go about obtaining the necessary permits?

The FC is the first stop for an investor seeking to invest in AR project(s). Under the Timber Resources Management (Amendment) Act, 2002 (Act 617) “[a]n application to invest in a project that involves forest or wildlife shall be submitted to the Commission for assessment and recommendations to the Minister.” Where the application is in respect of timber rights, the Minister’s approval is in the form of a Timber Utilization Contract (TUC) signed between the Minister on one hand and the applicant on the other, subject to the terms and conditions provided under Regulation 14 of Timber Resources Management (Amendment) Regulations, 2003 L.I. 1721 and Section 8 of the Timber Resources Management Act, 1997 (Act 547).

The mere signing of a TUC will not automatically entitle a holder of a TUC to commence business if other statutory requirements have not been met. Therefore, upon approval by the Minister, the holder of the TUC will still be required to obtain other approvals as may be required for example by the Environmental Protection Agency (EPA), or by the appropriate District, Municipal or Metropolitan Assembly. The Government of Ghana (GoG) is currently working to put in place a “one-stop shop” for investors interested in forest plantation development. The “one-stop shop” will be an administrative set-up to facilitate the effort of applicants/investors to secure various approvals/permits required by the laws of Ghana.

c. Is there a designated national authority (DNA) in the host country? Is the DNA part of any of the institutions described above, or any other institution? What is the scope of the powers of the DNA (e.g. Is it empowered to look into the terms of the contractual arrangements between or among the project participants and other contracts relating to the project, such as contracts with other occupants of the land?)?

Currently there is no “DNA” in Ghana in the formal/official sense.

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18 See the Memorandum which accompanied the Environmental Protection Agency Bill to Parliament, December 7, 1994.
19 Ibid.
20 See Section 11 of the Environmental Protection Agency Act, 1994 (Act 490).
21 See Section 7 of the Timber Resources Management (Amendment) Act, 2002 (Act 617).
22 For example the imperative to conform to the requirements of the Environmental Assessment Regulations, 1999 (L.I. 1652) and the EPA Sector-Specific Environmental Impact Assessment Guidelines for Forest and Wood Industries, 1999 and hence obtain an environmental permit.
23 See Section 49(1) of the Local Government Act, 1993 (Act 462) on the requirement to obtain a development permit from the relevant Assembly.
Although the Ministry of Environment and Science remains as the focal point for the UNFCCC activities, the main Country Implementing Institution (CII) for the technical coordination of activities on climate change, the UNFCCC and other environmental conventions ratified by Ghana is the Environmental Protection Agency.

d. If there is no DNA, are there plans to establish a DNA in the next 12 months?

Proposals for the setting up of a DNA have been made by the EPA to the Cabinet.

The proposals\(^{24}\) are for either a National Climate Change Secretariat (CCSEC) within an existing institution such as EPA or for the setting up of a National Climate Change Commission (NCCC) under the Ministry of Environment.

It does appear however that the favoured option is the NCCC which has received the Cabinet’s endorsement. At a recently held National Stakeholders Forum on Climate Change,\(^{25}\) draft legislation on a national climate change institutional set-up was discussed. The draft legislation proposes the establishment of a Climate Change Commission under the Ministry of Environment and Science to be responsible among other things, to “serve as the Designated Authority for CDM with responsibility for CDM project evaluation, approval, capacity building and marketing in the country”\(^{26}\) in accordance with the Kyoto Protocol and also to advise on policy matters related to sink enhancement, afforestation/reforestation programmes, improved forest management practices and guidelines for the operation of the CDM and post Kyoto legal instruments, etc.\(^{27}\)

e. How would you describe the relationship of the DNA with the institutions described in 1.a, as well as other agencies charged with the regulation of a CDM AR project?

The draft Climate Change Commission Act, 2004, proposes that members of the commission should be drawn from various institutions including the MLF, MES and the EPA.\(^{28}\) The draft law also proposes that the Commission should be the Designated National Authority for the CDM.\(^{29}\) If these proposals were accepted, the DNA will have greater opportunity for interaction, collaboration and partnership with those institutions to ensure harmonization of efforts and effective regulation of CDM AR programmes and activities. The draft law also empowers the Climate Change Commission to coordinate climate change related education, training and awareness creation programmes\(^{30}\) as well as liaise and cooperate with relevant agencies and institutions to enforce laws affecting climate change.\(^{31}\)

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\(^{24}\) See EPA (2004) Proposals for Institutional set up for the implementation of Ghana’s commitments under the UNFCCC and the Kyoto Protocol, p.9.

\(^{25}\) This took place in Kumasi from 19–21 October 2004, and was organized by the EPA.


\(^{27}\) Section 2(2)(a) (iv) and (v) of the Draft Climate Change Commission Act, 2004.


\(^{29}\) Ibid., Section 22.

\(^{30}\) Ibid., Section 2(2)(j).

\(^{31}\) Ibid., Section 2(2)(k).
2. Overview of the forestry sector

a. How is the term “forest land” defined in the country of study?

The EPA Sector-Specific Environmental Impact Assessment Guidelines for Forest and Wood Industries (EIAFW)\(^32\) defines “forest land” as “any terrestrial ecosystem made up of flora which is dominated by trees and is usually taken to have at least one distinct canopy. It covers both natural tree stands and man-made tree plantations”\(^33\).

b. In general terms, how are forest land, forest-related activities and forest products regulated in the country of study (e.g., Is there a separate law governing the sector, or are forestry provisions found in a more general law, such as an environment or natural resources code?)? How does this system compare with the way the sector is regulated in other countries in the region?

The regulation of forest land, forest-related activities and forest products in Ghana can best be understood within the context of government policy, i.e., the National Forest and Wildlife Policy launched in 1994. The objectives of the policy are:\(^34\)

- management and enhancement of Ghana’s permanent estate of forest resources;
- promotion of viable and efficient forest-based industries, particularly in the secondary and tertiary processing;
- promotion of public awareness and involvement of rural people in forestry conservation;
- promotion of research-based and technology-led forestry management, utilization and development; and
- development of effective capability at national, regional and district levels for sustainable management of forest resources.

In the pursuit of the stated policy objectives government is employing certain strategies including the following:\(^35\)

- development of an integrated national land use plan\(^36\) aimed at the sustainable use of all natural resources, including particularly the dedication of various land categories with potential for natural protection and production of timber and other products;
- revision of resource management standards and techniques for preparation of detailed prescriptions and plans to guide the sustainable management of forest reserves, as well as unreserved forests;\(^37\)
- enforcement of specifications prescribed in resource management plans, utilization contracts and logging manuals to ensure compliance of authorized users with approved harvesting practices and controls;
- periodic audit of forest utilization operations to ensure compliance with forest management specifications and environmental protection standards;

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32 The EIAFW is the official document issued by the Environmental Protection Agency, in addition to the EIA laws, that provides guidance for the adoption of sound forest resource management practices in Ghana.


36 This is intended to cover all lands, including private/community owned. This is consistent with the National Land Policy action to ensure planned land use: “The Ministry of Lands and Forestry in conjunction with other relevant MDAs shall develop and implement a comprehensive District, Regional and National Land Use Plan and Atlas, which zones sections of the country to broad land uses according to criteria agreed among various public and private land stakeholders.” See the National Land Policy (1999), p.17.

37 The Forestry Commission’s Annual Report, 2002 gives an insight into what has been done and outputs achieved as at December 2002. Outcomes for 2002 include the following: 1. the development of new institutional arrangements and redesigned certification and log-tracking
promote the development of consultative and participatory mechanisms to enhance land and tree tenure rights of farmers and ensure access of local people to traditional use of natural products.

It is for these reasons that the Forestry Commission has been set up as a body corporate to protect, develop, manage and regulate forest and wildlife resources and to co-ordinate policies related thereto. To strengthen these functions and to ensure the sustainable management and utilization of the timber resources of Ghana, the Timber Resources Management Act, 1997 (Act 547) was passed. This law regulates the process of awarding timber rights so that instead of granting timber leases to the users of the production forests, the rights to harvest and utilize timber would be awarded in the form of a “timber contract”. Consequently, the resource user will not “own” the lease but will enter into a contract with Government to utilize and manage the timber resource on terms and conditions which if breached would lead to the termination of the contract.

The Timber Resources Management Act provides for regulations to be made upon recommendations by the Forestry Commission to regulate various aspects of timber resources management, including: the procedure for the identification of lands suitable for grant of timber rights; the procedure for application, processing and grant of timber rights; the terms and conditions for timber rights; the Logging Manual to processes which have been approved; 2. the launching of a Service Charter outlining the kind and quality of services the Commission aims to provide to different stakeholders; 3. the carrying out of a forestry inventory to know about the quantities, qualities and dynamics of the existing resource base to enhance effective resource regulation towards sustainable forest management; 4. the completion and incorporation of socio-economic information into resource management plans; the preparation of draft business plans for some protected areas; and 5. the development and implementation of benefit-sharing arrangements as follows: FC – 40%; plantation investor – 40%; landowner – 15% and community – 5%. These outcomes could be applicable to CDM AR projects except that by law, i.e. the Timber Resources Management (Amendment) Act, 2002 (Act 617), private plantation developers do not need to obtain timber rights through the TUC/competitive bidding before harvesting trees planted for commercial purposes (Section 1 of Act 617).

38 See the Preamble and Section 2 of the Forestry Commission Act, 1999 (Act 571). Act 571 re-established the Forestry Commission in order to bring under it the main public bodies and agencies implementing the functions of protection, development, management and regulation of forests and wildlife resources. The FC was first established under Act 405 of 1980, but was replaced in 1992 by a second Commission established under P.N.D.C. Law 42, Section 34. This was independent of MLF and was directly responsible to the Head of State then. In line with the 1992 Constitution the third Commission was established by the FC Act, (Act 453) 1993 and was made directly responsible to the sector minister. The institutional reform of the FD initiated in 1995 necessitated a major government policy shift culminating in the re-establishment of the FC by ACT 571 to operate as a corporate body. See the FC Annual Report, 2002 at p.1; FC Draft Corporate Plan 2003–2005, pages 4–5.

39 The corpus of legislation regulating the sustainable management and utilization of timber resources in addition to Act 547 are: 1. the Timber Resources Management (Amendment) Act, 2002 (Act 617); 2. the Timber Resources Management Regulations, 1998 (L.I. 1649); and 3. the Timber Resources Management (Amendment) Regulations, 2003 (L.I. 1721).

40 See the Memorandum which accompanied the Timber Resources Management Bill to Parliament of 27 October 1997. The Timber Resources Management (Amendment) Bill sought to clarify this further, indicating that private plantation developers do not need to obtain timber rights before harvesting trees planted for commercial purposes. It is the view of Government that “once a private investor satisfies all contractual requirements of the owner of the land and fulfills other relevant statutory obligations to the State, he should be free to harvest the timber grown without obtaining timber rights”. See the Memorandum which accompanied the Timber Resources Management (Amendment) Bill to Parliament of 18th January 2003; Timber Resources Management (Amendment) Act, 2002 (Act 617), Section 1.

41 Timber Resources Management Act, 1997 (Act 547), Section 18.

42 Ibid., Section 18(a).

43 Ibid., Section 18(b).

44 Ibid., Section 18(c).
ensure proper harvesting and yield;\textsuperscript{45} criteria for categorizing timber operations in terms of scale of operations;\textsuperscript{46} prescribing species of trees considered “depleted”, “threatened” “endangered” or “economically extinct” and specifying the conditions under which they may be felled;\textsuperscript{47} and prescribing conditions for harvesting trees for domestic or social purposes.\textsuperscript{48}

CDM AR projects will not necessarily take place within the Timber Utilization Contracts regime as required of the Timber Resources Management Act (Act 547). Nevertheless, Act 547 gives broader details of key current legal requirements in the forestry industry, some of which will no doubt impinge on the execution of CDM AR projects, as for example the requirement for environmental and socio-economic impact analysis, and social responsibility agreements between project proponents and forest fringe communities.\textsuperscript{49}

The Timber Resources Management Regulations, 1998 (L.I. 1649) and the Timber Resources Management (Amendment) Regulations, 2003 (L.I. 1721) are the responses to the requirement under Section 18 of the Timber Resources Management Act to strengthen the regulatory regime for forest land, forest-related activities and forest products. In addition, the Forest Protection (Amendment) Act, 2002 (Act 624) provides a regime for criminalizing certain acts in relation to forest resources, supplemented by the Forest Protection (Amendment) Bill\textsuperscript{50} (following the 1974 Forest Protection Decree (P.N.D.C. L 142).

Both the Timber Resources Management Act, 1997 (Act 547) and the Timber Resources Management Regulations, 1998 (L.I. 1649) provide yet another regime of criminal sanctions to regulate and protect timber resources dealt with under these laws. For example, to prevent the waste of trees or timber in any area outside a forest reserve, the Minister may by executive instrument declare that area a protected area.\textsuperscript{51} The Minister may also grant licence for farming in any such protected area subject to certain conditions in the interest of the protected area.\textsuperscript{52}

No general law such as an environment or natural resources code exists as such. What is discernible is that the sources of power and authority for regulating the forestry sector are scattered in various laws\textsuperscript{53} and subsidiary legislation.\textsuperscript{54}

\textsuperscript{45} Ibid., Section 18(d).
\textsuperscript{46} Ibid., Section 18(f).
\textsuperscript{47} Ibid., Section 18(k).
\textsuperscript{48} Ibid., Section 18(l).
\textsuperscript{49} See for example, Section 3 (3)(b) and (c) of Act 547; Regulation 13 (1)(b) of L.I. 1649; Regulations 13(12)(b) and 14 (1)(c)(v) of L.I. 1721.
\textsuperscript{50} Ibid. Under the Forest Protection (Amendment) Act, 2002, any person who, in a forest reserve, without the written consent of the competent forest authority, fells, uproots, lops, girdles, taps, damages by fire or otherwise damages any tree or timber; makes or cultivates any farm or erects any building; causes any damage by negligence in felling any tree or cutting or removing any timber; sets fire to any grass or herbage; kindles a fire without taking due precaution to prevent its spread; makes or lights a fire contrary to any order of the Forestry Commission; in any way obstructs the channel of any river, stream, canal or creek; hunts, shoots, fishes, poisons water or sets traps or snares; subjects any forest produce to any manufacturing process or collects, conveys or removes any forest produce; or pastures cattle or permits any cattle to trespass; knowingly counterfeits or fraudulently uses upon timber or standing tree a mark or indicates that the timber or tree is the property of any person; or without the written consent of a Forest Officer alters, defaces or obliterates a mark placed on any timber; or alters, moves, destroys or defaces any boundary mark of any forest reserve, commits an offence and is liable on summary conviction to a fine not exceeding 500 penalty units or to imprisonment not exceeding two (2) years or to both. This criminal law regime is meant to deter potential offenders from engaging in any actions that may be unlawful in connection with forest reserves.
\textsuperscript{51} Ibid., Section 12.
\textsuperscript{52} Ibid., Section 13.
\textsuperscript{53} The key forestry laws include: 1. the Forestry Commission Act, 1999 (Act 571); 2. the Timber Resources Management Act, 1997 (Act 547); 3. the Timber Resources Management (Amendment) Act, 2002 (Act 617); the Forest Protection (Amendment) Act, 2002 (Act 624); 4. the Trees and Timber Decree, 1974 (CRSD 273) as amended by Trees and Timber (Amendment) Law, 1983 (PNDCL 70); and 5. the Trees and Timber (Amendment) Act, 1994 (Act 493).
\textsuperscript{54} Currently the major subsidiary legislation at play in the forestry sector are: 1. the Timber Resources Management Regulations, 1998 (L.I. 1649); and 2. the Timber Resources Management (Amendment) Regulations, 2003 (L.I. 1721).
Ghana’s experience has been that, over the years, piecemeal efforts have been made towards legislation regulating environment and natural resources. The result is a multiplicity of laws, dealing with more or less similar issues scattered in various statutes. One has to shuffle between several documents, to arrive precisely at what one really wants. A related danger is that the multiplicity is a potential source of jurisdictional overlaps. The overlapping in turn creates confusion, a situation where the laws may in the end not be enforced at all.55 This is certainly a drawback to the effective implementation of laws regulating the forestry sector.

What is required as a viable alternative is a Framework Law on Environmental Protection and the Promotion of Sustainable Development akin to the model developed for Latin America and the Caribbean in 1993 by UNEP, and to which Zambia’s Environmental and Pollution Control Act, 1990 comes close.56 A consolidated environment or natural resource code is desirable in the long term (for land, forestry and the environment). The existing land and forestry policies have this on the agenda.57 Until then or until appropriate adjustments and/or revisions are made, existing legislation and current policies will, in the meantime, have to provide guidelines for CDM AR projects pursuant to the requirements of the international rules. The requirements for timber rights as provided in the Timber Resources Management Legislation also offer some guide in this connection. (See the procedures outlined in part 5 of the paper).

In the absence of a consolidated legislation, the sources of domestic requirements for a CDM AR are fragmented and not easily accessible. This situation is a challenge and disincentive to potential CDM AR investors. When eventually set up, the DNA can help greatly to improve this situation by assisting CDM investors to understand the applicable laws and regulations and facilitating familiarity with national policies and procedures relating to the CDM.58 Through the “one-stop-shop” investors can count on easy quick availability of relevant information for business decision making and thereafter be helped to acquire relevant approvals. Aspects of the Forestry Policy help to address this challenge. Environmental impact assessment is a prerequisite for resource development and utilization projects,59 public participation is required in forest resource development (collaborative forest management),60 as is review of administrative arrangements to ensure effective resource management and administration towards sustainable development,61 and providing a share of financial benefits from resource utilization for the maintenance of resource production capacity and for the benefit of local communities.62 Indeed the policy recognises the need for support by appropriate legislation in harmony with laws concerning related sectors and for policy revision in the light of changing circumstances and updated information63 and the review of legislative instruments to ensure effective resource management.64 Thus some legislative support will be required to operationalize certain aspects of the policy.

c. If the majority of forest land is owned by the government (national or local), does the law allow afforestation or reforestation projects to be undertaken by private persons, including individuals, corporations and communities on government-owned forest land? What would the terms of such an arrangement be?

Yes, within the context of existing AR laws, private entities can undertake AR projects on government-owned forest land. As discussed under Question 2(e), the strategy of the MTS is to promote individual

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58 See the Draft Climate Change Commission Act, 2004, Section 23(1)(b) and (d).
60 Ibid.
61 Ibid., p.16.
62 Ibid., p.7.
63 Ibid., p.7.
64 Ibid., p.16.
The terms of the MTS arrangement are as follows:  
- The FC provides the land for the MTS implementation;
- Farmers will share in the cost of establishment by providing labour and become entitled to a specified share of benefits, in accordance with an agreement signed between the Forestry Commission and each interested farming community;
- Farmers will be responsible for the establishment and maintenance of the tree crop, even after the tree canopy is closed;
- Farmers will be given a new plot, as soon as intercropping is no longer possible on the first plot due to canopy closure.

d. In an AR project, how are benefits (such as harvesting, recreational or hunting rights) required by law to be shared with other parties who are not project participants i.e.:
   - with the landowner (if the landowner is not the one implementing the AR project);
   - with other persons occupying or using the land; and
   - with users or occupants of adjacent parcels of land?

Are existing laws sufficient to protect the interests of these other parties?

Recent legislation and policy gestures are changing towards increasing involvement and participation of local communities in forestry management and protection. The GoG is also conscious that a share of financial benefits from resource utilization should be retained to fund the maintenance of resource production capacity and for the benefit of local communities. It is envisaged that when a National Authority is designated, it will seek to facilitate and ensure that the rights and needs of local community groups in CDM AR project areas are catered for and clearly articulated in CDM AR project agreements.

Article 267(6) of the 4th Republican Constitution of Ghana provides some guide as to the sharing of revenue accruing from stool lands. The FC takes 60% of all stool land revenues accruing. 10% of the remaining 40% goes to the Administrator of Stool Lands. It is the remaining 36% which is divided according to the proportions provided for by the Constitution: 25% to the stool, 20% to the traditional authority and 55% to the District Assembly. In effect communities/resource owners are denied greater benefits resulting from stool lands revenue. This is thus considered as skewed in favour of the timber industry, government institutions and commercial resource utilization agencies against forest fringe communities and resource landowners. Thus the question of resource sharing and the absence of a comprehensive legislative framework to guide the sharing of benefits remain one of the challenges for an expanding sector.

Community Forest Management Project (CFMP)
An equitable benefit-sharing agreement between the Government and other stakeholders, particularly beneficiaries, is acknowledged to be crucial to the success of the CFMP.

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65 African Development Fund, p.8.
67 Traditional authorities (a person or body) in most of the northern parts of Ghana are designated as “skins” and their counterparts in the south are called “stools”.
69 Agyemang et al. (2003) p.15.
Current forestry policy requires that owners of natural resources should not only be entitled to access to the resources to meet domestic needs, but should also benefit from income generated from commercial extraction of the resources which are on their land or within their community, including forest plantations. A framework has been developed where all participants (investors, Forestry Commission, landowners and farmers) providing land, labour and capital share the production, market responsibilities and risks – with net benefits shared proportionally according to the level of inputs.\textsuperscript{71}

Under the CFMP, the borrower, i.e., the GoG was required to submit to the African Development Fund a written undertaking, \textit{inter alia}, to:\textsuperscript{72}

\begin{itemize}
  \item continue the on-going consultations towards concluding a “cost-benefit sharing framework agreement” to be signed between participating farmers and the Forest Commission stipulating respective responsibilities and rights, including shares of costs and benefits accruing to each stakeholder and to submit a draft framework agreement to the Fund for review and comments.
  \item Ascertain that the share of benefits accruing to the participating farmers will be remunerative relative to their contribution to the realization of the forest plantation outputs and shall submit a report of its findings to the Fund for comment.\textsuperscript{73}
\end{itemize}

Consultations on the benefit-sharing framework agreement have continued between the stakeholders, culminating in the review workshop on the subject on 24 February 2004 in Kumasi.\textsuperscript{74}

Pursuant to this consultation, a Draft Land Lease Agreement for the Development of Forest Plantations in Degraded Forest Reserves using the Modified Taungya System has been proposed by the Forestry Plantation Development Centre (FPDC)\textsuperscript{75} for appropriate action and implementation by the MLF. The relevant elements of the Draft Lease Agreement are as follows in so far as obligations and rights/benefits are concerned:

\begin{itemize}
  \item The Forestry Commission shall provide land\textsuperscript{76} within the degraded forest reserve and monitor the implementation of the Modified Taungya System.
  \item The investor\textsuperscript{77} shall develop the Modified Taungya management plan and implement it using the labour of the Taungya Farmer Group. In addition, the investor shall provide training for the farmers and technical persons who will supervise progress of work on a day-to-day basis. The investor shall also provide supplies and equipment required for plantation development.
  \item The Taungya Farmer Group shall provide labour for all the plantation development activities for the full duration (at least 25 years) and be entitled to farm within the Modified Taungya plantation area for at least three years.
  \item The Stool Chief/traditional ruler shall ensure security of tenure for the plantation development.
\end{itemize}

\textsuperscript{71} Agyemang \textit{et al.} (2003), p.46.
\textsuperscript{73} \textit{Ibid.} See also Agyemang \textit{et al.}, 2003, Draft Report on “Equitable Revenue Sharing from (Costs and Benefit Sharing on) Plantation Development: A Case Study of Public, Private and Local Community Partnerships in Ghana” at p.42. See also Section 18(1) and (2) of the Forests Ordinance 1927 (CAP 157).
\textsuperscript{74} \textit{Ibid.}, p.10.
\textsuperscript{75} The Forestry Plantation Development Centre (FPDC) has been established as a semi-autonomous agency under MLF and mandated to plan, co-ordinate, advise and inform stakeholders, promote plantation development by small-, medium-, and large-scale investors and to seek funds for plantation development under the NRMP.
\textsuperscript{76} Forests in Ghana are controlled and managed by GoG through the FC irrespective of the owner. The Forestry Commission is the Government agency appointed to manage the nation’s forest reserves and protected areas, having custody of the nation’s forest and timber resources; the owners (land owners) are the traditional authorities (stools, skins, etc.) to which royalties from the forest reserve in question accrue. That is why in the context of this project, it is the FC which provides the land, although it may invariably be owned by stools/skins.
\textsuperscript{77} The investor denotes a public, private or corporate entity that wishes to invest and thereby participate in the Modified Taungya Plantation Development Programme.
The local community (forest fringe community) shall be watchdogs against encroachment and shall provide labour for fire prevention activities.

The investor shall receive 40% of all proceeds obtained from the tree plantation, excluding agricultural crop proceeds unless by prior agreement with the Taungya Farmer Group.

The Farmer Group shall also receive 40% of all proceeds obtained from the tree plantation and also all the agricultural crop proceeds.

The Stool Chief/Traditional Authority shall receive 15% of all proceeds obtained from the tree plantation excluding agricultural crop proceeds.

The Local Community shall receive 5% of all proceeds obtained from the tree plantation excluding agricultural crop proceeds.

This development in benefit sharing is a typical example of some of the possibilities within existing forestry policy and legislation. Cabinet approved this benefit-sharing scheme. The Attorney General has also released the final version of the Benefit-Sharing Agreement which indicated that 40% of the accrued benefit would go to the farmer, 40% to the FC, 15% to the landowner and 5% to the local community. It is this benefits and obligations sharing scheme that is applicable under the CFMP, which has been launched in the five respective project sites between April and June 2004. These are being funded by a loan contracted by the GoG from the ADF. The FC is thus the investor, and at the same time the entity that has given/provided the land in the various project sites.

Commercial Plantation Development

For commercial forest plantations on degraded forest reserve lands, the specific proposals include:

- The investor/lessee shall pay directly to the landowner the equivalent of **US$7 Drinks Money** per hectare;
- For the duration of the Agreement an annual rent of **US$2** at the prevailing rate of exchange at the time of payment per hectare will be paid for the total area planted/acquired within forest reserve land payable to the FC for disbursement to the landowners through the Administrator of Stool Lands;
- A final payment of 2% of the standing tree value of the plantation to be paid after harvest to the FC for disbursement to the landowners through the Administrator of Stool Lands;
- A Social Responsibility Agreement (SRA) to be attached as a schedule to the Lease Agreement is to be signed between the investor(s) and the forest fringe communities. This is expected to cover an amount of not less than 2% of the standing tree value of the plantation (negotiable) to be spent on community-based development projects in the surrounding communities. The type and timing of the projects should be negotiated between the investor and the landowners.

The SRA is to be modelled after the framework provided for TUC holders under The Timber Resources Management Act, 1997 (Act 547), as amended by the Timber Resources Management (Amendment) Act, 2002 (Act 617), the Timber Resources Management Regulations, 1998 (L.I. 1649), and the Timber Resources Management (Amendment) Regulations 2003 (L.I. 1721).

Under the Timber Resource Management regime, the applicant will also be required to give an undertaking to execute a reforestation or afforestation plan for the establishment and management of forest plan-
tations of at least 10 hectares for each square kilometre of the contract area and to conclude a Social Responsibility Agreement (SRA, see above) with local communities which shall include an undertaking to assist communities and inhabitants of the timber utilization areas with amenities, services or benefits, provided that the cost of the agreed amenities, services or benefits shall be at least 5% of the value of stumpage fee from the timber that is harvested. The re/afforestation plan is a legal requirement within the TUCs while the SRA is a legal requirement not only for purposes of TUCs, but also proposed for commercial plantation developers.

Indeed the FPDC has developed a draft Social Responsibility Agreement (SRA) which is receiving the attention of the office of the Attorney-General and Minister of Justice as an input into what a relevant and an appropriate SRA ought to be for commercial plantation developers.

The following requirements of the timber license management laws listed above would be applicable to CDM projects:

- the need to secure ministerial approval;
- compliance with the requirements for the assessment of the environmental impacts of the project;
- the conclusion of a Social Responsibility Agreement (SRA) to provide social facilities and amenities for the inhabitants of the contract area;
- submission of a performance bond to guarantee the satisfactory implementation of the terms of the contract; and
- evidence of ownership or membership in a registered company or partnership authorized to engage in forestry activities.

Although forestry laws are numerous, they are not adequate to protect the interest of landowners, communities and other occupiers. The benefit-sharing scheme that has been approved is being implemented as a policy measure without direct legislative basis. This has to be addressed by forestry legislation to put the matter beyond doubt and avoid potential legal controversy. A clear legal basis is also desirable for SRAs for purposes of commercial plantation developers. One is also concerned about the basis upon which the FC arrogates to itself 60% of stool land revenue before the rest of 40% is shared among the various stakeholders. This leaves very little for resource owners and fringe communities and it remains a serious disincentive to them. It is due in part to this that the benefit-sharing schemes under the CFMPs and commercial plantation development programmes are most welcome.

e. Based on official records, are there major plans to host afforestation and reforestation projects in the country in the next 12 months?

Yes. Ghana has adopted various active forest policies and programmes, but none directly related to CDM AR projects:

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84 Timber Resources Management Regulations, 1998 (L.I. 1649), Regs. 13(1)(a), 14(1)(d) and 14(2).
85 Ibid., Regulations 13(1)(b), 14(1)(l) and 14(2). See also Timber Resources Management (Amendment) Regulations 2003 (L.I. 1721), Regulations 13(12)(b) and 14(1)(c)(v).
86 Timber Resources Management (Amendment) Act, 2002 (Act 617) Section 7.
87 Timber Resources Management (Amendment) Act, 2002 (Act 547) Section 3(3)(b); Timber Resources Management Regulations, 1998 (L.I. 1649), Regulation 12(3)(b).
88 Timber Resources Management (Amendment) Regulations, 2003(L.I. 1721) Regulations 14(1)(c)(v), 13(12)(b); Regulation 13(1)(b) of L.I. 1649.
89 L.I. 1649 Regulation 14(2); L.I. 1721 Regulation 14(1)(c)(ii).
90 L.I. 1721 Regulation 11(a).
Public programmes
The Forestry Development Master Plan provides a framework for increasing forest and tree cover through reforestation, afforestation, and community/agro-forestry development. As a result of these, two major forestry development programmes have been launched and are being executed, namely:

The National Forest Plantation Development Programme, 2001 (NFPDP); and

The NFPDP antedated Ghana’s accession to the Kyoto Protocol whereas the CFMP came post accession. It is however not clear whether they have been designed with the object of benefiting from the CDM. Nevertheless in mobilizing funding in support of forest plantation development, the GoG has explicitly expressed its intention to collaborate with foreign financiers to pursue carbon arrest initiatives. Thus the GoG is likely to positively consider proposals for CDM AR projects within the purview of these programmes. An argument against additionality on the basis of the existence of these initiatives alone would not stand because GoG recognises that by itself it is unable to sustain an effective plantation development programme and accepts that it will need help to carry out such endeavours. It is with the support of that kind that it will be able to proceed with implementation of a private sector forest plantation development programme that will expand the area of commercial forests throughout the high forest and transitional forest zones, to relieve the pressure on existing natural forests and thus enhance environmental conservation.

The National Forest Plantation Development Programme
The objectives of the National Forest Plantation Development Programme (NFPDP) are:

- To restore forest cover of degraded forest reserves and ecologically sensitive areas;
- To address the wood deficit situation especially timber and fuel wood;
- To create jobs to generate incomes for plantation owners, timber processors and the national economy; and
- To reduce poverty among participating farmers and rural communities.

Investments in commercial plantation establishment are to be encouraged to nurture an enhanced forest development culture in Ghana. Ongoing AR development programmes are aimed towards the realization of these objectives.

The programme for the implementation of the NFPDP has five sub-components:

- the Northern Savannah Plantation Sub-component;
- the Coastal Savannah Plantation Sub-component;
- the High Forest and Transition Zone Plantation Sub-component;
- the Urban Forestry Sub-component; and
- the Commercial Plantation Development Sub-Component.

Three strategies will be used under this programme to realize planting:

Modified Taungya System: This is a plantation establishment method where farmers are given parcels of degraded forest reserves to produce food crops for themselves and to help establish and maintain timber trees.

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91 Ibid., p.12.
92 See the Memorandum on the Forest Plantation Development Fund Bill of 23 December, 1999, p.ii.
93 Ibid.
94 Ibid., p.i.
Farm forestry: Under this system, individuals, local communities, district assemblies, private companies and non-governmental bodies would be mobilized at the district and rural community levels to plant trees on their own farms and/or on degraded community lands.

Communities and decentralized agencies plantation: The third strategy would be through local communities and decentralized agencies-led tree planting schemes on government-owned lands within urban and peri-urban areas. Participants in this programme will be provided with technical support services and other benefits under the NFPDP.

Over 17,000 hectares were planted in degraded forest reserves throughout the country in 2002. The target was not achieved because the programme was launched late. In addition, nurseries were established, plantations developed and jobs created. The programme also contributed to the food glut in 2003. In consonance with government policy, the Cabinet approved a new benefit-sharing scheme, which guarantees farmers 40% share in the plantations developed under the Modified Taungya System. The traditional authorities will receive 15% as their share.

The main problems encountered during programme implementation were as follows:

- Approved funds were not sufficient to meet the required capital costs, including tractors and nursery equipment, necessary to support the efficient implementation of the plantation programme;
- Inadequate technical support staff in some areas; and
- Lack of co-operation of farmers in other areas.

The Community Forestry Management Project (CFMP)

The objective of the CFMP “is the rehabilitation of degraded forest reserves while increasing production of agricultural, wood and non-wood forestry products and strengthening the capacity of relevant institutions”. The largest beneficiaries are smallholder farmers – men, women and their families, and migrant farmers. The approach is to allow “smallholder farmers living in the vicinity of the forest reserves to participate in collaborative forest management in which they gain access to relatively fertile land through the FC in the degraded forest reserves in which to plant trees and engage in food crop production”.

The CFMP will also have the following benefits:

- It will empower the poor in rural forest fringe communities to gain higher incomes and sustainable livelihoods;
- The project will benefit at least 6,000 farm families with average family size of about ten (10) people each;
- It will provide increased employment and income generating opportunities among participating local communities; and
- It will help in accelerating the alleviation of poverty in line with current government policy objective.

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98 Ibid., p.15.
99 The FC is the GoG’s appointed agency responsible for the custody of the nation’s forest and timber resources. It can therefore, on behalf of the GoG grant such access.
The CFMP will be located in five (5) regions, namely: Ashanti, Brong-Ahafo, Central, Eastern and Western Regions. The project sites have been chosen after a careful analysis of the level of deprivation and community preparedness to ensure the successful implementation of the project.

The project’s target beneficiaries are smallholder farmers (men and women) cooperatives and community based organizations. A total of 6,000 farm-families of which an estimated 20% are female-headed are expected to participate directly in project activities. The secondary project beneficiaries would be the staff of MLF and the Ministry of Food and Agriculture (MOFA) – especially the staff at the District Agriculture Development Units through specific capacity building and institutional strengthening activities.

The CFMP will be implemented over a six (6) year period by the MLF, effective from October 2003, the date of loan effectiveness.

The project has four (4) components, which are as follows:

- Integrated forest management;
- Sustainable livelihood support scheme;
- Capacity building and institutional strengthening; and
- Project management.

As part of the capacity building and institutional strengthening the project will provide short-term consultants to assist the government in the policy dialogue regarding the legal framework for the Modified Taungya System concerning tree and land tenure and revenue sharing framework agreement. Capacity building and institutional strengthening will likewise be important for the effective function of the DNA to exercise responsibility over CDM AR projects at various levels: to enable the DNA to effectively orient investors on applicable policies, laws and regulations; to enable the DNA to develop relevant information handbills, booklets and guidelines; and to build capacity of a core of professionals to assist in the policy dialogue on key issues impinging on CDM AR projects as for example sharing of CERs etc.

Existing legislation supports these forestry development initiatives in a number of ways:

**The Timber Resources Management Law**

Principally, a TUC grants timber rights to the holder to harvest timber in an on/off forest reserve area. This law requires an undertaking by the holder of a timber utilization contract to execute a reforestation or afforestation plan of at least 10 hectares for each square kilometre of the contract area during the period of the contract to the satisfaction of the Chief Conservator of Forests. Although this obligation arises for a TUC holder, the AR plans to be executed under TUCs granted will contribute to AR development initiatives depending on the extent of areas that may be given under TUCs. A TUC programme/operation is therefore not necessarily a CDM AR project. But even if this obligation were to be fully executed, significant additional support will still be required to enable the GoG to achieve its goals and targets for AR development initiatives. It is partly because of this that one of the projects contemplated in Ghana’s Initial National Communication, the “Joint Forestry Project to offset GHG emissions” envisages that an international corporation in a developed country will provide funding to a TUC holder to implement tree planting programmes and sequester carbon to be credited to the overseas funding agency.

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101 The Timber Resources Management Act, 1997 (Act 547), Section 8(d); See also The Timber Resources Management Regulations, 1998 (L.I. 1649), regulation 14(1)(d).
The Forest Plantation Development Fund Act

This Fund was created\(^{102}\) with an initial amount of ¢80 billion.\(^{103}\) It was designed to encourage small-scale/private sector commercial plantation developers and public sector institutions to embark on a sustained programme of afforestation and reforestation that will rehabilitate degraded forest lands and increase timber production.\(^{104}\) The objects of the Fund are to provide: (i) financial assistance for the development of forest plantation on lands suitable for timber production;\(^{105}\) and (ii) for research and technical advice to persons involved in plantation forestry.\(^{106}\)

The board constituted to administer the Fund is to “encourage investment in forest plantation development through incentives and other benefits”;\(^{107}\) facilitate best practices for optimum timber plantation establishment and management;\(^{108}\) and promote a feasible scheme that supports related forest projects.\(^{109}\) The Fund is expected to attract capital from various sources including “local and foreign financiers interested in timber production and environmentally conscious institutions interested in fostering global carbon arrest initiatives” (emphasis supplied).\(^{110}\)

An amount of ¢12.6 billion has been released for the cultivation of 20,000 hectares for 2003 to support plantation development in the country.\(^{111}\) About 25 companies have been given financial assistance ranging from ¢10–50 million to develop their forest plantation in line with the objectives of the Fund.\(^{112}\)

Furthermore, the Government of Ghana (GoG) has adopted the Commercial Plantation Development Programme.\(^{113}\) It is aimed at nurturing a forest plantation development culture in addition to creating the necessary institutional environment, which will be conducive to forest plantation development in the country.\(^{114}\) Besides plantation development using the MTS, available records show that between 2000 and 2003 a total of 167 companies benefited from allocations made to private entrepreneurs to undertake reforestation in degraded forest reserves. Of this figure only 102 (61%) can be considered actively involved in reforestation activities and reported to have planted about 9,318.25 hectares out of 35,244 hectares allocated.\(^{115}\) However:

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\(^{103}\) See the Memorandum which accompanied the Forest Plantation Development Fund Bill to Parliament, 23 December 1999, p.i. The cedi is the official currency used in Ghana. As of January 2000, $1 was equivalent to ¢6,886.

\(^{104}\) Ibid. See also the Memorandum which accompanied the Forest Plantation Development Fund (Amendment) Bill to Parliament, 18 January 2002.

\(^{105}\) Ibid., Section 2(a).

\(^{106}\) Ibid., Section 2(b).

\(^{107}\) Ibid., Section 7(c).

\(^{108}\) Ibid., Section 7(d).

\(^{109}\) Ibid., Section 7(e).

\(^{110}\) See the Memorandum on the Forest Plantation Development Fund Bill, 23 December 1999, at p. ii. It does appear that this declaration anticipates CDM/AR related programmes.

\(^{111}\) Including: support for the cultivation of 20,000 hectares of plantations on degraded forest reserves using the Modified Taungya System at an estimated cost of ¢10 billion; support for community plantation development and some essential capital costs; provision of some support for water harvesting in the savannah and transition forest areas; and provision of support to individual farmers and companies that have so far applied to the Fund Board for financial assistance to establish plantations on at least 2 hectares of land as well as supply of tree seedlings, including fruit trees, to schools, Armed Forces, Prison Services, District and Municipal Assemblies and other public sector organizations for planting. See MLF: Update on Actions Initiated by the Forest Plantations Development Fund Management Board (Undated). The support enumerated here is different from support being given under CFMP funded by the ADF.

\(^{112}\) For year 2002 under the National Forest Plantation Development Programme (NFPDP), local communities and farmer groups were funded at a cost of ¢5.25 billion to produce 25 million seedlings; ¢4.75 billion was paid to farmers through the FC for the planting of 17,000 hectares of degraded forests; 5,000 pairs of Wellington boots, 5,000 cutlasses and other nursery equipment was distributed to some farmers and local communities throughout the country. See MLF: Update on the National Forest Plantation Development Programme (undated).

\(^{113}\) The Forest Plantation Development Fund (FPDF) has been set up to enable Government to implement forest plantation development. The Fund is therefore at the disposal of plantation growers, both in the public and private sectors. Commercial plantation developers would therefore benefit under the FPDF.

\(^{114}\) Ibid.

\(^{115}\) National Forest Plantation Development Programme under the MTS and by Private Developers Annual Report for 2003, pages 11–12.
“Even with the active developers their annual performances are below expectation. It has been
realized that most of the private developers are looking for financial support, especially from the
Forest Plantation Development Fund, to be able to make any meaningful progress.”

It is against this background that the need for funding for commercial plantation development accessed
through the CDM becomes crucial.

3. Overview of land-related legislation

a. In rough terms and only to the extent they pertain to lands that, based on their legal classi-
fication, are permitted to have afforestation and reforestation projects:

i. Please describe the system of land ownership and the rights that attach to land
ownership (e.g., right to exclude others from entering the land, right to sell the fruits of
the land, including certified emission reductions (CERs), and rights of succession to
land), including the system of respecting pre-existing rights over the land (e.g., rights of
indigenous peoples, rights of long-time occupants that could ripen into ownership).

In Ghana land is administered by both customary law rules and practices on one hand and enacted legisla-
tion on the other. Basically there are two broad categories of land based on legal ownership: public/state
lands and private lands. Private lands “are in communal ownership, held in trust for the community or
group by a stool” or skin as symbol of traditional authority, or by a family”. Public/State lands are
those “compulsorily acquired by the government through legislation.”

“Fundamentally, land ownership is based on absolute ‘allodial’ or permanent title from which all other
lesser titles to, interest in, or right over land derive”. The “allodial” title is vested in a stool, skin, clan,
family and in some cases, individuals. The allodial title was acquired in ancient times by conquest,
original occupation or discovery, purchase or gift. The fundamental principle upon which ownership of
land is based is that land is owned by the community or group, represented by a stool or skin as the
acknowledged symbol or identity of the group. In the absence of a symbol or identity of the group,
ownership is vested in the family or tribe as the case may be. Traditionally, therefore, lands in Ghana are

116 Ibid., p.12.
118 Ibid.
119 Ibid., Article 295(1) of the 1992 Constitution defines “stool” to include “a skin, and the person or body of persons having control over skin
land.” The definition adopted in the Land Title Registration Law, 1986 (P.N.D.C.L.152) is consistent with the Constitutional definition.
Section 139 of P.N.D.C.L.152 provides: “Stool” includes a skin as well as any person or body of person having control over skin or community
land including family land, as a representative of the particular community.
120 Ibid.
121 Ibid.
122 Ibid.
123 Ibid.
124 Ibid., “The allodial title is the highest title capable of being held in land in Ghana and is subject only to such restrictions or limitations or obligations as may be imposed by the general laws of the country. Subject to these restrictions, it confers on its owner a complete and absolute
125 Ibid.
126 EPC/GERMP (1994), A Report Submitted by the Land Use Planning Committee, Accra, p.34.
127 Ibid.
128 Ibid. The proprietor of a title to land and his successors in title hold the title until there is a failure of successor; that is if there is no one capable
of lawfully claiming title through the original proprietor. This is a very unlikely event. It is difficult to conceive of a situation where title has
not passed by a disposition inter vivos or passed under a will of the proprietor or devolved upon his intestacy. The extended family system in
Ghana is such that it must be a very rare event for a person to have no successor. In the event of a title, example freehold coming to an end by
failure of successor, the title is merged with the allodial title from which it was originally carved. See da Rocha & Lodoh (1995), p.5.
owned by stools, families or individuals, accounting for 78% of the total land area in Ghana including forest reserves.129

Three land ownership types can be distinguished.130

**State land**

This is land acquired compulsorily by the State by means of an Executive Instrument in the interest of the public and for public use. In the context of the National Land Policy, provided that payment of adequate compensation in reasonable time will be made, the Government may acquire land wherever and whenever appropriate, as indicated in the National Land Policy of 1999 and Article 20(1) of the 1992 Constitution.131

Against the background of these policy and constitutional imperatives, it is my considered view that the Government of Ghana could compulsorily acquire land for AR projects if the public interest so demands.132 The title it acquires is the absolute or allodial title.133 The acquisition has the effect of divesting the stool/skin or family or community of its allodial title, together with all other subordinate titles in the land, and vesting same in the state free from all encumbrances.134

In this situation, the State is not liable to perform customary services135 to any allodial title owner when it compulsorily acquires the allodial land of any stool/skin, family or community.136

**Stool/skin land vested in the state in trust for the owners**

Land may also be declared vested in the State (Vested Land) by legislation137 in trust and administered for the benefit of the subjects of the stool/skin or members of the family or community who owned the allodial title before the acquisition.138 Land vested in the State is not absolute in that its effect is only to vest the land acquired in the State in trust for the subjects of the stool or members of the family or community which owned the allodial title to the land concerned before the acquisition. Vested lands are managed by the Lands Commission on behalf of the owners.139 Vested lands “are a form of split ownership between the state and the traditional owners”.140 Monies accruing out of the management of stool/skin land vested are paid into the Stool/Skin Lands Accounts on behalf of the stool/skin concerned. These are disbursed accordingly by the Administrator of Stool Lands141 in accordance with Article 267(6) of the 1992 Constitution.

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132 Even though opportunities abound for private landowners and private investors to carry out AR projects, it is government that must be seen to be spearheading the taking of appropriate initiatives for strategic and sustainable forest plantation development. To this end, government may exercise her constitutional prerogative to compulsorily acquire land in fulfillment of GoG land policy objective to facilitate easier access to land, and to ensure sustainable land use for the public good.
135 Customary services to the stool may include payment of annual drinks to the ancestors for the use of the land, pouring of libation on the land when any major activity is to take place, and observance of taboos and restrictions associated with the use of the land such as conforming to days set aside when no farming, hunting or fishing is allowed.
137 See Section 7(1) of the Administration of Lands Act, 1962 (Act 123) and the Public Conveyancing Act, 1965 (Act 302), Section 1(1) and (2).
139 Lands Commission Act, 1994 (Act 483), Section 2(1)(a).
140 MLF (1999), National Land Policy, p.2.
141 The Office of the Administrator of Stool Lands (OASL) is a creation of statute, i.e., the Administrator of Stool Land Act 1994 (Act 481). This was required by Article 256(2) of the 1992 Constitution to be responsible for: the establishment of a stool land account for each stool into which shall be paid all rents, dues, royalties, revenues or other payments whether in the nature of income or capital from the stool lands; the collection of all such rents, dues, royalties, revenues or other payments whether in the nature of income or capital, and to account for them to the beneficiaries specified in clause (6) of this article; and the disbursement of such revenues as may be determined in accordance with clause (6) of this article.
The legal interest vests in the government as a “trustee” while the indigenous community is left with a beneficial interest as a “beneficiary”.142

**Indigenous or traditional community land, including private land**

The community may be a village, families, clans, stools or skins. Ownership or tenure is generally community-based; hence exclusive control over the use and occupation of the land is exercised by the community acting through occupants and elders.143 Under this category, three types can be distinguished:

- **Stool/Skin Land.** Land vested in the appropriate stool/skin on behalf of the members or subjects of a stool/skin represented by the chief.
- **Family Land.** Land vested in a family represented by a head of family.
- **Privately Owned Land.** Land with the freehold interest purchased outright by an individual or a group of persons who do not belong to the same family or stool.

An individual or group of people can acquire State or Government land and stool/skin land vested in the State by application to the Lands Commission and in all cases only leasehold grants are made for commercial, industrial and residential plots. For CDM AR projects, commercial leases may be granted. In the case of non-Ghanaians, the 1992 Constitution prescribes a limit of 50 years at any one time.144 This restriction also applies to any freehold interest in or right over the land.145 For Ghanaians, a lease may be given for up to 99 years.146

**Rights attached to Stool/Skin/Family land ownership**

In paramountcies where the stool is the overlord of the traditional area, and owns all the land within its territorial borders, interest in the land is rooted in the principle that allodial ownership or title is exclusively vested in the stool and has absolute control over the land.147 If the allodial owner is a stool, family or clan, that absolute ownership will be subject to the rights of the stool’s subjects or members of the family or clan in possession.148

Certain common rights are exercised on the land, including hunting of game, fishing, collection of firewood, snails, fruits on wild growing trees like coconuts, palm nuts, berries, etc.149

In case of a stool the allodial title owner is entitled to the performance of customary services by the occupants of the land.150 The grant or disposition is made subject to the following customary law rules: the owner of the allodial title maintains absolute control over the land,151 subject to the rights of the subjects for occupation, farming etc.,152 and the allodial title holder is entitled to the performance of customary services from the grantees that would have been due from the subject or member to the stool, family or clan when demanded.153

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143 Report of the Land Use Planning Committee, 1979 (Re-Published by the EPC/GERMP), Sept. 1994, p.36.
144 Ibid., p.37. See also Article 266(4) and (5) of 1992 Republican Constitution.
146 It is a requirement of our law that the lease agreement must be in writing and must include the following: sufficient description/identity of the parties and the respective capacities in which they are contracting; accurate description of the precise area of land to be leased; clear statement of the period of the lease; the consideration of the lease, which usually takes the form of a rent payable in such manner as the parties agree. The consideration may take a form other than rent so long as it is valuable; and covenants, stipulations and conditions the parties intend to be binding on them, apart from covenants implied by law. Sections 1 and 2 of Conveyancing Decree, 1973 (NRCD 175); da Rocha and Lodoh (1995), p.16.
152 Ibid., p.4.
The land-owning group (i.e. the stool, skin/clan/family) may grant land outright to a stranger.\textsuperscript{154} This entitles him to a free use of the acquired land. He may exploit his interest in the same way that a native exploits his customary freehold. His family is entitled to the free use of the land and to be protected against usurpers.\textsuperscript{155}

ii. Short of ownership over land on which CDM AR projects can be implemented, what other rights can be granted over such land (e.g., in the case of government-owned land, licenses, concessions, and in the case of privately-owned lands, servitudes, leases)? Please describe each right briefly (e.g., duration of the right, entitlements and obligations that come with the right, fees, if any, paid for the enjoyment of the right, documentation of the right). Which of these rights can co-exist with other land-based rights (e.g., license with an easement)?

Other lesser interests which are derived from the allodial title of the traditional community are the following:

- freehold interest (customary or common law);\textsuperscript{156}
- tenancies;
- licences; and
- pledges.

**Customary freehold** is an interest in land acquired by a person by virtue of his being the subject of a stool or member of a family or clan.\textsuperscript{157} Such a person has a customary right to freely use part of the stool’s or family’s land as is not occupied by another person.\textsuperscript{158} This interest prevails against the whole world including the allodial owner. It is not a mere right of occupation and farming.\textsuperscript{159} The customary freeholder has unfettered right to all economic trees, natural or cultivated on the land.\textsuperscript{160} He may farm on it or build on it and is entitled to enjoyment of the natural products of the land except minerals under the surface of the land, the right to which remains in the allodial owner.\textsuperscript{161} The customary freehold may subsist forever, but may be terminated under specified circumstances.\textsuperscript{162}

**Common law freehold.** Whenever an allodial owner makes an express grant of an interest in the nature of a freehold, such an interest is a common law freehold.\textsuperscript{163} A common law freehold may also be created when an allodial owner or owner of a customary or common law freehold creates a life interest\textsuperscript{164} which in Ghana is a legal and not an equitable interest.

**Rights over private lands.** Rights that can be granted over privately-owned lands include pledges,\textsuperscript{165} licenses and customary tenancies. Customary tenancies are the mostly commonly granted right.

\textsuperscript{154} In indigenous land law, “stranger” is a person who has no inherent right to occupy land, i.e. stool (skin) land or family land. Thus in the case of land of a head or paramount stool “stranger” means a non-subject of that stool; in the case of land of a sub-stool, “stranger” means a non-subject of the particular sub-stool; in the case of family land “stranger” means a non-member of the family. See EPC/GERMP (1994): The Report of the Land Use Planning Committee, Accra, May 1979, p.36. Stranger in this context excludes foreigners as the 1992 Constitution proscribes outright grants to foreigners.


\textsuperscript{156} Section 19 of the Land Title Registration Law, 1986, P.N.D.C.L.152, identifies two types of freehold i.e. the customary freehold and the common law freehold.


\textsuperscript{158} \textit{Ibid.}

\textsuperscript{159} \textit{Ibid.}

\textsuperscript{160} \textit{Ibid.}

\textsuperscript{161} \textit{Ibid.}

\textsuperscript{162} \textit{Ibid.}, p.8.


\textsuperscript{164} \textit{Ibid.} A life interest is one which is made to subsist for the duration of the life of a person. It is treated as a freehold interest because it is of uncertain duration.

\textsuperscript{165} See Sections 1(2) and (2) of the Mortgages Decree, 1972 (N.R.C.D. 96).
A pledge (customary mortgage) is a contract charging immovable property as security for the due repayment of a debt and any interest accruing thereon or for the performance of another obligation for which it is given. It does not operate so as to change the ownership, right to possession or other interest in the property charged. The mortgagor remains the owner of the property and is entitled to remain in possession. A mortgage may be created in any interest in immovable property which the mortgagor has capacity to alienate by himself.\textsuperscript{166}

A license is a permission given by the owner of land or a holder of an interest in land which allows the licensee to do certain acts in relation to the land which would, without the permission, amount to a trespass.\textsuperscript{167} It does not create or confer an interest in land. Example – the placement of an advertisement board on land or a license coupled with a legally recognised interest to cut trees or dig minerals.

Customary tenancies. A tenancy is an interest which a person may acquire in land, conferring a right to occupy and to use the land for a special purpose either for an indefinite period or for a fixed period, so long as he continues to observe and perform the terms and conditions subject to the tenancy.\textsuperscript{168} Tenancy may be created for consideration and the grantor retains his ownership rights in the land, but grants possessory right and use to grantee for the term of the tenancy.\textsuperscript{169} Tenancies for consideration are usually granted for any agricultural purposes in land; they may also be granted for fishing, felling timber, collecting fruits or cutting firewood.\textsuperscript{170} Crop-sharing tenancies, known as abusa and abunu, are very common in Ghana.\textsuperscript{171}

Rights that can be granted over Government-owned land

Various rights that can be granted over government-owned lands include leases, and licenses either for timber felling, mining or stone quarrying operations. A typical example of timber felling license is the Timber Utilization Contract (TUC).\textsuperscript{172}

The contents of TUCs are regulated by the Timber Resources Management Laws\textsuperscript{173} and include the following:

- The size and limit of the contract area is specified\textsuperscript{174} as well as the duration of the contract.\textsuperscript{175}
- Specification of annual rent\textsuperscript{176} payable\textsuperscript{177} to the OASL (Office of the Administrator of Stool Lands) by the holder of the TUC.
- Obligation imposed on a holder to minimize or avoid adverse effect to the environment, prevent damage to property and fire.\textsuperscript{178}

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\textsuperscript{166} See Mortgages Decree, 1972 (N.R.C.D. 96) Section 1(3).
\textsuperscript{168} Da Rocha and Lodoh (1995), p.43.
\textsuperscript{169} Ibid.
\textsuperscript{170} Ibid.
\textsuperscript{171} Abusa tenancy is the system whereby an owner of uncultivated virgin land grants it to another to cultivate and to share the produce of the farm with the owner in the ratio of two-thirds (2/3) to tenant farmer and one-third (1/3) to the landowner. The landlord contributes nothing to the making of the farm except the forest land, the tenant-farmer contributes his labour and other inputs to the farm. On the other hand, the abunu system is one under which a landowner either cultivates a farm on his own land and thereafter hands it over to another person to maintain or provides that other person with money and/or labour to cultivate the farm. In either case, the farm proceeds are shared equally between the landowner and the tenant-farmer. A tenancy may be created either by contract, in which the terms of the contract are negotiated and agreement reached, or by implication of law from a given set of facts and from the conduct of the parties.
\textsuperscript{172} The TUC is a written agreement that specifies the terms of timber rights granted in respect of an area of land granted for a fixed period of time.
\textsuperscript{173} See the Timber Resources Management Act, 1997 (Act 544), sections 8, 9, 15, 18; the timber Resources Management (Amendment) Act, 2002 (Act 617), Section 6; and the Timber Resources Management (Amendment) Regulations, 2003 (L.I. 1721), Regulations 9–14.
\textsuperscript{174} Timber Resources Management (Amendment) Regulations, 2003 (L.I. 1721), Regulation 14(1)(a); Paragraph 4.1 of the model TUC.
\textsuperscript{175} Ibid., Regulation 14(1)(b).
\textsuperscript{176} “Annual rent” means the fee levied or paid per hectare per annum to the owner or landlord for the exercise of timber rights on his piece of land specified in the contract.
\textsuperscript{177} “Rent payable by the holder to the Administrator of Stool Lands” is calculated pursuant to Regulation 27 of L.I. 1649.
\textsuperscript{178} Paragraph 19 of the Model TUC.
Obligation on a holder to comply with all laws of Ghana, and with all applicable rules, regulations and requirements of governmental agencies.\(^{179}\)

Obligation to provide inhabitants of the contract area with social amenities/facilities in accordance with a Social Responsibility Agreement (SRA) to be annexed to the TUC.\(^{180}\)

**Which of these rights can co-exist with other land-based rights (e.g., license with an easement)?**

In Ghana, land-based rights such as easements and profits are recognised aspects of our land jurisprudence. "An easement is a right attached to a particular piece of land known as the dominant tenement or land which allows such owner to use or restrict the use of land known as the servient tenement or land belonging to another person".\(^{181}\) An easement may be acquired by statute, by grant or by prescription.\(^{182}\)

A profit à prendre is a right to enter another person’s land and to take something capable of ownership off that land, and it is this right to take part in the produce of the soil or in the soil itself that principally distinguishes a profit from an easement."\(^{183}\) Thus, rights to fish in another person’s creek, to pluck coconuts and oranges from another’s land, to take salt from another’s land are all examples of profits, for such things are capable of ownership.\(^{184}\) They are recognised as interests in land, and may be legal or equitable\(^{185}\) depending on the circumstances of their creation.\(^{186}\) Where they are acquired in registered land, they are registrable under sections 83 and 85 of the Land Title Registration Law. These rights can indeed co-exist with, for example, the grant of a lease which is one of the commonest means of conveying land property in Ghana.

These rights described are essentially a part of our land ownership system whether recognised by statute or by customary law.

Certainly, no CDM AR project can ignore subsisting traditional customary land rights, which are currently in part guaranteed by the Constitution\(^{187}\) and by the Timber Resources Management Laws.\(^{188}\) In a situation where about 78% of the total land area in Ghana including forest reserves is owned by customary land owners or allodial title holders (stools/skins, clans, families),\(^{189}\) customary laws and principles cannot be overlooked. Most lands to be used for CDM AR projects will be from this source. The State owns 20% of the remainder, whilst the remaining 2% is held in dual ownership, the legal interest being in the Government and the beneficial interest in the local community. The rights described above are being subjected to all kinds of variations partly as a result of government interventions through constitutional and statutory changes, and partly due to socio-economic changes. Increasingly therefore certain forms of entitlements are gradually being eroded and/or undermined:

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\(^{179}\) Paragraph 20 of the Model TUC.

\(^{180}\) Regulation 14(1)(c)(v) of L.I. 1721; Paragraph 24 of the Model T.U.C.

\(^{181}\) Da Rocha and Lodoh (1995), p.82.

\(^{182}\) Ibid., p.85. Examples of easements recognised in Ghana include rights of way, the right to run telephone lines over neighbouring land, and the right to use a lavatory situated on the servient tenement. Ibid., p.84.

\(^{183}\) Ibid., p.95.

\(^{184}\) Ibid.

\(^{185}\) Where a “profit” is conveyed to say X in trust for Y, X will be the legal owner, but because of the trust, Y in equity, is the beneficial owner entitled to enjoy the “profit” according to the terms of the trust. X holds the legal title and Y the equitable title.


\(^{187}\) See Article 11(1), (2), (3) and (4) of the 1992 Republican Constitution.

\(^{188}\) The Timber Resources Management Act, 1997 (Act 547); The Timber Resources Management (Amendment) Act, 2002 (Act 617); and The Timber Resources Management Regulations, 1998 (L.I. 1721).

\(^{189}\) See Agyeman et al (2003), Draft Reports on Equitable Revenue Sharing from (Costs and Benefits Sharing on) Plantation Development: A Case Study of Public, Private and Local Community Partnerships in Ghana, p. 23. Before the enactment of the Land Title Registration Law, 1986 (P.N.D.C.L.152) the Land Registry Act, 1962 (Act 122) provided the framework for registration of instruments affecting land. Consequently, all title registration which ante-dated Law 152 were done under Act 122, including all allodial titles registered prior to Law 152.
The customary principle of absolute ownership of the allodial title owner as for example a stool/skin to deal with the property is no longer observed. A stool/skin allodial owner cannot make any disposition of the land without the consent and concurrence of the Lands Commission.\textsuperscript{190}

The 1992 Constitution has also abolished the creation of any freehold interest out of any stool/skin land in Ghana. Any attempt to create a freehold interest out of stool/skin land will be invalid and will not confer any interest on the grantee.\textsuperscript{191}

The power of the State to compulsorily acquire land has the effect of extinguishing the title and interest of the owner of the land that may be acquired.\textsuperscript{192}

Upon compulsory acquisition, the State is not liable to perform customary services to the allodial owner.\textsuperscript{193}

The customary law principle that the right of a subject to cultivate any extent of stool land which did confer on him an unlimited license for indiscriminate cultivation\textsuperscript{194} has changed with increasing population and urbanization. The tendency now is to limit the extent of land a subject may acquire by reason of his inherent right.\textsuperscript{195}

iii. Does this system of rights described above accurately represent what exists on the ground, or are certain forms of entitlement not given legal recognition?

Yes, the system of ownership rights described above represents what exists on the ground. They have been adopted in the Land Title Registration Law 1986, PNDCL. 152. Subject to the constitutional and statutory limitations discussed above, these are recognised by the 1992 Constitution as per Article 11(1) and (2) and enforceable under Articles 18 and 33 of the Constitution.

iv. If there is a gap in the law, how could this complicate CDM AR projects in the country of study?

Complications may arise where a dispute/conflict develops over land granted for a CDM AR project, delaying the project and threatening the investment input.

This may be so, for example, where traditional authorities re-enter land compulsorily acquired for a CDM AR project but for which no compensation has been paid, or where two stools claim title to the same piece of land or where there is land border dispute between two or more stools because of inadequate land parcel documentation.

Key issues for land legislation in Ghana are being addressed through the World Bank funded Land Administration Project (LAP) which was launched in year 2003.\textsuperscript{196} The Legislative Reform component has the objective of harmonizing the land policy and regulatory framework for sustainable land administration.\textsuperscript{197}

b. Will land need to be reclassified and land use plans need to be changed in order to accommodate CDM AR projects?

\textsuperscript{190} See Article 267(3) of the 1992 Constitution; Section 4(1) of the Lands Commission Act, 1994 (Act 483).
\textsuperscript{191} Article 267(5) of the 1992 Republican Constitution provides “no interest in, or right over, any stool land in Ghana shall be created which vests in any person or body or persons a freehold interest howsoever described”; See also da Rocha and Lodoh (1995), pages 2 and 14.
\textsuperscript{192} Article 20, of the 1992 Constitution.
\textsuperscript{193} Section 1 of the State Lands Act, 1962 (Act 125).
\textsuperscript{195} \textit{Ibid.}, pages 7, 9–10. See also Frimpong v. Poku (1963) 2 GLR.1, at 4.
\textsuperscript{197} \textit{Ibid.}, p.16.
Within the context of the current land ownership system, CDM AR projects can still proceed, whether the lands for the project(s) will be given at the instance of the Government of Ghana or stool/skin authorities, or whether the sources of the lands will be public, vested or stool/skin/family lands. Within the context of the plantations development programme the FC’s strategies in the protection, management and development of forest resources would include development of a comprehensive database for plantation development covering site classifications, terms of tenure of various land types, species site matching, etc. These are some of the actions that would be required to accommodate CDM AR projects.

4. Review of carbon sequestration projects in the country (or in a country in the same region applying a similar legal system)

a. Please describe past (if any) and present carbon sequestration projects in the country (or in the region applying a similar legal system, in case there were no such project in the country of study), including which stakeholders participated in their development and implementation. Please focus on activities implemented jointly (AIJ) or prototype carbon fund (PCF) projects, if there are any in the country of study. If the projects are too numerous to describe, please select those that are, in your best judgment, most relevant to this study.

In 1999, the GoG expressed its intention to support carbon sequestration projects in the country. This was at the time when the Forest Plantation Development Fund legislation was being formulated for discussion and approval by Parliament. In creating the Fund the GoG hoped to attract additional capital from “local and foreign financiers interested in timber production and environmentally conscious institutions interested in fostering global carbon arrest initiatives”.

This was no doubt an important declaration of policy intent, culminating in the passage of the Forest Plantation Development Fund Act, 2000 (Act 583) and the Forest Plantation Development Fund (Amendment) Act, 2002 (Act 623). Under Act 583, the GoG expressly made clear its readiness to receive: “grants and loans for encouraging public and private investment in plantation forestry”; and grants provided by international environmental and other institutions to support forest plantation development projects for social and environmental benefits. Apparently, GoG’s concern is not so much of maintaining control over the Fund as attracting adequate resources for forest plantation development. The underlying concern is that if the forests are to be expanded appreciably within a reasonably short time, then other players or developers should be roped in. The representation on the Forest Plantation Development Fund Management Board itself underscores the private sector oriented stance of the GoG in relation to the Fund Management Board. There is only one GoG representative; the remaining five represent various bodies which have interest in the development of forest plantations.

An Italian university has officially declared interest to the MLF to execute a CDM AR project in Ghana on behalf of the Italian Ministry of Environment. The MLF has also indicated intentions to help. Efforts are being made to identify a potential site for the project. The Italian team had been taken to a place in the upper east region of Ghana to examine possibilities and to identify a potential site. The status of the site is being assessed, as at 1990. We are advised that the Italians are working on a PDD in pursuance of their declared interest.

200 See Section 4(b) of the Forest Plantation Development Fund Act, 2000 (Act 583) and Sections 2(a) and 6 of the Forest Plantation Development Fund (Amendment) Act, 2002 (Act 623).
201 See Section 4(c) of the Forest Plantation Development Fund Act, 2000 (Act 583).
202 The draft Climate Change Commission (CCC) law proposes the establishment of a Climate Change Fund into which grants from the GEF and other international donors will be put. This will call for harmonization of efforts between FPFD and the CCC as to where grants for CDM AR programmes will go and how they will be managed.
Apart from this, no carbon sequestration projects have been executed in spite of these very hopeful policy and legislative declarations of intent and purpose by GoG. This situation is perhaps due to lack of funding and the absence of a DNA to take the lead in ensuring that CDM AR related activities, programmes and relevant policy development and implementation are attended to in a concerted and coordinated manner, including the development of national criteria and procedures for CDM AR projects.

**Climate Change and CDM Activities in Kenya**

Many African countries are taking steps to meet their obligations under the Convention and the Protocol, but it appears not enough has been done. Kenya has compiled her First National Communication to the COP of the UNFCCC. Kenya’s Bureau of Environmental Analysis is engaged in a project entitled Capacity Building Initiative to Enhance Investment Operations. The project aims to provide analytical and technical support to capacity building initiatives necessary for clean development investment and the formulation of a climate change strategy.

Another initiative in Kenya being led by the Bureau of Environmental Analysis (BEA) International and World Agroforestry is in the area of tree planting for carbon sequestration projects involving rural communities in some selected areas in three districts in Kenya. It is a pilot project covering about 500–1500 hectares that is expected to generate offsets within the requirements of small-scale carbon sequestration projects.

Depending on the results of the pilot programme, land will be committed for growing trees for a 25-year period to allow for adequate sequestration of carbon. The proceeds of the sequestered carbon are to be shared between the local communities, land owners and other partners.

b. What are the most important lessons that can be learned, if any, from these carbon sequestration projects, which can be applied to CDM AR projects, especially as they relate to the issues set out in this list?

The Kenyan pilot programme of tree planting for carbon sequestration offers some lessons for thought and guidance in developing appropriate frameworks and meeting requirements for accessing and interfacing with opportunities offered by the CDM:

- **Capacity building and project development assistance.** This is imperative, for instance, in building capacity of civil society, including community groups to effectively participate in collaborative forest management practices under CDM AR projects.

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205 The Kenyan experience is being used here because of access to data, though very scanty, on some CDM initiatives in that country. Secondly, Kenya has a similar legal system to that of Ghana, being a common law country. Since Kenya’s last Presidential elections, hope for genuine democracy has been on the increase in that country amidst these initiatives on CDM and carbon sequestration. See Press Release on “Local Community Carbon Sequestration Initiative in Kenya” (www.iisd.ca/email/suscribe.htm). It is slightly ahead of Ghana having already developed national Guidelines on the CDM under the auspices of a National Climate Change Focal Point.

206 See status of climate change activities on Kenya at www.joanneum.at/encofor/casestudies/Kenya.html

207 Ibid.

208 Ibid.

209 Bureau of Environmental Analysis (BEA) International is a non-partisan not-for-profit trust foundation that catalyses interests of stakeholders and sensitizes the public in improving performance of the environment that adds value to socio-economic development. Established in February 2002 and registered in Kenya with focal points in Barbados, Malaysia, Chile, Austria and Norway, BEA International promotes partnerships and capacity building in order to leverage efforts aimed at supporting local community development through participation in implementing practical projects including tree planting, consumption of clean energy, renewable energy technologies and energy efficiency, waste management and self-financing support projects.

210 Ibid. The project aims to explore the possibilities of offering alternative models for local community development that work with international innovative financial instruments such as the CDM to generate sustainable development benefits simultaneously with generating global environmental services and products that would attract CDM investments. The goal of this collaboration is to develop a pilot phase and test local community participation that will facilitate project development.

211 Ibid.

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Collaboration with the local community offers a great opportunity to address community needs and priorities through effective public participation in a CDM AR project design, planning and implementation to ensure equitable distribution of sustainable development benefits.

- Defining the identities of project participants, the period of the agreement, the area of land involved in the projects, and the nature of obligations and rights that will be due land owners, community groups and other partners involved are of the essence of any framework agreement for a CDM AR project.

- There is also a recognition that the benefits to accrue from the project will be shared such as to enable local communities, land owners and partners to benefit. The right to carbon offset proceeds of all stakeholders are recognised and taken care of. This in effect is a recognition of not only the interest of land owners, but also the interest/right of local communities in or over land.

- The presentation of the CDM AR framework to the public offers an important opportunity for the public and other stakeholders to comment on the proposed project, to make/voice out objections if any or to concur and give their support.

c. **If no carbon sequestration projects have been implemented in the country, which countries’ experience could the country of study benefit from the most?**

The lessons from Kenya itemized above, can potentially inform CDM AR project planning and implementation in Ghana. The outcome of the pilot project will bring to the fore not only the potentials but some of the challenges and constraints to expect in executing a carbon sequestration project in rural Africa. These may be relevant for CDM AR initiatives in rural Ghana.

d. **In your opinion and based on your research, what types of projects will be implemented under the CDM? Are unilateral CDM projects planned? Which stakeholders (e.g., government, private sector, communities, NGOs) will have an active role in the planning, design and implementation of CDM projects (both unilateral and bilateral)?**

Besides the Italian University’s proposed CDM project, two specific proposed projects relating to CDM AR are worth mentioning here:

**Rehabilitation of degraded forest areas**

This project will contribute to the attainment of National Forest and Wildlife Policy (1994) by promoting resources development aimed at reforesting suitable harvested sites, rehabilitating degraded mining areas, afforesting denuded lands, regenerating desired wildlife species and habitats. Moreover, the project aims to promote tree planting and agroforestry systems as positive community-building actions which generate raw materials and income while improving the quality of the environment, and to ensure the renewal of forest resources through regeneration and afforestation with a view to sustaining the potential for carbon sequestration.

**Project objectives**

To encourage development of private plantations for the fulfilment of the target to restore degraded forests covering about 400,000 hectares.

- To motivate the local communities to participate in the conservation of forests and carry out silvicultural activities with a view to increasing revenues, restoring biodiversity and increasing the forest vegetation cover.

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213 The GoG Initial National Communication to the COP of the UNFCCC, December 2000, pages 125–130. These are proposed projects which have been on the drawing board since year 2000, but have not been implemented due to absence of the CDM institutional set-up and lack of funding.

214 One key objective of the forestry development programmes discussed is to rehabilitate degraded forest reserves. As the forests are regenerated, opportunity also arises for carbon sequestration initiatives. Achieving net forest growth to enable Ghana to contribute to reduction of global CO2 emissions is very necessary.

To increase forest area by afforestation and reforestation as one of the few proven ways to effectively increase the up-take of atmospheric CO2 by the biosphere. To provide income to local people and increase the amount of carbon sequestered. Stakeholders would include traditional rulers, local communities, wood-processing industries and women’s groups.

Expected outputs

- Many degraded plots replanted and rehabilitation of forest cover being achieved;
- Deforestation slowed down on communal lands;
- Reduction of human pressure on natural stands;
- Abundant private forest plantations (about 400,000 hectares established within 30 years);
- Jobs provided to local populations;
- Forest-dependent communities would have direct and effective participation in planning and decision-making in forest plantations development; and
- Net addition to the standing inventory of biomass carbon.

Joint Forestry Project to offset GHG emissions

Primarily a bilateral agreement for investor pools seeking to offset their GHG emissions and an implementing agency – Forest Service/private forest company in Ghana. The project will develop a sustainable forest management component that will sequester a defined range of carbon, and at the same time provide income to local people.

An international corporation in a developed country will provide funds to a TUC holder to implement tree planting programmes and training staff to use existing technology to undertake low impact harvesting operations.

Project objectives

- To regenerate degraded forest areas and reduce the deforestation rate.
- To facilitate agroforestry and tree planting as an alternative source of income.

Stakeholders would include forest-dependent communities, the private forestry sector (holders of Timber Utilization Contracts), the Ministry of Lands and Forestry, the Ministry of Environment and Science, the Environmental Protection Agency, Ministry of Finance and donor agencies.

Expected outcome

With this project, degraded forestland will increase biomass production/hectares and sequestered carbon can be credited to the overseas funding agency. In addition, improved forest management practices such as low-impact logging will help to reduce damage to the residual forest, decrease erosion, increase biodiversity protection, and hence reduce forest land degradation. Active local support and participation is a critical factor in the success and durability of the project. Experienced and committed implementing agencies – Forestry Service and overseas counterparts – will demonstrate their ability to leverage as well as attract other funds.

Planned activities

- Planting of community woodlots for poles and timber;
- Implementation of agroforestry practices for fuelwood, fodder, soil nitrogen fixation, fruits and nut production; and

216 Ibid., p.126.
217 Ibid., p.128.
218 Ibid.
219 Ibid., p.129.
220 Ibid.
The Ghanaian Experience

- Provision of training and extension for community forest fire brigades to protect the newly planted trees and natural forests.

These two are potential projects which can be implemented under the CDM framework. The first one on rehabilitation of degraded forest areas could be executed unilaterally, whereas the second one could be a bilateral CDM project. Current AR projects under the NFPDP and the CFMP are also potential CDM projects. Some of the projects likely to arise within the purview of the Forest Plantation Development Fund legislation are potential CDM projects. These various projects are likely to attract all kinds of stakeholders playing various roles at various points including:

- the Host Country, represented by the relevant Government Sector Ministries, Departments and Agencies (MDAs), as, for example, the Ministry of Lands and Forestry, the Ministry of Environment and Science, the Ministry of Finance, the Environmental Protection Agency, the Forestry Commission, and the Lands Commission;
- donor agencies (multilateral, bilateral);
- the CER purchaser – a company that invests in the project or purchases CERs generated by the project;
- the project proponent – an entity, such as an MDA, a company, or local NGO, that develops and implements a CDM project;
- private sector actors – as for example, wood processing entities and holders of Timber Utilization Contracts;
- traditional rulers (land owners)/local communities; and
- local government representatives as may be appropriate, from a District, Municipal or Metropolitan Assembly.

5. CDM AR project design and formulation

The following sections (5–9) are an attempt to provide some guidance as to the legal requirements attached to each step in the CDM project cycle in Ghana.

a. What substantive standards (e.g., species of trees to be used, types of land on which projects can be implemented), if any, are used for AR project activities:

i. as required by law?
ii. used in practice although not required by law (e.g., in development agency funded projects)?

The species of trees to be planted for AR project activities are varied. Under the Forestry Development Master Plan the Government of Ghana has recognised that one of the main forestry development opportunities lies in the establishment and management of large-scale timber plantations of fast-growing indigenous and exotic species over a 20 year period. There are several other different acts and planning processes that guide afforestation and reforestation in Ghana.

The Timber Resources Management Regulations, 1998, has a long list of timber species subject to stumpage charges giving an indication of the species that are involved in the timber industry.

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221 See the Memorandum to the Forest Plantation Development Fund Bill of 23 Dec. 1999, p.ii; Sections 2 and 4 of the Forest Plantation Development Fund Act, 2000 (Act 583); and Section 2 of the Forest Plantation Development Fund (Amendment) Act, 2002.
222 “Stakeholders” means the public, including individuals, groups or communities affected, or likely to be affected, by the proposed Clean Development Mechanism project activity, in Doc. FCCC/CP/2001/13/Add.2, p.26.
224 See Schedule 2 pursuant to Regulations 21(1) of the Timber Resources Management Regulations, 1998 (L.I.1649), Schedule 2 pursuant to Regulation 21(1).
These varieties offer an important guide to determining what species will be cultivated in an AR project activity. It is also my view that the following factors may also be reckoned with in making a determination of species to cultivate: (a) species for which the demand is high or depleted species; (b) species for which the demand is moderate or available species; (c) species for which the demand is low or abundant species.225

Subject to current GoG policy to encourage the cultivation of fast growing tree species, the reforestation requirement for a holder of a TUC226 presupposes that the species likely to be used in the forest plantations will not be different from what has been felled or different from those listed in Schedule 2 of the Timber Resources Management Regulations, 1998 (L.I 1649). In the case of alien species and genetically modified organisms, UNFCCC COP decision 19/CP.9 requires host Parties to evaluate, in accordance with their national laws, risks associated with the use of potentially invasive alien species, and potential risks associated with the use of genetically modified organisms by afforestation and reforestation project activities. Laws on prevention and control of pests and diseases of plants (including plant quarantine),227 and regulations on the importation of plants228 and seeds (certification and standards)229 will be applicable in determining whether or not to allow the introduction of alien species in AR projects.

In addition, Ghana is a party to the Convention on Biological Diversity (CBD) having ratified the CBD on 29 August, 1994. AR projects will have to reckon with the GoG’s obligations under the Convention. The obligations include developing national biodiversity strategies, plans or programmes,230 integrating the conservation of biological diversity and the sustainable use of its components into relevant sectoral and cross-sectoral plans, programmes and policies,231 integrating considerations of the conservation and sustainable use of biological resources into national decision-making, adopting measures relating to the use of biological resources to avoid or minimize adverse impacts on biological diversity, protecting and encouraging customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements232 and EIA requirements with a view to avoiding or minimizing significant adverse effects of projects on biodiversity.233

Under on-going AR projects, for the maintenance of biodiversity, 5–10% of the plantation established shall be of indigenous species.234 Also, areas of cultural, biological, scientific or touristic importance shall be excluded from plantation areas.235

225 Stumpage charges payable depends on which category of species will be felled. Where demand is high or is in the depleted species category, the rate is higher (20%), as against a situation where demand is low or the species are abundant (5%). Where species are available and demand is moderate, the rate is 10%. The higher rate of 20% serves as a disincentive to fell depleted species with high demand. See Schedule 2, Regulation 21(i) of L.I. 1649. For the ongoing forestry programmes, government policy is to encourage the growing of fast growing species, both indigenous and exotic, in particular teak, even though seedlings of various species are being planted. MLF: Forestry Development Master Plan: 1996–2020, p.13; FC Annual Report, 2002, p.20; NFPDP Annual Report for 2003, p.5.

226 See Regulations 11(d)(ii); 13(1)(a); 14(1)(d); and 14(2) of L.I. 1649.


228 Importation of Plants Regulations No. 25 of 1936.

229 Seeds (Certification and Standards) Decree, 1972 (NRCD 100). See also Importation of Plants Regulations No. 25 of 1936.

230 Convention on Biological Diversity, Article 6(a).

231 Ibid., Article 6(b).

232 Ibid., Article 10.

233 Ibid., Article 14.

234 See the Agreement for Accessing of Degraded Forest Reserve Lands for the Modified Taungya Forest Plantation Between the FC and the Investor, paragraph 5.5; Land Lease Agreement for Accessing Degraded Forest Reserve Lands for Commercial Forest Plantation Development, paragraph 3.8.

235 Ibid., paragraphs 5.4 and 3.7 respectively.
The question of exotic species of animals, plants or microbial agents (exotic species and/or land races of plants, animals and microbes) and potential consequences for loss of biodiversity was appropriately raised in the formulation of the CFMP.\(^{236}\)

The EIAFW Guidelines recognise that the introduction of exotic species and/or land races of plants, animals and microbes could adversely impact on the environment.\(^{237}\) Accordingly, the EIAFW Guidelines require that\(^{238}\) for any project which is likely to alter the species composition:

- the acceptable loss of biodiversity must be agreed upon before the project commences;
- biodiversity quality must be measured annually by an expert (botanist, forester, biologist, etc.) using appropriate and internationally accepted methodologies such as the genetic heat index (GHI) described by Hawthorne and Abu-Juam (1995); and
- if GHI drops below the agreed level then further negotiation must be carried out and it is likely that the project will have to take measures to reduce the impact to the extent of ceasing all activities and/or undertake active rehabilitation.

Other measures to mitigate impacts on ecosystems are also recommended by the Guidelines.\(^{239}\)

The underlying concern of almost all the plantation development projects being undertaken now (NFPDP and CFMP) is the restoration of forest cover. Thus, the type of land, the subject matter of those projects are mostly degraded forests both in forest reserves and off-reserved areas. In addition, the FC’s strategy of establishing enhanced and sustainable plantation development through creation of an autonomous, self-financing and commercially oriented Plantations Development Unit under the FC is to facilitate plantations establishment apart from the restoration programmes. Invariably the lands to be given for the projects would be those owned by GoG or lands held by the GoG in trust for stools/skins/communities.

The ADF funded CFMP is taking place in various districts on degraded forest reserves allocated by the FC for the development of MTPs, involving fast growing and other commercial species including teak and cedrella. Thus the analysis of the issues identified is largely within the context of the existing policy and legal regimes vis-à-vis the international legal framework for CDM AR project activities.

b. Under existing laws, what kind of study, at the minimum, must a proponent of an AR project undertake? Do the requirements for such study provide guidelines for an environmental impact analysis? A socio-economic impact analysis?

A proponent of an AR project is required to undertake a survey/study that will enable him to prepare and submit a reforestation plan to the FSD of the FC for evaluation and approval. This is a requirement not

\(^{236}\) See the ADF Document ADF/BD/WP/2002/43, Appraisal Report of the CFMP. It was expected that the environmental management plan for the project would respond appropriately to ensure that mitigation measures are incorporated into the project design and effectively implemented, and that the executing agency was to ensure that mechanisms were in place to monitor the long-term ecological viability of the project operations, p.23.

\(^{237}\) Such impacts would include: loss of habitat and decreased biological diversity; increased potential for massive loss of tree species particularly exotic ones by pests or pathogens (through simplification of natural ecosystems, and absence of natural controls); and spread of species (exotic) outside of the plantation competing with native species and becoming weeds in agricultural fields. EIAFW Guidelines 1999, pages 14 and 22.

\(^{238}\) EIAFW Guidelines (1999), p.36.

\(^{239}\) Such as: update and maintain inventory and research result on species present in the area; plan harvesting intensity methods and timing based on this information; choose species to avoid those that will grow uncontrollably and out of desired sites; use native species as plantation species; choose species with pest or disease resistance; and in semi-arid areas, choose low water demanding species; increase number of species planted and avoid monoculture over a large area. Ibid., pages 31–32.
only for purposes of Act 547, but also others interested in AR development. An AR proponent is required to undertake an assessment of the likely environmental effect of the project and proposed programme to redress any such effects. The requirements for such a study provide guidelines and the legal basis for both environmental impact analysis and socio-economic impact analysis. The requirements for environmental/socio-economic impact analysis are applicable irrespective of whether the land which is the subject matter of the AR project is state, private or community land.

c. If there are guidelines:

i. Are the guidelines for an environmental impact analysis different from those that are required by law for an environmental impact assessment?

Guidelines for environmental impact analysis are part of or contained in the guidelines for environmental impact assessment provided for in Act 490, L.I. 1652 and the EIAFW Guidelines.

ii. Are the guidelines for a socio-economic impact analysis different from those that are required by law for a socio-economic impact assessment?

Guidelines for socio-economic impact analysis are part of or contained in the guidelines for socio-economic impact assessment provided for in Act 490, L.I. 1652 and EIAFW Guidelines.

d. If there are no guidelines, what default technical guidelines could the project participants follow which, in your opinion, would be acceptable to the host country?

Not applicable.

e. How is the term “significant impact” defined by the host country’s law? Is this the criterion that triggers the need for an environmental and/or socio-economic impact assessment, or does some other criterion trigger this requirement? Is there a list of projects that require an environmental and/or socio-economic impact assessment? If there is such a list, are afforestation and/or reforestation projects included in such list?

Regulation 9(4) of L.I. 1652 makes reference to “significant adverse environmental impact”, but no definition or interpretation is given of this phrase; what is defined under the interpretation section is “adverse effect on the environment or public health.” It means “any change that an undertaking may cause to the

240 See Timber Resources Management Act, 1997 (Act 547) Section 8(d); L.I. 1649 Regulation 13(1)(a). The key ingredients of a reforestation plan include: (a) financial capability and how to sustain the project; (b) capability to produce seedlings/sources of seedlings; (c) investment appraisal of the project; (d) determination of species suitability; (e) management/operationalization of project and with which human resource; (f) environmental impact and mitigation measures; and (g) the maintenance of the plantation. (Info source: interview with Mr. F.S. Amoah, Director of Plantation Development Unit of FSD, 11/11/2004).

241 Environmental Protection Agency Act, 1994 (Act 490); sections 12(1) and 2(i); Environmental Assessment Regulations, 1999 (L.I. 1652), Regulations 1, 2 and 3; Timber Resources Management Regulations, 1998 (L.I. 1649), Regulation 12(3)(b); See also the EIAFW Guidelines, p.8.

242 Ibid. As part of the EIA process a proponent is required to submit a draft terms of reference stipulating the matters the environmental impact statement (EIS) on the proposed undertaking will deal with. These matters include information on potential, positive and negative impacts of the proposed undertaking from the environmental, social, economic and cultural aspects in relation to the different phases of the development of the project. The EIS itself when submitted must have addressed a host of issues impacting on the environment including changes in social, cultural and economic patterns relating to decline in existing or potential use of valued resources; direct or indirect employment generation; immigration and resultant demographic changes; provision of infrastructure such as roads, schools, health facilities; local economy; cultural changes including possible conflict due to immigration and tourism; and potential land use in the area of the proposed undertaking. An EIS shall also include information on the possible health effect of the undertaking on persons within and around the vicinity of the proposed undertaking. The EIAFW Guidelines amplifies the range of positive and negative socio-economic impacts likely to result from operations and activities impinging on the management and utilization of the forest, on the dynamics of the forest ecosystem and on the cultural set-up of communities found associated with these resources.

243 L.I. 1652, Regulation 30(1). Regulation 30(1) defines “undertaking” to mean “any enterprise, activity, scheme of development, construction, project, structure, building, work, investment, plan, programme and any modification, extension, abandonment, demolition, rehabilitation or decommissioning of such undertaking the implementation of which may have a significant impact”.

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environment and includes the effect of any change on health, socio-economic and cultural conditions”. For purposes of L.I. 1652, the implementation of any undertaking may have a significant impact. Therefore under the existing regime an environmental and/or socio-economic impact assessment will be required taking into consideration the following:

Circumstances and criteria for determining the need for environmental and/or socio-economic impact assessment for AR projects:

- where the undertaking/activity falls within those listed under Schedule 1 to the regulations or any undertaking to which a matter in the said schedule relates. Pursuant to the Environmental Assessment Regulations, 1999, no person shall commence any of the undertakings specified in Schedule 1 unless prior to the commencement, it has been registered with the EPA and an environmental permit (EP) has accordingly been issued by the EPA. The undertakings affected under this regulation include logging (management of forested land for the primary purpose of harvesting timber in a contract area) and forestry services involving pesticides application, introduction of exotic species of animals, plants or microbial agents; and establishment of forests in previously forested and unforested areas.

- L.I. 1652 makes it mandatory for environmental impact assessment (EIA) to be carried out in respect of any undertaking which in the opinion of the EPA has or is likely to have adverse effect on the environment or public health.

- where the activity or undertaking falls within those listed in Schedule 2 to the regulations. No environmental permit shall be issued for undertakings specified in Schedule 2 to the Regulations unless an EIA is submitted to and approved by the EPA. These undertakings include forestry activities.

- where the EPA, upon receipt of a preliminary environmental report is satisfied that “a significant adverse environmental impact” is likely to result from the activities of the undertaking. EIAs are therefore required for forestry development operations in the following circumstances and situations: (a) forest reserves; (b) biosphere reserves; (c) off-reserve forests; (d) plantation forests to be established with either exotic or indigenous tree and plant species; and (e) natural forest management involving enrichment planting, Taungya practices, stand maintenance/management, construction of access road to the forest, harvesting of timber.

- all activities and operations in the natural and plantation forests, woodlands, savannahs and other vegetation types which may affect the environmental stability or impact on the environmental resources may be subjected to an environmental vetting and permitting procedure.

- where the forestry activity will cover an area of land either bare or vegetated greater than 20 hectares and is to be undertaken in any areas described as socially, ecologically and/or environmentally sensitive/fragile.

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244 See reg. 30 (1) of L.I. 1652.
245 Ibid., Regulation 1(1).
246 Environmental Assessment Regulations, 1999 (L.I.1652) Regulation 1(1).
247 Ibid. Schedule 1 pursuant to Regulation 1(1). The terms “previously forested and unforested areas” are not defined by the Legislative Instrument 1652 or any other legislation. In the context here, my view is that a “previously forested area” means an area previously covered by either natural or man-made tree stands; and “previously unforested area” means an area to be planted with trees or to be developed as a man-made tree plantation.
248 Ibid., Reg. 3, 9(4).
249 Ibid., Reg. 3.
250 Ibid.
251 Ibid., Reg. 9(4).
252 EIAFW Guidelines, p.10.
253 Ibid. p.11.
254 Ibid.
255 Ibid.
256 Ibid., pages 12–13.
257 Ibid., p.9.
258 EIAFW Guidelines, p.9.
In the context of the EIA laws and the EIAFW guidelines permissibility of any forestry development activity and operations may depend on the economic, social, cultural, ecological and environmental sensitivity and fragility of the areas or system and/or the size of the area or system. Where the area to be “worked” exceeds 20 hectares, EIA or any agreed upon form of permitting may be required by the EPA in consultation with the project proponent.

f. Which government institution approves the environmental impact assessment? The socio-economic assessment? The mitigation plan to address projected negative impacts?

The Environmental Protection Agency Act, 1994 (Act 490) assigned new regulatory power to the EPA “To ensure compliance with any laid down environmental impact assessment procedures in the planning and execution of development projects, including compliance in respect of existing projects”. To strengthen the hand of the EPA in the discharge of this function, Act 490 further provides that:

“The Agency may by notice in writing require any person responsible for any undertaking which in the opinion of the Agency has or is likely to have adverse effect on the environment to submit to the Agency in respect of the undertaking an environmental impact assessment containing such information within such period as shall be specified in the notice”.

To provide a more explicit legislative basis for its actions, the Environmental Assessment Regulations, Legislative Instrument No. 1652, were passed and came into force on 24 June 1999.

With the passage of L.I.1652, there is clearly a legal basis for the EPA to require environmental impact assessment and/or socio-economic impact assessment. Indeed failure to operate within these legal requirements will attract the appropriate legal sanctions.

The EPA has legal authority to ask proponents of all categories of undertakings/projects as defined in L.I. 1652 and EIAFW Guidelines to submit to it Environmental Management Plans (EMPs). The EMP sets out in practical terms the efforts that will be made to manage any significant environmental impacts that will result from the existing undertaking, i.e., how the mitigation measures proposed in the EIA report or EIS will be implemented. It is required to be submitted every three years and in such form as the EPA shall determine. On the basis of existing legislation therefore, it is the EPA which is mandated to approve EIAs of which socio-economic assessment is a necessary part and to approve EMPs meant to mitigate projected negative impacts of projects and to issue environmental permits.

Is there a list of projects that require an environmental and/or socio-economic impact assessment? If there is such a list, are afforestation and/or reforestation projects included in such list?

Under L.I. 1652, two lists of projects that require environmental and/or socio-economic impact assessment are provided:

- Schedule 1 pursuant to regulation 1(1) of L.I. 1652: undertakings/projects listed here require only an initial assessment and may be registered for an environmental permit to be issued by the EPA.

259 Ibid., p.9.
260 Ibid.
261 Environmental Protection Agency Act, 1994 (Act 490), section 12(1).
262 See L.I. 1652, Regulations 1, and 3.
263 Ibid., Regulation 29.
264 Ibid., Regulation 24(1) and (2).
265 Ibid., Regulations 24(3) and 30(1).
266 Ibid., Regulation 24(2).
267 Ibid., Regulation 24(3).
268 Ibid., Regulations 7(3) 9(3) and 19.
Schedule 2 pursuant to regulation 3 of L.I 1652 (EIA mandatory list): undertakings/projects for which EIA is mandatory. Afforestation and/or reforestation projects are included in both lists. (See discussions on question 5e for the difference between Schedules 1 and 2.) The EIAFW Guidelines have a list of forestry activities and operations subject to environmental/and or socio-economic impact assessment.

g. **What types of AR projects are recognized by the host country’s law (e.g., agroforestry, monocultural or mixed industrial plantations, forest landscape restoration projects, for instance, on degraded or protected lands, community forest projects, other AR projects with focus on timber production, biomass energy, watershed management etc.)?**

From the point of view of existing legislation, the prescribed guidelines and experience from recent initiatives in plantation development programmes, the following AR project types are permissible and recognised in the country:

- Forest restoration in degraded natural forest reserves, ecologically sensitive areas, and protected areas as in special biological protection areas, convalescent areas, hill forest, swamp sanctuaries, provenance protection areas, sacred grove/cultural sites, productive forests, and fire protection areas and buffers.269
- Plantation development in off-reserve forests or in the savannah zones, and in some protected area systems or ecologically and/or environmentally sensitive/fragile areas as in dedicated forests, protective forests, hill forests, swamp sanctuaries/mangrove forests, riparian forests, sacred groves/cultural sites, fire protection areas and buffers.270
- Commercial forest plantation development projects of the following types: pure stand tree crop forests (monocultural); forests of agricultural and tree crops (agroforestry plantation farms); shrubland regeneration; woodlots; riparian forests.271
- Community forest programmes as in the ongoing CFMP.272

h. **Are these AR project types treated differently under the law, e.g., in terms of incentives, requirements? Do the regulations make certain project categories easier/more difficult, cheaper/more expensive to implement?**

While every project is unique in its own terms, the rules and guidelines are applicable without distinction. However, incentives may be employed under other legal regimes as the GoG Investment Legal Regime.

Enterprises273 set up for investments in AR projects, when registered with the Ghana Investment Promotion Centre (GIPC), may enjoy a whole range of financial, tax and other benefits and incentives pursuant to the Ghana Investment Promotion Centre Act, 1994 (Act 478).274 The GoG is indeed committed to:

> “encouraging investment in forest plantation development through incentives and other benefits; facilitating best practices for optimum timber plantation establishment and management; and promoting a feasible scheme that supports related forest products.”275

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269 See the Environmental Assessment Regulations, 1999 (L.I.1652), Schedule 1 and 2; EIAFW, 1999, p.10. See also the MLF update on the NPPDP; the Plantation Development Strategy and Action Plans.

270 Ibid.

271 Ibid.


273 “Enterprise” is defined under the Ghana Investment Promotion Centre Act, 1994 (Act 478) to mean “an industry, project, undertaking or business to which this Act applies or an expansion of that industry, undertaking, project or business or any part of that industry, undertaking, project or business” and where there is foreign participation it means such an enterprise duly registered with the Centre.

274 See the Memorandum accompanying the Timber Resources Management (Amendment) Bill to Parliament of 18 January 2002.

275 Ibid.
The benefits and exemptions for investors in forestry and wildlife include:\footnote{276}{The Timber Resources Management (Amendment Act) 2004 (Act 617), Section 3.}:

- benefits and exemptions pursuant to the Internal Revenue Act, 2000 (Act 592); Customs, Excise and Preventive Service Law, 1993 (P.N.D.C.L. 330);
- exemption of import duties, VAT or excise duties on plant machinery, equipment or parts;
- incentives for special investment to promote strategic or major investments in forestry and wildlife in addition to (a) above;\footnote{277}{This is not specified in Act 617, but the Minister for Lands and Forestry is mandated by the Act to negotiate for such incentives to be given investors.}
- investment guarantees in respect of transfer of capital, profits and dividends;\footnote{278}{Act 617 does not provide any time frames.} and
- guarantees against nationalization or expropriation by Government.\footnote{279}{Ibid.}

Government reaffirmed its stand on this issue in the GoG 2004 Budget. In the GoG Budget 2004 statement, it was noted that in line with the Ghana Poverty Reduction Strategy (GPRS) priorities of land administration reforms and re-afforestation of degraded forests, the MLF will implement certain activities including\footnote{280}{See Daily Graphic Special Pull-Out on BUDGET 2004: 2003 Sectoral Performance and 2004 Outlook, Monday, February 9, 2004, p.25.} rationalizing the fiscal and taxation regime in the forestry sector and implementing measures (such as long tracking, increasing benefit flows to resource owners and active community involvement to enhance law enforcement and good governance).

6. Negotiations of the CDM AR contract

a. Is the right to a CER defined in national law? If so, please describe how it is defined and how the law seeks to protect the right (E.g., Under which type of property, if any, does the right to a CER, fall? What form of registration within the country is required, if any, to protect the right (e.g., annotation on the title to the land, recording in a special registry)?).

No, the “right to a CER” is not specifically defined in any law in Ghana.

b. If the right is not defined by law:

i. Are there plans to define the right through legislation in the near future (i.e., in the next 12 months)?

There are no known plans to define the right by means of legislation in the immediate future. The hope however is that when the DNA is designated and established, the issue of defining the “right to CER” may be pursued.

ii. Based on existing property and contractual law, what would be the best way to characterize the right? Is there only one way, or are there several possibilities?

CERs are capable of ownership. My assumption is that in the context of the Land Title Registration Law, 1986 PNDCL 152, it may be recognised as an interest in land and therefore registrable. Therefore, the right to use CERs generated on certain lands could also be registered.
The Land Title Registration Law, 1986 (P.N.D.C.L. 152) provides for persons who may be registered as “proprietors” and provides for classes of “interest in land” which are regarded as rights of property that can be subject of initial registration.

The law also provides that “any interest appertaining to or affecting any land may be registered” provided that it is not an interest which according to its terms will expire without notice of termination within less than two years.

Under Law 152, “profit” which is recognised as a registrable interest in land is akin to CERs. Examples of “profit” envisaged under Ghanaian law are things capable of ownership as CERs are. “Profit” may be part of the soil or a product of the soil. CERs are also products of the soil, derived as part of the outcomes of a CDM AR project. Thus both “profit” and CERs import participation in the produce of the soil of another or the soil itself. Within the ambit of the land and immovable property laws of Ghana, and P.N.D.C.L. 152, the “right to a CER”, in so far as it will appertain to or affect any land over which a CDM AR project may be implemented, is potentially recognisable as a right/interest in or over land and capable of being registered pursuant to Law 152 in the register of the Land Title Registry.

The Effect of the Registration

When so registered, it will be by reference to the land itself on which the CDM AR project is being implemented, and not merely as an instrument executed by the parties involved; the registration of any person as the proprietor of an interest in land shall vest in the person the interest described, together with all implied or expressed covenants, liabilities and other incidents of title;

Allowing for registration of the right to a CER as an interest in or over land will give certainty to the title i.e., the right to the CER, facilitate the proof of it, and render dealings in CERs safe, simple, cheap and prevent frauds on purchasers.

The interest registered, i.e. the “right to CER” shall be subject to certain interests which can be enforced whether or not registered or notified in the land register.
The options and the means available for the registration could be any of the following:

- to register the CER purchase agreement where there is one, or any other contractual agreement between the project stakeholders that indicates who will receive which portion of the right to the CERs;
- to register any documentary evidence of the ownership of CERs;291 or
- registration of the document of legal title to the land (i.e. by annotation on the title to the Land Title Registry) which is the subject of the CDM AR project clearly stipulating the rights of access to the sequestered carbon/CERs.

In spite of these options and possibilities, carbon rights legislation or a legal framework for carbon sequestration programmes in Ghana may be imperative. This will be very much consistent with GoG land and forestry policies strategy of review of legislation dealing with the sectors to facilitate land administration delivery and ensure effective resource management and administration towards sustainable development, to enhance and motivate investments in CDM AR projects.

c. In the absence of a clear legal definition of the right to a CER, can the concept be defined sufficiently between Parties to a project through their contractual agreement?

In the absence of a clear legal definition of the right to a CER by means of legislation, the principle of freedom of contract can be invoked and parties/stakeholders can negotiate for the protection of their rights and interests. The benefits-sharing scheme of the ongoing CFMP offers a good example of collaboration and understanding between various stakeholders, MLF, FC, MTS farmers group and landowners, where negotiations have been made to cater for the interests, rights and responsibilities of the stakeholders all of which are embodied in a lease agreement.292 The benefits-sharing scheme experience of the CFMP experience can be brought to bear on this CDM AR situation.

d. Would defining the right to a CER by contract still be an available option even if the right were sufficiently defined by law?

The ambit of the definition of the right to a CER under a statutory enactment will determine whether the law can stand alone or there will be the need to amplify the right further in contract. Where the law is clear and unambiguous as what “the right to a CER” is, that settles it. But this does not preclude parties to a CER agreement from making a reference to the relevant legal rule or embodying the legal definition in the contract. This will strengthen the legal basis for the contract.

Previous forestry sector policy and legislation tended to ignore the crucial role/involvement of local communities and their rights. Since the local people own both the land and resources thereon, they have an inalienable right to a significant portion of the benefits accruing.

e. Does the country’s law on contracts set the venue and jurisdiction for dispute settlement? Can this requirement be waived?

Contract laws in Ghana do not restrict or compel parties to submit to certain specific jurisdiction in dispute or conflict settlement. Parties to a dispute will be free to submit themselves to the Alternative Conflict Resolution (ACR) procedures, or the courts provided for under the Constitution of 1992 or to the jurisdiction of an Arbitrator established under the Arbitration Act, 1961 (Act 38) or even to jurisdictions outside the country.

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291 Any writing affecting the land on which the CDM AR project is situated and which writing is the subject of ownership of CERs would constitute documentary evidence of such ownership. Similar to the requirements for making “profit” effective under section 85 of P. N. D. C. L. 152, to render such documentary evidence of CERs effective, it may be required of such writing to clearly stipulate (a) the nature of the CERs, the period for which ownership is to be enjoyed and the conditions, limitations and restrictions to which it is subject; (b) the land so burdened by the CERs and the particular part thereof so burdened; and (c) whether it is to be enjoyed exclusively or in common with any other(s).

292 See the Draft Land Lease Agreement for the Development of Forest Reserves Using the Modified Taungya System.
Some legislation however may provide guidance as to dispute settlement procedures to be followed. For example the Timber Resources Management (Amendment) Act, 2002 (Act 617) provides guidance as to how disputes arising between an investor and Government will be settled in respect of the grant of timber rights. For CDM AR projects, whatever policy/legal framework which may be enacted will provide the threshold for dispute settlement related issues. The draft Climate Change Commission Act proposes that the Commission shall at the request of a person engaged in a CDM activity, set up an Arbitration Panel between such a person and the Commission where the parties cannot reach an agreement. Parties can appeal against the decision of the arbitration to the High Court. Until the draft CCC Act is adopted, the provision on dispute settlement in Act 617 may inform dispute settlement in relation to CDM AR projects. Section 14F(1) of the Act provides:

Where a dispute arises between an investor and Government all efforts shall be made through mutual discussions to reach an amicable settlement.

Any dispute between an investor and Government which is not amicably settled through mutual discussions may be submitted at the option of the aggrieved party to arbitration as follows:

- in accordance with the rules of procedure for arbitration of the United Nations Commission on International Trade Law;
- in the case of a foreign investor, within the framework of any bilateral or multilateral agreement on investment protection to which the Government and the country of which the investor is a national are parties; or
- in accordance with any other national or international machinery for the settlement of investment dispute agreed to by the parties.

Where in respect of any dispute, there is disagreement between the investor and the Government as to the method of dispute settlement to be adopted, the choice of the investor shall prevail.

It will be up to CDM AR project investors/project proponents to negotiate and agree as to what options they will prefer for venues and jurisdictions for dispute settlement. In my view, these provisions are not restrictive.

f. Under the law, is there any class of persons who are recognized as requiring the special protection of the law when entering into contracts (e.g., indigenous peoples, unorganized communities)? What special protection does the law grant this class of persons (e.g., higher burden of proof in demonstrating that the party entered into the agreement voluntarily, entitlement to special assistance from the DNA in the negotiation of CDM AR contracts)?

In the context of both the National Land Policy and the Forestry Policy, the GoG has clearly demonstrated its concern for various classes of persons in need of protection of their rights and interests in land. Currently, steps being taken by law to protect indigenous and local community rights and interests in land include the obligation imposed on AR investors to provide social amenities/facilities to assist local forest fringe communities in accordance with the relevant Social Responsibility Agreement. In the ongoing

293 Draft Climate Change Commission Act, 2004, Section 32.
294 Ibid.
295 Timber Resources Management (Amendment) Act, 2002 (Act 617), Section 14F(2).
296 Ibid., Section 14F(2)(a).
297 Ibid., Section 14F(2)(b).
298 Ibid., Section 14F(2)(c).
299 Ibid., Section 14F(3).
301 See L.I. 1721, Regulations 13(12)(b) and 14(1)(c)(v). In addition, the SRA imposes an obligation on the investor not to undertake plantation development activities on taboo and/or other days of cultural significance to the community, and local infrastructure shall not be altered without prior notice and agreement in writing with the local community.
Land Administration Project, steps are being taken to address the need to protect various disadvantaged groups, vulnerable groups like migrant-farmers, women, village youth from poor families, and indigenous minorities.

These steps include participation of women in monitoring land transactions to ensure transparency in allocation and administration of communal property of the family or stool; consciously granting the youth access to information about land being allocated or sold by their elders and chiefs; and determination and documentation of land boundaries to enhance security of land tenure for migrants and tenants.

The projected impacts of the LA project on the interests of these groups are:

**Migrants and tenants:** Improved security of leased land and development of better terms and conditions. Documentation of agreements and their enforcement will be a public concern as terms are negotiated in a transparent manner.

**Women:** The project will ensure women’s involvement in village committees to be set up for project implementation. The project will sponsor further studies into gender considerations relative to acquisition, ownership, utilization and disposal of lands to inform legislative and institutional reform.

**Youth:** The participation of youth in village committees and their participation in land awareness and mobilization committees will enable them to access information they need to check the customary council members who err in their commitment to serve the interests of the community.

CDM AR project negotiations must reckon with these interests.

### 7. National approval

a. Under present laws, are there special requirements that CDM AR project participants need to comply with to become CDM AR project participants (apart from the general capacity to enter into contracts, e.g., financial capacity, track record in the implementation of CDM AR projects, proven commitment to environmental protection)?

No. However, provision has been made under the draft Climate Change Commission Act 2004 for detailed procedures/documentation for registration and execution of CDM activities and operational guidelines to be prescribed by regulations pursuant to the Act.

b. What legally mandated criteria are used for determining whether a CDM AR project assists in achieving sustainable development?

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303 Ibid., p.34.

304 Ibid., p.35.

305 Ibid.


307 Ibid., p.97.

308 Ibid., p.95.

309 Ibid., p.95.

310 Ibid., p.96.

311 Ibid., p.97.

There is no formal legal framework yet at the national level from which one can glean the legally mandated criteria for determining whether a CDM AR project assists in achieving sustainable development. For now, the corpus of environmental, forestry, land policies and accompanying legislation, will inform whatever criteria is to be developed. The DNA when it is in place must generate its own sustainability principles on the basis of existing policies and legislation and on any new initiatives so as to arrive at more relevant criteria for the context of a developing country like Ghana.

c. Is there a legally specified mechanism for determining that a CDM AR project assists the host Party in achieving sustainable development (e.g., sustainable development indicators, if any, for CDM projects, and for CDM AR projects in particular)? If so, please describe this process. Who is authorized to issue this certification? Can this certification be issued even in light of objection from other agencies and from stakeholders?

There is no legally specified mechanism in place now. There have been consultations and discussions toward the adoption of a document on “Selection of sustainable development indicators for Ghana” which is currently receiving the Cabinet’s attention for approval. In the document, sustainable development includes social, economic and ecological objectives:

- socially desirable, fulfilling people’s cultural, material and spiritual needs in equitable ways;
- economically viable, paying for itself, with costs not exceeding income; and
- ecologically sustainable, maintaining the long-term viability of supporting ecosystems.

When approved, it will guide the public and private sector, institutions in decision making and execution of plans, programmes/activities including the future DNA in the determination of whether a CDM project assists in achieving sustainable development.

d. If there are no substantive and procedural guidelines on determining that a CDM AR project assists in achieving sustainable development, in your opinion and based on your knowledge of the related law and policy in the country of study, what basis would the DNA use to determine that this requirement has been met? For instance, are there voluntary criteria that have been used in past (not necessarily CDM) projects (e.g., donor-funded afforestation and/or reforestation projects?) which could be acceptable to the DNA?

The sustainability guidelines agreed to by participants at the second stakeholders meeting under the UNIDO Project “Developing National Capacity to Implement Clean Development Mechanism Projects in a Selected Number of Countries in Africa: Preparatory Assistance”, and the sustainable development indicators being developed at the instance of MES can serve as a good guide for developing sustainable development criteria for CDM AR projects in Ghana. Against this background, and having regard to the existing law and policy regime for the land, forestry and environment sectors of Ghana’s economy, it is my opinion that the following could serve as a guide for a DNA in Ghana in fashioning out criteria for determining whether a CDM AR project assists in achieving sustainable development:

313 See The Week End Agenda, of 30th August 2004, p.4.
315 The draft Climate Change Commission Act, 2004 mandates the proposed DNA to develop procedures and criteria to ascertain if a particular CDM project activity assists in achieving sustainable development and also to monitor to ensure that approved CDM projects continue to meet established sustainable development criteria.
The CDM AR project must:

- be consistent with sustainable development priorities and poverty reduction objectives (GPRS);\(^{317}\)
- result in real, measurable and long-term emissions reductions below those that would have happened without the project;\(^{318}\)
- lead to the transfer of new and appropriate environmentally friendly and efficient technologies;\(^{319}\)
- contribute immensely to national institutional and human capacity building to reflect sustainable development strategies, priorities and initiatives;\(^{320}\)
- ensure that CDM investment inflows are over and above the existing Official Development Assistance (ODA);\(^{321}\)
- provide environmental and socio-economic benefits as well as reduce GHG emissions and the use of fossil fuels;
- address community needs and priorities through effective public participation in project design, planning and implementation to ensure equitable distribution of sustainable development benefits.\(^{322}\)

The DNA has to develop procedures to determine project eligibility/approve CDM AR activities.\(^{323}\) Pursuant to this the DNA may have to publish sustainable development criteria in relation to CDM AR projects to ensure such projects are environmentally effective and to certify that they lead to sustainable development. Project participants would be able to demonstrate compliance with these partly through meeting the national requirements for project participants’ eligibility and also through meeting the requirements of the PDD for afforestation and reforestation project activities under the CDM.

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\(^{317}\) GoG National Development Planning Commission (NDPC): Ghana Poverty Reduction Strategy 2003–2005 – An Agenda for Growth and Prosperity, Vol.1. The GPRS represented comprehensive policies, strategies, programmes and projects to support growth and poverty reduction by: 1. ensuring sound economic management for accelerated growth; 2 increasing production and promoting sustainable livelihoods; 3. direct support for human development and provision of basic services; 4. providing special programmes in support of the vulnerable and excluded; 5. ensuring good governance and increased capacity of the public sector; and 5. the active involvement of the private sector as the engine of growth and partner in nation building.


\(^{319}\) Ibid., pages 10–11 and 57.

\(^{320}\) Ibid., p.57.

\(^{321}\) Ibid., pages 10–11 and 57.

\(^{322}\) Ibid., p.10.

\(^{323}\) Some local/domestic guidelines for project eligibility are however emerging under the auspices of the UNIDO Project YA/RAF/01/405 “Developing National Capacity to Implement Industrial Clean Development Mechanism (CDM) Project in Selected Number of Countries in Africa: Preparatory Assistance”. The emerging CDM guidelines can be a reference point for the DNA when it is put in place, to be fully defined and clarified. These are that:

- The project must be consistent with stated national development priorities.
- The project has the unqualified support of the government in the Non-Annex 1 country.
- The project is clearly additional and would not be developed “but for” CDM.
- The Base Case against which the emissions reductions are measured is highly credible.
- The project is highly cost-effective: the incremental cost of reducing emissions is very low compared to Annex 1 Country cost (but not negative).
- The methodologies for calculating the emissions reductions are transparent and widely accepted.
- The data for calculating the emissions reductions are easy to obtain and verify.
- The project, including revenues from CER sales, is financially viable: has a high enough rate of return to attract foreign investment (private sector), or cost-savings are large enough to justify internal financing (private sector), or is favourable from a fiscal perspective (public sector).
- The owner/operator of the projects is an existing private/public sector entity.
- The regulatory requirements of the project are manageable under current practices/laws/regulations.
- The project uses technology that has already been commercialized and is highly reliable.
- Project technology is compatible with the existing infrastructure in which it will be placed.
- Project technology has been implemented successfully under similar local conditions.
- The emissions reductions are large enough to attract CER buyers.
- The project will be supported by local residents, and responsible authorities welcome and support the project and its implementation under the CDM.
- The project creates a number of other “ancillary” benefits in the form of jobs, reduction of other pollutants, increased trade, etc.
- Adverse environmental impacts from the project are small or manageable under existing regulations.
In addition to certification to the effect that a CDM AR project assists in achieving sustainable development, host country approval will also be required at two levels: formal written support for the CDM AR project; and to certify that other requirements in the context of the host nation’s legal and regulatory framework for such a project have been met. For example, approval and/or permits may be required from various Ministries, Departments and Agencies, Metropolitan, Municipal and District Assemblies. All these must be obtained prior to project commencement. The host country formal approval will presuppose that these have all been cleared.

8. Project validation

a. Under existing law, how is the requirement for public comment under the Kyoto Protocol likely to be complied with in the host country?

The Draft Climate Change Commission Act, 2004 has no provision directly addressing the requirement for public comment under the Kyoto Protocol. When the Draft Act is adopted into law, the Commission will have power to enact regulations to provide among other things for the procedures and/or documentation for the registration of activities including the terms, conditions and procedures for the execution of CDM projects and operational guidelines for DOEs.\(^{324}\) One can infer that the requirement for public comment will likely be covered under this as the proposed Act is generally intended to give effect to Ghana’s obligations under the UNFCCC and the KP.\(^{325}\)

The EIA regime as it exists currently offers good opportunity to meet the requirement for public comment, especially where a project proponent has been asked to submit an environmental impact statement (EIS). The legal requirements include the need to post notices of the proposed project to MDAs, Metropolitan, Municipal and District assemblies,\(^{326}\) to advertise in at least one national and local newspaper;\(^{327}\) and to make the scoping report for the EIA available for inspection by the general public in the locality of the proposed project.\(^{328}\) This transparent process is intended to offer the general public, agencies, organizations, NGOs, Metropolitan, Municipal and District Assemblies and local communities opportunity to make any comments, suggestions and even to raise objections.

In the context of current forestry policy, the GoG is open to transparency and local community participation and involvement in forest resource management. A typical example of demonstration of this policy stance is the CFMP. The CFMP\(^{329}\) was designed with the involvement of a cross-section of stakeholders, participating communities and individual farmers, to gauge their concerns and interests in the project as well as to obtain their views on operational modalities, especially on the MTS and how women, in particular, would gain equal access to the resources as their male counterparts. Consultations were also held with local leaders, government officials at district, regional and national levels to discuss issues of project design, relevant government policies and plans for the sector. These views and concerns were integrated into the CFMP design.

b. What weight would stakeholder opinion have on the issuance of permits?

The public and/or stakeholder comments and opinions expressed within the framework of the EIA processes and procedures could, in some circumstances, precipitate a public hearing:\(^{330}\) where following the

\(^{325}\) See the Preamble to the draft Climate Change Commission Act, 2004.
\(^{326}\) Environmental Assessment Regulations, 1999 (L.I. 1652), Regulation 15(1)(a).
\(^{327}\) Ibid., Regulations 15(1)(b) & 16(3).
\(^{328}\) Ibid., Regulations 11 & 15(1)(c).
\(^{330}\) Environmental Assessment Regulations, 1999 (L.I. 1652), Regulation 17(1).
posting of the notices and advertisements there appears to be great adverse public reaction to the commencement of the proposed project, where the undertaking will involve the dislocation, relocation or resettlement of communities, or where the EPA considers that the undertaking could have extensive and far reaching effects on the environment. The panel presiding over the hearing is obliged to hear such persons and bodies that will make submissions to it, consider all the submissions and make recommendations in writing to the EPA. Public and stakeholder comments could also trigger a further revision of the EIS by the project proponents or the project proponents may be required to conduct such further studies as the EPA might consider necessary. No environmental permit will be issued until the question of EIS revision or any further studies required have been addressed to the satisfaction of the EPA.

With the coming into force of the 1992 Republican Constitution and the conferment of the right to freedom of expression and the right to information, the potential for environmentally conscious individuals and groups to demand information and to raise concerns about the socio-economic and environmental implications of an AR project cannot be easily overlooked. Provision has been made for persons aggrieved or dissatisfied by any decision, action or omission of the EPA with respect to an environmental assessment of an undertaking, to exercise the right of appeal to the Minister responsible for the environment, who will appoint a board to decide on the case.

9. Project monitoring

a. In monitoring a CDM AR project, can project participants use monitoring processes put in place for other purposes (e.g., EIA law, forestry laws, CBD) as a guide?

The DNA proposed under the Draft Climate Change Commission Act, 2004 is expected to design monitoring systems and plans that are consistent with international requirements. In the absence of a DNA and its relevant structures, monitoring requirements under the EIA and forestry regulations and practices could serve as useful alternative guides. For example under the Timber Resources Management regime, the Forestry Department is mandated to carry out periodic review of the operations of TUCs and to monitor to ensure compliance with the terms and conditions attached thereto. The Forestry Commission is also obliged to assign an independent organization to undertake an audit of activities of every TUC holder every five years and report any irregularities detected for appropriate sanctions. Under the EIA legal regime, the mandatory submission of annual environmental reports by project proponents to the EPA, as well as the preparation of EMPs by proponents are significant aspects of the monitoring mechanisms and processes to which projects are subjected.

331 Ibid., Regulation 17(1)(a).
332 Ibid., Regulation 17(1)(b).
333 Ibid., Regulation 17(1)(c).
334 Ibid., Regulation 17(5).
335 Ibid., Regulation 18(2)(a).
336 Ibid., Regulation 18(2)(b).
338 Ibid., Article 21(1)(f).
339 Environmental Assessment Regulations, 1999 (L.I. 1652), Regulation 27.
341 Timber Resources Management Act, 1997 (Act 547), section 8(g); Timber Resources Management (Amendment) Regulations, 2003 (L.I. 1721), Regulation 14(2).
342 Timber Resources Management (Amendment) Regulations, 2003 (L.I. 1721), Regulation 14(3) & (4).
343 Timber Resources Management Act, 1997 (Act 547), section 15.
344 Environmental Protection Agency Act, 1994 (Act 490), section 2(i), (j) & (k); Environmental Assessment Regulations, 1999 (L.I. 1652) Regulations 24 & 25; See also Appendices 2, 3, 4 and 5 of EIAFW.
345 The EMP sets out in practical terms how the mitigation measures proposed in the EIS should be implemented. This includes, for example, details of the environmental monitoring programme (parameters, locations, measurements and frequency).
b. What happens if monitoring indicates that there has been a violation of national law governing the project? How would that affect the project’s implementation? Can the certification that a project assists in achieving sustainable development be subsequently withdrawn?

Where monitoring reveals that national law is being violated, various sanctions applicable may be invoked. The Environmental Assessment Regulations outline certain consequences which may flow from breaches of the regulations. The EPA may suspend, cancel or revoke an environmental permit or certificate where the holder is for example in breach of any provision of L.I. 1652 or any other enactment relating to environmental assessment\(^\text{346}\) or acts in breach of any of the conditions to which his permit or certificate is subject\(^\text{347}\) or fails to comply with mitigation commitments in his assessment report or EMP\(^\text{348}\) or knowingly submits or provides the EPA with false information.\(^\text{349}\) It is a criminal offence to fail to submit an annual environmental report or contravene any provision of L.I. 1652.\(^\text{350}\) Such an offence is punishable on summary conviction by a fine not exceeding $200 or imprisonment for a term not exceeding one year or to both.\(^\text{351}\)

Under the Timber Resources Management legal regime, the Minister for Forestry may suspend or terminate a TUC where the holder has breached any of the terms or conditions of the contract\(^\text{352}\) or where a review of operations by the FSD determines that there are enough grounds for termination of the contract.\(^\text{353}\) A holder of a TUC whose timber rights have been suspended may rectify the breach. Alternatively, if the reasons for the suspension have been redressed, the TUC holder may petition the FC, which shall make recommendations to the Minister on the merits of the case or recommend a lifting of the suspension.\(^\text{354}\) Upon receiving a report from a District Forest Officer or a qualified audit organization which indicates that damage to any asset within the contract area has occurred, the FC may require the holder of the TUC to compensate the owner for the loss in value to the asset.\(^\text{355}\)

In the context of a CDM AR project operation, it will be in the interest of the host Party to deal with the violation by reference to the specific laws or regulations violated, before turning to CDM-related rules. Where the nature and impact of the violation does not go to the root of the CDM project and its requirements, project implementation may continue, whilst the authorities seek ways to deal with the violation. But the violation itself, in my view, cannot be a basis for withdrawing the certification that the project assists in achieving sustainable development.

C. Conclusions and Recommendations

1. Will the introduction of CDM AR projects in the host country significantly alter the afforestation and reforestation objectives of the country, as stated in law, and the nature of afforestation and reforestation projects that are currently being implemented in the country of study (as registered with the pertinent national/local agency), if any?

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346 Environmental Assessment Regulations, 1999 (L.I. 1652), Regulation 26(1)(b).
347 Ibid., Regulation 26(1)(d).
348 Ibid., Regulation 26(1)(e).
349 Ibid., Regulation 29(d). See also Environmental Protection Agency Act, 1994 (Act 490), section 27(2)(c).
350 Environmental Assessment Regulations, 1999 (L.I. 1652), Regulation 29(e) and (f).
351 Ibid., Regulation 29.
353 Ibid., section 15(1)(e).
354 Ibid., section 15(3)
355 Timber Resources Management (Amendment) Regulations, 2003 (L.I. 1721), Regulation 14(4).
The introduction of CDM AR projects in Ghana will no doubt raise issues about CDM AR project objectives vis-à-vis afforestation and reforestation objectives. The afforestation and reforestation programmes being implemented face the constraint of inadequate financing. CDM AR projects could provide opportunity for financial interventions to promote forest expansion and regeneration, and ultimately contribute to enhancing carbon sinks.

The GoG, in mooting the Forest Plantation Development Fund Bill, contemplated partnership with foreign financiers and environmentally conscious institutions interested in fostering global carbon arrest initiatives. Plantation development programmes in Ghana must therefore move beyond the objective of restoring denuded forest cover to consciously include sustained AR programmes executed in the context of the CDM to pursue sustainable development priorities and goals.

CDM policy objectives must be clearly articulated and a conscious effort made to harmonize the same with current afforestation and reforestation project objectives. Thus policy coherence and harmonization will be crucial. The FC should step up the pursuit of its corporate strategic objective to develop linkages with ongoing projects/programmes in the forestry sector and mechanisms to coordinate new and emerging projects as for example CDM ARs to optimize the use of resources. To this end, the harmonization of the relevant aspects of the existing legal instruments and institutional objectives will be crucial.

2. In case there is as yet no clear legal definition of the right to a CER in the country of study, if participants to different CDM AR projects use varying contractual characterizations of that right within the same country, will this situation result in any particular legal and related difficulties in the host country?

Where participants to different CDM AR projects use varying contractual characterization of that right, this will engender a multiplicity of definitions and/or interpretations of “the right to a CER”. Legal and related difficulties likely to arise may include:

- Predictability and certainty required of law, as well as authoritative criteria for identifying contractual rules of obligations will be undermined. Predictability and certainty of law, and authoritative criteria for identifying rules of obligation are key ingredients of the foundations of a legal system. In a legal system where rules are not predictable and certain, investor confidence in the legal environment of business is likely to be low. The principle of fairness and equity in benefit sharing will be undermined. Outcomes of negotiations will differ from project to project. Agitations may occur in particular communities where the outcome of negotiations have not been good in relation to other project areas.
- Where land owners and investors have doubts that the outcome of negotiations will not be fair and equitable, they will not be willing to make commitments either of land or investment funds as the case may be for any CDM AR project, consequently reducing investment financing in the land/forestry sector. This will not augur well for a country such as ours seeking to improve the economy, increase standard of living and reduce poverty among other things through forestry expansion programmes.
- The situation where the status of “the right to a CER” remains ambiguous, may create an opportunity for cheats and speculators to take undue advantage of illiterate and semi-illiterate local communities to engage in undue land speculation and land racketeering because of general indiscipline in the land market.

356 Phase I of the Forestry Development Master Plan contemplated the development and launching of flexible schemes for investment in commercial forest plantations, tree farming and propagation of non-timber forest products (NTFPs).
357 For example: mobilizing/attracting funds for CDM AR projects through the Forest Plantation Development Fund, the requirement for SRAs under the Timber Resources Management laws to inform similar initiatives under CDM AR projects; the benefits-sharing scheme under MTS of the CFMP to be made applicable to CDM ARs.
The absence of a unified basis for consensus on what the ingredients of the “right to a CER” ought to be can also be a potential source of dispute, litigation, misunderstanding and confusion between investors on one hand and project participants, land owners and communities on the other, leading to a disruption of CDM activities and a freezing of land for CDM project development.

There is therefore the need to determine the status or the ingredients of “the right to a CER” through a fair and transparent system and collaborative consultations involving stakeholders. The outcome can then be adopted by the GoG for implementation in CDM AR projects. The adoption may be at two levels:

- **Policy enactment**, as is the case of the Benefit-Sharing Scheme being implemented under the Forestry Plantation Development Strategy.\(^{359}\)
- **Legislative enactment**\(^{360}\) of “the right to a CER” applicable to all CDM AR projects may be considered:
  - defining the right, for example, as an interest in or appertaining to or affecting land, its allocation and corresponding responsibilities.\(^{361}\)
  - regulating the relationship between project participants, land owners and communities affected by CDM AR projects to ensure not only enhanced secured access to land, but also create a regime that will ensure equitable share of benefits, and to assure due mutual protection of the rights of investors, landowners and local fringe communities affected by the CDM AR project.\(^{362}\)

To strengthen the legal basis for CER contracts, parties should not be precluded from adopting legislative provisions dealing with “the right to a CER”, as the main and/or additional contractual stipulations, if these exist.

3. Based on the issues that were revealed by the analysis you have undertaken, how would you describe the nature of the legal issues identified? Are they avoidable or unavoidable? (For instance, could land tenure issues be resolved simply by choosing a different project site, or are the problems so prevalent that they would emerge, regardless of the project’s location?) Are policies and legal provisions on CDM AR projects clear enough to prevent most disputes from arising in the future?

The underlying factor underpinning the legal issues raised is essentially one of land rights and its socio-economic and environmental implications. As discussed in Section 3 of this paper, the land sector in Ghana faces a number of constraints and challenges.\(^{363}\) These factors coupled with the wide diversity of traditional tenure systems, ignorance of relevant laws, policies and practices, impact negatively on land and land-related development investments. This situation arises in part because the majority of lands in Ghana are owned by stools, families or individuals. Seventy-eight per cent of the total land area in Ghana including forest reserves are owned by customary landowners or allodial titleholders.

CDM investors will still have the option whether to look to the state or the customary land owners for land for CDM AR projects. State/customary landowners’ collaboration in line with GoG policy will still be

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359 Policy enactment can be a good beginning in the absence of legislation. The benefit-sharing scheme under the CFMP is a policy enactment not based on any legislation.

360 The National Climate Change Commission (NCCC) proposed by the EPA is to be based on an Act of Parliament. CDM issues for legislation may be considered under this. See Draft Climate Change Commission Act, 2004.

361 See for example the way certain interests in land have been defined and their registration provided for by the Land Title Registration Law, P. N. D. C. L. 152. See in particular sections 83 & 85 on registration of “easements” and “profits” respectively.

362 Ibid.

363 The challenges and constraints include: inadequate policy and legal framework; fragmented institutional arrangements and weak institutional capacity; weak land administration system that excludes land owners and chiefs from major decisions on land administration; underdeveloped land registration system and inefficient land markets; compulsory acquisition by Government of large tracts of land without payment of compensation; indeterminate boundaries of customary held lands, spawning land disputes and litigation; inadequate security of land tenure; difficult access to land; and general indiscipline in the land market.
required irrespective of the option which may be exercised. The extent of land-related difficulties to be faced, however, will be determined by a number of factors including the nature and scope of due diligence to be carried out in relation to the land to be acquired, the depth of prior consultations to be carried out with interested stakeholders, and acceptability of the benefits to be derived.

The challenges referred to above are likely to be faced irrespective of the project’s location. The legal and policy regimes for CDM AR projects are not yet developed at the national level. To improve security of tenure, protection of land rights and to reduce disputes it is envisaged that the GoG will pursue the following actions:364

- to collaborate with and support traditional authorities and land stakeholders to develop systems to facilitate proper record keeping in respect of allocation and disposal of stool/skin, clan and family land by all traditional authorities and other land stakeholders.365
- to facilitate land tenurial reform which documents and recognises the registration and classification of various titles.366
- to draw up a standard land lease agreement to be used for land allocations for CDM AR project not only to enhance land access but also strengthen security of tenure and provide mutually agreeable guidelines for resolving issues related to title to carbon. Developing specific standard lease agreements for natural resource management/utilization is not new in Ghana. This is the situation now under the CFMP. The Modified Taungya System Agreement under the CFMP/Benefits Sharing Scheme are blueprints from which the CDM ARs can borrow ideas. Another is being developed for commercial plantations. Experience in the mining sector is not different where investments are dominated by foreign investors. In my view it can also be done for CDM AR project land acquisition/grants.
- to ensure transparency in CDM AR project negotiations, design and formulation by giving opportunity to local communities and other stakeholders to comment and express their views especially relating to the EIA process and their beneficiary rights in relation to the CDM AR project boundary.

These actions will collectively strengthen legal components of CDM AR projects.

4. How would you characterize the level of compliance and enforcement with the legal standards and regulations you have described above?

Compliance with Forestry Sector Legal Regime

The forestry sector laws and regulations introduced since 1999 (as discussed in previous sections 1 and 2) were meant to ensure proper planning, management and development of forest resources.

To streamline exploitation operations the Forestry Commission designed a system and manual for procedures for competitive price bidding for both plantation and natural timber in accordance with the Timber Resources Management Laws.367 The FC also reported a tremendous drop in illicit timber operations and other forms of forest offences for 2002 (245) as compared to year 2001 (450). This has been due to the establishment of Community Forest Committees (CFCs) and the re-introduction of military/police joint patrol operations to combat illegal timber exploitation. The number of forest offences prosecuted ranged between 360 in 1999 to 245 in June 2002.368

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364 GoG is already pursuing (a) and (b) through the LAP project. GoG’s declared intentions for partnerships for carbon arrest projects presuppose that there is goodwill for (c) and (d).
365 This issue is being handled under the Land Administration Project (LAP).
366 Ibid.
Outputs achieved by the FC as at December 2002 are a reflection of FC’s institutional and legal capacity to facilitate forestry sector development. These include: \(^{369}\) 1. the development of new institutional arrangements and redesigned certification and log-tracking processes which have been approved; 2. the launching of a Service Charter outlining the kind and quality of services the Commission aims to provide to different stakeholders; 3. the carrying out of a forestry inventory to know about the quantities, qualities and dynamics of the existing resource base to enhance effective resource regulation towards sustainable forest management; 4. the completion and incorporation of socio-economic information into resource management plans; the preparation of draft business plans for some protected areas; and 5. the development and implementation of benefit-sharing arrangements as follows: FC – 40%; plantation investor – 40%; landowner – 15% and community – 5%. These outcomes could be applicable to CDM AR projects.

Requirements for afforestation/reforestation programmes, i.e. environmental assessments, the protection of local forest fringe communities’ rights, provision of social amenities for them through SRAs are all indications of the forestry sector institutions’ ability to strengthen legality and to deal with illegality and thereby promote a reliable legal and institutional environment to service CDM AR project investors. For example under the FC’s corporate status, integration and harmonization of activities of the various divisions previously independent are on the way to help reduce conflicts and tensions, reduce duplication and enable the FC to achieve the much needed efficiency and effectiveness for protecting, managing and developing Ghana’s forestry resources. \(^{370}\)

**Compliance with Land Sector Legal Regime**

The system of compulsory land title registration under P.N.D.C.L. 152 has not done much to develop the land registration system and reduce inefficiency in the land market. Under the LAP, land policies, laws and regulations are being reviewed and rationalized to produce land legislation consistent with customary practice and the 1992 Constitution and a land registration system that will be based on reliable property maps and/or plans to enhance investor confidence as they seek for land(s) for CDM AR projects.

A comprehensive new land legislation or series of revised land acts are to be prepared and brought to Parliament no later than four years after the date of credit effectiveness (September 2003). \(^{371}\) Although my conjecture is that CERs may be registrable under P.N.D.C.L. 152, a new land registration policy to be formulated would strengthen title registration. \(^{372}\) CDM AR project activities stand to gain from an improved title registration regime.

**Compliance with Environmental Laws and Regulations**

Of the 102 registered proposals in 2002, none dealt with forestry and wildlife, while only one was registered \(^{373}\) out of the 86 for 2003. Ensuring compliance with environmental laws remains a challenge for EPA. The unavailability of standards and regulations pursuant to Act 490 makes compliance and enforcement difficult. \(^{374}\) Most EPA officers do not have adequate skills to investigate cases and worse still, to gather and present evidence in court. \(^{375}\)

Do you think the CDM AR framework can and will act as a trigger for improved compliance and enforcement for these standards and regulations?

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\(^{369}\) See FC Annual Report for 2002.


\(^{372}\) Ibid., p.54.

\(^{373}\) No information is available as to which type of project it was.


\(^{375}\) Ghana EPA 2002 Annual Report, p.11.
Certain aspects of the CDM AR framework, i.e. the participation requirements and requirements/criteria for the PDD will no doubt enhance compliance and enforcement of some of these legal requirements. An example is the requirement for project participants to submit documentary analysis of the socio-economic and environmental impacts, including impacts of biodiversity and natural ecosystems of the CDM AR project activity, and a statement that confirms that they have undertaken such an assessment in accordance with the procedures required by the host Party together with a description of the planned monitoring and remedial measures to address them.

The requirement for this assessment ensures that local/domestic legal requirements on environmental and socio-economic assessments are complied with.

5. What recommendations for adjustments in legislation, if any, can you make, to address the issues set out above? In your best judgment, how likely is it that these adjustments will be made? Is it possible to estimate how long these adjustments would take, and how much they would cost? Please relate your response to any major legal reforms relating to forestry, land or the environment currently taking place in the country of study/region.

The host of legal issues one is confronted with calls for adjustments in legislation to enable the legal and policy environment to respond appropriately to the challenges posed by CDM AR projects, and to ensure effective resource management and administration towards sustainable development.

- Review, consolidate and harmonize all land laws and regulations into a comprehensive legal code for an effective and efficient land administration delivery.
- To review, consolidate and harmonize forestry laws and regulations to ensure effective forestry resource management and administration.
  
  This review and consolidation of legislation will improve the title registration system, enhance accessibility to land and support efficient and dynamic forestry sector policies and laws to improve policy/legal environment for CDM AR projects making information on existing land, forestry and environmental legislation accessible in appropriate forms for stakeholders including communities and the private sector.

- To enact legislation to require stool, skin, clan, family and other land owners to survey and demarcate their land boundaries with the approval of the Survey Department. Such lands will constitute a major source of land for CDM AR projects.

- To collaborate with the traditional authorities and other land stakeholders to review, harmonize and streamline customary practices, usages and legislation to govern land holding, land acquisition, land use and land disposal, and consequently require that custodians or owners of land may specify uses for their land in consultation with relevant land use authorities and abide by the applicable land use prescriptions and guidelines.

- To put in place legislation for a national CDM authority/DNA to administer CDM investments and to develop appropriate policy and legal framework for carbon rights vis-à-vis land ownership rights.377

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376 The strategic framework for biodiversity conservation and management in Ghana is guided by three objectives – the conservation of biodiversity; the sustainable utilization of biological resources, and the fair and equitable sharing of benefits arising from the use of genetic resources. See MES, National Biodiversity Strategy for Ghana, 2002, p.30. An Action Plan is therefore in place to achieve the above objectives. The activities being implemented include: the strengthening of institutions and governance for effective biodiversity conservation; strengthening the management of protected areas; and strengthening the management of forest reserves. Another initiative is the designation of 29 forest reserves of 117,322 hectares as globally significant biodiversity areas (GSBAs) found to harbour a high concentration of biological resources of global conservation importance. This is to be managed with local community participation. See MES, Action Plan for the Implementation of the National Biodiversity Strategy for Ghana, 2003, pages 6–8; and MES National Biodiversity Strategy for Ghana, 2002, p.36. The proposed DNA under the draft National Climate Change Act, 2004 should ensure that biodiversity conservation issues are brought to bear on CDM AR projects.

377 The draft Climate Change Commission Act, 2004 is on its way to fulfilling this need.
To specifically include in any future legislation on CDM AR project activities a requirement for:
- an assessment of the likely environmental, socio-economic effects of the project and proposed programme to redress any such effects, and
- proposals to assist in addressing social needs of the communities who have interest in the proposed area of operations. These have been done within the framework of the Timber Resources Management Legislation irrespective of the provisions on EA requirements under the EPA Act, (490) and L.I. 1652; and
- proof of legal title to the land and rights of access to the sequestered carbon.

Relevant to these recommendations is the Ghana Land Administration Project, a major initiative to achieve the goals of the GoG land policy. The project will seek to (a) harmonize land policies and the legislative framework with customary law for sustainable land administration; (b) undertake institutional reform and capacity building for comprehensive improvement in the land administration system; (c) establish an efficient, fair and transparent system of land titling, registration and valuation; and issue and register land titles in selected urban and rural areas as a pilot to test (b) and (c) above.

This is a long-term project estimated to take more than 15 years to complete the implementation, due to the complexities of the issues involved. The first phase covering a 5 year period is being funded through a World Bank credit of US $20.5 million. It is during the first phase that the policy and legal components will be reviewed and re-enacted. Thus CDM AR project activities could potentially benefit from this.

There must be sustained Government commitment to these not only by word but by deed and action. Such projects tend to be costly and time consuming, though. It is not easy for one to conjecture how much time will be involved and how costly this venture for legislation review and re-enactment will be. One great benefit from such a review project will be the increase in land/forest related investments from both domestic and external sources due to increased confidence of investors towards a more secure, stable and predictable investment environment. The project ought to be pursued to also enhance improved access to formal financial credit and to attract CDM AR projects funding.

LAP is also bound to meet with challenges in various ways especially from people who are benefiting from the present status quo to the neglect of the wider public interest. When the Forestry Policy was enacted in 1994, and the Forestry Development Master Plan developed two years after, it took the GoG almost 10 years to enact various laws and regulations dealing with the forestry sector on a piecemeal basis. Perhaps what is required is a concerted determination by Government to work towards a certain target date, with short-term targets for specific legislation and a long-term timeframe for a consolidated natural resource (land, forest and environmental) framework legislation.

From the experience of ongoing AR projects the way forward for CDM AR projects will be the pursuit of the concept of participatory management and protection of forest resources, involving communities, and developing appropriate strategies, modalities and programmes, while sensitizing local communities about the issue of right of access to sequestered carbon, and finally to develop appropriate legal and contractual frameworks within which land right issues and title to carbon can be fully handled consistent with the CDM AR project design requirements.

378 This may be done only for purposes of emphasis as the current EIA provisions are sufficient for CDM AR environmental/socio-economic assessment requirements. See for example the Timber Resources Management Laws which will specifically require EIA irrespective of the existing EIA laws.

379 Whether framework legislation or otherwise, is a matter to be determined by the exigencies of the situation on the ground. Where separate distinct laws have existed over time, controlled by separate institutions, it will not be easy to begin with framework legislation as against sectoral laws. Various institutions must commit to mutual information disclosure, sharing and communication, between the institutions and their partners.

380 Refer to the AR projects discussed under the National Forest Plantation Development Programme and the Community Forest Management Project (CFMP).

381 Ghana’s forest policy of 1994 is explicit with regard to placement of emphasis on the concept of participatory management and protection of forest resources. Against this background, I do not see the prospect of CDM AR projects being exempted from community involvement. See also Kwame Ameyaw Domfeh (1997), “Collaborative Forest Management in Ghana” in: Environmental Management in West Africa – Proceedings of a Seminar held at Grand Bassam, Cote D’Ivoire, July 24–August 7, 1996, pages 271–288.
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