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Access to Justice

A briefing prepared by ClientEarth

In collaboration with
Elvis Kudaar and
Bennette Aabangbio Nakaar
Shadrack Obeng Yeboah
Godfred Acheapong

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Introduction

Purpose of this document

This document aims to provide clarity on the different offences, penalties, procedures for redress within the Forestry and wildlife sector. It seeks to guide civil society and local community representatives as to how the different offences linked to forests and wildlife could get prosecuted. Secondly it investigates the extent at which the different offences do actually make it into court and the outcomes of these proceedings. Doing so this document will highlight some of the gaps in judicial enforcement of laws governing the forest and wildlife sector.

Methodology

This report is the first in a series of four reports that relate to access to justice in the different natural resources sectors. A two part methodology was used to write this report. The first component of the methodology was a legislative audit. During this audit pertinent parent and subsidiary legislation of the Forest and wildlife sector was analyzed to be able to isolate the different offences, applicable penalties and procedures.

Subsequently District and Circuit Courts were visited to collect case law in five regions of Ghana:

- Ashanti Region,
- Brong Ahafo Region,
- Central Region,
- Eastern Region, and
- Western Region.

In the above regions a total number of one hundred and fifty five (155) formal courts exist of which 123 in a total of 77 districts were visited. The choice of Courts to visit was done applying the following criteria:

- Courts located in districts where natural resources exist,
- Nearest courts to districts that have natural resources but no courts,
- Accessibility of the courts (distance & road network),

The generic process that guided data collection included:

- Meeting with court registrar, introduction, presentation of the letter from the Judicial Secretary and the demand for the cause list.
- Meeting prosecutor or other relevant sources for summary of cases,
- Selection of cases and request for information where there were no records of the cases,
- Summarization of the cases and making of copies of the courts records.

In total 51 cases related to forest and wildlife were identified during the field survey. It was possible to obtain some documentation in relation to 22 of these cases. For the remaining 29 an official request has been submitted to the concerned courts to obtain transcripts.

What is in this document?

This report will start by summarizing what CSO and local community members can do when they witness a Forest and/or Wildlife offence and what the procedures are to take forest and wildlife offences to court and possibly get damages reimbursed.

In the second and third part relevant Forest and Wildlife legislation will be reviewed to identify the different offences included therein, the penalties that are applicable and the competent court.

Following legislative audit, the forth part focuses on case law that has been obtained trough the field survey. This analysis is however still provisional as we are still waiting to receive the transcript of the majority of cases.

Finally some conclusions will be drawn based on the legislative audit and the preliminary study of available case law.

1 MODE AND VENUE FOR REDRESS

1.1 What to do if you witness an offence?

If you are a witness of a Forest or Wildlife related offence the first thing to remember is **not to put yourself in danger**. Do not confront armed offenders and keep a safe distance at all times. If you have a mobile phone or another means of communication with you contact the local police officer, forestry official and/or Game Officer (specifically trained FC officials contact details are annexed to this briefing). You can also consider contacting local traditional authorities or a local NGO operating in the sector.

While waiting for the official to arrive or if you could not reach him, you can gather evidence without changing the 'crime scene'. This could include the taking pictures, noting of names and contact details of other witnesses, taking note of license plates, company names on vehicles, marks on stumps and/or logs etc.

If you were unable to reach any official you can lodge a formal complaint at the police station. When lodging a complaint at the police station or upon the arrival of the official, describe as detailed as you can what you have witnessed. the following must be taken into consideration:

- Which offence did you witness?
- At what time did you witness it and were there indications as to how long the offence had been going on?
- Where did the offence take place?
- Is this the first time you are witnessing such as offence?
- If this is a recurring offence, what actions have been taken previously.
- Other witnesses of the offence and their contact details
- Could you identify the offenders? How many were they and how would you describe them (gender, age, clothes, others distinctions)?
- Were there any tools, machines or vehicles used in the commission of the offence? Do you remember any number plates of those vehicles? Or were there any other markings, colors, stickers that could identify them?
- What was the damage that was caused?
- Did you take any pictures?

Once you lodge a complaint at the police station as a witness of any offence or as someone who has suffered damage, you become a witness for the prosecution should the police decide to initiate criminal proceedings. To be able to follow up the case later, it is important to note the identity (and number) of the officer who has lodged your complaint. If you are for any reason unable to be witness for the prosecution, you can pass on the information to local authorities, a local NGO or paralegal workers. They can investigate and lodge a complaint at the police station independently or on your behalf.

Where you have suffered personal damage, you can institute civil proceedings to claim damages. If you do so, consider seeking professional assistance to help you with the many technicalities associated with these proceedings. Organizations like Center for Public Interest Law (CEPIL), Legal Resource Centre (LRC), Natural Justice (NJ) as well as trained paralegal workers can provide useful advice at this stage. You can find their contact details under the section contacts at the end of this briefing.

1.2 Which Courts have can try offences and/or claims for damages suffered from an offence?

The Constitution guarantees the independence of the Judiciary. The Court hierarchy consists of the superior courts of judicature, which is constituted by the Supreme Court, the Court of Appeal, and the High Court and Regional Tribunals. There are also Circuit Courts and District Courts which constitute the inferior courts.

The **Supreme Court** is the highest court in the realm. It has Original Jurisdiction with respect to matters relating to the enforcement or interpretation of the Constitution, and in matters arising as to whether an enactment was made in excess of the powers conferred on Parliament or any other authority or person by law or under the Constitution. If any matter of constitutional interpretation arises before any other court, that court is required to stay its proceedings and refer the matter to the Supreme Court. It is the final court of appeal and in the exercise of its Appellate Jurisdiction, appeals lie to it from the Court of Appeal and the Judicial Committee of the National House of Chiefs. It also exercises Supervisory Jurisdiction over all other courts and adjudicating authorities and may, in the exercise of that jurisdiction, issue orders and directions including orders in the nature of *habeas corpus*, *certiorari*, *mandamus*, prohibition and *quo warranto* for the purpose of enforcing or securing the enforcement of its supervisory power.

The **Court of Appeal** is the second highest court. The Court has only Appellate Jurisdiction with respect to judgments, decrees or orders of the High Court and Regional Tribunals and such other appellate jurisdiction conferred by the Constitution or any other law.

The **High Court** has Original Jurisdiction in all matters. It has Appellate Jurisdiction in judgments of the Circuit Courts in criminal matters, and in judgments of the District Courts. It also has jurisdiction to enforce the Fundamental Human Rights and Freedoms guaranteed by the Constitution, and any other jurisdiction conferred by the Constitution, or any other statute. It has Supervisory Jurisdiction over the lower courts and lower adjudicating authorities, and may issue orders and directions including orders in the nature of *habeas corpus*, *certiorari*, *mandamus*, prohibition and *quo warranto* for the purpose of enforcing or securing the enforcement of its supervisory powers. The High Court has many Divisions including Commercial, Fast Track, Land, Industrial and Human Rights.

The **Regional Tribunals** have concurrent Original Jurisdiction with the High Court in criminal matters, particularly offences involving serious economic fraud, loss of State funds or property, tax and customs duty offences, and narcotic offences.

Although the above-mentioned courts have jurisdiction to try offences and civil claims for damages, most cases will be try by the circuit and district courts. Their jurisdiction has been regulated under the Courts Act, 1993 (Act 459)

Circuit Courts are established in each region as the Chief Justice may determine. He will also specify the area of jurisdiction of each Circuit Court and will appoint a Judge (on the advice of the Judicial Council and subject to the approval of the President).

The Circuit Court has original jurisdiction in most civil matters. Specifically relevant here is its ability to judge on civil claims amounting to no more than 10.000 Ghana Cedis and on matters involving ownership, possession, occupation of or title to land. The Circuit Court also has original jurisdiction in all criminal matters other the most heavy offences (treason, offences triable on indictment and offences punishable by death).

A person aggrieved by a judgment of a Circuit Court in any civil action may, appeal to the Court of Appeal and to the High Court in criminal matters.

District Courts have jurisdiction over some civil matters. Specifically relevant here is its ability to judge on civil claims amounting to no more than 5.000 GHc. The criminal jurisdiction of the District Court is limited to a maximum of 500 penalty units and/or two years imprisonment.

A person aggrieved by a judgment of a Circuit Court in any civil or criminal action may appeal to the High Court.

Box 1: The use of customary law by courts

The courts act 1993 (Act 459) in its sections 54 and 55 provides for a number of rules that apply to the choice of law by courts where references are made to the personal law of a person according to customary and/or common law.

Rule 1. Application of the law which concerned persons have intended to apply

Rule 2. In absence of intention and in cases related to the passing devolution of a person's estate the personal law of that person applies

Rule 3. In absence of intention and where concerned persons have the same personal law, that law applies.

Rule 4. For the 2 previous rules and where the dispute relates to land overriding provisions of law of the place where the land is situated have to be taken into account

Rule 5. In absence of intention and where concerned persons do not have the

same personal law, the court can apply the relevant rules of their different systems of personal law to achieve a result that conforms with natural justice, equity and good conscience.

Rule 6. If none of the preceding rules applies the Court will apply such principles of common and/or customary law as will do substantial justice having regard to natural justice, equity and good conscience.

Rule 7. The Supreme Court may in an issue arising from common and/or customary law adopt, develop and apply such remedies from any system of law (Ghanaian and non-Ghanaian) appearing to be efficacious and meeting the requirements of justice, equity and good conscience

In addition to considering reported cases, textbooks and other sources a court may hold an inquiry when answering questions related to the existence and content of customary law

1.3 Which are the procedures that are used in Court?

In Ghana, the Constitution, the Criminal Offences Act, 1960 (Act 29) and Criminal Procedure Code (Act 30) form the basis of Criminal Law. These do not however constitute the only sources of Criminal Law in Ghana. The offences section of the various Forest and Wildlife legislations form part of the body of criminal law in Ghana.

The general basis for imposing liability in Criminal Law is that the defendant must be proved to have committed a guilty act whilst having had a guilty state of mind. The prosecution builds its case by drafting a charge sheet. The charge sheet outlines the offences (counts) and sections of the law implicated as well as the particulars of the offence (facts surrounding the offence). One guilty transaction can lead to several offences (counts). It is the fundamental duty of the prosecution to prove both of the afore-mentioned elements for each of the counts to the satisfaction of the judge beyond reasonable doubt. In the absence of such proof the defendant will be acquitted and discharged. Where an accused person is found guilty by a court in a criminal proceeding he/she is either given a fine, a prison sentence or both depending on the nature of the offence. The duration of prison sentences can either be concurrent (running at the same time) or consecutive (running one after the other). In criminal proceedings, the judge on his own motion can make directions for the payment of some monetary compensation to victims.

Whether or not there criminal investigations or proceedings are ongoing, civil proceedings can be initiated by a person who has suffered damage caused by an act or omission of someone else. This act or omission can be an error or negligence. For the judge to decide to order the reparation of the suffered damages one has to prove the existence of error or negligence, its causal relation to the damage as well as the nature and amount of the damage.

The majority of civil proceedings are commenced by the filing of a Writ of Summons, which is a formal document by which the Chief Justice informs a defendant that an action has been

commenced against him by the named plaintiff, and then commands the defendant to "cause an appearance to be entered" within eight days if the defendant wishes to dispute the plaintiff's claim; otherwise judgment may be given without further notice to him. A part from the writ of summons 2 other specialized processes are recognized by the law for commencing civil proceedings, namely by an Originating Notice of Motion and by a Petition.

A plaintiff must file and serve the Writ of Summons with a Statement of Claim, which will contain formal allegations of the claim and must state specifically the relief or remedy which the plaintiff claims. A defendant, who is served with a Writ and Statement of Claim, must file a Notice of Appearance and a Statement of Defence.

A defendant who has a valid cause of action against a plaintiff, does not need to bring a separate action, but can make a 'counterclaim' against the plaintiff in respect of that matter.

If a plaintiff can show that there is no answer to his case, he will be entitled to obtain judgment on his claim or part thereof summarily, i.e. without having to go through a full trial, particularly where the defendant is unable to set up a bona fide defence or raise an issue against the claim which ought to be tried. The summary judgment procedure provides for early judgment in cases where the defendant (or defendant to counterclaim) has no hope of success and any defence raised will merely have the effect of delaying judgment. It enables the court to grant summary judgment at an interlocutory stage without the delay and expense of a full trial if it is shown that no trial is necessary.

At the end of the trial, the lawyers are usually required to file a written submission (addresses). The court will then deliver its judgment on the respective rights and claims of the parties to the action. The rules impose a duty on the court to deliver judgment as soon as possible after the close of the case (i.e. when the evidence and final addresses have been concluded).

2 ACCESS TO JUSTICE IN RELATION TO FORESTS

2.1 The Timber Operations (Government Participation) Act 1972 N.R.C.D 139

2.1.1 Abstract

The act provides for the majority participation of the government in a number of companies that operate in the timber sector; the Gliksten (West Africa) Limited, the Takoradi Veneer and Lumber Co. Limited and African Timber and Plywood (Ghana) Limited.

2.1.2 Amendments

There are no amendments to this Act

2.1.3 Offences and penalties

Non-compliance with the Timber Operations (government participation) Act

Section 8 of the Timber Operations (government participation) Act (N.R.C.D 139 from 1972) provides for a number of offences in relation to that act. A person commits an offence if that person:

- obstructs the implementation of the Act
- fails to comply with a direction or condition given by the Minister
- fails to produce or produces false information requested by the Minister
- destroys, falsifies or mutilates a record or book of account relating to a matter affected by this Act

A person convicted of one of these offences is liable to a fine of not less than 1.500 penalty units (18.000 GHc) and/or to a term of imprisonment not exceeding seven years. In the case of a continuing offence a further fine not exceeding one hundred penalty units (1.200 GHc) in respect of each day during which the offence continues can be imposed.

Where an offence under this section is committed by a body of persons every partner, director, secretary or any other officer of that body shall be deemed to have committed that offence, unless it is proved that the offence was committed without the knowledge or consent of that person, and that the necessary steps were taken, having regard to the circumstances, to prevent the commission of the offence.

Box 2: Fines, Penalty units and Ghana Cedis

To avoid the need for constant revision of legal texts that mention fines the Fines (Penalty Units) Act, 2000 (Act 572) provides for the conversion of fines mentioned in future and in previous acts into a number of *penalty units*. In the future a simple adjustment of the conversion rate between penalty units and Ghana Cedis will therefore automatically apply to all fines mentioned in Ghanaian legislation.

Currently one penalty unit is 12 new Ghana Cedis (or 120.000 old Ghana Cedis). So to know the fine in acts mentioning penalty units one must just multiply the number of penalty units by 12 to have the amount in new Ghana Cedis.

If an act, decree, LI,... dates from before 2000 it will still mention fines in Cedis. These amounts have to be converted to penalty units using the following formula:

$$\frac{\text{Amount mentioned} \times 10}{20.000} = \text{number of penalty units}$$

In this legal briefing we will mention all amounts in penalty units followed by the current amount in new Ghana Cedis.

2.1.4 Competent Court

The Timber Operations (government participation) Act does not identify a specific court to have jurisdiction over the offences included under the act. Therefore the general rules included in the Courts Act (Act 459 from 1993) apply and we can conclude it is the circuit court that has jurisdiction to try the offences included under this Act.

2.2 The Forests Protection Act, 1974 (N.R.C.D. 243)

2.2.1 Abstract

The Act provides for the duties and powers of Forest Officers and identifies a number of offences related to Forest reserves.

2.2.2 Amendments

The Forest Protection Decree, 1974 (N.R.D.C. 243) has been amended by the Ghana Forestry Commission Act in 1980 (Act 405), by the Forest Protection (Amendment) Law in 1986 (R.N.C.D.L. 142), by the Forest Protection (Amendment) Act in 2002 (Act 624). These amendments have been taken into account in this section. The offences and penalties in this act replace the ones previously included in the Forest Act 1927 (CAP 157) as amended by the Forest (Amendment) Ordinances in 1954 (No 40) and 1957 (No 10),

2.2.3 Offences and penalties

Forest offences (within forest reserves)

In its first subsection of the first section the Forest Protection Act provides for a number of different offences to protect forest reserves:

- (a) Felling or damaging trees or timber,
- (b) Cultivating or building,
- (c) Causing damage while cutting trees,
- (d) Kindling fire without precaution to cause its spread,
- (e) Lighting fire contrary to any order of the Forestry Commission;
- (f) Obstructing streams,
- (g) Hunting or fishing,
- (h) Collecting, removing or processing forest produce,
- (i) Pasturing or passing with cattle

Without the written consent of the competent Forest Authority¹ or without an admitted right (see below), all of these are offences punishable by maximum 500 penalty units (6.000 GHc) and/or no more than 2 years imprisonment. For a second or subsequent offence the fine shall be *no less than* 250 penalty units (3.000 GHc) and/or no more than 3 years of imprisonment.

Box 3 : Be smarter than the lawyers! Careful with Consolidated Acts

Many lawyers use tools such as 'Lexis Nexis' or 'Datacenta Laws of Ghana' to inform their legal work. These tools contain consolidated versions of laws. This means the original laws have been changed to include subsequent amendments. Although these consolidated laws can be very useful, some mistakes do occur. The Forest protection Decree is an example of this. The original first section of the Forest Protection Decree from 1974 contains 4 subsections. In subsequent amending acts subsection 1 of the original act has

¹ According to the Forest Protection (amendment) Act (Act 624 from 2002) 'competent forest authority' means a forest officer with the rank not below Assistant District Manager who is able to take decisions on behalf of the Executive Director of the Forest Services Division or the Chief Executive of the Forestry Commission

been replaced to include an updated list of forest offences and related penalties. Subsections 2 to 4 of the original Forest Protection Act have however been left untouched by this amending legislation. In the consolidated Forest Protection Act that is available on the aforementioned tools subsections 2 to 4 have however disappeared due to a mistake.

Those who have damaged trees (a) or timber or collected forest produce (h) will in addition have to pay twice the value of the commercial value of each tree or timber or forest produce to the Minister (subsection 2)

Subsection 3 empowers the court to which the matter has been conferred to direct compensation to the person whose rights have been infringed by offenders under subsection 1

Box 4 : Preexisting rights

The Forest Protection Act mentions admitted rights as an exception to the prohibited actions included above (subsection 4 of section 1). To be able to clarify what these admitted rights might be, reference is made to Section 16 (1) of the Concessions Act of 1962 (Act 124). This section provides that all lands in forest reserves are vested in the President, provided that all rights, customary or otherwise, in such lands validly existing immediately before the commencement of that act shall continue. This means that customary practices of local communities, even within forest reserves, cannot be labeled as offences.

Section 7 of the act further provides that the *burden of proof* that a forest produce has not been taken in contravention of the act lies on the person in whose possession the produce is found.

Similar offences are provided under the trees and timber decree 1974 (N.R.C.D. 273) in relation to protected areas (see 2.3 below) and in the Wildlife Conservation Regulations, 1971 (L.I. 685) in relation to wildlife reserves (see 3.2 below).

Offences relating to marks

The Forest Protection Act (as amended) further provides for a number of offences linked to marks (section 2).

Fraudulent use a mark on tree or timber or fraudulent indication of property of a tree or timber:

- Altering or destroying a mark on tree or timber without written consent of Forest Officer
- Altering or destroying a boundary mark

are offences punishable by maximum 500 penalty units (6.000 GHc) and/or no more than 2 years imprisonment. Subsequent or second offences are to be punished by *no less than* 250 penalty units (3.000 GHc) and/or no more than 3 years imprisonment.

A number of additional offences related to property marks are included under the trees and timber decree 1974 (N.R.C.D. 273) (see 2.3 below).

Failing to respect exclusion from timber business after three convictions

Offenders who have been convicted for three times of an offence included in the Forest Protection Act are banned from timber business or concessions. All permits or property marks this person holds shall be forfeited. Failing to respect this exclusion is an offence punishable by imprisonment for no more than 10 years without the option of a fine (Section 3).

Failing to assist a forest officer

Section 8 of the Forest Protection Act provides that persons who are exercising a right, are permitted to take forest produce or who are working in a forest reserve, are obliged to give information to Forest Officers and assist them to :

- extinguish a fire in a forest reserve
- prevent a fire near the forest reserve from spreading to the reserve
- prevent the commission of an offence and find the offender
- Failing to do so is an offence punishable by a fine not exceeding 25 penalty units (300 GHc)

Seizure and forfeiture

If there is reason to believe an offence has been committed under the Forest Protection Act, a forest officer may seize the forest produce to which the offence relates together with the instruments, vehicles and other articles suspected to have been used in committing the offence. When no prosecution is brought these items have to be returned to their owners, if they are known. If the owner is not ascertained within 14 days, they are forfeited to the Republic. Forfeited vehicles can be claimed back by their owners if they convince the Minister that they were not implicated in the offence. (Sections 5 and 6)

Box 5: Seizure vs. Forfeiture vs. Confiscation

Seizure is used to indicate an action by police or forest officers to secure goods suspected to have been used in the commission of an offence. It always is a temporary measure followed by either restitution to the owner or forfeiture to the state. Seized goods can only be used for the purpose of investigating the offence they relate to and remain the property of the original owner during the

time of seizure.

Forfeiture refers to the passing of ownership of seized goods from the original owner to the Republic. This happens either through a court order or after a certain amount of time during which seized goods have not been reclaimed. Goods can be forfeited by a court even if they have not been seized beforehand. Once ownership has been passed to the state, the goods can be used or sold as seen fit by the government institution to which the good have been forfeited. In the case of the goods forfeited under the Forest Protection Act the proceeds have to be used for forest rehabilitation

Confiscation refers to the taking of possession and ownership of items by a government official based on a confiscation order. This order can be given by a court or official specifically empowered to do so by law (e.g. Chief Game and Wildlife Officer), ownership of the goods passes to the confiscating government institution by virtue of this confiscation order.

2.2.4 Competent Court

The Forest Protection Act does not identify a specific court to have jurisdiction over the offences included under the act. Therefore the general rules included in the Courts Act (Act 459 from 1993) apply. This means the offences relating to forest reserves and to marks and failing to assist a forest officer can be tried by the District Court. However if the first two offences are repeated or subsequent to another offence mentioned in the act they can be punished by a penalties exceeding 2 years imprisonment and therefore fall under the jurisdiction of the Circuit Court. Persistent offenders who have failed to respect their exclusion from the timber sector are punishable by up to 10 years of imprisonment and therefore also fall within the jurisdiction of the Circuit Court.

2.3 The Trees and Timber Decree 1974 (N.R.C.D. 273)

2.3.1 Abstract

The Act provides for property marks and export levies for trees and timber. It also contains a procedure for establishing protected areas. These protected areas aim to protect standing trees outside of forest reserves by restricting farming and providing for penalties for those who illegally fell or damage timber within these protected areas.

2.3.2 Amendments

The Act has been amended by the Trees and Timber (Amendment) Decree, 1983 (P.N.C.L. 70) as well as the Trees and Timber (Amendment) Act, 1994 (Act 493). These amendments have been taken into account in the paragraphs below.

2.3.3 Offences and penalties

Offences relating to marks

Section 11 of the Trees and Timber Decree provides for a number of offences in relation to property marks. Any person who fails to comply with the provisions of the Decree is guilty of an offence and liable to a fine of 1.000 penalty units (12.000 Ghc) and /or imprisonment of for no more than 5 years. The trees and/or timber in respect of which the offence was committed and the license/permit of the offender may also be forfeited. In addition the chief executive of the FC may cancel the registration of the relevant property mark.

Offences based on key provisions related to marks are:

- (a) Felling an unmarked tree for export (Section 2)
- (b) Exporting unmarked logs (Section 3)
- (c) Failing to mark stumps and logs (section 6)
- (d) Failing to produce the certificate of registration to police or forest officer (section 7)
- (e) Buying, selling, exporting or possessing unmarked logs (section 8)
- (f) Failing to show marked stumps to police or forest officer by person with registered property mark (section 10)

The burden of proof that a mark is in accordance with the provisions of the act lies with the registered holder of the mark.

A number of additional offences related to property marks are included under the Forest Protection Decree 1974 (N.R.C.D. 243) (see 1.2.2. above)

Offences relating to protected areas

In its section 14 the Trees and Timber Decree provides for a number of different offences relating to protected areas:

- (a) Damaging trees or timber,
- (b) Cultivating or building,
- (c) Fire without due precautions to prevent its spread

are offences punishable by a maximum fine of 1.000 penalty units (12.000 Ghc) and /or imprisonment of for no more than 5 years.

Similar offences but in relation to Forest reserves are included under the Forests Act 1927 as amended (CAP 157) (see 1.1.2. above).

Offences related to export levies

Sections 15A – 15C have been inserted in the Trees and Timber decree by the Trees and Timber Amendment act. They provide for export levies for timber. Exporting timber without paying the levy is an offence punishable by a fine not exceeding 250 penalty units (3.000 GHc) and/or no more than one year imprisonment.

2.3.4 Competent Court

The Trees and Timber Decree does not identify a specific court to have jurisdiction over the offences included under the act. Therefore the general rules included in the Courts Act (Act 459 from 1993) apply. Taking into account the possible punishments the Circuit Court has jurisdiction to try the offences included relating to property marks and protected areas. The district court can try offenders who have failed to pay the export levy.

2.4 Timber Industry and Ghana Timber Marketing Board (Amendment) Decree, 1977 (S.M.C.D 128)

2.4.1 Abstract

The Act confers the exclusive right of exportation overland of timber and timber products² to the Ghana Timber Marketing Board. The Board may fix export prices for such timber and timber products. The Board shall also have control on timber marketing through returns to be made by manufacturers, the power to give directions regarding percentages of timber products produced to be dedicated to exportation and the registration of dealers in timber products.

2 Logs, plywood, veneer, lumber, flush doors, furniture and furniture parts

2.4.2 Amendments

There are no further amendments to this Act

2.4.3 Offences and penalties

Exporting timber or timber products without the written permission of the board

A person who exports timber or timber products without the written permission of the board commits an offence and is liable on summary conviction of imprisonment of not less than 15 years and no more than 30 years. The minimal penalty may be reduced to a minimum fine not exceeding 3.000 penalty units (36.000 GHc) and/or a lesser term of imprisonment if the offence was trivial or if there are special circumstances relating to the offence or the offender. In addition the goods involved in the offence may be forfeited to the republic (Section 3)

The board may in addition to the provided punishments suspend convicted offenders from manufacturing timber products (Section 10)

Failing to comply with the demand of returns or contravening direction given by the Board

A manufacturer of timber products who:

- (a) fails to comply with the demand of the Board to submit returns of products manufactured and/or sales made, or who provides false information
- (b) contravenes a direction given by the Board in relation the percentage of products that should be exported and percentage of products that should be sold in Ghana
- (c) fails to register as retailer, wholesaler, or dealer in timber products

commits an offence and is liable on summary conviction of a fine not exceeding 250 penalty units (3.000 Ghc) and/or imprisonment of a term not exceeding 1 year. In the case of a continuing offence the court may order a further fine of more than 25 penalty units (300 GHc) per day the offence continues (Section 8).

The board may in addition to the provided punishments suspend convicted offenders from manufacturing timber products (Section 10)

Offence by bodies of persons and suspension of manufacturers

Where one of the above-mentioned offences included under this act is committed by a natural person the penalties apply to the offender. Where the offence is committed by a body of persons each corporate director, partner or officer shall be considered to have committed the offence unless (s)he can prove the offence was committed without the persons knowledge or connivance and that required steps to prevent the commission of the offence were taken.

2.4.4 Competent Court

The Trees and Timber Decree does not identify a specific court to have jurisdiction over the offences included under the act. Therefore the general rules included in the Courts Act (Act 459 from 1993) apply. Taking into account the possible punishments the circuit court has jurisdiction to try the offences relating to export without authorization. The District court has jurisdiction to try offenders who failed to register, to comply with the demand of returns or contravening direction given by the Board

2.5 The Control and prevention of bushfires Law, 1990 (P.N.D.C.L.229)

2.5.1 Abstract

The Act prohibits the starting of bushfires

2.5.2 Amendments

There are no amendments to this Act.

2.5.3 Offences and penalties

Uncontrolled burning of a forest

Any action that results in the uncontrolled burning of a forest is offence punishable by a fine of no less than 250 and no more than 1.000 penalty units (3.000 -12.000 GHc) and/or a term of imprisonment or community labor not exceeding 2 years. In addition the court may impose the reimbursement of the value of destroyed trees and crops(section 11)

A person who fails to report the occurrence of a bushfire or failed to report a person known to have started a bushfire also commits an offence which is punishable a fine not exceeding 25 penalty units (300 GHc) and/or imprisonment or community labor for term of no more than 1 month (section 12).

2.5.4 Competent Court

The Control and prevention of Bushfires does not identify a specific court to have jurisdiction over the offences included under the act. Therefore the general rules included in the Courts Act (Act 459 from 1993) apply. Taking into account the possible punishments the circuit court has jurisdiction to try the offences relating to the starting of a bushfire. The District court has jurisdiction to try offenders who failed to report bushfires or persons known to have started a bushfire.

2.6 The Timber Resources Management Act 1998 (Act 547, as amended by act 617)

2.6.1 Abstract

The Act provides for the granting of timber rights. Except in the case of land with private forest plantations or lands with timber grown or owned by an individual or group, no person shall harvest timber unless that person holds timber rights in the form of a Timber Utilization Contract (TUC). A Timber Rights Evaluation Committee is established. The Committee shall evaluate applications for timber utilization contracts. The Minister shall grant such rights after a recommendation of the Forestry Commission based on the report of the evaluation committee. The act further outlines the terms of contract and provides for various other conditions as well as provisions for the suspension, termination or transfer timber rights.

2.6.2 Amendments

The Timber Resources Management Act has been amended by the Timber Resources Management (Amendment) Act in 2002 (Act 617). This act excluded land with private forest plantation from the prohibition to harvest trees without timber right and timber utilization contract. It also provided for the maximum duration and area of timber rights as well as for incentives and benefits applicable to investors in forestry and wildlife. The Amendment made to the original Timber Resources Management Act have been taken into account below.

2.6.3 Offences and penalties

Illegal transfer of timber rights

A timber rights holder who transfers or assigns a timber right without the written consent by the Minister (on recommendation of the commission) commits an offence and is liable of a fine of no less than 300% of the annual payable rent.

Offences by government officials

Government officials charged with the management or protection of a forest resource who:

- (a) by act or omission in the performance of his functions facilitate the breach of a provision of the act
 - (b) condone or connive with any other person in breach of a provision of the act
- commit an offence and are on summary conviction liable to of a term of imprisonment of no less than 6 months and no more than 2 years without the option of a fine (section 17 (1)).

Key provisions that could be breached through act, omission or connivance are:

- (a) Illegal harvesting of timber (section 1)
- (b) Non-compliance with the procedure for
 - i. applying for a timber right (section 3)
 - ii. evaluating the applications (section 6)
 - iii. exceeding the maximum duration or area (section 6A)
 - iv. granting of a timber right (sections 6B, 7, 9, 11, 12)
- (c) Non-compliance with minimal terms of contract (section 8)
- (d) Irregularities in the payment of royalties (sections 13 and 14)

Illegal harvest or transport of timber

Harvesting timber without a TUC or operating a vehicle to transport harvested timber in contravention of the act is an offence punishable on summary conviction to imprisonment of no less than 6 months and no more than 2 years (section 17 (2) (a) and (b)). Instead of imprisonment, the court can decide to impose a fine corresponding to 1.000% of the market value of the timber involved (section 17 (4) (a)). However, if the transport was done by non-mechanical means the corresponding fine can only be 100% of the market value of the timber involved (section 17 (4) (c)). In addition tools, equipment and machinery shall be confiscated. Illegally harvested timber shall be confiscated and sold (section 17 (3)).

Illegal sale and stocks of timber

Commercializing or stocking timber that has been harvested in contravention to the act is an offence punishable on summary conviction to imprisonment of no less than 6 months and no more than 2 years (section 17 (2) (c) and (d)). Instead of imprisonment, the court can decide to impose a fine corresponding to 500% of the market value of the timber involved (section 17 (4) (b)). In addition tools, equipment and machinery shall be confiscated. Illegally harvested timber shall be confiscated and sold.

2.6.4 Competent Court

The Timber Resources Management Act does not identify a specific court to have jurisdiction over the offences included under the act. Therefore the general rules included in the Courts Act (Act 459 from 1993) apply. Taking into account the possible punishments the circuit court has jurisdiction to try the offences relating the illegal transfer of a timber right if the value of the annual payable rent exceeds 166 penalty units (2.000 GHc). For illegal transfer of timber rights of a lesser value the District court has jurisdiction.

The circuit court or the district court has jurisdiction to try offences by officials, illegal harvest and transport of timber as well as the illegal sale and stock of timber. This choice of court will depend on the punishment that has been asked by the prosecutor³.

2.7 The Timber Resources Management Regulations 1998 (L.I.1649)

2.7.1 Abstract

These Regulations implement provisions of the Timber Resources Management Act, 1998 (Act 547 as amended by act 617) with respect to the granting of timber rights, timber operations, payment of stumpage fees and registration and use of chainsaws. The Regulations set out the procedures for the inventory and reservation of specified lands for timber utilization. The Chief executive of the Forestry Commission shall identify lands suitable for granting TUCs and initiate the inventory of the forest resources thereon. For lands other than public lands or forest reserves, he shall also obtain consent of landowners. After the competitive bidding procedure for the granting of a timber right can be launched. The Regulations further set out terms and conditions of timber utilization contracts and provides for various matters relating to the control of timber logging operations. Subsequently Stumpage fee and the registration and use of chainsaws are regulated. The regulations also provide timber utilization permits, a procedure for seized and abandoned timber and salvage permits. Finally a number of offence have been included.

2.7.2 Amendments

The Timber Resources Management Regulations 1998, (L.I. 1649) have been amended by the Timber Resources Management (Amendment) Regulations in 2003 (L.I.1721). These Regulations amend the original LI in relation to the procedure for competitive bidding for the

³ If an act mentions a fine within the limits of the jurisdiction of the District court and a term of imprisonment exceeding those limits but within the limits of jurisdiction of the circuit court it is up to the prosecutor to decide where he will lay down the charge sheet. This decision is based on the punishment he is asking for.

grant of timber rights. Competitive bidding shall be the basis of allocation of timber rights, and shall be in two stages, i.e. a pre-qualification and bidding for timber rights. Only pre-qualified applicants shall be eligible for invitation to bid. The Regulations set out pre-qualification requirements. Applications shall be assessed by the Timber Rights Evaluation Committee. The principal Regulations are also amended in provisions concerning terms and conditions of timber utilization contracts, monitoring functions of District Forest Officers and stumpage fees. These amendments have been taken into account in the preceding abstract as well as the paragraphs below.

2.7.3 Offences and penalties

Offences by officers

Any officer who:

- (a) declares false measurements of the volume of timber of a tree
- (b) falsely calculates the stumpage fee
- (c) assists a contractor to under declare tree volumes used in the calculation of the stumpage fee

commits an offence punishable by a fine not exceeding 2.500 penalty units (30.000 GHc) or imprisonment for no more than 1 year. This seems in contradiction with act 547 as amended by act 617 which states in its section 18(2) that an instrument made to execute the act may provide for fine of no less than 250 penalty units and no more than 1.000 penalty units. A court judging an offence under this regulation will therefore only be able to apply the fine provided for in the Act. Oddly, the imposition of both the fine and the imprisonment does not seem to be a possibility under this regulation. In addition the offender shall be liable to be dismissed from the public services (Regulation 41 (3)).

***Box 6: What if an LI contradicts an act or an act contradicts the Constitution?
Hierarchy of norms***

Different types of norms relate to each other in different ways. One will take precedence over another as dictated by a hierarchy between these different norms. In this hierarchy the Constitution is at the top, no regulatory text can contradict the Constitution. Second are Acts. This means an Act cannot be contradicted by its implementing LI.

When this hierarchy is not respected the courts cannot apply the provision that breaches the hierarchical superior norm. Where a question in relation to constitutionality arises in the proceedings in any other court, that court needs to halt the proceedings and refer the question of law involved to the Supreme Court for determination. (Section 3 Courts Act, 1993 Act 459)

Offences related to chainsaws

A landowner who permits an unregistered chainsaw to be used on his land for felling trees or sawing timber (regulation 34 and 41 (1) (h)) commits an offence.

Any person who

- (a) owns an unregistered chainsaw (regulation 28 (1) and 41 (1) (d))
- (b) uses an unregistered chainsaw to fell a tree (regulation 29 (1) and 41 (1) (e))
- (c) fells a tree with a chainsaw without marking the stump with his timber registration number
- (d) sells or offers for sale lumber cut with a chainsaw (regulation 32 (2) and 41 (1) (g))

also commits an offence. Both are punishable by a fine not exceeding 2.500 penalty units (30.000 GHc) or imprisonment for no more than 1 year. This seems in contradiction with act 547 as amended by act 617 which states in its section 18(2) that an instrument made to execute the act may provide for fine of no less than 250 penalty units and no more than 1.000 penalty units. A court judging an offence under this regulation will therefore only be able to apply the fine provided for in the Act. Continuing offenders are in addition liable to a fine not exceeding 50 penalty units (600 GHc) per day the offence continues. Forest produce obtained by the use of an unregistered chainsaw as well as the chainsaw itself shall also be forfeited.

Other offences

A timber operator, processor or seller who obstructs a forest officer entering a contract area for timber production in exercise of his duties (regulation 15 (2) and 41 (1) (a)) commits an offence.

Any person who

- (a) is found in possession of not properly marked or unmarked timber or lack the requisite documentation (regulation 20 (3) and 41 (1) (b))
- (b) moves timber from a forest area without conveyance certificate (regulation 24 (1) and 41 (1), (c))
- (c) fells or is found in possession of a restricted species of timber (regulation 40 (1) and 41 (1) (i))

commits an offence. Both are punishable by a fine not exceeding 2.500 penalty units (30.000 GHc) or imprisonment for no more than 1 year. This seems in contradiction with act 547 as amended by act 617 which states in its section 18(2) that an instrument made to execute the act may provide for fine of no less than 250 penalty units and no more than 1.000 penalty units. A court judging an offence under this regulation will therefore only be able to apply the fine provided for in the Act. Continuing offenders are in addition liable to a fine not exceeding 50 penalty units (600 GHc) per day the offence continues. Forest produce obtained by the use of an unregistered chainsaw as well as the chainsaw itself shall also be forfeited.

2.7.4 Competent Court

The Timber Resources Management Regulations do not specify a court to have jurisdiction over the offences included under them. Therefore the general rules included in the Courts Act (Act 459 from 1993) apply. Depending on the punishments that are asked by the prosecutor either the District or the Circuit Court will have jurisdiction to try the offences contained in the Timber Resources Management Regulations.

2.8 The Forest Plantation Development Fund Act 2000 (Act 583)

2.8.1 Abstract

This Act establishes the Forest Plantation Development Fund and the Forest Plantation Development Fund Management Board, provides for management and other matters regarding the Fund, defines functions of the Board and provides for the appointment of Forest Plantation Inspectors.

The objects of the fund are to provide financial assistance for:

- (a) the development of private forest plantation on lands suitable for commercial timber production;
- (b) for research and technical advice to persons involved in commercial plantation forestry on specified conditions.

The Fund shall be managed by the Forest Plantation Development Fund Management Board, which shall adopt a private sector forest plantation development scheme and promote investment in commercial forest plantation development through incentives and other benefits.

2.8.2 Amendments

The Forest Plantation Development Fund Act 2000 (Act 583) has been amended by the Forest Plantation Development Fund (Amendment) Act 2002 (Act 583)

2.8.3 Offences and penalties

Obstruction or assault of a forest plantation inspector

Section 11 (3) of the act states that any person who assaults or obstructs a Forest Plantation Inspector while he tries to enter a plantation which is beneficiary of the Fund commits an offence

and is liable on summary conviction to a fine of not less than 500 penalty units and/or to a term of imprisonment of not more than two years.

2.8.4 Competent Court

The Consolidated Forest Plantation Development Fund Act does not identify a specific court to have jurisdiction over the offence it mentions. Therefore the general rules included in the Courts Act (Act 459 from 1993) apply. Taking into account the possible punishments the district court has jurisdiction to try the offence of obstructing or assaulting a Forest Plantation Inspection Officer.

3 ACCESS TO JUSTICE IN RELATION TO WILDLIFE

3.1 The Wild Animals Preservation Act, 1961 (Act 43)

3.1.1 Abstract

The Wild Animals Preservation Act, 1961 (Act 43) provides for honorary game officers (appointment, arrests powers and immunities), rules in relation to the collection of specimens and trophies and the prohibition of certain types of hunting.

3.1.2 Amendments

The act has been amended by the Wild Animals Preservation (Amendment) Law, 1983 (P.N.C.D.L. 55) and the Forestry Commission Act, 1999 (Act 571). These amendments have been taken into account in the text below.

3.1.3 Offences and penalties

Illegal import or export of trophies

Section 4 of the Wild Animals Preservation Act, 1961 (Act 43 as amended by P.NC.D.L. 55 and Act 571) provides that:

- (a) exporting or attempting to export of a trophy without a certificate by a superior police officer
- (b) importing from a country without a a certificate of lawful export⁴

are offences liable to a fine of 200 penalty units (2.400 GHc) or to a term of imprisonment of six months. In addition the trophy being imported or exported shall be forfeited.

Hunting or disturbing animals by motor vehicle or aircraft

4 The prohibition is to import from other countries that are also signatory to the International Convention for the Protection of Fauna and Flora from 1933. Signatories were Belgium, Egypt, France, Italy, the Anglo-Egyptian Sudan, the Union of South Africa and the United Kingdom and their dependencies. The London Convention was superseded by the African Convention on Conservation of Nature and Natural Resources in 1968 which in turn has been superseded by the African Convention on Conservation of Nature and Natural Resources (Revised Version) signed in Maputo in 2003, this last convention has been signed by the big majority of African countries

It is an offence to use motor vehicles or any type of aircraft

- (a) to hunt, kill or capture animals
- (b) In a way that would drive, stampede or disturbs animals

except if you are the occupier of the land and it is not forbidden to hunt on that land (section 6). The offence is punished by a fine of 200 penalty units (2.400 GHc) and/or to a term of imprisonment of no more than twelve months.

Surrounding animals by fire

Surrounding animals by fire for hunting purposes is an offence liable to a fine of 200 penalty units (2.400 GHc) and/or to a term of imprisonment of twelve months.

3.1.4 Competent Court

The Wild Animals Preservation Act does not identify a specific court to have jurisdiction over the offences included under the act. Therefore the general rules included in the Courts Act (Act 459 from 1993) apply. Because none of the foreseen penalties exceeds 500 penalty units or 2 years of imprisonment we can conclude the District court has jurisdiction to try all of the offences included under this Act.

3.2 The Wildlife Conservation Regulations, 1971 (L.I. 685) and subsequent amendments

3.2.1 Abstract

The regulations provide for hunting restrictions based on different lists of type of animals included in the schedules and based on hunting methods. The regulations further provide for rules and procedures in relation to game licenses and game and trophy export licenses.

3.2.2 Amendments

The original Wildlife Conservation Regulations were subsequently amended by the Wildlife Conservation (Amendment) Regulations in 1983 (LI 1284), 1988 (LI 1357) and in 1989 (LI 1452). These amendments have been taken into account in the text below.

3.2.3 Offences and penalties

Hunting or possessing fully protected animals and possession of ivory

The first regulation prohibits hunting, destroying or possessing fully protected animals and the possession of ivory. Failing to respect this prohibition is an offence liable to a fine of 5 penalty units (60 GHc) and/or 12 months imprisonment. The Wild Animals Preservation Act does however limit the term of imprisonment that can be provided for in executing LIs to six months (section 11 (r) as amended by P.N.D.C.L. 55 and Act 571). A court hearing a case based on the offences included in this regulations will therefore have to respect the maximum term of imprisonment provided for in the Act. Any vehicle or implement found to have been used in the commission of the offence shall in addition be confiscated to the state.

Illegal hunting of partly protected animals or hunting during closed season

Hunting animals that are enumerated in the second schedule to the regulations during the close season or any time else when they are accompanied by their young or are young themselves (Regulation 2) as well as hunting any animal included in the third schedule during close season (regulation 3) is an offence liable to a fine of 5 penalty units (60 GHc) and/or 12 months imprisonment. As for the preceding offence, a court hearing a case based on the offences included in this regulations will therefore have to respect the maximum term of imprisonment provided for in the Act. Any vehicle or implement found to have been used in the commission of the offence shall in addition be confiscated to the state.

Hunting a animals included in schedule 2 (within open season and unaccompanied by young) or hunting animals included in schedule 3 (within open season) without a valid license is also an offence liable to the same fine and/or imprisonment as mentioned in the preceding paragraph (regulation 6)

Illegal methods of hunting

Hunting any wild animal by means of the following methods is prohibited (regulation 4):

- (a) Use, possession or manufacturing of gin traps
- (b) hunting by using artificial light or flares
- (c) hunting with nets (except for fish and poisonous snakes) without written authorization
- (d) hunting by pitfalls and snares in combination with pitfalls or poison
- (e) hunting in group (except if for cultural festivals for which a license has been granted)

Failing to respect this prohibition is an offence liable a fine of 5 penalty units (60 GHc) and/or 12 months imprisonment. The Wild Animals Preservation Act does however limit the term of imprisonment that can be provided for in executing LIs to six months (section 11 (r) as amended by P.N.D.C.L. 55 and Act 571). A court hearing a case based on the offences included in this regulations will therefore have to respect the maximum term of imprisonment provided for in the

Act. Any vehicle or implement found to have been used in the commission of the offence shall in addition be confiscated to the state.

Trading in bush meat or keeping wild animals as pets without license

Anyone who trades in bush meat (meat from any wild undomesticated animal) without the required license or who keeps a wild animal as a pet without a valid license commits an offence liable and is liable to a fine of 5 penalty units (60 GHc) and/or 12 months imprisonment (regulations 6A and 6B). The Wild Animals Preservation Act does however limit the term of imprisonment that can be provided for in executing LIs to six months (section 11 (r) as amended by P.N.D.C.L. 55 and Act 571). A court hearing a case based on the offences included in this regulations will therefore have to respect the maximum term of imprisonment provided for in the Act.

Illegal export of trophies

Exporting or attempting to export

- (a) any animal included in the first three schedules (dead or alive)
- (b) elephants' tusks
- (c) hides or skins (in commercial quantities) of any animal included in the first three schedules

is an offence punishable by a fine of 5 penalty units (60 GHc) and/or 12 months imprisonment (regulation 11). The Wild Animals Preservation Act does however limit the term of imprisonment that can be provided for in executing LIs to six months (section 11 (r) as amended by P.N.D.C.L. 55 and Act 571). A court hearing a case based on the offences included in this regulations will therefore have to respect the maximum term of imprisonment provided for in the Act.

Seizure

According to regulation 15 a game officer may seize any equipment or apparatus in possession of any person in contravention of any of the regulations. If no proceedings are commenced against that person within three months the items shall be restored. On the contrary, if that person is convicted of an offence under these regulations the items shall be forfeited to the state. Firearms will be delivered to the police the rest to the Chief Game and Wildlife Officer. If the Game officer finds equipment whose use is unlawful and the owner is not apparent he shall take possession of it and deliver it to the Chief Game and Wildlife Officer.

Exceptions

The regulations mention two exceptions to the prohibitions included above:

- (a) Killing of animals as an act of self defense or defense of another person is not an offence (regulation 17)
- (b) A Game Officer, acting in accordance with his official duties, kills an animal included in schedule 1, possess ivory or shoots an animal without a hunting license does not commit an offence either (regulation 16)

3.2.4 Competent Court

The maximum penalties provided for in the regulations do not seem to respect the limits that were included in the Wild Animals Preservation Act, 1961 (Act 43 as amended by Act 571). In its section 11 (r) that Act states that regulations executing it can provide for penalties not exceeding one hundred penalty units and/or 6 months of imprisonment. None of the penalties provided for in the regulations respects this limit.

The District Court can try criminal cases where the punishment would not exceed 500 penalty units and/or 2 years of imprisonment and can therefore try offences included in the Wildlife Conservation Regulations.

3.3 The Wildlife Reserve Regulations, 1971 (LI 710) and subsequent amendments

3.3.1 Abstract

The regulations provide for the establishment of 12 Reserves (national park/reserve/sanctuary). Entrance to these reserves has to be authorized and in which animal, plant life and amenities are protected

3.3.2 Amendments

The original Wildlife Reserves Regulations, 1971 (LI 710) were subsequently amended by the Wildlife Reserves (Amendment) Regulations in 1974 (LI 881), 1976 (LI 1085), 1977 (LI 1105), 1983 (LI 1283) and in 1991 (LI 1525). These amendments have been taken into account in the abstract and the text below.

3.3.3 Offences and penalties

Unauthorized entry into wildlife reserve

Entering a wildlife reserve without the written consent of the Chief Game and Wildlife Officer or failing to respect the conditions subject to which the permission was granted is an offence punishable by a fine of 5 penalty units (60 GHc) and/or 12 months imprisonment (regulation 11). The Wild Animals Preservation Act does however limit the term of imprisonment that can be provided for in executing LIs to six months (section 11 (r) as amended by P.N.D.C.L. 55 and Act 571). A court hearing a case based on the offences included in this regulations will therefore have to respect the maximum term of imprisonment provided for in the Act

Illegal hunting or collecting (within wildlife reserve)

It is illegal to:

- (a) hunt, capture or destroy any animal or collect or destroy any plant within a reserve, except with the written consent
- (b) bring into a reserve any equipment or any apparatus which may be used to hunt, capture or destroy any animal
- (c) take any animal or plant out of a reserve without the written consent

Failing to respect this prohibition is an offence liable to be punished by a fine of 5 penalty units (60 GHc) and/or 12 months imprisonment (regulation 11). The Wild Animals Preservation Act does however limit the term of imprisonment that can be provided for in executing LIs to six months (section 11 (r) as amended by P.N.D.C.L. 55 and Act 571). A court hearing a case based on the offences included in this regulations will therefore have to respect the maximum term of imprisonment provided for in the Act

A Game Officer may seize and confiscate any apparatus brought into a reserve which is in the opinion of the Game Officer capable of being used to hunt, capture or destroy any animal and such equipment or apparatus may be disposed of in such manner as the Chief Game and Wildlife Officer thinks fit⁵.

Endangering or damaging the reserve

No person can

- (a) light any fire within a Reserve
- (b) pollute any water within a Reserve
- (c) abandon any litter or unwanted articles within a reserve

⁵ If the game officer makes the seizing and confiscatory order before the case goes to court, that court cannot make any order respecting the concerned articles. If such an order was not made, the court order the restitution. L.I. 710. r. 3 (2) did not give the game officers the power of “automatic confiscation” to the game officer. (REPUBLIC v. CIRCUIT COURT JUDGE, TAMALE; EX PARTE VOLTA, SENIOR GAME WARDEN)

- (d) clear or cultivate any area within a reserve without the written consent of the Chief Game and Wildlife Officer

Failing to respect this prohibition is an offence liable to be punished by a fine of 5 penalty units (60 GHc) and/or 12 months imprisonment (regulation 11). The Wild Animals Preservation Act does however limit the term of imprisonment that can be provided for in executing LIs to six months (section 11 (r) as amended by P.N.D.C.L. 55 and Act 571). A court hearing a case based on the offences included in this regulations will therefore have to respect the maximum term of imprisonment provided for in the Act

3.3.4 Competent Court

The maximum penalties of imprisonment provided for in the regulations do not seem to respect the limits that were included in the Wild Animals Preservation Act, 1961 (Act 43 as amended by Act 571). In its section 11 (r) that Act states that regulations executing it can provide for penalties not exceeding one hundred penalty units and/or 6 months of imprisonment. None of the penalties provided for in the regulations respects this limit.

The maximum penalties provided for in the regulations make the District court the competent court to try all offences committed in relation to Wildlife Reserves

3.4 The Wetland Management (RAMSAR) Regulations, 1999 (L.I 1659)

3.4.1 Abstract

The regulations provide for the creation of RAMSAR sites within which the Minister may declare certain periods as close season for certain activities. He may also designate core areas within these sites (with elevated restrictions). Certain activities may be restricted to designated areas or subject to written authorization. Other activities may be fully prohibited

3.4.2 Amendments

The RAMSAR regulations have not been amended

3.4.3 Offences and penalties

General offences

Regulation 8 provides that any person who contravenes any provision of these regulations commits an offence liable on summary conviction to

- (a) in the case of a first offence : a fine no less than 25 penalty units (300 GHc) and no more than 50 penalty units (600 GHc) and/or imprisonment for no more than 14 days
- (b) in the case of a second offence: a fine of no less than 100 penalty units (1.200 GHc) and no more than 250 penalty units (3.000 GHc) and/or imprisonment for no more than 2 months
- (c) in the case of a continuing offence a fine not exceeding 25 penalty units (300 GHc) per day the offence continues

In addition to the fine or term of imprisonment an offender convicted for causing damage to the environment shall pay for the cost of the rehabilitation of the environment as may be ordered by the court. Any equipments, tools, apparatus or articles used in contravention of these Regulations can be seized by police officers and shall be confiscated by court after the conviction of a person and may release the items to the Chief Wildlife Officer.

Offences based on the most important provisions are:

- (a) Not respecting the closed season for certain activities (regulation 2)
- (b) Quarrying sand or removing soil outside approved areas (regulation 4)
- (c) Executing prohibited activities (regulation 6)
 - Polluting water
 - Using prohibited methods of fishing (poison, explosives, chemicals)
 - Fishing with nets with mesh size below 25mm
 - Fishing during closed season
 - Any other act likely to have adverse effect on environment
- (d) Not respecting the restrictions on certain activities (regulation 7)
 - Removing woody vegetation or cultivate in core area without written consent of executive director (given in consultation with the relevant committee)
 - deposit any litter outside designated areas
 - win sand, carry out quarrying activities or remove any soil except from areas approved by the Minister in writing
 - hunt, capture, harm or deliberately disturb any wild animals (including their nests and eggs) except as provided for by the Minister
 - graze any livestock in and around market bird nesting sites during nesting periods
 - allow grazing of livestock unsupervised by a herdsman within a core area
 - allow grazing livestock to disturb vegetation or to wade through a core area in such a manner as to adversely affect the environment
 - do any other act to disturb the ecosystem.
 - start a bush fire within a distance of 1 km from the boundary of a RAMSAR Site.
 - undertake any activity that has or is likely to have an adverse effect on any animal or species or the environment in a RAMSAR Site.

Offences by persons exploiting a natural resource or undertaking commercial activities

Regulation 8 provides that any person who contravenes any provision of these regulations while exploiting a natural resource or undertaking any activity for commercial purposes commits an offence liable on summary conviction to

- (a) in the case of a first offence : a fine no more than 1.000 penalty units (12.000 GHc) and/or imprisonment for no more than 6 months
- (b) in the case of a second offence: a fine of no more than 2.500 penalty units (30.000 GHC) and/or imprisonment for no more than one year
- (c) in the case of a continuing offence a fine not exceeding 50 penalty units (600 GHc) per day the offence continues

The maximum penalties provided for in these regulations do not seem to respect the limits that were included in the Wild Animals Preservation Act, 1961 (Act 43 as amended by Act 571). In its section 11 (r) that Act states that regulations executing it can provide for penalties not exceeding one hundred penalty units and/or 6 months of imprisonment. A court hearing a case based on these regulations will therefore have to respect the limits that were provided for in the parent Act.

In addition to the fine or term of imprisonment an offender convicted for causing damage to the environment shall pay for the cost of the rehabilitation of the environment as may be ordered by the court. Any equipments, tools, apparatus or articles used in contravention of these Regulations can be seized by police officers and shall be confiscated by court after the conviction of a person and may release the items to the Chief Wildlife Officer.

Offences based on the most important provisions are the same as mentioned in the preceding paragraph.

3.4.4 Competent Court

The maximum penalties provided for in the regulations do not seem to respect the limits that were included in the Wild Animals Preservation Act, 1961 (Act 43 as amended by Act 571). In its section 11 (r) that Act states that regulations executing it can provide for penalties not exceeding one hundred penalty units and/or 6 months of imprisonment. Courts will have to respect these limits rather than the ones in the LI exceeding them.

Taking into account the maximum penalties that have been provided the district court has jurisdiction to try offences included in the RAMSAR regulations

4 Preliminary analysis: case law collated from field survey

Although a significant amount of cases have not yet been received from the courts, some preliminary analysis of the case law already available from the field survey throws up interesting findings worth sharing.

Firstly, from the numerous, scattered and old legislations regulating the forest and wildlife sector, only three Acts and their enabling Legislative Instruments form the basis for the initiation of majority of criminal proceedings. These are the

- (a) Timber Resources Management Act (as variously amended) and Legislative Instruments
- (b) Forest Protection Act and Legislative Instruments
- (c) Wild Animals Act and Wildlife Reserve and Legislative Instruments as variously amended.

The preliminary findings from individual counts in a pile of twenty two (22) charge sheets show that 17 charges were brought under the Timber Resources Management Act and its L.Is, 9 charges were brought under the Forest Protection Act and 7 charges were initiated under Wild Animals Act and its L.Is. Depending on the nature of the offence, penalties for ranged from 25 to 1000 penalty units and/or 1-24 months of imprisonment. In certain events the lumber or the trophies are seized, forfeited or confiscated as the case maybe. Also, from the preliminary case law analysis it became evident that the most popular offences include harvesting timber without a valid TUC and entering a forest reserve without authorization.

The District and Circuit courts appear as the favoured venue for the initiation of criminal proceedings for breaches of forest and wildlife offences.

From informal contacts during the field survey it seemed large quantities of forest produce (especially timber) are seized, but alleged offenders are rarely summoned to appear in court. As explained in box 3 this could be problematic. Seized forest produce can only be sold by officials if the owner is not know after a certain amount time or if the court specifically forfeited the produce to the state. From these contacts it also seemed the decision on whether to go to court usually depends on whether the offence occurred in the forest or the culprits are arrested outside the forest reserve as well as on the gravity of the offence. Where offenders are arrested in the forest reserve or prohibited areas, they are sent to the court immediately. Where offenders are arrested outside the forest reserve, the Regional Office is informed for necessary action to be taken. This might include a seizure of the lumber or trophies involved.

PRELIMINARY CONCLUSIONS

Need for Consolidation into one comprehensive and coherent act

Scattered and uncoordinated amendments to numerous Forest and Wildlife Laws make any research into in the sector challenging and time consuming. The current state of laws has led to inconsistencies in between the various acts. There has been an attempt to consolidate all the laws in Ghana with their amending legislation including the Forest and Wildlife laws. Although these consolidations are useful tools, there are a number of mistakes and omissions that have occurred along the way.

Because of these problems, it has become almost impossible to understand the offences, duties and rights according to the Forest and Wildlife legislation without assistance of professionals (lawyers). There is the need for an urgent consolidation of all the laws in the Forest and Wildlife sector. Elaborating a single comprehensive and coherent act (as has been done in other natural resources sectors) will be an opportunity to address most of the problems mentioned in the preceding paragraph.

Knowledge of the law (Prosecutors and Court)

Only three acts and their enabling regulations form the basis of majority of the charges. This indicates prosecutors seem to have a limited level of knowledge of the large corpus of law that regulate the Forest and Wildlife sectors.

Similarly, the nature of the sentencing in some cases where the sentences are either below the prescribe minimum or above the maximum show a lack of appreciation of laws in the Forest and Wildlife sector. A large number of cases brought to court are labeled 'entering a forest reserve without authorization'. According to the Forest Protection Act and the offences included therein this is however not an offence, further indicating incomplete legal knowledge by prosecutors (and courts).

Further, since these offences are tried summarily most often than not it is just the prosecutors and accused persons with little or no legal representation.

The “Long Arm of the Law”

One interesting revelation from this study is the fact that, aside the Forest and Wildlife related charges preferred against offenders, they were also charged with offences in Criminal Offence Act, 1960 (Act 29) such as causing harm, conspiracy, abetment and violent conduct. This shows the will of prosecutors in drumming up the most charges against an offender. Such broad scope of charges meant that offenders are either found guilty under a forest or wildlife offence or under the general body of criminal liability as contained in the Criminal Offences Act.

Elusive Criminal Liability of Companies

From the preliminary results mostly, criminal proceedings are initiated against individuals and groups of individuals. Suits involving companies and corporations are usually civil in nature. This might partly be due to the difficulty in linking companies with criminal liability.

Even though the director of companies can be held criminally liable, there is the difficulty of “lifting the veil” to find the hands and minds behind companies and corporations. Also, it might be due to the fact in a civil action, communities are more likely to obtain direct compensation or the payment of damages should the action go in the favour.

Access to Information

Access to information on cases involving Forest and Wildlife offences is very poor. During the field survey, even though the researchers had authorization from the Judicial Secretary to have access to charge sheets case law and judgments in the courts they visited, the reality was that these documents were either not readily available or officials were not ready to immediately release the documents. Where these documents are released to the researchers, they had to bear the cost in making copies of the documents. In other instances, researchers were asked to submit a formal request to the information. Many of such requests were made and single reply is yet to be received.

Contact details of Forestry Officials who participated in the training for public prosecutors of Forest and Wildlife related offences

In 2013 Law And Development Associates (LADA) organized an 8 weeks training course for Forestry Officials. This course aimed at giving them the legal knowledge they need to be able to prosecute Forest and Wildlife related offences. ClientEarth supported LADA in the organization of the training and this briefing was used during some of its sessions.

Because the officials that were trained will be the future prosecutors of Forest and Wildlife related offences they are also the first point of contact when witnessing such an offence. For your information we have included their names and contact details below.

	Name	Email Address	Phone number
1.	CORNELIA DASSAH	pauletdas@yahoo.com	0208167943
2.	FAUSTINA OPPONG SIDIKI	pomaaafia@yahoo.com	0543012280 0509411088
3.	JAMILLA ABDUL-RAHMAN	Jamieabdul72@yahoo.com	0242617457 0205489342
4.	MARTINA ADDAI	obaapaforreal@gmail.com	0244478156
5.	NANA AFIA HODIBERT	nanafiab@yahoo.com	0201930763 0244659026
6.	PATIENCE APASSNABA	apassnaba@gmail.com	0243406002 0203401399 0574179798
7.	PRISCILLA AMA ANOMWAA ASOMANI	prifasom@yahoo.com / priasom@gmail.com s	0244482450
8.	ALFRED KOFI BARA	alfredbara2013@gmail.com	0244963553 0205149815
9.	ALI MAHAMA	Maliba2013@gmail.com	0546224599 0275543056
10.	ANDREWS AGYEKUMHENE	andyaohene@yahoo.com	0242580606 0208829002
11.	ATO NYAN	atonyan10@gmail.com	0207357128
12.	BLESSING OBENG APPIAGYEI	apeezadat@yahoo.co.uk	0546455422
13.	FRANK OWUSU	francoxx002@yahoo.com	0243181514
14.	GAD YAW COFFIE	gadcoffie@yahoo.com	0244585965
15.	GIDEON YAW WOLLIE	ozihuuza@yahoo.com	0244138788 0200138788

16.	HENRY KUDIABOR	henkud@gmail.com	0244861850
17.	HORATIUS ASANO	horatius21@yahoo.com / horatiusasano@gmail.com	0241423950 0269795137 0509024635
18.	JAMES KUBASI WUNI	jawukub@yahoo.co.uk	0208298389 0243541504
19.	KOBINA ADU-BAIDEN	kobinabaiden@gmail.com	0243209789 0208316214
20.	PIUS DUMBA	Pius.dumba@yahoo.co.uk	0208094123 0241774126
21.	PATRICK KWEKU ANDERSON	pandersongh@yahoo.com	0268667886
22.	POLYCARP WULDEFAAR MAABIER	polycarpmaabier@yahoo.com	0240611340 0200149334
23.	SAMUEL KOJO ANNAN- RIVERSON	annanriverson@gmail.com	0269808208 0243432309
24.	MARSHALL ALHASSAN ADAMS	marshallal hassanadams@yahoo.com	0244073752
25.	NASIGRI MAHAMADU	nasigramahamadu@yahoo.com	0245807646 0209808442
26.	RAYMOND MBIAH	raymbiah@yahoo.com	0242657189 0277007176
27.	RICHARD GYAMFI BOAKYE	rgboakye@yahoo.co.uk	0205540277 0275544145
28.	RICHARD ANTWI	richardantwi8686@yahoo.com	0240133558
29.	YAW BOATENG ASANTE	boatenasante@yahoo.com	0244801198 0202198268

ClientEarth is a non-profit environmental law organisation based in, London, Brussels and Warsaw. We are activist lawyers working at the interface of law, science and policy. Using the power of the law, we develop legal strategies and tools to address major environmental issues.

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Clement Kojo Akapame

Ghana in-country Lawyer (Accra)

Akapame@yahoo.com

+233 (0)244 624 130 (mob)

Jozef Weyns

Ghana law and policy advisor (London)

jweyns@clientearth.org

+44 (0)20 3030 5976 (fix)

+44 (0)78 2996 9368 (mob)

Brussels

4ème Etage
36 Avenue de Tervueren
1040 Bruxelles
Belgium

London

274 Richmond Road
London
E8 3QW
UK

Warsaw

Aleje Ujazdowskie 39/4
00-540 Warszawa
Poland