

When are social responsibility agreements a legal requirement?

A short analysis of when social responsibility agreements are legally required under different types of logging permits in Ghana

This short briefing aims at clarifying when social responsibility agreements (SRA) are a legal requirement under the laws of Ghana and under the legality assurance system put in place by the Voluntary Partnership Agreement (VPA) concluded between Ghana and the EU. To do so we will first analyse how the requirement of SRAs has been included in laws and regulations for known different types of logging permits. Subsequently we will look at whether and how SRAs are mentioned as a legal requirement in the VPA and the Ghana Legality Assurance System (GLAS) it puts in place. This short briefing needs to be read in conjunction with a previous briefing on the legality of different types of logging permits which explains these different types and their legal requirements more in detail.¹

When are SRAs required?

All Timber Utilisation Contracts require a Social Responsibility Agreement

The main type of commercial logging rights granted by government is called a Timber Utilisation Contract (TUC).² An application for a timber right (TUC) has to contain a proposal to assist in addressing the social needs of the communities who have interest in the applicant's proposed area of operations.³ The SRA obligates the contractor to provide for amenities, services or benefits to assist the communities and inhabitants of the area, at a cost of 5% of the value of the stumpage fee of timber that is harvested.⁴ It has to be concluded upon reception of the Notice of Grant of timber right before the right is actually granted.⁵ The Minister shall nullify the grant in case of failure to comply with this requirement within the time specified in the Notice.⁶

¹ 'Understanding the legality of rights, permits and certificates to harvest naturally occurring timber in Ghana', ClientEarth, April 2013. Available on <http://www.clientearth.org/resources/clientearth-resources/ghana-ce>

² Timber Resources Management Act, 1998 (Act 547 as amended by Act 617), section 1

³ Ibid, section 3 (e)

⁴ Timber Resources Management Regulation, 1998 (LI 1649 as amended by LI 1721), Regulation 13 and 14

⁵ Ibid, regulation 13 (12)

⁶ Ibid, regulation 13 (13)

Once concluded, the SRA will become part of the contractual obligations of the logger.⁷ This means that failure to implement the SRA amounts to a breach of the terms and conditions of the TUC, which can lead to suspension or termination of the TUC.⁸

When discussing TUCs, a logging permit for harvesting naturally occurring timber immediately springs to mind. However, TUCs and the rules that apply to them cover a wider range of types of timber harvesting. Below we will look at each of these types.

Natural forest and plantation TUCs equally require an SRA

TUCs can be granted by the government for naturally occurring trees in on and off-reserve areas and forest plantations in forest reserves. Private forest plantations and timber which has been grown by (groups of) individuals in off-reserve areas cannot be subject to the allocation of such logging rights.⁹ This means the rules laid down to regulate TUCs, including the obligation to conclude an SRA, apply to both natural forest TUCs and plantation TUCs.¹⁰

Replacement TUCs require an SRA

When TUCs are terminated because the area of land subject to a TUC is under review or has been deemed no longer suitable for timber operations or when the Forestry Commission reviews the operations and determines there are enough grounds for termination of the TUC, the TUC holder is entitled to replacement.¹¹ No specific provisions are made for such replacement TUCs which means they are subject to the same terms and conditions as 'normal TUCs'. Therefore the conclusion and implementation of SRAs are a legal requirement.¹²

Old leases need to be converted into TUCs which require an SRA

Holders of timber rights, leases or concessions which were valid before the coming into force of the Timber Resources Management Act in 1998 were given 6 months to apply for a TUC before their old permits would become invalid.¹³ No special provisions were made for the application for a TUC to replace old concessions so the standard procedure, including the necessity to submit a proposal to assist in addressing social needs of communities, applies.¹⁴ The regulations applicable at that time confirmed that an application for a TUC needed to include such a proposal¹⁵ and added that the Evaluation Committee shall invite applicants whose application scored above a predetermined level to submit a social responsibility agreement at a cost of 5%

⁷ Ibid, regulation 14 (1) (c) (v)

⁸ Timber Resources Management Act, 1998 (Act 547 as amended by act 617), section 15 (1) (a)

⁹ Ibid, section 4

¹⁰ Timber Resources Management Regulations, 1998 (LI 1649 as amended by LI1721), regulation 14

¹¹ Timber Resources Management Act, 1998 (Act 547 as amended by act 617), section 15 (2)

¹² Timber Resources Management Regulations, 1998 (LI 1649 as amended by LI1721), regulation 14

¹³ Timber Resources Management Act, 1998 (Act 547 as amended by Act 617) Section 18

¹⁴ Ibid, Section 3

¹⁵ Timber Resources Management Regulations, 1998 (LI 1649 before amendment by LI 1721), Regulation 11

of the stumpage accruing from operations.¹⁶ The subsequently concluded TUC had to include an undertaking to provide social facilities.¹⁷

Parliament has approved under-water logging when compliant with legislation in respect of TUCs. Therefore SRAs is deemed required for under water logging rights.

Current forestry laws do not contain specific rules for the allocation of underwater logging rights. Strictly speaking, under water logging rights are no TUCs (which are concluded by the Ministry of Land and Natural Resources) or salvage permits (which are concluded by the Forestry Commission), rather they are agreements concluded by the Government of Ghana /Volta River Authority. So at first sight, it is unclear whether such rights would require an SRA.

However, parliament considered a previous under-water logging agreement between Government of Ghana/VRA and Clark Sustainable Natural Resources for the harvesting, processing and marketing of timber from the Volta Lake.¹⁸ The Hansard states “The Committee was further informed that the operations of the project would be conducted like any land based timber utilization contract (TUC). Therefore, the Forest Services Division of the Forestry Commission will be present during the harvesting, processing and export of timber from the lake to ensure that the contractor complies with the relevant legislation in respect of TUCs in the country”.¹⁹ It therefore seems that the Parliament has approved of a previous underwater logging contract if it complies with TUC requirements, including the obligation to have an SRA with local communities.

Salvage Permits require SRAs if the terms of the permit indicate so, which is the case if they are commercial in nature

Salvage permits are logging permits for salvaging tree in areas undergoing development.²⁰ The rules on salvage permits are silent on whether or not they require the negotiation and implementation of an SRA. However they do specify that the Forestry Commission issues salvage permits subject to such terms and conditions as shall be specified therein. This means that if the FC includes the requirement of SRAs in the salvage permits, then SRAs become criteria for legality.²¹ The Resource Management Support Unit indicated that where salvage permits are of a commercial nature they will include the requirement to conclude an SRA, where salvage permits are granted for social infrastructure they do not include SRA requirements.

‘Special permits’ require SRAs if the terms so indicate but these permits are not recognized as a legal source of wood by the VPA

¹⁶ Ibid, Regulation 13 (1) (b). The original regulation mentioned a ‘no more than 5%’ which was replaced in by the amending LI 1721 by ‘5%’

¹⁷ Ibid, Regulation 14 (1) (l)

¹⁸ Parliamentary records-Hansard of 30th November 20103, column 2237-2256,

¹⁹ Ibid, paragraph 7.4

²⁰ Timber Resources Management Regulations, 1998 (LI 1649 as amended by LI 1721), Regulation 38 (1)

²¹ Ibid, Regulation 38 (2)

The Timber Resources Management (amendment) Act from 2002²² inserted a new subsection in the interpretation section of the original Timber Resources Management which states:

“The expression “timber utilization contract” shall apply with the modifications that are necessary, to a certificate of purchase, a permit or any other authorization for timber rights approved by the Minister on the recommendation of the Commission”²³

The Ministry of Lands and Natural Resources interprets this section such as to enable the Minister to grant other types of logging permits called ‘special permits’, ‘ministerial TUCs’,... The above subsection does not indicate whether SRAs are a requirement for such permits. Therefore they will only be if included under the term and conditions in the permit itself.

However, regardless of whether SRAs are required under these permits, they are not accepted as a legal source of timber under the VPA. Therefore, once the Ghana legality assurance system becomes operational no timber harvested under such permits can be exported or sold on the domestic market.

Timber Utilisation Permits by their nature do not seem to require SRAs but these permits are not recognized as a legal source of wood by the VPA

The timber Resources Management Regulations provide for the possibility to request Timber Utilisation Permits from the Forestry Commission. These permits allow District Assemblies, town committees, community groups or NGOs to harvest a specified number of trees for social or community purposes.²⁴ Timber or lumber sourced under such permits can however not be sold or exchanged. Because timber from TUPs cannot be traded, these permits are not recognised as a legal source of timber under the VPA.

The regulations do not mention any obligation to conclude a social responsibility agreement. Rather terms and conditions of the permit are to be determined and included in the permit by the Forestry Commission. However, given the social and non-commercial nature of timber harvesting under TUPs it seems unlikely that SRAs would be included as a requirement.

A certificate of purchase is not a logging permit and does not require an SRA

Strictly speaking a certificate of purchase is not a logging permit. Rather it is a document that proves previously seized timber has been bought after due process. Regulations with respect to such certificates of purchase do not mention any obligation to conclude a social responsibility agreement.²⁵

The Ghana Legality Assurance System included in the VPA requires loggers to execute and comply with the relevant SRAs

²² Timber Resources Management (Amendment) Act, 2002 (Act 617), section 6

²³ Timber Resources Management Act, 1998 (Act 547 as amended by Act 617), section 20 (2)

²⁴ Timber Resources Management Regulations, 1998 (LI 1649 as amended by LI 1721) Regulation 35

²⁵ Timber Resources Management Regulation, 1998 (LI 1649 as amended by LI 1721), regulation 37

The VPA concluded between Ghana and the EU includes a definition of what can be considered as legal timber for export and for the domestic market. Full compliance with obligations under social responsibility agreements is a part of this legal definition.²⁶ In addition to the definition the VPA puts in place a system, the Ghana Legality Assurance System (G-LAS) to verify and certify the legality of wood for export and the domestic market. Within the G-LAS one of the criteria of verification is whether the logger executed and complied with the relevant social responsibility agreements.²⁷ The need for compliance with SRAs has further been included in the draft legal timber verification protocols. However, neither the legal definition, nor the G-LAS or the protocols define whether SRAs are applicable for all legal sources of timber, so to determine what '*relevant*' SRAs stand for one would have to look at which types of logging permits require a SRA under existing national law.

Conclusion: all logging permits recognised under the VPA require an SRA

In this short legal briefing we analysed whether SRAs are a legal requirement for different types of logging permits currently in use in Ghana. We can conclude that all TUCs require an SRA. Albeit on different grounds, the same holds true for salvage permits. Whether SRAs are a requirement for other types of permits is less clear, but these permits have not been recognised as a legal source of wood by the VPA. Therefore we can conclude that all logging permit types recognised under the VPA require the conclusion and implementation of an SRA. The grounds upon which this requirement rests do however differ and in some cases require inspection of the terms and conditions of the permits themselves, in other cases one has to consult the Parliamentary records or interpret the law. However, the current somewhat confusing situation will be addressed through full implementation of the VPA. More specifically, the VPA aims to enhance forest law enforcement and governance and includes aspirations for forest legislative reform. Completion of the promised reform would offer an opportunity to clearly include the different criteria of legality in a consolidated forest act.

²⁶ Voluntary Partnership Agreement between Ghana and the EU, 2009, annex II, annotated legal definition (g)

²⁷ Ibid, annex II, table 1, principle 3, criterion 3.6

May 2015



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ClientEarth is funded by the generous support of philanthropic foundations, engaged individuals and the UK Department for International Development.

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