



*Review of Ghana's
Legal Framework for*
**Protected Areas,
Agriculture, and
Environmental
Assessment**

(Abridged Version)



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This abridged report provides a summary of work undertaken by TaylorCrabbe Initiative for the Ghana Wildlife Society. The full report can be accessed at www.ghanawildlifesociety.org and should be read by anybody who wants to understand the details behind the recommendations contained in the abridged report.

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Abridged Report



Full Report

Contents

About the Ghana Wildlife Society	iv
Acknowledgements	v
Foreword	vi-vii
Abbreviations	viii
Executive Summary	ix
PART ONE: INTRODUCTION	1
1.1 About this report	1
1.2 Background	2
1.3 Methodology	4
PART TWO: FINDINGS & RECOMMENDATIONS	5
2.1 Protected Areas	5
2.1.1 Overview	5
2.1.2 Findings	9
2.1.3 Recommendations	11
2.2 Agriculture	13
2.2.1 Overview	13
2.2.2 Findings	14
2.2.3 Recommendations	19
2.3 Environmental Assessment	22
2.3.1 Overview	22
2.3.2 Findings	22
2.3.3 Recommendations	26
PART THREE: CONCLUSION	29

About the Ghana Wildlife Society

The Ghana Wildlife Society is a non-governmental, non-political and non-profit making conservation organization. We have been at the forefront of nature conservation for the past three decades. Our mission is to conserve wildlife in all its forms to ensure a better environment and for improved quality of life for all people. We belong to BirdLife International, the world's largest nature conservation partnership of 120 autonomous NGOs around the world. We operate based on the model that stipulates that, conservation actions must hinge on credible scientific evidence.

Our work over the past three decades has transformed corporate industrial practices and national policy, including the ban on trade in Grey Parrots and provision of models for community ecotourism initiatives in Ghana (Nzulezu and Afadjato). Our past and present campaigns have contributed to the reduction of deliberate killing of bats in the Accra Metropolis and other parts of the Country. Through several research activities, we have contributed scientific data to various national policy processes. We rely on our junior wing, the Wildlife Clubs of Ghana to promote conservation education in schools and the general public.

Acknowledgements

The Ghana Wildlife Society (GWS) sincerely thanks the Royal Society for the Protection of Birds (RSPB) and the Critical Ecosystem Partnership Fund (CEPF) for providing financial support to undertake this review. We are grateful to Mr. Eric Lartey, the Executive Director of GWS, for his pivotal role in the initiation of this project and prioritisation of recommendations from the parent document. Special appreciation goes to Mr. Andrew Callender of the RSPB for his contributions throughout the entire review process.

Many thanks to Messrs. Nana Tawiah Okyir, Clement Akapame and Denis Nii Abu Martey, lawyers of TaylorCrabbe Initiative, for all their hard work and forbearance throughout the duration of the review.

Through the steering group and follow-up consultation process, many individuals and organisations have contributed to this review. We are therefore grateful to all the members of the steering group, particularly Dr. Stanislaus Adiaba of the Lands Commission, Mr. Isaac Charles Acquah Jr. and Mr. Anthony Appianti of the Environmental Protection Agency (EPA), Mr. Kingsley K. Amoako and Mr. Gibrilla Ahmed of the Ministry of Food and Agriculture and Ms. Cornelia Danso of the Wildlife Division of the Forestry Commission. Their commitment and insights during the steering group meetings were invaluable. Our gratitude also extends to those who provided technical inputs to the report during our consultation process – including WABiCC and the EPA. As far as possible, we have taken these comments and suggestions into account in this published piece. Finally, thanks to Mr. Faisal Elias, the Policy and Advocacy Officer of GWS, for his coordination role in the project, and others who anonymously shared information during the review process.

Foreword



Biodiversity underpins all life and provides vital benefits to our societies and economies. Yet despite this, pressures from land use change, over-exploitation of natural resources, pollution and climate change are contributing to an alarming loss of living diversity. This in turn is reducing the capacity of our environment to sustain us into the future. We have to reverse these trends. But it is only through well-informed interventions that this can happen. The Government is very keen on reversing this trend. We are committed to putting measures in place to fight things like illegal mining (galamsey), climate change, pollution and deforestation.

The report on the review of Ghana's legal framework on Protected Areas, Agriculture and Environmental Assessment provides an understanding of legislations and practices governing our environment. Ghana has a lot of laws and policies. We also have obligations in meeting international conventions and protocols. This report has adequately exposed the gaps in legislation and substantive policy. It has further highlighted the key recommendations for changes that could strengthen the effectiveness of legal and policy requirements to deliver sustainable land use in the country.

The report provides a worrying update on the state of legislations and policies and of the challenges ahead. It visibly reveals that solutions do exist and that substantial lasting success can be attained, especially if all stakeholders work together to the realization of the Sustainable Development Goals, the Aichi Biodiversity targets and other global policy instruments.

I wish to congratulate the Ghana Wildlife Society and the Royal Society for the Protection of Birds for undertaking this task. I would like to encourage other stakeholders and government institutions to join hands to promote sustainable development while conserving Ghana's biodiversity and ecosystems.

A handwritten signature in blue ink, appearing to read 'Kwaku Asamoah-Cheremeh'. The signature is stylized and fluid.

Hon. Kwaku Asamoah-Cheremeh
Minister of Lands and Natural Resources

Foreword



Ghana is a country rich in biodiversity. But over the years anthropogenic activities have exacerbated the already declining biodiversity and the associated ecosystem services it provides. It is only through well-informed interventions that we can reverse this trend. The Government's efforts at combatting the menace of galamsey, climate change and deforestation demonstrate its commitment to conserving biodiversity and the environment at large.

This report is timely. The report on the review of Ghana's legal framework on Protected Areas, Agriculture and Environmental Assessment provides an insight into legislations and practices governing our environment. Ghana has a myriad of legislations and policies as well as commitments to international conventions in these three areas and this report has successfully captured them. It has adequately exposed the gaps in the legislations and the substantive policy. It has further highlighted important recommendations that could strengthen the effectiveness of policy requirements to deliver sustainable land use in the environment sector.

Although the report provides a sobering update on the state of legislations and policies and of the challenges ahead, it clearly demonstrates that solutions do exist and that significant lasting success can be achieved, especially if all stakeholders work together to the realization of the Sustainable Development Goals.

I wish to congratulate the Ghana Wildlife Society for undertaking this arduous task. I would like to encourage other stakeholders and government institutions to utilise the recommendations made in this report to trigger the needed policy reforms that will safeguard our environment.

A handwritten signature in blue ink, appearing to read 'Kwabena Boateng', written in a cursive style.

Prof. Kwabena Frimpong Boateng

Minister of Environment, Science, Technology and Innovation

Abbreviations

AEWA	Agreement on the Conservation of African-Eurasian Migratory Waterbirds
CBD	Convention on Biological Diversity
CEPF	Critical Ecosystem Partnership Fund
CSOs	Civil Society Organisations
CREMA	Community Resource Management Area
CRMC	Community Resource Management Committee
EA	Environmental Assessment
EAFI	East Atlantic Flyway Initiative
EIA	Environmental Impact Assessment
EIS	Environmental Impact Statement
EPA	Environmental Protection Agency
ESIA	Environmental and Social Impact Assessment
FC	Forestry Commission
GMOs	Genetically Modified Organisms
GSBA	Globally Significant Biodiversity Area
GWS	Ghana Wildlife Society
IBA	Important Bird Area
IDA	Irrigation Development Authority
ISSAP	International Single Species Action Plan
IUCN	International Union for Conservation of Nature
MoFA	Ministry of Food and Agriculture
MLNR	Ministry of Lands and Natural Resources
NBSAP	National Biodiversity Strategy and Action Plan
NDC	Nationally Determined Contribution
NRMC	Natural Resource Management Committee
PA	Protected Area
RSPB	Royal Society for the Protection of Birds
SDGs	Sustainable Development Goals
SEA	Strategic Environmental Assessment
SRA	Social Responsibility Agreement
TSG	Technical Steering Group
TUC	Timber Utilization Contract
UNFCCC	United Nations Framework Convention on Climate Change
WD	Wildlife Division
WRC	Water Resource Commission
wPAs	Wildlife Protected Areas

Executive Summary

The Ghana Wildlife Society (GWS), working in partnership with the Royal Society for the Protection of Birds (RSPB), commissioned TaylorCrabbe Initiative to review the legal framework for Protected Areas (PAs), Agriculture and Environmental Assessment (EA) in Ghana. This forms part of BirdLife's East Atlantic Flyway Initiative (EAFI) programme of work, focused on migratory birds of the African-Eurasian Flyway which migrate through or use the landscapes of West Africa as their wintering grounds.

This abridged report captures the requirements in law to address specific questions, identifies gaps in legislation, considers its application in practice and finally, puts forward recommendations for changes in legislation and enforcement actions. The findings of the study are intended to provide information for further governmental action by way of coordinated legislative, policy and administrative improvements in the three reviewed areas. This abridged report only reflects a small sense of the complexity and depth of the full review, and it is recommended the two documents should be read together.

Background

PAs can safeguard important areas of native habitats where they are well managed and these are vital for the conservation of nature given the pressure that unabated habitat loss is placing on the viability of species' populations. Importantly they can also provide resilience against challenges such as food and water security, disease, disaster risk reduction and climate change. PAs are, however, not isolated reservoirs of nature, but have an important and dynamic relationship with the land surrounding them. This land can provide vital ecological connectivity – or insurmountable barriers - with other PAs. Protected areas in Ghana are faced by a myriad of threats, with agriculture being top of the list. Agricultural expansion and intensification is the most significant driver of land use change in Ghana and this is negatively impacting on the biodiversity and ecological health of landscapes. Unlike other associated sectors such as forestry, there is a paucity of information on how effective the legal framework on agriculture is in supporting the sustainable use of land as described in the Abuja Declaration . Environmental assessment is a tool that ensures the incorporation of environmental information in sound and well-balanced decision making. On that account, Ghana has put in place legal measures for the conduct of an environmental assessment before the

¹ <https://www.cms.int/sites/default/files/document/Abuja%20Declaration.pdf>

commencement of any activity which has the potential to cause significant impacts on the environment.

Despite the existence of extensive legislation, weak governance structures, inadequate implementation of existing laws, and loopholes and gaps within current legislation is not fulfilling the ambition of the sustainable development of Ghana: development that raises living standards yet protects the natural environment and tackles climate change. Biodiversity remains in sharp decline and many of the country's natural ecosystems continue to be degraded. This trajectory is unsustainable.

Recommendations

The recommendations presented are by no means exhaustive. This executive summary only gives a snippet of a gamut of recommendations on different topics in the three areas reviewed.

— Protected Areas

Management: The Wildlife Division's Policy for Collaborative Community Based Wildlife Management for the establishment of Community Resource Management Areas (CREMAs) across Ghana should be given legal backing and expressed in law. PA legislation should be amended to allow for the preparation of PA management plans, and the need for a regular assessment of its status and plans. These should use the best available science to identify any parts of the site that may be particularly vulnerable to climate change, incorporating measures that may help build resilience and allow adaptation to preserve the conservation objectives of the area. The creation of PAs should include consideration of buffer zones and corridors for adaptation to climate change.

PA network: Legislation should provide a mechanism that gives the public/stakeholders the opportunity to propose the creation of new PAs or amend the status of existing ones. This should include a requirement in law for a mandatory wide and adequate consultation with relevant stakeholders, before reclassification or change of status of PAs. Undoubtedly, some Forest Reserves in Ghana (e.g. Atewa Range Forest Reserve) could make significant contribution to conservation if managed for biodiversity. Also, PAs created through legislative instruments have the characteristics of perpetual integrity

when compared to those created through an executive instrument. Furthermore, the PA system should be synchronized into one national system that recognizes the importance of habitat connectivity by introducing legislation that will establish conservation corridors in PA design within and between Ghana and neighbouring countries.

Access to information: PA authorities should provide timely access to accurate, relevant and understandable information, as well as provide a reasonable opportunity for the public to contribute meaningful comments where significant decisions are being contemplated on the Protected Area.

— Agriculture

Tree tenure: The ownership and benefit sharing in naturally occurring trees on farms continues to be one of the thorny issues. Security of tenure is needed to ensure that farmers benefit from planting and tending trees and from investing in improvements that enhance the value and sustainability of trees. The underlying land ownership should determine the ownership of trees thereon. We recommend an amendment of the existing vesting structure of timber and trees to divest the ownership of trees off reserves from the President to enable their vesting in the landowners, farmers or stools concerned. There is also a need for an amendment of the tree tenure system to give farmers/inhabitants a share of proceeds made from the harvesting of any naturally occurring trees that they have nurtured.

Pesticide and fertilizer: Despite the existence of regulatory authorities to oversee the importation, manufacturing and application of pesticides and fertilizers in Ghana, various concerns have been raised on their impact on food security and biodiversity. There is a need for legislation to create a requirement for a license for the use of pesticides in significantly large quantities. The license should require an environmental impact assessment to assess the cumulative effect on the environment. Legislation is also needed to provide a framework for regulating non-commercial quantities of fertilizers and to ensure that the impact of fertilizer products on ecosystems and biodiversity are assessed and controlled.

Water resources: The legislation regarding the wise and equitable use of water, and the protection of water courses from pollution was investigated at length. The review recommends an amendment to provide in detail the criteria the Water Resources

Commission should use in the assessment of application for water rights. There is also the need to amend existing legislation to specify the thresholds of water abstraction and related activities which should require an environmental impact assessment before the grant of water rights. Moreover, the existing Riparian Buffer Zone Policy for Managing Freshwater Bodies in Ghana should be transformed into law as an Act of Parliament to ensure the proper management of freshwater bodies in Ghana. An amendment to the laws on irrigation should be introduced to require that the Irrigation Regulatory Authority to be given regulatory powers to regulate all forms of irrigation and irrigated lands in Ghana.

— Environmental Assessment

Strategic Environmental Assessment (SEA): Legislation is required to introduce a legal and technical framework governing SEA, the triggers and thresholds for its application, specifying which institution should supervise the process and criteria for its performance. The legal framework should require the performance of SEA before the commencement of any policy, plan or programme across a defined landscape. This should be undertaken by a multi-sectorial task force of stakeholders with the Environmental Protection Agency (EPA) providing leadership. Establishing a legal basis for SEA is a necessary step but is not sufficient on its own. Effective and efficient implementation mechanisms should also be put in place to enhance the environmental performance.

Cumulative impact: The law should be amended to require an Environmental Impact Assessment (EIA) for agricultural undertakings using prescribed criteria which takes into account cumulative, induced and indirect impacts, considerations of climate change mitigation, the likely pollution of soil or water from chemicals, removal of trees and other habitats (including protected species), degradation of soil, introduction of invasive species and considerations of the intensity of the activity of the land cleared for agriculture. There is also a need to incorporate investigations on the cumulative impacts of similar undertakings across a given radius or locality in an EIA. The Rapid Cumulative Impact Assessment and Management (RCIA) six-stage steps could be adopted in legislation.

Monitoring, compliance and enforcement: The EPA has the duty to ensure compliance with any laid down EIA in the planning and execution of development projects, including compliance in respect of existing projects. To ensure effective monitoring

and compliance, a special environmental court should be set up to try environmental offences. A revision of the penalty for failing to obtain the necessary environmental permits before commencing an undertaking, to make it more punitive and in effect deter offenders. The EPA must be given the mandate to publish annually, offenders and defaulters who have been successfully prosecuted after starting or undertaking a project without the required permits, together with the details of the respective sanctions meted out.

— **International obligation**

As a member of the international community, Ghana is party to a number of international agreements and conventions. Ghana is thus enjoined to enact such treaty norms into domestic legislation so as to give force and effect to them, and also to provide the necessary institutional and administrative frameworks for the implementation of the domestic legislation so enacted. The review, however, revealed that most of these international commitments have not been transposed into existing or new domestic legislation. It is, therefore, recommended that Ghana should endeavour to reduce such commitments into existing laws or pass new legislations to accommodate such treaties.

PART ONE:

Introduction

1.1 About this report

This is an abridged report of a comprehensive review of 124 legislations and 28 policies that span three thematic areas: protected areas; agriculture; and environmental assessment in Ghana. It synthesizes a long list of Ghanaian domestic, parent and subsidiary legislation and regulations; international legislation signed and ratified by Ghana, including regional treaties (whether or not transposed into domestic law) and relevant policies across the three themes, including an analysis of the gaps in legislation and substantive policy. It further highlights the key recommendations for changes that could strengthen the effectiveness of legal and policy requirements across the three thematic areas. This abridged version should be read in conjunction with the full report, as this summary document only reflects a small sense of the complexity and depth of the full document. This piece of work is intended to collate all legislation, regulations and substantive policies that are relevant to agriculture, protected areas and environmental assessment. Our aim is to provide insight into the requirements that exist within current legislation and policy in the aforementioned areas, and provide recommendations for changes that could strengthen the effectiveness of these requirements to deliver sustainable land use and conserve biodiversity. The gaps and recommendations in this report are expected to provide the basis for prioritisation of areas of policy and legislation that require amendment. The findings and recommendations will provide the basis for future action and cooperation across all levels of the Ghanaian society to work towards a healthier and more sustainable natural environment. This review is expected to trigger future advocacy actions by pro-environmental civil society organisations across different sectors and provide information to stakeholders to work towards a healthier and more sustainable development that does not harm the environment, biodiversity and people.

Relevant stakeholders such as the Ministries of Lands and Natural Resources, Environment, Science, Technology and Innovation, Water and Sanitation, Agriculture, and other government institutions could use this report as a one-stop-shop for identification of relevant legal and regulatory requirements that relate to their work in any of the thematic areas analysed. The report will provide support to pro-environmental civil society organisations (CSOs) to prioritize for policy advocacy and campaigns for legal and policy reforms in the relevant sectors such as agriculture and

protected area management. Users of this report are encouraged to consult the full report for more details on the analysis.

The report is structured into three parts: Part One provides the introduction, background, and the methodology used; Part Two discusses the findings and recommendations across the different themes (protected areas, agriculture and environmental assessment); and Part Three presents the conclusion.

1.2 Background

This review forms part of BirdLife's East Atlantic Flyway Initiative (EAFI) programme of work on migratory birds focused on those using the African-Eurasian Flyway that migrate through or use the landscapes of West Africa as their wintering grounds. The Ghana Wildlife Society (GWS), working in partnership with the Royal Society for the Protection of Birds (RSPB), commissioned TaylorCrabbe Initiative to review the legal framework for Protected Areas (PAs), Agriculture and Environmental Assessment (EA) in Ghana. This review is intended to support the mainstreaming of ecosystem services into national decision making under the Critical Ecosystem Partnership Fund's Guinean Forests of West Africa Programme. It further helps to understand the policy context driving the processes leading to land use change.

Some migratory birds use specific sites within West Africa, and well-managed protected areas (PAs) may provide suitable habitats for roosting aggregations or stopover congregations. Migrant bird population densities may be key general indicators of the capacity of the environment to retain wider biodiversity; the populations of many of these migratory birds have been in sharp decline during the past few decades. As yet, the precise causes and geographies of such declines are relatively unknown. Agricultural expansion and intensification is the most significant driver of land use change in Ghana, and in comparison to other relevant areas, such as forestry, there is no existing work to ascertain how well legislation and regulation in this area delivers for sustainable land use. Similarly, there is a paucity of information on how effective the legal framework on agriculture is in supporting the sustainable use of

² The Abuja Declaration on Sustainable Land Use for People and Biodiversity, including Migratory Birds, in West Africa, was agreed by West African governments, international institutions and NGOs in November 2016, at a workshop organized by the UNEP Convention on the Conservation of Migratory Species of Wild Animals and hosted by the Nigerian government in Abuja.

land as described in the Abuja Declaration². Protected areas and sustainably managed agricultural landscapes can safeguard important habitats where effective policies and legislation are well implemented.

PAs can safeguard important areas of native habitats where they are well managed and these are vital for the conservation of nature. Importantly, they can also provide resilience against challenges such as food and water security, diseases, disaster risk reduction and climate change. PAs are, however, not isolated reservoirs of nature, but have an important and dynamic relationship with the land surrounding them. This land can provide vital ecological connectivity – or insurmountable barriers - with other PAs. Yet many species of migratory birds occur more diffusely across the wider landscape where land use change, habitat degradation and uncontrolled development may be impacting the long-term sustainability of not just their populations but also Ghana's broader natural environment. Environmental Assessment (EA) is a tool that aims to ensure the incorporation of environmental information in sound and well-balanced decision-making to ensure that development pressures do not adversely impact human well-being and the natural environment. It is intended to expedite sustainable development by incorporating public participation in decision-making, thus reducing potential conflict and enabling equitable sharing of the environmental benefits in the long-term. However, EA is only valuable if it is effective in mitigating negative impacts and making the public aware of the trade-offs (environmental, economic etc.) of development.

It is, therefore, imperative to pull together all the legislation and policies to ascertain the requirements that exist within current legislation and policy in the areas of agriculture, protected areas and environmental assessment and analyse the mechanisms through which they are fulfilled. The purpose of this review is to address the gap in understanding the legislative underpinnings to ensure that agricultural practices and protected area management are carried out in a sustainable way. It is hoped that this work contributes to balancing the competing demands for food security and production, economic growth and the protection of the natural environment over the long-term, in the face of increasing pressures such as climate change, unregulated and anarchic development, water scarcity and invasive species.

1.3 Methodology

A five-step qualitative approach was followed to reflect on laws, both local and international, and practices in the areas under review. The first step collated legislation, regulation and substantive policies relevant to PAs, Agriculture and EA. The second step reviewed all the identified laws and regulations relevant to these three areas to tease out the institutional framework and requirements in law to address specific questions and to assess the effectiveness of Ghanaian legislation, regulation and enforcement in these areas. The third step identified gaps and proposed recommendations on changes to the legislation and/or enforcement of the identified requirements. The next step developed a matrix of the findings and presented it to a Technical Steering Group (TSG) comprising specialists drawn from the government sector who are knowledgeable in the respective thematic areas. The final step involved incorporation of comments from the TSG and other stakeholders into the findings which led to the preparation of this narrative report.

PART TWO:

Findings & Recommendations

2.1 Protected Areas

2.1.1 Overview

Ghana has fourteen state-established wildlife protected areas (wPAs), two community-owned wildlife protected areas five coastal Ramsar sites and one inland Ramsar site³; these together constitute a total of 1.41 million hectares⁴, estimated to constitute about 5.9 percent of the total surface area of Ghana. This percentage figure compares with the 17% terrestrial protected area target by 2020 of the Aichi Target 11 under the CBD⁵. For the purposes of this report, the state-established wPAs, community owned wPAs and Ramsar sites shall constitute PAs in Ghana. With the exception of Ramsar sites, legislation identifies the categories of PAs in Ghana without defining them. However, since 1994, governmental policies⁶ have adopted the definitions used by the International Union for the Conservation of Nature (IUCN) (as shown in Table 1 below):

Table 1: Categories of Protected Areas in Ghana

	Type of Protected Area	IUCN Categories
1	National Parks	Category II - National Park
2	Resource Reserves	Category IV - Habitat/Species Management Area
3	Wildlife Sanctuaries	Category III - Natural Monument or Feature Category IV - Habitat/Species Management Area
4	Strict Nature Reserve	Category IA - Strict Nature Reserve
5	Coastal Wetlands	Category VI - Protected Area with sustainable use of natural resources

³ Ghana has three wildlife sanctuaries. Amongst them is the Owabi Wildlife Sanctuary, which is also an inland Ramsar site. Since the inland Ramsar site is located in the wildlife sanctuary, it is counted as one in calculating its area.

⁴ Republic of Ghana. National Biodiversity Strategy Action Plan, Nov 2016, page 13. <https://www.cbd.int/doc/world/gh/gh-nbsap-v2-en.pdf>

⁵ <https://www.cbd.int/sp/targets/rationale/target-11/>

⁶ 1994 Forest and Wildlife Policy of Ghana

Forest reserves are sometimes included with wildlife conservation areas as protected areas and taken together they make up 16.2% of the total land area in Ghana. Ghana's legal regime, however, makes a distinction between Forest Reserves and PAs. Forest Reserves are established by executive instruments – they do not require parliamentary approval or consideration. In effect, they are established by the President to ensure the sustainable utilisation of forest resources. Hence, in a strict legal sense and within this report, forest reserves are not considered as PAs.

In contrast, wPAs are established by subsidiary legislation (legislative instruments) and are enacted or revoked through a more rigorous procedure, laid before parliament for consideration and approval. With the exception of Kyabobo National Park (created by executive instrument No 20 of 16/09/1993 which provides for the acquisition of the land for a National Park and describes a boundary), all the legally recognized PAs in Ghana have been created using legislative instruments. A National Park created by executive instrument, like the Kyabobo National Park, may in a sense be regarded as a PA. However, it remains a PA at the pleasure of the President and his agents. Legislative instruments⁷ have the characteristic of perpetual integrity when contrasted with Executive instruments⁸, hence legislative instruments are considered appropriate for creating PAs.

PAs are established primarily for the conservation of biodiversity and associated ecosystems. Undoubtedly, some forest reserves in Ghana (e.g. Atewa Range Forest Reserve) could make a significant contribution to conservation if managed for biodiversity. It is the Minister for Lands and Natural Resources who has the mandate, on the advice of the Forestry Commission (FC), to make subsidiary legislation to establish new PAs, provide for their management and the protection of endangered species and other related matters. Practically these duties fall to the Wildlife Division (WD) of the FC whose obligations include protecting and developing Ghana's permanent estate of wPAs, assisting local communities to develop and manage their own reserves, fostering closer collaboration with communities adjacent to PAs through

⁷ A legislative instrument is law made pursuant to authority given to a person body by Parliament. This authority is usually given through an Act of Parliament. Legislative instruments require parliamentary approval before they become law. Consequently, Legislative instruments can only be repealed by another legislative instrument or by an Act of Parliament.

⁸ An Executive instrument (E.I.) is the record of the use of executive power. This executive power is usually given to the Executive and its agencies (such as the president, his ministers or other statutory bodies) by the Constitution or through an Act of Parliament. All that is required in making an E.I is making an order and publishing it in the gazette. It does not need parliamentary approval, hence, it can be revoked "at will" by the creating agency/person.

the promotion of community resource management areas (CREMAs) and promoting public awareness and education on wildlife management issues. The most holistic document pertaining to the network of PAs in Ghana is the Ghana Forest and Wildlife Policy, 2012. The policy articulates the government's vision of managing all national parks, wildlife sanctuaries, wildlife resource reserves and other PAs in accordance with the duly approved wildlife management plans to ensure comprehensive biodiversity conservation and development in line with national conservation policies, strategies and Government of Ghana's commitment to international conventions and protocols. The last establishment of any new PAs in Ghana occurred on 1st December 1999 with the creation of five coastal Ramsar sites and one inland Ramsar site. There is no evidence of any intention to create new PAs beyond the two proposed in the National Biodiversity Strategy and Action Plan. Some PAs, particularly Ramsar sites, have been severely degraded (*see case study 1*) and this indicates a lack of enforcement of the requirements/safeguards in environmental protection legislation. International Law requires Ghana, as a state party, to control activities outside conservation areas which are detrimental to the purpose for which the conservation areas were created and establish for that purpose buffer zones around their borders. Furthermore, research shows that the payments of compensation to communities affected by the establishment of some protected areas have still not been made and this occasionally results in displaced persons returning to the designated areas (*see case study 2*).

CASE STUDY 1:

ENCROACHMENT AT THE SAKUMO RAMSAR SITE

The Sakumo site was designated a Ramsar site under the Wetland Management (Ramsar site) Regulations, 1999 (L.I. 1659). It is a coastal wetland located in Tema with an area of 1,364.35 hectares providing essential ecological and social services to communities and serves as a habitat for fish and stopover grounds for migratory birds. Despite its importance, the wetland has been subjected to encroachment resulting in considerable risk of deteriorating water quality, biodiversity loss and drying up of most parts of the wetland. This is due to the conversion of the land to residential and agricultural uses and problems of domestic and industrial pollution. In 2017, the Metropolitan Chief Executive of Tema instructed for the demolition of structures constructed by individuals and estate developers on the Ramsar site. Despite this, residential development is still ongoing on the site. Figure 1 shows an aerial view of the Sakumo Ramsar Site in Ghana.

⁹ Agumatsa Wildlife Sanctuary and Kyabobo National Park



Source: Environmental News Agency

Figure 1: An aerial view of the Sakumo Ramsar Site

CASE STUDY 2:

NON-PAYMENT OF COMPENSATION AT THE DIGYA NATIONAL PARK

The Digya National Park was established as a PA under the Wildlife Reserves Regulation, 1971 (L.I. 710). In the process of reservation, a large tract of land was compulsorily acquired. This affected over 15 communities within the park. Before the compulsory acquisition, a greater portion of the land was in the hands of stools. Most of the people affected by this action were farmers who cultivated both commercial crops, like cocoa and oil palm, and subsistence crops such as yam, cassava and maize. Since the reservation of the area as Digya National Park, there have been a series of encroachments into the reserve and constant confrontation between the communities and the government agencies due to the non-payment of fair and prompt compensation for resettlement. Consequently, land owners are demanding the return of their lands. In 1989, 2002 and 2006, three major eviction exercises were carried out in Digya National Park to move mainly migrant communities and their families who were allowed entry into portions of the park by local chiefs. These chiefs claimed that cash compensation for expropriation of their lands had been paid to wrongful claimants while some were not compensated and, therefore, considered themselves as rightful owners of these portions of the park. During the 2006 eviction exercise, 58 people were confirmed dead as a result of a ferry accident during the process of moving the people across the Volta Lake.



Source: Statesman online

Figure 2: Destroyed houses at Mepekope village in the Digya National Park

2.1.2 Findings

Some legislative gaps are covered by practices outlined in the Ghana Forest and Wildlife Policy, 2012, notably in the preparation of individual management plans for each existing PA. Moreover, these plans have encouragingly been drawn up with some degree of local community consultation.

The policy states that the government aims to manage all national parks, wildlife sanctuaries, wildlife resource reserves and other PAs in accordance with the duly approved wildlife management plans. These ensure comprehensive biodiversity conservation and development in line with national conservation policies, strategies and governmental commitments to international conventions and protocols¹⁰. The policy further states that the government will create biological corridors between existing networks of conservation areas to maintain genetic continuity of flora

¹⁰ See full report for a list of international conventions and protocol ratified by Ghana.

and fauna and promote trans-boundary corridor management with neighbouring countries. Furthermore, the government will develop guidelines for the use of biodiversity offsets to rehabilitate degraded areas, increase community participation in wildlife management in all forest areas, and develop an incentive system to promote investment in community-based eco-tourism and commercial wildlife conservation and development. This policy does not carry the force of law and thus does not provide a legally binding mandate for such necessary actions to occur.

The findings indicate many areas of legislation and policies that need be amended by law-makers (see recommendations below and section 4.4 of the full report). For example, there is no requirement in law for management plans for each PA to be drawn up, nor a requirement to consider threats for Invasive Alien Species. There is no provision in PA legislation that explicitly provides for mainstreaming climate change into protected area design and management though this in part can be explained in that Ghana's legislation creating PAs was enacted before Ghana signed the United Nations Framework Convention on Climate Change (UNFCCC). Similarly, the study found that there are no express requirements in PA legislation that provides for protected area authorities to update species schedules, despite the conservation status of migratory and other species changing with time and environmental conditions. The study found no requirement in PA legislation that allows the public to request and receive information on PAs, and neither are the PA authorities required to collect and disseminate information proactively to the public regarding PAs.

The study also found no requirements in PA legislation and regulations for PA authorities, the FC and MLNR to ensure effective public participation in their decision making. However, the Government is in the process of establishing Community Resource Management Areas (CREMAs) across Ghana, which, when established, will give the authority to a community represented by a locally elected Natural Resource Management Committee (NRMC) to regulate and control access to wildlife in defined areas. Civil Society Organizations (CSOs) have been instrumental in advocating and supporting the establishment of CREMAs across Ghana. At the time of writing, CREMAs have been established at Bia, Ankasa and Mole. A Community Resource Management Committee (CRMC) has been set up to lead the management in each of these areas. The CRMC also helps with resolving human-wildlife conflicts and issues between the PA authorities and the communities. CREMAs have also been established in communities fringing Forest Reserves while some are in the process of being created.

2.1.3 Recommendations

The key recommendations that relate to PAs are detailed below, however, this is by no means an exhaustive list, and further prioritization may be necessary. Some of these legislative gaps and recommendations will be more contentious to pass and indeed implement than others.

2.1.3.1 International commitments

The review highlighted the existence of many international commitments made by Ghana yet most of the commitments have not been transposed into existing or new domestic legislation. The effect is that such commitments are often not effectively implemented and monitored in Ghana. For instance, Ghana is a signatory to the Ramsar Convention, and yet this is not effectively implemented. These agreements should be transposed into existing laws or new legislations enacted to that effect. On the account of CBD, the Wild Animals Preservation Act (Act 43) require the regular review and amendment of the list of protected species in all the schedules. Ghana has yet to turn the International Single Species Action Plans (ISSAP) for specified species into National Single Species Action Plans and there is no mechanism in legislation that requires this to be done. Current legislation must provide for the production of National Single Species Action Plans from the ISSAP for the specified water bird species. As part of commitments to AEWA, Ghana must establish a proficiency test for hunters, including among other things, bird identification should be expressed in law and an appropriate license regime established and implemented by the FC.

2.1.3.2 Protected Area Network (PAN)

- (a) Creation of PAs: legislation should provide a mechanism that gives the public/stakeholders an opportunity to propose the creation of new PAs or amend the status of existing ones. This should include a requirement in law for a mandatory wide and adequate consultation with relevant stakeholders in the establishment, reclassification or change of status of PAs. Ghana's PAs constitute an estimated 5.9% of the country's total surface area compared with the 17% terrestrial protected area target by 2020 of the Aichi targets under the CBD. Also, considering the forthcoming assessments of the degradation of Forest Reserves by Ghana under the Joint Framework of Action under the Cocoa and Forest Initiative¹¹, stakeholders must be given the opportunity to propose the creation of new PAs or change in the status of existing ones.

- (b) National PA system plan: a legal requirement for the PA network to be synchronized to reflect the importance of habitat connectivity and introduce legislation that will establish conservation corridors in PA design within and between Ghana and neighbouring countries.

2.1.3.3 Management

Connectivity of PA systems is necessary to facilitate large-scale ecological and evolutionary processes such as gene flow, enabling seasonal migration and species range shifts. The connectivity of PA systems is essential for the persistence of viable populations, especially when facing climatic and environmental changes in an increasingly transformed and fragmented landscape. By connecting PAs through corridors, a balanced system of protection and sustainable use and land management is created. The following are, therefore, recommended:

- (a) Management plans: the production of PA management plans and their regular review by the FC should be based on sound empirical scientific information (e.g. current baseline surveys). These plans should be publicly available, developed and reviewed through an extensive consultative process with local fringe communities.
- (b) Condition of PAs: include a legal requirement to monitor the condition of the PA and report on the progress of implementation of the management plan. These assessments should be publicly available.
- (c) CREMAs: The Wildlife Division Policy for Collaborative Community Based Wildlife Management for the establishment of CREMAs across Ghana should be given legal backing and expressed in PA legislation.
- (d) Consent for proposed policies, plans, and programmes related to PAs: these should only be consented by the relevant authorities following a strategic environmental assessment (SEA) and/or an environmental impact assessment to ensure that any given proposed activity does not negatively affect the habitats and species for which it is designated.
- (e) Invasive Alien Species: legislation should require that an Invasive Alien Species (IAS) list, if applicable, be prepared for each protected area and regularly reviewed and updated.

¹¹ <https://www.idhsustainabletrade.com/uploaded/2017/11/Ghana-Framework-Final-082418.pdf>

- (f) Climate change: PA legislation should be amended to make provision for mainstreaming climate change adaptation and mitigation measures that may help build resilience to achieve the conservation objectives of protected areas.

2.1.3.4 Access to information

PA authorities should provide timely access to accurate, relevant and understandable information, as well as provide a reasonable opportunity for the public to contribute meaningful comments where significant decisions are being contemplated on Protected Areas.

2.2 Agriculture

2.2.1 Overview

Ghana's agriculture land area is estimated at 13.6 million hectares, representing about 56 percent of the country's total land¹². The economy is heavily dependent on agriculture, employing nearly half of the national labour force. Yet agriculture remains largely rain-fed and subsistence-based, with rudimentary technology supporting 80 percent of total output. The majority of farm holdings are less than 2 hectares in size, although there are some large farms and plantations, particularly for rubber, oil palm and coconut. Most food crop farms are intercropped while monoculture is mostly associated with large-scale or commercial farms. Agricultural intensification and expansion has been identified as a significant cause of land use change in Ghana¹³. This is leading to the over exploitation and loss of trees and non-timber forest products across the landscape, increasing pressures on water supply, primarily through water abstraction for irrigation. Furthermore, unquantified (over-)use of fertilizers and pesticides seep into water courses, threatening fisheries resources and limiting water. Aichi Target 7 of the CBD calls for the sustainable management of areas under agriculture, aquaculture and forestry by 2020¹⁴.

¹² Government of Ghana (2005) Support to NEPAD – CAADP implementation: National Medium-Term Investment Programme. Accra

¹³ Government of Ghana (2015) Ghana National REDD+ Strategy. Forestry Commission, Accra

¹⁴ <https://www.cbd.int/sp/targets/rationale/target-7/default.shtml>

2.2.2 Findings

This part of the review was wide-ranging, covering 18 different topics (see full report for details). Given the proportion of agricultural activities that take place in the informal sector, implementation of any legislation is a significant challenge. Solutions are complicated by the land tenure structure because it does not support comprehensive land use planning. Unlike other jurisdictions, the allodial title¹⁵ on the land is not held by one entity but held by different stools, families and the state. A limited number of key areas are summarised below, covering water, pesticides and fertilizers, timber, trees in the agricultural landscape, and plant and materials regime.

2.2.2.1 Water resources

The legislation regarding the wise and equitable use of water, and the protection of water courses from pollution was investigated at length. Key findings are outlined below:

- a) *Water rights*: a person is required by law to obtain water rights - in the form of a water use permit - to divert, dam, store, abstract or use water resources, or construct or maintain any works for the use of water resources. The use of water for domestic purposes is exempted. The Water Resources Commission (WRC) is responsible for issuing and regulating the permits regime but this is subject to parliamentary ratification¹⁶. Legal collaboration is required between the WRC and the Environmental Protection Agency (EPA) to decide whether an Environmental Impact Assessment (EIA) is necessary, while the WRC is responsible for consulting the potentially affected local communities¹⁷. In practice, however, unless an operation is large scale there is no attempt to regulate water rights. It was further noted that the WRC is basin based and unless an operation is affecting a water basin there is no regulation by the WRC.
- b) *Benefit-sharing*: neighbouring communities that will be affected by the grant of water rights have to benefit from the revenue generated but in practice, they do not get any share of the fee/sum paid for the water rights awarded. In addition, there it is quite difficult to ascertain precisely which community is affected by the grant of water rights.

¹⁵ Allodial title is the highest interest in land that a person can acquire under Ghanaian Law. Most often, the stool (traditional community) and family hold this interest.

¹⁶ Water Commission Act, 1996 (Act 522)

¹⁷ Water Use Regulations, 2001 (L.I. 1692)

- c) *Regulation of irrigation:* there is no specific regulation of irrigation in law. Legislation has created the Irrigation Development Authority (IDA) with specific mandates for official irrigated farming, livestock improvement and aquaculture. However, the legal framework only sets up the authority and gives it the above mandates. It does not establish a regime to regulate irrigated farming or give the IDA any regulatory powers.
- d) *Protection of freshwater bodies:* A Riparian Buffer Zone Policy for managing freshwater bodies in Ghana exists that apply to lands adjacent to rivers, streams, lakes and wetlands and lands at the margins of municipal reservoirs. The Riparian Buffer Zone Policy is to be implemented by the Ministry of Sanitation and Water Resources with support from other governmental agencies but does not have the force of law and depends on the political will of district officers and local officials to be effective. While this may have already affected the survival of freshwater bodies, the transformation of the policy into law will greatly contribute towards protecting waterbodies from drying up and consequently prevent loss of habitats for aquatic life such as migratory water birds and fish. Specifically, the riparian policy should be applied within forest plantations and new agricultural developments. Logging operations or tree felling are not permitted within a buffer strip, 25 metres either side of any stream or 50 metres either side of a river¹⁸. No provision was found in law that forbids or regulates farming or construction activities within/along riverine/riparian buffer zones. Figure 3 shows the boundary of a section of River Volta with different land use activities.

¹⁸ Section 3.2 of The Revised Logging Manual for Ghana (2003) prepared in accordance with Section 10 of The Timber Resources Management Act, 1997 (Act 547)



Source: Google commons

Figure 3: The boundary of a section of Volta River with different land use activities.

2.2.2.2 Timber and trees in the agricultural landscape

The ownership of naturally occurring timber is vested in the President in trust for the people of Ghana. The management of the utilization of timber resources is the mandate of the FC on behalf of the President. A person requires timber rights in the form of a Timber Utilization Contract (TUC) to harvest timber from any land¹⁹ but TUCs can only be awarded by the government to corporate bodies. An application for a TUC must be accompanied by a harvesting plan prepared in accordance with sustainable management of timber resources, an assessment of the likely environmental effect, a proposed programme to address the effect, and proposals to assist in addressing social needs of the communities who have interest in the applicant's proposed area of operations through a Social Responsibility Agreement (SRA). The study has revealed,

¹⁹ Timber rights maybe granted under a TUC in respect of: (a) lands previously subject to timber rights which have expired and are suitable for re-allocation, (b) unallocated public or stool lands suitable for timber operation; and (c) alienation of holdings

however, that applicants frequently fail to conclude the SRA after the grant of the timber rights or they fail to comply with the SRA if it is concluded.

In off-reserve areas, agriculture is the primary activity and forest management is adapted to account for the farming system, not vice-versa. The study found that in practice timber in off-reserve areas, especially in cocoa farms, is unlawfully harvested without adequate compensation to affected farmers. There is no provision in the law that spells out modalities for compensation of the affected farmer. The law does not provide any incentive structure to promote integration of native trees in the farming systems (agroforestry). This goes contrary to Ghana's National Determined Contributions (NDCs) under the REDD+ programmes.

2.2.2.3 Pesticides

The law²⁰ requires that pesticides must be registered before they can be imported, exported, manufactured, distributed, advertised, sold or used in Ghana. The EPA, as the responsible government agency, must be satisfied that the pesticide does not present any toxic risk to people, crops, animals and the environment before it approves and registers the pesticide²¹. The study, however, found no provision in legislation/regulation that expressly takes into regard the assessment of impact of chemical/pesticide/herbicides on plant and animal species, their habitats, and humans.

EPA appoints inspectors at the District Assembly level to ensure compliance with Section 54 of the Environmental Protection Agency Act, 1994 (Act 490).

In practice, there is weak enforcement of these requirements at the borders. Another challenge is the mixing of certified pesticides with illegal and inferior products. There is also a weak supervision and monitoring of pesticides sold at the marketplace (see case study 3).

²⁰ Section 28 of the Environmental Protection Agency Act, 1994 (Act 490)

²¹ Section 9 of the Pesticides Control and Management Act, 1996 (Act 528)

CASE STUDY 3:**THE PESTICIDES CRISES IN GHANA**

The government's role as provider of pesticides at subsidized prices to farmers ended in the 1990's when the pesticide industry was liberalized. Since then the amount of imports, the number of importers, the quantities of pesticides used and the number of farmers using pesticides all appear to have increased. Majority of Ghanaian farmers (estimates as high as 80-90%) use chemical pesticides to control insects and diseases on their food and cash crops. Ghana currently approves the use of 537 pesticides while 32 have been banned and some restricted in use. However, these banned and restricted pesticides are still being used by farmers. Lindane and endosulfan - which were restricted to use on cocoa, coffee and maize - are being used on vegetables, along with DDT, which was banned. In 2008, the EPA discovered 71 tonnes of banned pesticides, most of which were found at the warehouses of the Ghana Cocoa Board at Anyinam, the Benso Oil Palm Plantation and the Twifo Oil Palm Plantation. Endosulfan, a toxic organochlorine widely used in cotton growing, was suspended by the government in 2009. It had previously been restricted to use on cotton but was suspended because of its widespread diversion by farmers for use on food crops such as cowpea, tomatoes and okro. The increase in pesticide imports has been accompanied by an increase in the number of private importing companies. Up to 50 companies are now believed to be importing pesticides into Ghana. Yet many imports are illegal. In 2001, EPA estimated that 20 per cent of pesticides used by farmers in Ghana were obtained from unauthorized traders. The use of unregistered pesticides is also on the rise. The main reasons for using unregistered pesticides include: the relatively lower cost compared to registered pesticides; their availability (sold on local market); and difficult access to registered pesticides (in terms of proximity).

2.2.2.4 Fertilizers

It is a legal requirement that fertilizers are registered by the Ministry of Food and Agriculture (MOFA) before they are manufactured or imported into Ghana. The Pesticide and Fertilizer Regulatory Division of the Plant Protection and Regulatory Services Directorate of MOFA ensures the correct labelling, inspection, sampling, testing and nutrient guarantees in accordance with the Plant and Fertilizer Act, 2010 (Act 803). MOFA inspects and analyses fertilizers distributed across the country to ensure that they comply with the provisions of the Act. But as with pesticides, the practice of fertilizer use is different from the intended legislative framework: due to inadequate enforcement of the requirements in legislation, there is a problem of

smuggling substandard fertilizers into Ghana across neighbouring countries through Ghana's border towns. Furthermore, it appears that subsidies on fertilizers create domestic shortages. There are government subsidies on approved fertilizers in the country to boost agriculture and this creates a financial incentive to smuggle "cheap" quality fertilizers to neighbouring countries. The study found no regulation for the use of fertilizers that have the potential to pollute the environment.

2.2.3 Recommendations

The following identified requirements and recommendations, if well enforced, have the potential to provide a regulatory framework that will reduce the adverse impact of agricultural activities on ecosystem services. The proper assessment and control of these activities protects the environment from hazardous impacts that may distort or degrade ecosystem services and will enhance climate change mitigation and adaptation efforts. These recommendations represent a subset of those areas identified in the main body of the report (please refer to the full report for details). Clearly some of these legislative gaps will be more contentious to pass and implement, however, all are important if we are to secure the well-being of Ghana's food security and natural environment in the long term.

2.2.3.1 Water resources

(a) Water rights:

- An amendment to provide the detailed criteria the Water Resources Commission should use in the assessment of application for water rights.
- A requirement in law that the publication of an application for water rights in a local area should be done in the language of the inhabitants as appropriate (e.g. by town criers or on radio).

(b) Water abstraction:

- An introduction of legislation to specify the thresholds of water abstraction and related activities which should require an EIA before the grant of water rights.
- A provision for a legal framework for Strategic Environmental Assessment (SEA), the threshold and criteria for its performance and its regular review in respect of water resources. The legal framework should require the

performance of a SEA before rolling out any policy, plans or programmes that may significantly impact water availability and rights across the landscape. This should be undertaken by a multi-sectorial taskforce of all relevant stakeholders with EPA providing leadership.

- A requirement in law that the WRC should prescribe what constitutes a fair and adequate consultation to ensure a proper representation of the inhabitants before granting the right to use the water resource.
- (c) Protection of freshwater bodies: The existing Riparian Buffer Zone Policy for Managing Freshwater Bodies in Ghana should be transformed into law as an Act of Parliament. The law on the riparian policy should particularly be applied within plantations and new agricultural developments.
- (d) Regulation of irrigation: An amendment to the laws on irrigation should be introduced to require that the Irrigation Regulatory Authority is given powers to regulate all forms of irrigation and irrigated lands in Ghana.

2.2.3.2 Trees in the agricultural landscape

- (a) The underlying land ownership should determine the ownership of tree and timber resources thereon. The amendment of the existing tree tenure legislation to divest from the President the ownership of off-reserve trees, instead vesting them into the appropriate landowners, farmers or stools.
- (b) Complete reforms in the tree tenure system to give farmers/inhabitants a share of proceeds made from the harvesting of any naturally occurring trees that they have nurtured and registered with the Forestry Commission.

2.2.3.3 Pesticides and fertilizer use in agriculture

- (a) Legislation to require a license for the use of pesticides in significantly large quantities. The license should include an assessment of the cumulative effect of projects on the environment.
- (b) Legislation to provide a framework for regulating non-commercial quantities of fertilizers and monitoring that ensures the impact of fertilizer products on ecosystems and biodiversity are assessed and controlled.

2.2.3.4 On Climate change and REDD+

- (a) A translation of existing policies and action plans into law with express provisions for sustainable agriculture practices.
- (b) Provision of a comprehensive legislative framework for the grant of a development permit that addresses support for resilient livelihoods, ecosystem services and sufficient natural habitats for both resident and migratory species.

2.2.3.5 Plants materials regime and GMOs

- (a) District Assemblies (DAs) must be given a legal duty to establish district Agriculture Inspectorate Divisions to enforce the use of approved seeds, particularly in farming communities.
- (b) An express provision in law for the protection of native species by defining native species and providing a list in an Act of Parliament or subsidiary legislation.
- (c) The law needs to be amended to clearly require that GMOs used in Ghana should be properly monitored.

2.2.3.6 Administrative action

- (a) Mechanisms be instituted that allow MOFA officials and customs staff to be assigned to various entry points of Ghana to check unlawful introduction of unapproved plant material into the country, including seeds that may contain alien species. This will require making a publicly available list of agricultural and horticultural species that are approved to be imported to Ghana.
- (b) Mechanisms be instituted to control alien invasive species that may already be present in Ghana.
- (c) Transparency of information in respect of companies registered, certificates issued etc. so that any member of the public may be able to check compliance with the law.
- (d) Strengthening and resourcing of Civil Society Organizations (CSOs) to monitor and compliment the work of state organizations working in the agricultural sector.

2.3 Environmental Assessment

2.3.1 Overview

Environmental Assessment (EA) is a tool that ensures the incorporation of environmental information in sound and well-balanced decision making. It can be delivered, alongside other assessments, through Environmental and Social Impact Assessment (ESIA) and Strategic Environmental Assessment (SEA). EIA/ESIA can be defined as ‘an instrument to identify and assess the potential environmental and social impacts of a proposed project, evaluate alternatives, and design appropriate mitigation, management, and monitoring measures. SEA can be defined as ‘a systematic examination of environmental and social risks and impacts, and issues, associated with a policy, plan or program, typically at the national level but also in smaller areas.’²²

The framework for EA in Ghana is set out by the Environmental Protection Act, 1994 and its subsidiary legislation, the Environmental Assessment Regulations, 1999. The Environmental Protection Act, 1994 establishes the Environmental Protection Agency (EPA) and gives it the broad mandate, in addition to other functions, to request a full EIA for any activity which has the potential to cause significant impacts on the environment. This applies to governmental and private projects, as well as to national and foreign projects. On receiving an application for an environmental permit, the EPA considers the geography of the undertaking, the technology intended to be used, the concerns of the general public, land use and any other factors the EPA may decide. After this screening, the EPA takes the decision on whether to grant the permit, refuse the application or request further information through a preliminary environmental report or a full EIA.

2.3.2 Findings

The findings on the legislative regime covering EA considered a wide range of issues, notably the clarity of responsibilities for implementing processes and decision making, experience and expertise of those carrying out EA, triggers and/or thresholds for when EAs are required, public participation (public consultation and information disclosure), availability of EA documentation in hard and soft copy, transparency in decision making and compliance and enforcement mechanisms. Some of these findings are summarised

²² <http://documents.worldbank.org/curated/en/383011492423734099/pdf/114278-REVISED-Environmental-and-Social-Framework-Web.pdf>

below but a fuller, more detailed discussion can be found in the full report. Five broad areas are summarised here.

2.3.2.1 Public participation and the availability of information:

These factors lie at the heart of the process of EA. While legislation does prescribe the responsibility of both a project's applicant and the EPA to publicise an undertaking, the absence of a legal duty on the EPA to make available soft copies of Environmental Impact Statement (EIS) makes access for public scrutiny difficult and cumbersome. Besides making the scoping report and hard copies of the EIS available in its libraries and offices, there is no obligation on EPA to make the application for the environmental permit, screening reports, preliminary environmental reports, the review opinion on the EIS, the environmental plan, the annual environmental report and minutes and recommendations from a public hearing available to the public, either in hard or soft copy. The disclosure of such reports may be problematic due to corporate confidentiality. The law does specify that the EPA must hold a public hearing for applications that receive adverse public reaction, but the law does not clearly indicate what constitutes "adverse public reaction" and does not specify a minimum notice period for such a hearing. Environmental Management Plans submitted to the EPA are also not published to allow public scrutiny.

2.3.2.2 Strategic Environmental Assessment

The findings of this study indicate the absence in law of a requirement for SEAs in all areas²³. The current legal framework in place provides only for the requirement and procedure for EIAs to the exclusion of SEAs. Nonetheless, in practice, SEAs are occasionally undertaken and, indeed, EPA has a department for SEA. SEAs are usually undertaken by EPA in partnership with the relevant ministry to assess government policies and plans but there are no triggers or thresholds for the performance of SEA as this is largely determined by the availability of funding and political will (see case study 4). Figure 4 shows a map of the Atewa Range Forest Reserve and the three major watersheds.

²³ Even though SEA is absent in the environmental laws of Ghana, the Petroleum (Exploration and Production) Act, 2016 (Act 919) requires the conduct of a strategic impact assessment before the opening of new areas for petroleum exploration. Act 919, however, did not put in place institutional structures and other mechanisms for conducting SEA.

CASE STUDY 4:

SEA IN GHANA AND THE CASE OF ATEWA RANGE FOREST RESERVE

Although environmental regulations do exist in Ghana, there is no legal or institutional framework concerning SEA. SEA, therefore, is conducted voluntarily and sometimes starts after the commencement of implementation of projects, plans or programmes.

The Atewa Range Forest Reserve, which is one of the sites for the proposed bauxite mining by the government, may suffer this same fate if measures are not instituted. The reserve is one of Ghana's Upper Guinean Forests declared as a Globally Significant Biodiversity Area (GSBA) and an Important Bird Area (IBA). The Integrated Bauxite and Aluminium Development Authority Bill, which is supposed to be passed into law, has no provisions for the conduct of SEA in any of the sites intended for bauxite mining. This bill, when passed into law, will lead to the establishment of an Authority that will oversee the development of a bauxite industry in Ghana. Bauxite mining in the Atewa Forest would have damaging impacts for biodiversity, wildlife, climate, water resources and people both present and future.

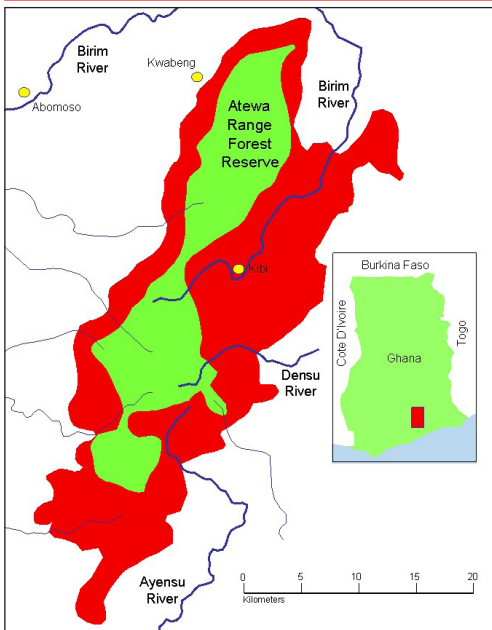


Figure 4: A map of the Atewa Range Forest Reserve showing the Birim, Densu and Ayensu Rivers

Source: Wikimedia Aymath 2

2.3.2.3 Cumulative impacts

The law is silent on investigating the cumulative impacts of undertakings of a similar nature, across a given radius or locality. This may be compounded by the lack of coordination among sector agencies and institutions in giving out approvals or licenses in respect of physical developments affecting the environment. The introduction, and subsequent implementation of SEA legislation would go some way to alleviate this obvious loophole in environmental protection.

2.3.2.4 Mitigation hierarchy

For the mitigation target of “avoid”, the applicant for an environmental permit needs to indicate in their application “a clear commitment to avoid any adverse environmental effects which can be avoided on the implementation of the undertaking”²⁴. For the mitigation target of “minimize/mitigation”, the applicant is also required²⁵ to indicate in the application “a clear commitment to address unavoidable environmental and health impacts and take steps where necessary for their reduction.”

For the mitigation target of “restore/rehabilitation”, the EIA for mining and other extractive industries must include reclamation plans and the person/organization responsible for the undertaking is required to post a reclamation bond based on the approved work plan for reclamation.²⁶ Besides that, the law does not provide for consideration of measures to be taken to improve/rehabilitate degraded or removed ecosystems following exposure to impacts that cannot be completely avoided or minimized.

The study found out that there is no provision in EA legislation for “offset”. Legislation does not provide for measures towards compensation and offsetting for any residual, adverse impacts after full implementation of the other steps in the mitigation hierarchy.

2.3.2.5 Monitoring, compliance and enforcement:

The EPA has the duty to ensure compliance with any laid down EIA in the planning and execution of development projects, including compliance in respect of existing projects. Although an applicant is required to prepare an Environmental Management Plan, it is submitted after the issuance of the permit and after the commencement of

²⁴ Regulation 5(2)(b) of L.I. 1652

²⁵ Regulation 5(2)(b) of L.I. 1652

²⁶ Regulation 23 of L.I. 1652

operations. The law speaks nothing of the consequences of an unsatisfactory plan. The role of the EPA is somewhat undermined by triggers and thresholds that other sector legislation sets for EIAs to be performed. For example, a person planning to conduct any activity that is likely to have a substantial impact on fishery resources, other than fishing, must notify the Fisheries Commission. It also appears there is inadequate consideration of impacts on the environment in the award of mineral rights and petroleum exploration contracts as both do not require submission of an approved EIS during the application process. The law only requires that an environmental permit should be acquired before the commencement of mining or petroleum activities. The EPA is under resourced in terms of workforce and logistics. This primarily affects the EPA's ability to undertake its core mandate and effectively monitor compliance. The penalty for default in procuring an environmental permit when required (i.e. GHC 12,000, or up to one-year imprisonment) is an inadequate deterrent compared to the potential commercial worth of such undertakings.

2.3.3 Recommendations

The application for utilization of any natural resources should be streamlined to make the EPA the first point of call for any permit/ approval or licences to exploit any natural resource. EPA, on receiving any such application, guided by the thresholds or criteria set out in law, may request for an EIA and consider whether to grant an environmental permit prior to the issuance of subsequent permits by other sectorial institutions.

2.3.3.1 Public participation and the availability of information:

- (a) Require EPA to make available to the public both hard and soft copies of the application for the environmental permit, screening reports, preliminary environmental reports, scoping opinions, EIS, the review opinion, the client's environmental management plan, the annual environmental report and minutes and recommendations from a public hearing. Considering corporate confidentiality, portions of such reports with company's trade secrets can be redacted. This will enhance transparency, public scrutiny, access to information and ultimately decision making.
- (b) Specify that notice of an application and notice for a public hearing should be broadcasted at least on local radio stations or through a town crier in languages that inhabitants of the land can understand.

- (c) Include provisions that specify requirement for a notice of a public hearing and a minimum notice period before such a hearing. Instead of “adverse reactions” triggering a public hearing, specify an objective criterion such as: a petition signed by at least 100 citizens should suffice for the EPA to hold a public hearing in respect of an application for an environmental permit. Alternatively, make public consultation a compulsory part of all EA process.

2.3.3.2 Strategic Environmental Assessment

- (a) Legislation is required to introduce a legal and technical framework governing SEA, the triggers and thresholds for its application, specifying which institution should supervise the process and criteria for its performance.
- (b) The legal framework should require the performance of a SEA before the commencement of any policy, plan or programme across a defined landscape. This should be undertaken by a multi-sectorial task force of stakeholders with EPA playing a coordination role.
- (c) Establishing a legal basis for SEA is a necessary step but is not sufficient on its own. Effective and efficient implementation mechanisms should also be put in place to enhance the environmental performance.

2.3.3.3 Cumulative impacts

- (a) The law should be amended to require an EIA for agricultural undertakings using prescribed criteria which takes into account cumulative, induced and indirect impacts; considerations of climate change mitigation; the likely pollution of soil or water from chemicals; removal of trees and degradation of habitats, including protected species; degradation of soil; introduction of invasive species; and considerations of the intensity of the activity of the land cleared for agriculture.
- (b) Incorporate investigations on the cumulative impacts of similar undertakings across a given radius or locality in an EIA. Rapid Cumulative Impact Assessment and Management (RCIA) six-stage steps could be adopted in legislation.

2.3.3.4 Mitigation hierarchy

- (a) The law should be amended to consider measures to improve/rehabilitate degraded or removed ecosystems following exposure to impacts that cannot be completely avoided or minimized.

- (b) Incorporate consideration of measures to offset or compensate for any residual, adverse impacts after full implementation of the other steps in the mitigation hierarchy in law.

2.3.3.5 Monitoring, compliance and enforcement

- (a) Setting up of a special environmental court to try environmental offences.
- (b) A revision of the penalty for failing to obtain an environmental permit before commencing an undertaking, to make it more punitive and in effect deter offenders.
- (c) Inclusion of a penalty of ten percent of the project cost as punishments for non-compliance with the law for an environmental permit.
- (d) A mandate for the EPA to annually publish the list of offenders and defaulters who have been successfully prosecuted after starting or undertaking a project without the necessary permits, together with the details of the respective sanctions meted out.
- (e) A requirement in law that mandates the EPA to publish on its website the annual environmental report and environmental management plans they receive from holders of environmental permits to allow public scrutiny, assessment and comments.
- (f) Specify the minimum requirements in terms of structure and the contents of an environmental management plan and to require its submission before commencement of operations.
- (g) Provide that an unsatisfactory Environmental Management Plan is a ground for revoking or suspending the environmental permit.
- (h) There should be clarity on making information available in good and sufficient time to the public on the duties or work being done by the EPA.
- (i) Adequate resourcing of the EPA to undertake effective compliance monitoring.
- (j) Workshops and regular training for police officers, judges, state prosecutors and similar officers who are non-environmental experts to build their capacity to understand and appreciate environmental issues, environmental management principles and environmental offences.

PART THREE:

Conclusion

This piece of work has collated a plethora of legislation, regulations and substantive policies that are relevant to agriculture, protected areas and environmental assessment. It has provided an insight into the requirements that exist within current legislation and policies in the afore-mentioned areas. Furthermore, the review has proposed key amendments that could strengthen the effectiveness of these legal and policy requirements, both in legislation and implementation, to deliver sustainable land use and conservation of biodiversity.

The findings indicate the absence in law of a requirement for SEAs. This absence has meant that, inter alia, the cumulative and long-term impacts of actions which affect the environment are not considered. The public is largely excluded from key decision-making and the degradation of Ghana's natural environment continues unchecked. The review recognises the existence of many international commitments of Ghana yet many of these have not been transposed into domestic legislation. The effect is that such commitments are not effectively implemented and monitored in Ghana.

The review points to the existence of a number of policies, plans and programmes in Agriculture, PAs and EA. This is evident in three of such policies that have been specifically highlighted in this study, namely the Ghana Forest and Wildlife Policy, the Riparian Buffer Zone Policy for Managing Freshwater Bodies and the Policy for Collaborative Community Based Wildlife Management for the establishment of CREMAs across Ghana. These are indicative of government intentions but they suffer from not having force in law. It is important that these are translated into law for effective implementation and enforcement.

Finally, in the three areas addressed in the report – and repeatedly during discussion in the workshops - the issue of tenure rights related to trees and land came up repeatedly. These are hugely complicated and potentially contentious areas but at a minimum, the reform of ownership and incentives for tree planting and sustainable management across the wider landscape should be given priority by the government. Trees have multiple benefits that are indispensable if Ghana is to restore its natural environment so that it works for people and for nature.



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