SUSTAINABLE DEVELOPMENT AND THE FOREST SECTOR IN GHANA: A STUDY OF THE LAW IN ACTION.

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ABSTRACT.

Following the Report of the World Commission on Environment and Development (WCED), this thesis examines the concept of sustainable development in the light of laws and policies relating to the forest sector of Ghana. The goal is to consider how far the relevant laws and policies are compatible with the model of sustainable development propounded in the Report and whether, in reality, that model is a feasible one for developing countries such as Ghana. The study explores the law relating to the management, protection and exploitation of forests in Ghana. Anomalies in forest laws, problems of their enforcement and proposals for reform are discussed. The history of forest legislation is briefly considered but the emphasis is on recent developments in the forest sector, including the Forest Resource Management Project, Forest Inventory Project and the work of the National Investigations Sub-Committee on Timber. Detailed inquiries into problems of forest protection in the Western Region and rural forestry initiatives in Bongo, a district in the North-East of Ghana, are made. The findings from Ghana suggest that, although in many cases reforms corresponding to the recommendations of the WCED are desirable, a number of conflicting interests operate to frustrate their implementation.

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LIST OF ABBREVIATIONS.

ACF	Assistant Conservator of Forests
ADB	African Development Bank
ADRA	Adventist Development Relief Agency
AFRCD	Armed Forces Redemption Council Decree
AJCL	American Journal of Comparative Law
ALA	Administration of Lands Act
ARPS	Aboriginal Rights Protection Society
BRDP	Bongo Rural Development Project
CA	Consolidated Acts
CCF	Chief Conservator of Forests
CCFI	Collaborative Community Forestry Initiative
CDO	Civil Defence Organisation
CDR	Committee for the Defence of the Revolution
CF	Conservator of Forests
CIDA	Canadian International Development Authority
CSIR	Council for Scientific and Industrial Research
DA	District Assembly
DC	Divisional Court
DCF	District Conservator of Forests
DEMC	District Environmental Management Committees
DFO	District Forestry Office
DM	Deutschmarks
DWM	31st December Women's Movement
EPC	Environmental Protection Council
ERP	Economic Rehabilitation Programme
FAO	Food and Agriculture Organisation
FD	Forestry Department
FC	Forestry Commission
FIP	Forest Inventory Project
FOB	Free On Board
FPIB	Forest Products Inspection Bureau
FPRI	Forest Products Research Institute
FRMP	Forest Resource Management Project
FSC	Farm Service Centre
GDP	Gross Domestic Product
GEPC	Ghana Export Promotion Council
GLC	Ghana Land Cases
GLR	Ghana Law Reports
GLRD	Ghana Law Reports Digest
GN	Gazette Notice
GNA	Ghana National Archives
GTMB	Ghana Timber Marketing Board
GWSC	Ghana Water and Sewrage Company
IBRD	International Bank for Reconstruction and Development
IDS	Institute of Development Studies
ICOUR	Irrigation Company of the Upper Region
ICRAF	International Centre for Research in Agroforestry

IECL	International Encyclopedia of Comparative Law
IFAD	International Fund for Agricultural Development
IIED	International Institute for Environment and Development
ILM	International Legal Materials
IRNR	Institute for Renewable Natural Resources
ITTO	International Tropical Timber Organisation
IUCN	International Union for the Conservation of Nature
JAL	Journal of African Law
LC	Lands Commission
LC Minutes	Minutes of the Legislative Council
LDC	Less Developed Country
LN	Legal Notice
LNRO	Land and Native Rights Ordinance
LPA	Land Planning Area
LPG	Liquid Purified Gas
LRC	Law Reform Commission
MLNR	Ministry of Lands and Natural Resources
MOA	Ministry of Agriculture
NGO	Non Governmental Organisation
NIC	National Investigations Committee
NLCD	National Liberation Council Decree
NOS	National Onchocerciasis Secretariat
NRCD	National Redemtion Council Decrees
OAU	Organisation of African Unity
OCP	Onchocerciasis Control Programme
ODI	Overseas Development Institute
OFZ	Onchocerciasis Free Zone
Oncho	Onchocerciasis
PDG	People's Daily Graphic
PMU	Planning and Monitoring Unit
PNDC	Provisional National Defence Council
PNDCL	Provisional National Defence Council Law
PPMEU	Policy, Planning, Monitoring and Evaluation Unit
RAO	Regional Administrative Officer
RFO	Regional Forestry Officer
RGL	Review of Ghana Law
RGLC	Review of Ghana Land Cases
RSC	Reserve Settlement Commissioner
Ren	Renner's Gold Coast Reports
SADCC	Southern African Development Co-ordination Conference
SFS	Sunyani Forestry School
SMCD	Supreme Military Council Decree
Sar.FLR	Sarbah's Fanti Law Reports
TEDB	Timber Export Development Board
TMB	Timber Marketing Board
TO	Technical Officer

UGLJ	University of Ghana Law Journal
UN	United Nations
UNCED	United Nations Conference on Environment and Development
UNCHE	United Nations Convention on Human Settlements
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
URADEP	Upper Region Agricultural Development Project
USAID	United States Agency for International Development
UST	University of Science and Technology
WACA	West African Court of Appeal
WALC	West African Lands Committee
WALR	West African Law Reports
WCED	World Commission on Environment and Development
WHO	World Health Organisation
WNLR	Western Nigerian Law Reports
WWFN	World Wide Fund for Nature

PART ONE. INTRODUCTION.

CHAPTER ONE: THE ENVIRONMENT AND DEVELOPMENT DEBATE.

(i) Introduction.

Since the Report of the World Commission on Environment and Development (WCED) (the Brundtland Report) in 1987,[1] the debate concerning the direction and interaction of development and environmental issues has focused on the concept of sustainable development. This thesis questions the practical feasibility - as opposed to the theoretical desirability - of that goal, in the light of efforts being made to conserve and develop forest resources in Ghana.

Detailed studies of the type attempted in this thesis provide much needed factual evidence and critical analysis of the legal, political and practical problems associated with the implementation of sustainable development policies. This level of detail was sadly but inevitably lacking in the Report of the WCED which aimed for a comprehensive overview of environmental and development issues. In view of the widespread support for the concept of sustainable development in official circles,[2] it now seems particularly important to

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[1] WCED Our Common Future 1987, Oxford University Press, Oxford, pp.400.

[2] The need for sustainable development was recognised in Principle Four of the Rio Declaration on Environment and Development, adopted at the United Nations Conference on Environment and Development (UNCED), Rio de Janeiro, 3-14/6/1992, (1992) 31 ILM 874. It was also recognised in Principle One of the Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of all Types of Forests, UNCED, Rio de Janeiro, 3-14/6/1992, (1992) ILM 882.

consider the operational aspects of sustainable development and to question how far sustainable development is, in reality, a feasible goal for developing countries such as Ghana. Are the objectives of development and environmental protection so readily compatible as the Report would suggest, in the real world of poverty and economic crisis? Can the logic of sustainable development prevail in the debt saddled, economic chaos which seems to characterise developing countries? What are the political, legal and institutional obstacles to the achievement of sustainable development? These are some of the issues addressed in this analysis of Ghana's forest sector.

The forest resources of Ghana represent a valuable economic resource of national importance but they also provide, directly and indirectly, economic, environmental and aesthetic benefits for Ghanaians in their everyday lives. A study of the forest sector in Ghana therefore provides opportunities to consider the relevance of sustainable development policies and laws both from the "top down" and the "bottom up". The chapters on the history of forest legislation,[1] management institutions[2] and the legal control of forest exploitation[3] incorporate the former approach while the study of forest protection in the Western Region[4] and

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[1] Infra Chp.4.

[2] Infra Chp.6.

[3] Infra Chp.8.

[4] Infra Chp.7.

rural forestry initiatives in Bongo[1] incorporate aspects of a "bottom up" analysis.

Throughout the thesis, a careful effort has been made to identify the economic, political and social factors which influence the working of the relevant law. This in line with the call made in the Brundtland Report for a cross sectoral, multi-disciplinary and integrated approach to environment and development problems.[2] The analysis reveals a number of political, economic, institutional and other factors which frustrate the successful implementation of the law.

These findings raise serious questions about the operational viability of the Brundtland proposals. If the recommendations of the Report are flawed at the operational level, then, it is submitted, the call for sustainable development is at risk of becoming mere rhetoric, or, worse still, a new kind of development morality, fuelling insensitive and unrealistic policies and programmes. If this is the case, politicians and development experts may do well to stop aiming for the remote ideal of sustainable development. They may be better advised to continue tackling the full range of development problems, recognising and confronting the intense social and economic conflicts which beset them, with due respect to all local circumstances and with greater emphasis on the achievement of more feasible and more diverse development goals. The task must then become a more realistic one, involving the practical reconciliation of

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[1] Infra Chp.9.

[2] WCED op cit p.62.

environmental concerns with existing policies and dilemmas. In this task, the very real possibility of conflicting environmental and development imperatives must be recognised and confronted. Some short or medium term environmental trade-offs in developing countries must be accepted as inevitable. In addition, the significance of academic writing which has identified the "limits of law"[1] and other structural deficiencies in the "soft state"[2] must be afforded greater weight. If these issues are swept under the carpet, as appears to be the case in the Brundtland Report, then, it is submitted, the concept of sustainable development may all too quickly join the list of failed development initiatives.

(ii) Evolution of the International Environment and Development Debate.

Before proceeding to the study of Ghana, a preliminary task is to define and explain the concept of sustainable development. This is necessary in order to establish a framework for the systematic exploration of the wider issues raised by the study of forestry issues. In order to avoid a lengthy theoretical debate, the definition of sustainable development provided by the WCED has been adopted. The substance of this definition is open to many general

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[1] A.N. Allott, The Limits of Law 1980, Butterworths, London, pp.322.

[2] G.Myrdal, The Challenge of World Poverty 1970, Penguin Press, London, pp.518.

criticisms.[1] Some of the criticisms most relevant to the discussion in this thesis are outlined below. In addition, as the philosophy of the Report cannot be fully appreciated without a brief description of the earlier debate, the history of the United Nations Conference on the Human Environment and the concept of ecodevelopment, are briefly reviewed. In subsequent chapters, the detailed inquiry into practical aspects of forest conservation in Ghana will serve to test the validity of these preliminary criticisms. It is these pragmatic findings which fuel the critique of the Brundtland Report offered in this thesis.

(A) The United Nations Conference on the Human Environment, 1972.

Prior to 1972, the views of developing and developed countries on environmental protection were in polar opposition. The subject was viewed critically by developing countries as a need arising out of the irresponsible policies of industrialised countries which created pollution and caused the rapid exploitation of natural resources. Developing country governments feared that environmental protection implied constraints on their own rapid economic growth. Meanwhile, developed countries viewed with growing alarm the extraordinary rate of population growth in developing countries which they saw as a threat both to global economic growth and environmental security.

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[1] See, for example, De la Court Beyond Brundtland: Green Development in the 1990s 1990, Zed Books, London, pp.139.

The United Nations Conference on the Human Environment (UNCHE), held in 1972 at Stockholm, forged a new consensus on environmental and development issues. For the first time, environmental protection and economic development were not viewed as entirely incompatible objectives. The Conference devoted particular attention to the environmental concerns of developing countries:

> "The solution to the environmental problems of poor societies is to be found in the process of development itself: development is a cure for most of these problems rather than their cause. Only the process of development can remove many of the factors which at present endanger not merely the quality of life but threaten life itself in many parts of the world."[1]

The Report to the Conference of a Panel of Experts on Environment and Development divided the environmental issues facing developing countries into two types - those arising out of poverty and those occurring as development proceeds. It argued that environmental problems in the first class could only be met by increasing the pace and broadening the scope of development objectives while environmental problems in the second category could be avoided or minimised by improving techniques of environmental impact assessment and by improving environmental management in developing countries. The Panel recognised that in some circumstances trade offs between environmental and development priorities would be inevitable but decisions on these matters could only be made by individual governments in the light of their own unique

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[1] Report by the Secretary General to the UNCHE 5-16/6/1972, Stockholm, A/CONF.48/10, pp.7, p.3.

circumstances.[1]

The UNCHE culminated in the Stockholm Declaration. This document reflects the new consensus on environment and development. Most emphatic is the assertion that rapid economic growth in developing countries is an essential pre-requisite for environmental protection.[2] Increased flows of foreign assistance, improved terms of trade and rational planning are among the measures recommended to enhance development and environmental protection in developing countries.[3]

The Stockholm Declaration won the support of developing countries for environmental protection but it did so by embracing their view of development priorities, by rejecting radical environmental policies and by allowing a large measure of discretion for individual states to adopt their own environmental and economic priorities.[4] It affirmed the classical economic theories of development based on investment, industrialisation and growth and combined them with rhetorical calls for a new international economic order.

(B) Ecodevelopment.

During the 1970s, a growing body of opinion began to criticise conventional development economics. It was argued

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[1] UNCHE Development and Environment: Report By a Panel of Experts Convened By the Secretary General of the UNCHE Founex, Switzerland, 4-12/6/1971, A/CONF.48/10, pp.34, p.5.

[2] Declaration of the UNCHE 1972, Chapter II, Principle 8.

[3] ibid Principles 9,10,14.

[4] See in particular Principles 17 and 21 ibid

that the growth of a country's Gross National Product was an inadequate measure of its development because it paid no attention to the quality - economic, social and cultural - of that development and because it gave no indication of the distribution of benefits from economic growth. It was observed that the standard agenda of enclave, infra structural projects too often led to economically and environmentally disappointing results while also failing to spread the potential benefits of development widely among developing country populations. It was argued that the time had come to broaden the scope of conventional development economics:

> "It is now time to turn towards Another Development, geared to the satisfaction of needs, relying fully on the energies of the people and making it possible for human societies to live in harmony with the environment."[1]

Environmental sustainability was one important component of this self reliant model of development which focused on the satisfaction of basic needs and improvements in the quality of life.[2]

With few refinements, the model of Another Development provided the essential ingredients for a philosophy of ecodevelopment which emerged at about the same time. Ecodevelopment, with its vision of self reliant and environmentally harmonious development, offered a new synthesis between environmental protection and development,

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[1] J. Nyere, "What Now?" A Report Prepared on the Occasion of the Seventh Special Session of the United Nations General Assembly, (1975) Development Dialogue 23-59, p.25.

[2] See also, D.Seers, The New Meaning of Development, (1977) 3 International Development Review 2-7.

one that contrasted sharply with the conventional economic thinking of the Stockholm Declaration.[1] It was ...

> "An approach to development aimed at harmonizing social and economic objectives with ecologically sound management, in a spirit of solidarity with future generations; based on the principle of self reliance, satisfaction of basic needs, a new symbiosis of man and earth; another kind of qualitative growth, not zero growth, not negative growth."[2]

In their purest and most radical forms, Another Development and ecodevelopment argue for political transformation empowering poor people in poor countries to take control of their own cultural, social, economic and environmental development. They look beyond the politics of nation states and they argue for the destruction of capitalist structures which create and perpetuate dependency within and between societies.[3]

Political agendas of this magnitude appeared ideological and impractical. A more operational formulation of ecodevelopment was provided by the United Nations Environment Programme (UNEP):

"Development at regional and local levels ...

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[1] The idea of economic self reliance was also embodied in the Lagos Plan of Action for the Economic Development of Africa, 1980-2000, adopted by the member states of the Organisation of African Unity (OAU). See, OAU Lagos Plan of Action for the Economic Development of Africa, 1980-2000 1982, International Institute for Labour Studies, Geneva, pp.130; D. Fashole-Luke, T. Shaw (Eds.) Continental Crisis: The Lagos Plan of Action and Africa's Future 1984, University Press of America, New York, pp.231.

[2] Sachs quoted in Glaeser (Ed.) Ecodevelopment - Concepts, Projects, Strategies 1984, Pergamon Press, Oxford, pp.247, p.25.

[3] Redclift Sustainable Development: Exploring the Contradictions 1987, Routledge, London, pp.221, p.36.

> consistent with the potentials of the area involved, with attention given to the adequate and rational use of natural resources and to applications of technological styles ... and organizational forms that respect the natural ecosystems and local socio-cultural patterns."[1]

In adopting a planning approach to ecodevelopment it was hoped to bring theory into operation. This approach, however, was technocratic, too easily tagged onto existing projects without altering their fundamental top down design. In this way, the ideology became diluted while the policy was overtaken by events such as the debt crisis which ushered in the era of structural adjustment, the policies of which can only be seen as the antithesis of a self reliant development model.

(iii) Sustainable Development.

By the early 1980s renewed concern for environmental issues and despair at the disappointing results of two development decades led to the establishment of the WCED which, after three years of travel and debate, produced its Report, Our Common Future (the Brundtland Report). This Report takes a fresh look at the environment and development debate and it attempts to remedy some of the short comings of the Stockholm Declaration and the ecodevelopment model. It looks at some controversial environmental issues, it examines in some depth the type of growth which is compatible with environmental sustainability and it makes specific

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[1] UNEP, Ecodevelopment, 1976, quoted in Bartelmus Environment and Development 1986, Allen and Unwin, Boston, pp.128, p.45; Sachs, The Strategies of Ecodevelopment, (1984) 17(4) Ceres 17-21.

recommendations for political, legal and institutional reform. The Report can be criticised, however, for failing to include a detailed agenda for practical action, for its confusing mixture of descriptive and prescriptive analysis and in its failure to make uncompromising recommendations on controversial issues.

The principal arguments of the Report and the substance of this definition are outlined below.

(A) The Definition of Sustainable Development.

> "Sustainable development is development that meets the need of the present without compromising the ability of future generations to meet their own needs."[1]

This definition has both physical and political dimensions:

(a) Physical Sustainability: Physical sustainability or 'sustained yield management' is a concept already familiar to natural resource managers. It suggests that in the exploitation of a renewable natural resource, production should not exceed the incremental growth rate applicable for that resource. In addition, the Brundtland Report has pointed to the need to take into account the "system-wide effects" of exploitation which may impair the regenerative ability of whole ecosystems.[2]

The technical knowledge required for sustained yield management is not always readily available. In the context of

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[1] WCED op cit p.43.

[2] ibid p.45.

tropical forest management, for example, the method of calculating the Annual Allowable Cut, the degree of protection which should be afforded to young trees and other management techniques are matters of continuing debate.[1] Applied as a general rule for the management of natural resources, the principle has some even more obvious drawbacks. How, for example, can a non-renewable resource be managed for a sustained yield? The Brundtland Report concedes this problem and suggests that such resources should be exploited at rates which take into account the criticality of any particular resource, the availability of technologies for minimizing depletion and the likelihood of substitutes becoming available.[2] The concept of physical sustainability in the Brundtland Report is therefore larger and more sophisticated than in the traditional definition.

Despite the adoption of a broader vision of physical sustainability, the Report, it is submitted, does still not deal adequately with the argument raised by some economists that it is better for developing countries to fuel their initial stages of development by mining their natural resources even if this leads to degradation of the environmental resource base in the short term.[3] It is the argument of these economists that once development "takes off", there will be more financial resources available to

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[1] The Timber Resource infra Chp.8.

[2] WCED op cit p.46.

[3] This argument is reviewed in Tisdell, Natural Resources, Growth and Development 1990, Praeger Publishers, New York, pp.186 at pp.1-4.

rehabilitate and improve environmental quality. They point to the experience of the developed countries as the proof of their hypothesis.[1] Why, then, should the present level of resources in developing countries be taken as the starting point for calculations of sustainability if more profitable alternatives present themselves?

(b) Political Sustainability: Physical sustainability is only one dimension of the call for sustainable development. Of equal, if not greater, concern to the Commissioners was the political dimension to sustainable development. In their view, it is only when the basic needs and legitimate aspirations of poor people are met that their recourse to environmentally destructive survival strategies will stop.[2] If these needs are to be met, then equitable access to the resources necessary for development must be secured for all. Sustainable development implies a concern for social equity not only between generations but also within generations.

The emphasis placed in the Report on meeting basic needs is reminiscent of the philosophy of both Another Development and ecodevelopment. However, the methods advanced for its achievement are not compatible. Whereas proponents of ecodevelopment argued sometimes for radical political change and always for greater self reliance, the Commission's view is

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[1] "Global Warming and Developing World Priorities," A lecture given by Dr. Andrew Hurrell, Nuffield College, Oxford, at a Seminar on Law and Politics of Global Climate Change 6/12/1991, South-North Centre for Environmental Policy in association with the British Branch of the International Law Association.

[2] Infra p.33.

that greater equity can be achieved essentially by redistributing the benefits of growth. The better use of institutional, educational and legal resources is canvassed as the appropriate method of securing this objective.[1]

Some social scientists argue that it is naive to rely on these methods because pressure groups which hold the balance of political power rarely act to their own detriment even if their prospects for long term gain are high.[2] Where resources are scarce and competition is great, the likelihood of enlightened action actually occurring is even slimmer. It is possible to argue that without radical alterations in the power configuration of national and international societies, any attempt to redistribute scarce resources will be of only limited success.[3]

Is the Commission's call for existing institutions to act in a more enlightened fashion more or less realistic than the radicals' call for structural change? Will educational, legal and institutional changes be sufficient to meet the challenge of satisfying basic needs? In the discussion of rural forestry initiatives in chapter nine, this thesis looks at how far some local institutions and programmes have shown themselves capable of addressing the interlocking challenge of meeting

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[1] WCED op cit p.46.

[2] De la Court op cit p.118; M. Galanter, Why the Haves Come Out Ahead: Speculations on the Limits of Legal Change, (1974), 9, Law and Society Review 95-160; F. Snyder, Law and Development in the Light of Dependency Theory, (1980), 14(3), Law and Society Review 723-804.

[3] W.Adams, Green Development: Environment and Sustainability in the Third World 1990, Routledge, London, pp.257, pp.66-83.

basic needs and protecting the environment.

The emphasis on inter-generational equity in the definition of sustainable development given in the Brundtland Report is equally vulnerable to these criticisms. The argument that the material needs of future generations may be better served by allowing resource depletion and environmental degradation in the short term has already been raised.[1] In addition, the same doubts as to the likelihood of enlightened political actions actually occurring can be raised with respect to the interests of future generations. What weight are developing country governments in reality likely to give to the interests of future generations when the unsatisfied demands of the existing generation are so pressing? It is the present generation, after all, which determines the fate of its political leaders. With the population explosion in full swing, it appears simply naive to burden fragile governments with duties towards their future citizens which they cannot even secure for the present generation. The analysis in the Brundtland Report seems to ignore the very real possibility that meeting the most basic needs of the present generation may require short term policies which conflict with the less tangible needs of future generations. The problem of conflicting short term and long term interests is evident in the study of forest exploitation in chapter eight.

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[1] Supra p.29.

(B) Poverty as Cause and Effect of Environmental Stress.

> "Poverty itself pollutes the environment ... Those who are poor and hungry will often destroy their immediate environment in order to survive. They will cut down forests; their livestock will overgraze grasslands; they will over use marginal land; and in growing numbers they will crowd into congested cities. The cumulative effect of these changes is so far reaching as to make poverty itself a major global scourge ... A world in which poverty is endemic will always be prone to ecological and other catastrophes".[1]

The Stockholm Conference drew the world's attention to environmental problems which characterise poverty including poor sanitation, overcrowded cities and unclean water supplies. The lack of public money was identified as a principal cause of these circumstances. This reinforced the developing countries' calls for faster growth. The Brundtland Report adds a new dimension to this argument by drawing attention to situations in which poor people are forced, by their immediate need to survive, into adopting strategies which undermine the prospects for long term, sustainable growth. The impact of their activities is not only of local concern but also of national and even international concern. The destruction of tropical forests by landless farmers in Cote d'Ivoire is one example quoted by the WCED.[2] These farmers, the majority of whom are themselves "environmental refugees" from neighbouring Sahelian countries, speed up the process of global warming by contributing to global

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[1] WCED op cit pp.28,44.

[2] ibid p.291. These labourers may only be working the land on behalf of relatively wealthy, capitalist farmers who have bought the land and are reaping handsome profits as a result. See the discussion of forest encroachment in the Western Region infra Chp.7.

deforestation. Thus, argues the Report, the survival of all rests on eradicating the poverty which drives the most vulnerable into ecologically destructive lifestyles.[1]

The view that poverty is a causal factor of environmental degradation is open to criticism. In many instances it is the expansion of commercial agriculture by relatively affluent capitalist entrepreneurs which degrades the environment, either directly, by expansion into forest land or indirectly, by driving poor people off their land and onto marginal land under the pressure of market forces. In both situations, the root of environmental destruction lies in the expansion of commercial agriculture and not simply in the phenomenon of poverty.[2] The Commission's firm commitment to increasing the exports of developing countries[3] is not easily reconcilable with this view.

The Brundtland Report does argue that greater support for small holder farming should be preferred to continuing assistance to large scale capitalist agriculture.[4] This should help to counteract the process of environmental degradation which results from growing landlessness. However, the idea that meeting the basic needs of poor people, by increasing the productivity of their existing agricultural land in consonance

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[1] ibid p.44.

[2] De la Court op cit pp.24-5; J. Browder, Development Alternatives for Tropical Rain Forests, in H.J. Leonard et.al., Environment and the Poor: Development Strategies for a Common Agenda 1989, Transaction Books, Oxford, pp.222, pp.111-133 at p.113.

[3] WCED op cit p.52.

[4] ibid p.143.

with sound environmental practices, will reduce the threat to marginal and forest land fails to take into account the potentially unlimited desire of "poor" people to increase their wealth by expanding agricultural production to meet international market demands. Contrary to the argument of the Report, the threat to marginal and forest land may actually be increased if farmers, in meeting their basic needs, acquire the minimum security necessary to expand their farms. The Report was blind to this possibility in part because it failed to distinguish between poor but economically viable farmers and the plight of the poorest and most desperate people who have no resources with which to satisfy even their minimum needs, whether or not by environmentally harmful methods.[1]

The Brundtland Report raises the spectre of land reform as a possible solution to growing landlessness and to ensure that basic needs receive priority in agricultural production patterns.[2] However, for these problems to be effectively tackled, not only land reform but radical changes in international market demand, which encourages cash crops to be grown at the expense of subsistence crops, and in the political power of capitalist entrepreneurs, who may undermine law reform, would seem to be required. These changes do not appear immediately feasible nor consistent with the vision of

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[1] The existence of economic differentiation in the rural societies of developing countries has been recognised by social scientists for a long time. See, for example, P.Hill, The Myth of the Amorphous Peasantry: A Northern Nigerian Case Study, (1968) 10(3) Nigerian Journal of Economic and Social Studies 239-260.

[2] WCED op cit p.141.

enlightened growth which pervades the Report. If the issue is fundamentally one of competition between the rich and the poor for scarce resources, there is no indication in the Report of the power base and method by which poor people can themselves radically improve their access to resources.[1]

There are other arguments which suggest that the Brundtland Report placed a disproportionate emphasis on the environmentally destructive role of poor people. Even where poor people are at the forefront of environmental degradation, the scale of their activities is relatively insignificant when compared to the impact of commercial or government sponsored developments.[2] The flooding of tropical forests to build hydro-electric dams is a case in point.

It can also be argued that the Commission's negative portrayal of poor people does not do justice to their frequently environmentally benign cultures and lifestyles. These range from isolated communities' awareness of tropical forest ecosystems to the practical recycling of material goods by impoverished urban communities. Many environmentalists consider that governments and western societies have much to learn from these alternative lifestyles.[3]

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[1] The same weakness was evident in the model of ecodevelopment. See, Glaeser op cit p.36.

[2] Browder op cit p.113.

[3] Richards, Alternative Strategies for the African Environment, in International African Institute African Environment: Problems and Perspectives 1975, Oxford University Press, London, pp.117, at pp.102-114; de Klemm, Culture and Conservation: Some Thoughts for the Future, in McNeely and Pitt (Eds.) Culture and Conservation 1985, Croom Helm, London, pp.308, at pp.239-257.

Whether poor people are an important cause of environmental degradation and, if so, whether it is their absolute poverty or their desire for greater wealth which is the motivating factor for their actions are questions considered in this thesis. Clearly the evidence cannot speak for all situations but, at least in the example of forest protection in the Western Region of Ghana,[1] the evidence would seem to suggest that the view of the WCED on this point was too simplistic.

(C) Need for Renewed Growth.

> "It is essential that global economic growth be revitalized. In practical terms, this means more rapid economic growth in both industrial and developing countries, freer market access for the products of developing countries, lower interest rates, greater technology transfer and significantly larger capital flows, both concessional and commercial."[2]

The Commission argued that renewed global economic growth is essential in order to eradicate the poverty which, in the view of the Commission, causes environmental degradation.[3] It firmly rejected the view that continued economic growth can only be bought at the expense of further environmental degradation. On the contrary, it argued that the current global recession has adverse impacts on the environment as conservation programmes take a low priority and as more people are forced into environmentally destructive survival

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[1] Infra Chp.7.

[2] WCED op cit p.89.

[3] ibid p.50.

strategies.[1]

The Report calls for economic growth in the order of at least 3% per anum in developing countries as a whole.[2] In response to fears that growth of this magnitude will undermine the resource base and create pollution, the Report calls for greater use of environmentally clean and resource efficient technologies.[3] These technologies must be openly shared with developing countries if their full impact is to be felt.[4] Technology must play a critical role in ensuring that continued growth does not destroy the environment to an extent which threatens mankind's prospects for sustained development in the future.

The Commission's support for economic growth rests on the premise that this is necessary in order to eradicate the threat to the environment caused by poverty. It is realistic enough, however, to concede that growth will only achieve this purpose when it is put on a sustainable development path.

> "Growth by itself is not enough. High levels of productive activity and widespread poverty can co-exist and endanger the environment. Hence sustainable development requires that societies meet human needs both by increasing productive potential and by ensuring equitable opportunities for all."[5]

Malthusian scenarios of economic growth in combination

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[1] ibid p.70.

[2] ibid p.50.

[3] ibid p.59.

[4] ibid p.16.

[5] ibid p.44.

with increasing population leading to global catastrophe[1] were clearly unacceptable to the Commission, if only for political reasons. On the contrary, it argued that only by improving the lot of the poorest will the rate of population growth be slowed to a sustainable level.[2]

The arguments of the Commission follow firmly in the tradition of the Stockholm Declaration. The principal tenets of conventional development economics are closely adhered to despite their mixed record of success. Progressive industrialisation[3] in developing countries and increased levels of international trade[4] are among the Commission's objectives for a world of ever increasing interdependence. This vision appears to contrast with the emphasis on self reliance in the ecodevelopment model. The Report can be criticised for adopting such a euro-centric view of development as well as for its firm belief in technological solutions.

Many environmentalists doubt the ability of global ecosystems to provide for and absorb the level of growth envisioned in the Report whether or not greater use is made of environmentally clean technologies.[5] The slow uptake of

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[1] G. Hardin, The Tragedy of the Commons, (1968), 162, Science 1243-1248.

[2] WCED op cit p.106.

[3] ibid p.214.

[4] ibid p.52.

[5] Trainer,F. Abandon Affluence! 1985, Zed Books, London, pp.308, pp.2-3; G. Hardin, Living on a Lifeboat, in G. Hardin and J. Baden (eds), Managing the Commons 1977, W.H. Freeman and Co., San Francisco, pp.294, pp.261-277; De la Court op cit

renewable energy technology is just one of the factors giving credence to these doubts.

Perhaps an even greater flaw in the argument of the Commission is the reality of the economic situation faced by most developing countries. The record of the 1980s certainly gives no cause for optimism that the targeted growth can in fact be achieved. Without decisive action to cancel developing country debt and to enhance the terms of trade in their favour it is likely that growth will remain as elusive for developing countries in the 1990s as in the 1980s. Although the Report considers the need for more debt relief[1] and improved international commodity prices,[2] it is far from taking a firm stand on these pre-requisites to renewed growth.

In this thesis, the question whether recent economic development programmes have proved consistent with environmental objectives is raised. The impact of Ghana's Economic Recovery Programme on the forest sector is a particularly pertinent example of how structural adjustment programmes can force developing countries into environmentally disastrous policies.[3] The question now is whether Ghana has the technological and managerial capacity to reverse that trend once growth is revived. What are the prospects for environmentally sustainable development if growth is attained within the existing structure of international economic

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p.15.

[1] WCED op cit pp.73-5.

[2] ibid p.71.

[3] Infra Chp.8.

relations? What is the likely impact of recent sector wide reforms? Can they be relied upon to secure Ghana's sustainable development in the future given the record of managerial and political problems to date?

(D) A Call for Action: The Need for Institutional and Legal Reform.

In addition to the major policy goals contained within the Report's proposals for sustainable development, there are general proposals for legal and institutional reform. These recommendations are geared towards effecting the integrated consideration of environmental and economic issues at the policy, planning and decision-making stages. In the view of the Commission, this is the most fundamental challenge for sustainable development in the 1990s.[1]

The Report favours strengthening the roles of existing national environmental and resource management agencies.[2] However, this action by itself will not suffice to meet the requirements of sustainable development. Environmental problems are too serious to be left to isolated environmental agencies acting retrospectively to minimise environmental damage. Neither can they be adequately tackled by traditional sector institutions which are rarely authorised to consider the cross sectoral challenge of sustainable development.[3] The Report argues that the key policy and decision-making

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[1] WCED op cit p.313.

[2] ibid p.319.

[3] ibid p.310.

institutions in each nation must take greater responsibility for action to promote sustainable development. Only in this way will complex, multi-dimensional environmental problems be afforded the priority they deserve.[1]

In addition to institutional reform, the Report calls for legal reform:

> "Legal regimes are being rapidly outdistanced by the accelerating and expanding scale of impacts on the environmental base of development. Human laws must be reformulated to keep human activities in harmony with the unchanging and universal laws of nature."[2]

The Report considers that national laws should define the reciprocal rights of government and individuals with respect to sustainable development. These may, for example, cover the right of public access to environmental information, procedures for settling environmental disputes and rules regarding liability and compensation in respect of environmental damage. The Report outlines the principal objectives of sustainable development legislation.[3] These range from maintaining essential ecosystems to enforcing the principle of optimum sustainable yield in the exploitation of renewable natural resources. Existing laws which are compatible with these objectives should be strengthened and improved. Conflicting or out of date laws should be reformulated to promote sustainable development. Environmental education and greater public participation in environmental decision-making will enhance the effectiveness of the law. The

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[1] ibid p.314.

[2] ibid p.330.

[3] ibid p.331.

Commission argued strongly for enhancing the role of Non Governmental Organisations (NGOs) in the areas of public education and participation in decision-making as well as in the implementation of sustainable development programmes.[1]

Can legal devices be successfully employed to achieve these ambitious goals? The history of the law and development debate suggests that such programmatic goals may be beyond the scope of the law.[2] It has been suggested that there are limits inherent in the nature of law which make it an imperfect instrument for effecting change.[3] Developing country governments often do not have the resources necessary to implement the most ambitious legislation in their statute books. Corruption and other institutional weaknesses characteristic of the "soft state" frequently undermine the efficacy of the law.[4] The Brundtland Report seems to have remained aloof from these fundamental problems of development administration.

This thesis looks at the positive as well as negative contribution of the political, institutional and legal mechanisms currently being employed in the conservation of some of Ghana's natural resources. In so doing, the pertinence and feasibility of the Commission's recommendations on

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[1] ibid p.326.

[2] J. Merryman, Comparative Law and Social Change: On the Origins, Style, Decline and Revival of the Law and Development Movement, (1977), 25, AJCL 457-491; A.N.A. Allott, The Past and Future Contribution of Law to Development in Africa, (1980), 1, Jahrbuch Fur Afrikanisches Recht 3-19.

[3] Allott, The Limits of Law, op cit p.287.

[4] Myrdal op cit p.208.

integrated decision-making, public participation and strengthened laws, will be assessed. How far has Ghana moved towards implementing these legal and institutional recommendations and what else needs to be done? What are the factors which constrain the policy and law-makers when they try to adopt reforms of the type recommended by the WCED Commissioners? What problems of implementation confront the laws and institutions responsible for effecting sustainable development policies in Ghana?

(iv) Mutual or Conflicting Interests? The Logic of Resource Development.

At the heart of the Commissioner's Report lies a firm belief in the ability of nation states to act in a rational, enlightened fashion in order to achieve sustainable development:

> "This Commission believes that people can build a future that is more prosperous, more just and more secure ... We do not offer a detailed blueprint for action but instead a pathway by which the peoples of the world may enlarge their spheres of co-operation."[1]

The Commissioners believe that the logic of sustainable development, as the only guarantee of mutual security in an increasingly inter-dependent world, will be self evident to decision-makers in positions of authority. The need for responsible management and co-operation, they argue, has never been greater and never before have the incentives been so

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[1] WCED op cit pp.1-2.

manifest.[1] It is only logical, therefore, for the governments of the world to take on board its recommendations for long term planning, rational resource management and basic needs development policies. Fundamentally, the Brundtland Report is a rallying call for an international environmental consensus.

In this thesis, the basic assumption that effective sustainable development policies can be brought about by appealing to mutual interests is questioned. Environmental resources are scarce commodities.[2] This means that countries, classes, communities and individuals may ultimately have to compete for their control. In this situation, political conflict is an outcome equally, if not more likely, than mutual consensus. This possibility raises important questions about the distribution and balance of political power in developing countries and about the role of law in society.

The "conflict versus consensus" paradigm has a long history in legal sociology. For analysts who favour a consensus model of law, laws reconcile and represent the interests of society at large[3] but in conflict models of law, analysts argue that laws favour and reflect the interests of the most powerful interest groups in society:

> "Society is characterized by diversity, conflict, coercion and change, rather than by consensus and stability ... law is a result of the operation of interests, rather than an instrument that functions

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[1] ibid p.23.

[2] Tisdell op cit p.1.

[3] This view is reflected in the writings of Pound, Durkheim and Ehrlich. See, Lloyd and Freeman, Lloyd's Introduction to Jurisprudence 1985, Stevens and Sons, London, pp.1257, pp.557-572.

> outside of particular interests. Though law may control interests, it is in the first place created by interests. Third, law incorporates the interests of specific persons or groups; it is seldom the produce of the whole society ... Unlike the pluralistic conception of politics, law does not represent a compromise of the diverse interests in society, but supports some interests at the expense of others."[1]

Whereas some analyses of the conflict model of law recognise the diffusion of power between various competing interest groups,[2] a Marxist analysis of law holds that, in capitalist economies, the interests of the capitalist class dominate political and legal institutions.[3] Law is then an instrument of control used by the capitalist class to promote its own economic interests at the expense of the proletariat.[4] If the vested interests of the ruling class in every new law are not always immediately self evident, it is nevertheless arguable ...

> "Not that each legislative choice is directly motivated by the interests of the ruling class, but that the economic basis of class interests will filter out and render ineffective all laws which are

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[1] Quinney, The Social Reality of Crime, quoted in Lloyd, ibid p.620. For a fuller discussion of conflict models of law, see, W. Chambliss and R. Seidman, Law, Order and Power 1971, Addison-Wesley Press, Reading, Massachusetts, pp.533, pp.45-73. For a discussion of the applicability of the consensus model of law to Africa, see, R. Seidman, Law and Economic Development in Independent, English-Speaking, Sub-Saharan Africa, (1966) Wisconsin Law Review 999-1070.

[2] R. Cotterrell, The Sociology of Law 1992, Butterworths, London, pp.398, p.113.

[3] ibid pp.106-118; J. Harris, Legal Philosophies 1980, Butterworths, London, pp.282, pp.251-256. For a fuller discussion of Marxist theory and law see, H. Collins, Marxism and Law 1982, Oxford University Press, Oxford, pp.159.

[4] Cotterrell op cit p.107; Harris op cit p.252; Collins op cit pp.27-8.

not."[1]

The "conflict versus consensus" paradigm has been discussed in the context of the law and development debate. Seidman, for example, has ably argued that a conflict perspective on law is appropriate for African states as elsewhere:

> "The state and the legal order can never be neutral ... they reflect not consensus but conflict."[2]

Conflict over access to resources is a theme often raised in political analysis.[3] It is a hidden agenda in some of the literature on basic needs and people's participatory approaches to development.[4] The impact of political and social conflicts on environmental programmes within developing countries is a theme which has entered some recent literature

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[1] Harris op cit p.253.

[2] R. Seidman, The State, Law and Development 1978, Croom Helm, London, pp.483, p.93. See also, F. Snyder, Law and Development in the Light of Dependency Theory, (1980) 14(3) Law and Society Review 723-804.

[3] See, for example, Marenin,O. The Managerial State in Africa: A Conflict Coalition Perspective, in Z. Ergas (Ed.) The African State in Transition 1987, Macmillan Press, London, pp.340 at pp.61-85; "Deep Politics: Political Response, Protest and Conflict" in N. Chazan, R. Mortimer, J. Ravenhill, D. Rothchild, Politics and Society in Contemporary Africa 1992, Lynne Rienner Publishers, Boulder, pp.483, at pp.189-210.

[4] G. Sen, C. Grown, Development Crises and Alternative Visions 1987, Monthly Review Press, New York, pp.116; I. Dankelman, J. Davidson, Women and Environment in the Third World 1988, Earthscan Publications, London, pp.210; R. Chambers, Rural Development: Putting the Last First 1987, Longman, Harlow, pp.246; C. Blankson, The Food Crisis in West Africa: An Examination of Theoretical Approaches, (1987) 27, Rural Africana 1-17.

on environment and development.[1] The links between international relations of dependency and environmental degradation have been highlighted by some scholars[2] and were tentatively acknowledged in the Brundtland Report.[3]

These theoretical analyses of legal structures, development and environmental processes are relevant to the debate in this thesis on the practical efficacy of the Brundtland recommendations. If the legal and administrative machinery of states are fora for competing interest groups of unequal political and economic power, or alternatively, if they are instruments of class rule serving prevailing economic interests, the faith of the Brundtland Commissioners in legal and institutional solutions to environmental problems may be misplaced because rational solutions based on mutual interests may be sacrificed to the more immediate concerns of dominant political and economic interests.

On the basis of the evidence presented in the following pages, the argument put forward in this thesis is that political, institutional and legal structures are vulnerable to the influence of competing interest groups and economic

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[1] T. O'Riordan and W. Derrick Sewell Project Appraisal and Policy Review 1981, John Wiley and Sons, Chichester, pp.302, p.288; Adams op cit pp.76-87; Redclift op cit pp.199. Links between environmental degradation and military conflicts are explored in, A. Hjort af Ornes, M. Salih (Eds.) Ecology and Politics: Environmental Stress and Security in Africa 1989, Scandinavian Institute of African Studies, Motala, Sweden, pp.255.

[2] Redclift op cit p.36; Blaikie, The Political Economy of Soil Erosion 1985, Longman, London, pp.182; De la Court op cit pp.24-25.

[3] WCED op cit pp.67-90.

forces which do not seek, first and foremost, to realise the objective of sustainable development. The ability of these structures to meet the challenge of sustainable development is therefore compromised to an extent not adequately realised in the Brundtland Report. This fundamentally weakens the force of the Report's recommendations. In failing to highlight these concerns, the Report falls short of providing concrete and realistic proposals for action at the national level.

Underlying this thesis is the contention that only when the nature and extent of conflicts which affect resource exploitation are fully exposed will a realistic debate on the prospects for environmental conservation in developing countries become possible. In highlighting the issues of competition and conflict, as opposed to mutuality of interests and consensus, the aim of this thesis is not to put forward a pessimistic, doomsday scenario. Rather, the hope is that by exposing these realities, more concrete, more pragmatic and less idealistic environmental programmes will be promoted. By attempting to foresee the potential conflicts and by drawing widely on the experience of development, it may be possible to overcome some of the obstacles to success which have frustrated earlier programmes. At the very least, a more open recognition of the magnitude of social problems which underlie environmental issues should inspire a more balanced assessment of the priority to be afforded to environmental protection in preference to other equally pressing and sometimes more urgent development goals.

CHAPTER TWO: RESEARCH METHODOLOGY: PARAMETERS AND CONSTRAINTS.

(i) Choice of Subject Matter.

The Brundtland Report argued for an holistic approach to environmental and development problems. In particular, it argued for an integrated, cross-sectoral and multi-disciplinary analysis of problems and solutions:

> "The objective of sustainable development and the integrated nature of the global environment /development challenges pose problems for institutions, national and international, that were established on the basis of narrow preoccupations and compartmentalized concerns ... The challenges are both interdependent and integrated, requiring comprehensive approaches."[1]

Following the logic of the Brundtland Report, the initial objective of the writer was to consider development and environmental problems in as wide a context as possible using multi-disciplinary materials and employing the knowledge and insights into the working of the law in developing countries gathered, inter alia, from the law and development school and from legal sociology more generally.

It was initially thought that the demand for an integrated analysis of environment and development problems would best be served by an analysis of two contrasting case studies. The two case studies chosen were forestry and, in sharp contrast to a sector study, a district case study of a range of development and environmental problems in Bongo, a political district in the north-east savanna. This choice of studies was made purposely to allow a maximum number of the

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[1] WCED op cit p.9.

issues and recommendations made in the Report, from institutional strengthening to participatory, "bottom up" development projects, to be considered and assessed within the framework of one thesis.

It soon became clear, however, that stricter parameters were required in order to maintain the depth, compactness and consistency required of an academic thesis. It was therefore decided to concentrate on only one subject matter, that is, forestry, in all its legal, social, economic and environmental aspects. The concern of the Brundtland Report for an holistic appreciation of environmental issues has not been disregarded, however, and the goal throughout this thesis is to explore cross sectoral, multi-dimensional influences on the forestry sector. In particular, the opportunity to explore some broad issues of development and environmental inter-relationships as they relate to forestry issues was seized upon during the author's research in Bongo District. Parts of the discussion in that chapter particularly reflect this search for a more holistic, comprehensive view of forestry problems in their legal, social, economic, political and environmental setting. Overall, the objective has been to meet academic requirements while adhering to the call of the Brundtland Report for the closer integration of environmental and development affairs.

(ii) Research Materials.

The desire to consider forestry problems in as wide a context as possible encouraged the use of a wide range of sources and materials. Some of these are conventional legal

sources - statutes, case law, books and journals. Jurisprudential, socio-legal and law and development literature has been employed to establish a theoretical framework which serves the research findings. In addition, archival materials at the Public Records Office in London and at the National Archives in Accra were searched for relevant information on historical aspects of forest conservation in Ghana. The goal here was not to make a comprehensive, detailed inquiry but to investigate problems and issues which seem to have a bearing on forestry issues in debate today.

A number of problems are associated with the use of historical and official sources of information. These include the problems of inaccurate statistics and information, official secrecy which attaches, for example, to the Report of the National Investigations Sub-Committee on Timber, and the non-availability of this and some historical material which has been lost, destroyed or is currently withheld from the public.

In addition to studying written sources of information in Britain, the author spent thirteen months in Ghana, from November 1989 to December, 1990 during which time oral evidence was gathered and materials locally available were studied. Extensive interviews were held with dozens of Ghanaians, officials and ordinary citizens, who provided the author with an enormous amount of valuable information. A list of interviewees is presented in Appendix Six and acknowledgements have already been made. The information so gained is used throughout this thesis.

There are many methodological problems associated with the use of oral evidence. Although attempts were made to cross check and confirm evidence given during interviews and although repeat interviews were conducted with some officials throughout the whole thirteen months of the author's stay in Ghana, the inevitable risks of using first hand oral evidence include misinformation and misunderstandings which may have arisen from the enthusiasm of the author, the political judgement of the interviewee, cultural differences and constraints of time and formality, especially in the case of interviews with officials, although it is only fair to say that all interviewees were considerably more helpful and patient than even Ghanaian courtesy demands!

Two case studies of forestry issues at the district level are included in the thesis. The first concerns aspects of forest protection in the Western Region. Research towards this case study was undertaken at two district forestry offices, in Sefwi Wiawso and Juabeso-Bia, over a period of three months, from January-March, 1990. During this time, thanks to the co-operation of the district forestry officers, the author scrutinised the locally available written materials including correspondence and district reports, notes and records of forest offences. In addition, in depth interviews were conducted with forestry staff. No opportunity was lost to quiz forestry staff, local farmers and traditional authorities on forestry issues. Unfortunately, the author's dependence on forestry and game and wildlife officers to act as interpreters and the general secrecy and suspicion regarding the issues in

the Western Region, inevitably led to some slanted answers being given during interviews with local people. Only the very simplest method of counteracting this tendency could be employed in the time available. This "method" was for the author to ask as many people as possible as many questions as possible as informally as possible. Written sources and the opinions of officials outside the district helped to corroborate information gathered at the district level but, at the end of the day, a measure of academic sceptism on, for example, the views of local people on the desirability of forest conservation or statements about their activities with respect to forest reserves, remains justifiable.

The second case study was undertaken in Bongo District. The size and nature of the research challenge here deserves a separate consideration.

(iii) Research Conducted in Bongo District.

Separate visits were made by the author to Bongo District in early January 1990 and November 1990. In addition, during the period, March-July, 1990, the author was given residence in the District, firstly in the house of Mr. Jones Awuni, a local teacher, and later in separate accommodation provided by courtesy of the District Secretary, to both of whom the author is particularly thankful.

During her stay in Bongo, the author conducted interviews with many officials in Bongo and Bolgatanga, the regional capital. Non-Ghanaian project officers resident in the area were also quizzed in lengthy interviews. Records of law suits

heard in the Magistrates Court and before the High Court at Bolgatanga were examined and a number of relevant district reports were also made available to the author.

All interviews were conducted as informally as possible with wide ranging issues explored and discussed. In every case, pre-determined questions were followed up with supplementary questions and free ranging discussion, the objective being to elicit as much interesting and pertinent information as possible. Attempts were made to cross check information and to further investigate interesting information in successive interviews. Notes were made at the time of the interview and immediately afterwards these were written up in more precise detail. In every case, informants were as wholly co-operative as their knowledge and their circumstances would permit but, as with the conduct of interviews elsewhere in Ghana, there are a number of limitations, of the type noted above, on the reliability of the oral evidence.

Traditional authorities in the area were also interviewed in depth. These interviews were conducted with the help of interpreters.[1] It was unfortunate that the long reigning Paramount Chief of Bongo had recently died and so too had the Tindana of Bongo. The Regent of Bongo and his linguist, who had also served the Paramount Chief, did their utmost to answer the author's questions but as the new Tindana was still to be appointed, an important opportunity to cross check the

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[1] This was not only because of the language barrier but, in some cases, also to conform to custom. The Chief of Gowrie, for example, speaks English but answered all of the author's questions in Fra Fra.

information given by the Regent was missed. The Tindana of Adaboya, the Chief of Adaboya and the Chief/Tindana of Gowrie were also interviewed on the basis of very similar interview formats. The authorities were encouraged to expand and illustrate their answers whenever they wished. The author's common request for additional interviews was never refused. All the evidence given on the specific points covered in the main body of the thesis are presented to the reader in Appendix One.

Questions of reliability are particularly important in the case of interviews with traditional authorities. The language barrier inevitably meant that much information was lost to the author or easily misinterpreted.[1] If traditional authorities are competing for political influence locally, as is quite probable, or if their concern is to provide the legally correct answer rather than to explain the actual practice, if memories are poor, questions too abstract or the interviewer's persistence too trying for the patience of the interviewee, then the answers will no doubt have been adjusted accordingly.[2] The interpreters were always keen but not always as keen as the author. A far greater problem, however, was the

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[1] Pelto, Muessig, Charles The Study and Teaching of Anthropology 1980, Merrill Publishing Co., London, pp.124, p.39.

[2] On these and other problems which bedevil interview techniques see, R. Mayntz, K. Holme, R. Huebner Introduction to Empirical Sociology 1976, Penguin Education, Harmondsworth, pp.240, pp.100-118; S. Roberts Order and Dispute - An Introduction to Legal Anthropology 1979, Penguin Books, Harmondsworth, pp.216; M. Morison Methods in Sociology 1986, Longman Group, Harlow, pp.111, pp.43-73; M. Shipman The Limitations of Social Research 1988, Longman Group, Harlow, pp.196, pp.78-89, 161-176.

inherent difficulty of finding the correct legal interpretation of the terms used locally by the traditional authorities and interpreters.[1] This was probably the greatest obstacle. Concepts of land ownership are notoriously associated with linguistic problems.[2] For this reason, a technical discussion of issues of land ownership has been avoided in this thesis in favour of a more limited investigation into the ways in which legal rights and obligations have an impact on the use of the environment.

Linguistic problems also help to account for the contradictions and uncertainties in the interviews, not only in the evidence of the Chief and the Tindana of Adaboya, for example, which to a certain extent was expected, but even in the evidence obtained during the same interview with one person![3] A plausible explanation for these apparent discrepancies lies in the error of thinking in terms of clearly defined legal norms. Customary law, here as elsewhere in Africa, may best be viewed as being in a state of flux with

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[1] Pelto op cit p.39.

[2] For an interesting debate on the relevance and substance of the concept of ownership in African customary law, see, A. Allott, Towards A Definition of "Absolute Ownership", (1969) 2 JAL 99-102; S. Simpson, Towards A Definition of "Absolute Ownership", (1969) 3 JAL 145-150 and the reply by Allott at pp.148-150 of the same issue.

[3] The Chief of Adaboya, for example, initially stated that the land was for the Tindana but later stated that the land was for the Chief infra Appendix One.

uncertainties inherent in the system.[1] It appears from much of the evidence presented to the author, that the administration and control of land is not solely the job of one clearly identifiable "owner".[2] Instead there are procedures for obtaining a broad consensus among all the interested parties. This makes it foolish to attempt to think in terms of one clearly identifiable, legal, "owner". It should not surprise any student of Ghanaian customary law to read that more often rights are concurrent and overlapping, while decisions are made with the consent of the community and not just the individual.[3]

It is because of these many linguistic and conceptual obstacles that theoretical questions on very specific legal issues have so far as possible been avoided. Instead, an account of the relevant rights and obligations pertinent to an inquiry into environmental and forestry initiatives, has been offered in general terms which are, it is hoped, less likely to distort the substance of the information that was given to the author. Existing materials written in general terms or

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[1] A. Allott, The Changing Law in a Changing Africa, (1961) 11(2) Sociologus 115-131; L. Fortmann, J. Riddell Trees and Tenure: An Annotated Bibliography for Agroforesters and Others 1985, ICRAF/ Land Tenure Center, Nairobi/ Wisconsin, pp.135, p.x.

[2] This would account for the frequent and sometimes conflicting use of the term "the land is for..." in answers to the author's questions infra Appendix One. Without a more detailed knowledge of the language, an accurate legal analysis of this statement seems impossible.

[3] For a general, thematic discussion of African customary land law, see, Bentsi-Enchill, The Traditional Legal Systems of Africa, 6, International Encyclopedia of Comparative Law 68-102.

with respect to neighbouring communities are also extensively referred to. A more specific legal inquiry must await the experienced and lengthy research methodology of a legal anthropologist or, at least, a lawyer conversant in the local language.

Attempts were made to cross check the information provided by the traditional authorities and Government officials in informal discussions with local people who could speak English. All manner of information on legal, environmental, agricultural, political and social issues was acquired in this way. In addition, three more specific methods were employed in an attempt to elicit information from local people.

Detailed interviews were conducted with a series of local families who were chosen for the author as reflecting a variety of social arrangements. As many family members as possible, alone or in groups, whichever the interviewees preferred, were interviewed on aspects of family life, farming, tree planting and conservation practices. The details given on social and farming arrangements in the family proved to be the most useful information. Summaries of this information are provided in Appendix Two and are incorporated into the discussion in chapter nine. The enthusiasm of the interviewees for tree planting and conservation activities cannot be taken as representative, however, because most of the families are known to be keen participants in development

activities of this type.[1] Although the information gained in these interviews cannot in any sense be said to represent any quantitative findings, the amount of interesting facts, opinions and insights which these interviews revealed to the author was highly illuminating.

In order to meet and initiate discussions with a wide range of farmers, the author also drew up a short questionnaire on some farming and conservation issues. Fifty farmers, men and women, answered the questionnaire with a great deal of help from interpreters and one assistant. Although the farmers were chosen at random and no farmer refused to answer questions, there was no special sampling method employed and no particular attempt to verify factual evidence. The information gathered cannot, therefore, be presented in any quantifiable format but there is no doubt that a broader insight into the views of local people was gathered during this research. Some of this information is reflected in, for example, the discussion of environmental problems and priorities in Bongo.

The author was also invited to construct a quiz for use in a number of junior schools in the district. The results of the quiz, conducted in seven schools in the absence of the author, showed that many children were aware, probably through

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[1] Members of Adi'bono's House, Azure's House and Akiriba's house were active participants in Bongo Rural Development Project (BRDP) while Francis Ayalkoom, Ayalkoom's House, is a teacher of agricultural science infra Appendix Two. The author is cognisant of the possiblity that such families may not be wholly representative of family arrangements in less well motivated families and accordingly the information is used to illustrate and illuminate rather than to record quantifiable, representative data.

lessons at school, of some topical environmental problems such as soil erosion. A large number of school children claimed to have planted trees, many as a result of initiatives at school. It was particularly encouraging to find so much evidence of environmental awareness among youths attending school.

The problems, inaccuracies, contradictions and obstacles to the conduct of research by a foreign student in Bongo cannot be over stated. Nevertheless, the co-operation and patience of local people was outstanding. Exhaustive debates, interviews and queries provided valuable insights into local life. English speaking informants of every status were particularly helpful. Many of the ideas, contributions and contradictions emanating from all informants are discussed in chapter nine. They will hopefully serve to illuminate the issues as much for the reader as they did for the author.

PART TWO: SUSTAINABLE DEVELOPMENT IN THE FOREST SECTOR OF GHANA.

CHAPTER THREE: INTRODUCTION.

> "Conservation does not mean not using the forest but managing it to meet varied needs, including the provision of all kinds of forest products now and continuously into the future."[1]

The tropical forest in Ghana now covers approximately 20,700 square kilometres (8,118 square miles), of which approximately 17,00 square kilometres (6,689 square miles) are contained in 252 forest reserves.[2] In 1989, the value of Ghana's timber exports was $80.31 million, representing a volume of 375,769 cubic metres of wood. It is estimated that 70,000 people are engaged in the forest sector.[3] Wood supplies 75% of the country's energy requirements. The tropical forest yields various minor produce, provides homes for rare animals and plants and serves important environmental functions.

Several important programmes are currently affecting the forestry sector. The Economic Recovery Programme(ERP), particularly in its early stages, had a dramatic impact on the well being of the timber industry. The Programme involved capital investment in logging activities which led to a speedy recovery of timber exports but has since been criticised for encouraging uncontrolled over cutting and exports of logs at

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[1] TEDB, Ghana - Forests, Wood and People, 1990, TEDB, Takoradi, Ghana, pp.8, p.6.

[2] ibid p.4.

[3] Staff Appraisal Report, Ghana Forest Resource Management Project, 1988, Confidential Report no. 7295-GH, IBRD, West African Department, pp.119, p.1.

the expense of higher value wood products.[1] The Forest Inventory Project (FIP), started in 1980, has provided a wealth of information about the physical condition of Ghana's forests and its staff are now engaged in preparing new working plans for selected forest reserves. The Forest Resource Management Project (FRMP) is currently addressing a number of issues in the forestry sector with a view to placing forest exploitation on a sustainable basis, reducing waste and improving the performance of management institutions. The Project covers a five year period, 1990-1995. The National Investigations Sub-Committee on Timber (NIC) has made several recommendations as a result of its investigations into malpractice in the timber industry. Lastly, non governmental organisations (NGOs) are now playing an important role in rural forestry programmes of all types.

In Ghana, forestry must compete with a number of alternative land-uses. Particularly threatening is the expansion of commercial agriculture, whether for cash crops or foodstuffs, in addition to the expansion of subsistence agriculture to feed a population which is estimated to be growing at a rate approximating to 3% per anum. In remote forest areas, it is the actions of farmers and traditional authorities which have the greatest impact on the well being of the forest. This has implications for the effectiveness of Government policies and for the Forestry Department's control of timber exploitation. While the timber industry relentlessly pursues the objective of profit maximisation, the Government,

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[1] The Timber Industry Since 1980 infra Chp.8.

in practice, has not always acted so consistently when implementing forest conservation policies.

It is this fascinating complex of competing interests, private and public, long term and short term, which provides the setting for attempts to conserve and sustainably develop forest resources in Ghana. Can conservation and development objectives both be met? Is sustainable development a realistic policy for Ghana's forest sector? To what extent do existing laws and procedures incorporate the elements of a sustainable development policy? The purpose of this part is to examine the feasibility of sustainable development policies in the context of forest conservation in Ghana. Deviations from the types of laws, legal processes and policies favoured by the Brundtland Report will be noted and an attempt will be made to consider whether reforms in the direction of the Brundtland proposals are viable in practice. If the weight of evidence suggests that such reforms are neither likely nor practicable then the doubts raised in chapter one as to the practical feasibility of the Brundtland recommendations will be correspondingly strengthened.

CHAPTER FOUR: FOREST LEGISLATION IN THE COLONIAL ERA.

Forest legislation in Ghana has an exciting history closely associated with the controversial Public Lands Bills of the 1890s. This history has already been recorded in some detail[1] and all that is required here is a brief outline of that history drawing attention to issues which seem particularly pertinent to the sustainable development debate of today. Three findings are of particular significance - (i) forest legislation, despite the views of officialdom, could not easily be separated from controversies relating to land tenure generally, (ii) the laudable goal of forest conservation had to compete with the not necessarily consistent objectives of different interest groups vying for influence in the national arena, and, (iii) the Colonial Government was forced to deal with these matters firstly by allowing major concessions to powerful interest groups in the legislation it enacted and, eventually, by using the threat of coercion to ensure that its targets were met. The unfortunate consequence of the first approach was that colonial forest legislation failed to confront some of the most contentious issues, resulting in only weak measures for controlling the forest sector as a whole. The inevitable consequence of using

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[1] See in particular, D. Kimble, A Political History of Ghana, 1850-1928 1963, Oxford, Clarendon Press, pp.587, Chps.9,10; L.K. Agbosu, Land Administration and Land Titles Registration in Ghana 1980, PhD Thesis, University of London, pp.494, Chps.3-6 and The Origins of Forest Law and Policy in Ghana During the Colonial Period (1983) 27(2) JAL 169-187; R. Howard, Colonialism and Underdevelopment in Ghana 1978, Croom Helm, London, pp.244, pp.37-55.

the threat of coercion was, in addition, the general unpopularity of any forest conservation measures. The tradition of antagonism which this created has persisted into the post colonial era.

The history of forest legislation in Ghana throws light on some of the difficulties which may frustrate the implementation of sustainable development policies in the forest sector today. Evidence of the role played by competing interest groups has particular relevance to the question of 'consensus versus conflict' raised in the first chapter. Land and forest resources are now under great pressure to meet rising agricultural and economic demands. In this situation, the competition between rival interest groups is likely to be even more fierce. At the same time, the pressure from the outside world to be seen to be implementing a sustainable development strategy is growing. Can the administrative and legal framework be adequately strengthened without resort to an unacceptable degree of coercion? Can the objectives of competing interest groups be reconciled within that framework? It is these issues which in practice will determine the efficacy of the sustainable development model propounded by the WCED. They are considered in more detail in subsequent chapters.

(i) The Lands Bills of 1894 and 1897.

The rapid development of the Gold Coast mining and timber industries at the end of the 19th century involved a scramble for economic resources in which both Europeans and local

people were engaged. The emphasis was no longer solely on trade but on the acquisition and development of grants of land. This situation encouraged the Colonial Government to show an interest in native land tenure.

For some colonial officials, the principles of native land tenure were too vague to form the basis for effective and orderly development of the natural resources of the Colony. It was believed that chiefs and elders were foolishly disposing of stool land with no regard for the future agricultural needs of their communities.[1] Worse still, some of the grantees of concessions were taking no practical measures to develop their concessions. The land was being held merely as an item of speculation profiting a few individuals, native and European, to the detriment of the public good. Occasionally, idle land was granted away to more than one concessionaire, an act which increased the likelihood of future disputes. Timber was being cut, with or without licence, and then being left to rot in the forests or in the rivers when transport and export contracts dried up or the timber cutter went bankrupt. In their hunger for firewood, the mines were causing the wholesale destruction of forests. Valuable revenue was being lost to the Government in the waste of precious timber and in the unworked mineral deposits of idle concessions. All in all, members of the Colonial Government felt that, in the public interest, they were duty bound to take a more interventionist

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[1] See, for example, a dispatch from Governor Maxwell to the Marquess of Ripon, 9/5/1895, CO879/46 Encl. no.15.

role in the running of the Gold Coast.[1] The Public Lands Bills of the 1890s were introduced to address these problems.

In 1894, Sir William Brandford-Griffith, Governor of the Gold Coast, introduced a Bill entitled "An Ordinance to Vest Waste Lands, Forest Lands and Minerals in the Queen".[2] According to the terms of the Bill all waste land, all forest land and all minerals would be vested in the Queen for the use of the Government of the Colony.[3] In future, all grants of rights over forest or waste land or grants of rights to minerals would be made by the Governor on whatever terms he saw fit.[4] The Governor's grant would confer an absolute title to the interest granted.[5] Any existing grants of rights to timber or minerals which were not being developed at the time the new law came into force would become void.[6]

The history of the downfall of the 1894 Bill has been recorded by Kimble and Agbosu. The radical proposals for governmental control of land grants were met with overwhelming opposition. Agbosu's analysis suggests that the most powerful opposition group was that comprising the European merchants and their trading associations in Liverpool, Manchester and

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[1] Dispatch from Sir William Brandford-Griffith to the Colonial Office, 8/7/1895, CO879/46 Encl. no.19. See also the Preamble to the 1897 Public Lands Bill, GN 10/3/1897, CO99/10

[2] CO879/46 Encl. no.19.

[3] An Ordinance to Vest Waste Lands ...ibid Cl.3,6.

[4] ibid Cl.12.

[5] ibid Cl.12.

[6] ibid Cl.11.

London.[1] They wanted low taxation, freedom to negotiate for concessions on favourable terms and minimal governmental intervention.[2] Their interests were championed by Sir Frederick Hodgson, the Colonial Secretary. He argued that an act of "confiscation and spoliation" such as this would drive future investment away from the Gold Coast.[3]

Kimble examines the opposition raised by members of the emergent African middle class.[4] Many of them were heavily involved in speculative deals of the type the legislation hoped to stop. While the chiefs profited from the leasing of land to concessionaires, native lawyers were also making handsome profits out of the numerous cases of land litigation arising in customary law. Their opposition focused on the clause vesting waste and forest land in the Queen. This term was interpreted as an attempt to confiscate the lands of the natives. The lawyers argued that all land in the Colony, according to native custom, belonged to someone and unutilized land was held in trust for future generations. In addition, they argued that the sanctity of private property rights had been confirmed by the Public Lands Ordinance of 1876 so the British Government had no legal authority to alter that position now. They stirred up local opposition among the chiefs and in the newspapers where nationalist sentiments were

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[1] L.K. Agbosu, op cit p.120.

[2] ibid p.163.

[3] Dispatch from the Colonial Secretary to the Governor, 8/7/1895 CO879/46 Encl. no. 19(2).

[4] D. Kimble, op cit p.335.

raised in response to the threat of land confiscation and to this challenge to native custom.[1]

The principle of no ownerless lands had been accepted for some time in the courts of the Colony although the accuracy of that proposition with respect to all land in Ghana was not and has still not been proven.[2] Nevertheless, it was in the interests of local speculators, traditional authorities and native lawyers to uphold those tenets of customary law which would maximise their opportunities for profit. This objective was easily reconciled with nationalist sentiments:

> "Simultaneously, Ghanaians were attempting to defend both their right to maintain traditional land tenure relationships and their right to evolve and change. But overall, their objective was to avoid British control."[3]

On the question of the Lands Bill, the interests of European merchants coincided with those of the educated, professional and traditional authorities in Ghana.[4] Together, the magnitude of the opposition was sufficient to persuade the new Governor, Sir William Maxwell, who, having been appointed in succession to Brandford-Griffith, inherited the Bill, to defer its enactment and to consider an alternative draft

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[1] R.Grove, Chiefs, Boundaries and Sacred Woodlands: Early Nationalism and the Defeat of Colonial Conservationism in the Gold Coast and Nigeria, 1870-1916 Paper presented at a Colloquium on Conservation and Indigenous Knowledge, Harare, Zimbabwe, 1-7 December, 1990, pp.21, p.12.

[2] A.P. Kludze, The Ownerless Lands of Ghana, (1974), 11 UGLJ 123-142.

[3] Howard op cit p.41.

[4] Agbosu op cit p.120.

despite his own personal support for the Bill.[1]

In 1897, a new Bill entitled "An Ordinance to Regulate the Administration of Public Land and to Define Certain Interests Therein and to Constitute a Concessions Court",[2] was presented to the Legislative Council. This Bill dropped the clause vesting unoccupied and forest land in the Queen. The relevant provision now provided that all public land in the Colony would be "administered" by the Government.[3] "Public land" was defined as land over which no private or public grants existed.[4] In future, any grant relating to public land made by a local landowner would be invalid without the prior written consent of the Governor.[5] Licences to cut timber or extract minerals would be granted exclusively by the Governor.[6] A Concessions Court would have power to inquire into the terms of existing concessions and to alter inequitable terms.[7] The Governor would be able to reserve any public land for any public purpose, including the growth and preservation of timber.[8]

Agbosu claims that British business interests were once again primarily responsible for the downfall of this Bill as

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[1] CO879/46 op cit Encl. no.15.

[2] GN 10/3/1897, CO99/10

[3] ibid Cl.4.

[4] ibid Cl.2.

[5] ibid Cl.10.

[6] ibid Cl.26.

[7] ibid Cl.37,57.

[8] ibid Cl.5.

with its predecessor.[1] However, the views of British entrepreneurs may not have been so wholly negative as he portrays. The Manchester Chamber of Commerce, for example, saw fit to comment on the Bill in the following terms:

> "The Board has arrived at the conclusion that the Bill appears on the whole to be well calculated to place the administration of public land in the Colony on a satisfactory basis and to secure as far as possible the effective occupation and utilisation of the natural resources of the Colony."[2]

For British merchants, so long as taxes remained low, there could be advantages in government protection of concessions, including greater security of tenure and simpler acquisition procedures.[3] Nevertheless, the Secretary of State for the Colonies, Mr. Joseph Chamberlain, did not, as a general policy, favour governmental intervention in land matters.[4] This policy of non intervention was reflected in his decision not to proceed with the Bill.[5]

Kimble records the opposition activities of the African middle classes to the new Bill. They by-passed the Governor

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[1] Agbosu op cit p.120.

[2] Dispatch from the Manchester Chamber of Commerce to the Colonial Office, 25/10/1897, CO879/49 Encl. no.217.

[3] Agbosu op cit p.159.

[4] Grove op cit p.12; Howard op cit p.42.

[5] Chamberlain was also instrumental in curtailing the powers of the Colonial Government with respect to forests in Lagos Colony and Protectorate at about this time. See, E. Egboh, British Colonial Administration and the Legal Control of the Forests of Lagos Colony and Protectorate, 1897-1902: An Example of Economic Control Under Colonial Regime, (1978) 9(3) Journal of the Historical Society of Nigeria 70-90, p.87.

and sent their petitions directly to the Colonial Office.[1] They claimed that the new Bill carried the same threat of confiscation as the Bill of 1894. Their strategy was further promoted when, in 1898, members of the newly formed Aboriginal Rights Protection Society (ARPS) arrived in London to represent the views of Africans to the Secretary of State in person. The Secretary of State, his own views not being favourable to the Bill, responded by assuring the Society that customary law would prevail in the matter of concessions and that any supervision would be by a judicial and not an administrative body.[2] Meanwhile, after the death of Sir William Maxwell in 1897, Sir Francis Hodgson was appointed Governor. Hodgson had opposed the proposals to convert all land in the Colony into Crown land in 1894. His appointment was the final blow to the Public Lands Bill of 1897.

Kimble and Agbosu have ably demonstrated the importance of the role played by the various opposition groups in defeating the Lands Bills of the 1890s. Although the general desirability of forest conservation was not denied, more immediate economic issues took priority. The anxiety of some of the colonial officers was defeated by the over-riding capitalist concerns of the metropole, on the one hand, and by the speculative, capitalist and nationalist sentiments of the emerging middle classes in Ghana, on the other. The policy of non-intervention advocated by some officials in the Colonial

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[1] Dispatch from Governor Maxwell to Mr. Chamberlain ibid Encl. no.154.

[2] Kimble op cit p.354.

Office further strengthened the opposition case.

The evidence supports the contention made in chapter one that the rational use of natural resources is a policy which may easily fall prey to the competing economic objectives of powerful interest groups engaged in their exploitation for short term gain. The question remains as to how far the achievement of independence has altered the power configuration and the ordering of priorities in this respect.

In 1897, a draft new Bill was introduced which finally abandoned the idea of vesting control or ownership of public or waste lands in the Government and which in no way disturbed the title of the customary landowners. Its modest aim was to ensure that concessionaires purchased a secure title in exchange for a price fair to the landowners. In 1900, this Bill became the Concessions Ordinance.[1]

The Concessions Ordinance was a retreat from the earlier, radical proposals for government intervention. It exemplifies the unwillingness of the Colonial Government in Ghana to operate with a heavy hand and it is the epitome of the type of "facilitative law" described by Seidman.[2] Its restrained tone was a major concession to local and foreign business interests but its provisions excluded any measures for the control of forest exploitation. In 1907, it was reported that only two timber concessions had completed the statutory procedures of

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[1] Ordinance no.14/1900

[2] R. Seidman, Contract Law, The Free Market and State Intervention (1973) 7(4) Journal of Economic Issues reprinted in Y. Ghai, R. Luckham and F. Snyder, The Political Economy of Law: A Third World Reader 1987, Delhi, Oxford University Press, pp.821, pp.438-449.

the Concessions Ordinance despite brisk business in the timber trade.[1]

(ii) The Timber Protection Ordinance, 1907.

In 1899, Sir Frederick Hodgson, aware that forest conservation would not be adequately provided for in the Concessions Ordinance, transmitted a copy of a separate Bill entitled "An Ordinance to Make Provision for the Conservation of Woods and Forests in the Colony and the Protection of the Water Courses Thereof" to the Secretary of State.[2]

Although the main provisions of this Bill required all timber cutters and all brokers in timber to obtain licences from the Governor,[3] it does not seem fair to conclude that the Bill was principally concerned with revenue raising.[4] In addition, for example, the Bill prohibited the cutting of any timber below a girth limit of nine feet measured at ten feet from the ground.[5] It empowered the Governor to declare any tree standing in any forest land to be a reserved tree.[6] He

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[1] L.C. Minutes, 29/4/1907, CO98/15 On the impact of the Concessions Ordinance more generally, see C.U. Illegbune, British Concessions Policy and Legislation in Southern Ghana, 1874-1915 1974, PhD Thesis, University of London, pp.543.

[2] Dispatch from Governor Hodgson to the Secretary of State CO 879/65 Encl. no.157(1).

[3] An Ordinance to Make Provision for the Conservation of Woods ... ibid Cl.6.

[4] This is the view taken by Agbosu in, The Origins of Forest Law and Policy in Ghana ...op cit p.171.

[5] An Ordinance to Make Provision for the Conservation of Woods ... op cit Cl.9.

[6] ibid Cl.10.

would be able to constitute any land into a reserved forest "with the approbation of the head chief of a district".[1] The cutting of any tree in a reserved forest would then be illegal.[2] Regulations under the proposed Ordinance would require every person who cut a tree to plant another tree of a similar kind in a nearby location within seven days.[3] Taken at face value, these clauses indicate a desire on the part of the Government to provide for the conservation of forest resources although, as the Director of Kew Gardens was quick to point out, the provision for re-afforestation was unrealistic.[4]

Nevertheless, whatever the real motives for the Bill, there was insufficient commitment to get the Forest Protection Bill before the Legislative Council for a first reading. Kimble argues that the Bill was dropped for fear of rekindling the sort of opposition raised against the Lands Bills.[5]

The problem of uncontrolled timber felling would not go away. In 1907, the Gold Coast Government commissioned two reports, one by Mr. Nigel Thompson, the Conservator of Forests in Southern Nigeria on the state of the Gold Coast forests[6]

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[1] ibid Cl.11.

[2] ibid Cl.14.

[3] Conservation of Woods and Forests and Watercourses (Protection) Regulations, 1889, CO879/65 Encl. no.157, Cl.5.

[4] Dispatch from Mr. Thistleton-Dyer to the Colonial Office, 23/10/1900, CO879/65 Encl. no.182.

[5] Kimble op cit p.362.

[6] H.N. Thompson, Gold Coast - Report on Forests 1910, Cd.4993, ZHC1/7434.

and one on the conditions prevailing in the timber industry.[1] In the same year, the Timber Protection Ordinance was passed.

This Ordinance provided that no person without the written permission of the District Commissioner should cut or fell certain species of timber trees below specified minimum girths.[2] It empowered the Governor-in-Council to add to or alter the list of species in the schedule and to make rules for the marking of timber trees which may be cut.[3]

The ease with which the Timber Protection Ordinance reached the statute books may be explained partly by the limited nature of the measures involved which in no way touched upon critical issues of land tenure, and partly by the divided and therefore weaker nature of the opposition which met the Bill. Firstly, there was the view of some mining concessionaires that timber cutters should in practice and not just in theory, be subject to the same regulatory measures of the Concessions Ordinance as they were. This was not just a matter of principle but more importantly it was due to the invasion of mining concessionaires' land by timber cutters acting either without authority or under a timber licence granted by chiefs. The timber supplies of the mines were threatened by these activities. The mining concessionaires were concerned that whatever legislation was introduced did

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[1] Report of the Pennington Commission Appointed to Inquire into the Manner in Which the Timber Industry is Conducted in the Colony, the Provisions of the Concessions Ordinance and the Ordinances Amending the Same. 1908, CO879/99 Encl. no.47(2).

[2] Timber Protection Ordinance no.20/1907, s.3.

[3] ibid s.5.

not restrict their right to cut timber for use in the mines but did restrict the activities of trespassers.[1] Secondly, there were the European timber merchants who were not opposed to measures to control timber cutting because they were confident that any such measures would give them the advantage over African cutters, the people responsible for the cutting of immature timber (in their view).[2] On the other hand, Africans were opposed to any interference in their rights to cut timber for domestic purposes and to the imposition of penal provisions for offences under the Act.[3] Thus, there was not the same coalition of interests opposing the Timber Protection Ordinance as there had been the Public Lands Bills of the 1890s.

If the Timber Protection Ordinance was not defeated in the Legislature it was nevertheless undermined by practical problems of administration. There were no forestry officers in the Colony to help enforce its provisions until 1909 but even then the number of prosecutions remained small.[4] It was not until 1921 that regulations under the Ordinance for the marking of timber were made.[5] This was despite the recommendation of the Pennington Commission that a system of

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[1] L.C. Minutes 29/4/1907, CO98/15 Evidence of Mr. Hunt at p.6.

[2] ibid Evidence of Mr. Nicholas at p.34.

[3] ibid Evidence of Mr. Sarbah at p.40.

[4] For example, in 1915, six offences against the Ordinance were prosecuted. Forestry Department, Annual Report 1915, p.5.

[5] Timber Protection Rules no.13/1921.

property marks should be introduced as soon as possible.[1] The Commission had also recommended the compulsory registration of timber cutters, middlemen and exporters but this advice was also ignored, quite possibly due to the same sort of administrative constraints that characterised the implementation of the Timber Protection Ordinance. In failing to provide adequate logistical support for law enforcement, the Government itself undermined the effectiveness of its own conservation policies.

(iii) The Forests Ordinance, 1911.

Instead of enforcing simple measures to control the cutting of timber, the Colonial Government was now showing more interest in the idea of forest reservation as recommended by Thompson.

Thompson's Report on Gold Coast Forests was the first scientific appraisal of the forests of the Colony. In it, he emphasised the role of tropical forests in protecting the soil, water supplies and micro-climate of tropical countries:

> "The preservation of the water supply and the climatic factors of the country must always claim first attention in any rational scheme of forest administration."[2]

The dangers of uncontrolled deforestation had for long been recognised in other parts of the Empire.[3] Thompson

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[1] Pennington Report op cit p.1.

[2] Report on Gold Coast Forests, op cit p.98.

[3] R. Grove, Conservation and Colonialism; the Evolution of Environmental Attitudes and Conservation Policies on St. Helena, Mauritius and in Western India, 1990, Unpublished

collected evidence from Aburi that rainfall there was decreasing at an average of three quarters of an inch per annum.[1] His principal recommendation was that forty per cent of the forest estate should be reserved for special protection:

> "Long experience has shown that in accordance with the local conditions usually existing in the tropics, it is far better to adopt intensive protection in certain selected areas and to introduce only the very lightest restrictions to the bulk of the remaining forests."[2]

Thompson gave detailed proposals for the enactment of a forest law, rules and regulations and the establishment of a Forestry Department.

Following Thompson's advice, a Forests Bill[3] which was almost the exact replica of the old Southern Nigerian Forest Ordinance,[4] was introduced in 1910. Its provisions empowered the Governor to acquire by agreement with the native landowners any forest land for the purpose of constituting it a "native forest reserve".[5]In addition, the Governor could declare any "waste lands" to be a native forest reserve. "Waste lands" were defined as unoccupied and uncultivated

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paper, pp.30.

[1] Report on Gold Coast Forests op cit p.12.

[2] Dispatch from Mr.Thompson to the Governor, 3/4/1908, CO879/99 Encl.no.38

[3] A Bill entitled "An Ordinance to make Provision for the Establishment of Forest Reserves and their Conservation and Management", GN 16/10/1910, CO99/22

[4] Forestry Ordinance no.14/1902, Southern Nigeria.

[5] "An Ordinance to Make Provision for the Establishment of Forest Reserves ..." op cit Cl.4,5.

land. Native forest reserves were to be managed by the Government and the Governor would be able to make any rules for that purpose. Theoretically, the ownership rights of native communities would not be affected by the reservation of the land,[1] but any concessions granted by landowners over reserved land would have to be executed by the Colonial Secretary.[2] Landowners' rights to grant concessions could be abrogated by order of the Governor-in-Council[3] and any admitted rights[4] could be compulsorily acquired under the provisions of the Public Lands Ordinance.[5]

The provisions of this Bill reversed the policy of minimum government intervention in land administration enshrined in the Concessions Ordinance. It was a blue print brought from other colonies without regard to the history of the Gold Coast. The first person to realise the naivety of this action was Sir William Brandford-Griffith (junior), now the Chief Justice. His criticisms caused the Bill to be withdrawn in favour of a more appropriately termed draft. The episode serves to illustrate the rule of the "non-transferability of law" suggested by Seidman.[6]

Unfortunately for the Government, this action was not

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[1] ibid Cl.4.

[2] ibid Cl.17.

[3] ibid Cl.18(3).

[4] The Bill provided for existing customary rights to be recognised as "admitted rights" ibid Cl.10.

[5] ibid Cl.14.

[6] Seidman, The State, Law and Development, op cit p.29.

quick enough to prevent the ARPS getting hold of a copy. The nationalist sentiments of the Society were once again aroused[1] and in September 1911, its views were presented to the Legislative Council.[2] It applied the same arguments against the Forest Bill as it had to the Public Lands Bills without distinguishing forest conservation as a cause in its own right. It took the view that all matters with respect to land administration had been finally settled by the decision of Mr. Chamberlain in 1899.

In the new Forests Bill the explicit reference to the power of compulsory acquisition under the Public Lands Ordinance was dropped.[3] However, the Bill retained a provision empowering the Governor-in-Council to declare any unoccupied land a forest reserve[4] and it left the Governor's consent to concessions in any forest or native forest reserve a necessary requirement for their validity.[5] It clearly stated that the ownership of land in a forest reserve would not be affected by its constitution as a reserve.[6] The landowners would be able

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[1] The views of the ARPS are well represented in a book written by its President, J. Casely-Hayford. See, J. Casely-Hayford The Truth About the West African Lands Question Second Edition, 1971, Frank Cass and Co., London, pp.203, pp.47-50.

[2] L.C. Minutes, 13/9/1911 CO98/19

[3] This did not, of course, mean that the Public Lands Ordinance would not be used for the compulsory acquisition of admitted rights.

[4] A Bill entitled "An Ordinance to Make Provision for the Establishment of Forest Reserves and their Conservation and Management," G.N. 20/5/1911, CO99/23 Cl.4.

[5] ibid Cl.17(1).

[6] ibid Cl.14(3).

to opt whether reserved land should be managed by themselves under the direction of the Forestry Department, by the Government for the benefit of the landowners or by the Government under lease from the landowners, provided that if the landowners did not opt for any method the Government would intervene and make the choice.[1]

In November 1911, the amended version of the Bill was passed by the Legislative Council.[2] At this time, printed copies of the Bill had not yet been made available to the public.[3] Consequently, the ARPS was not able to register a formal protest to its terms. The likely opposition of the Society and other interest groups was not debated.[4]

To be brought into effect, the Ordinance required the approval of the Secretary of State for the Colonies. However, in England, the West African Lands Committee (WALC) had recently begun its deliberations. The Secretary of State decided to await the conclusion of this inquiry before finally approving of the new Forests Ordinance. He therefore wrote advising local officers that the chiefs should simply be told to stop the indiscriminate felling of trees.[5] At about the

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[1] ibid Cl.4.

[2] Forests Ordinance no.15 of 1911.

[3] Kimble op cit p.366.

[4] The Government had an official majority in the Legislative Council at this time so the chances of the ARPS being able to stall the Government once again were anyway now slim.

[5] Dispatch from the Secretary of State to Governor Bryan, 30/11/1912, Kimble, op cit p.370.

same time, he appointed Conway Belfield to make an independent inquiry into legislation governing the alienation of land and forest conservation in the Gold Coast.

Belfield approved generally of the new law but he proposed several amendments including, in a concession to the ARPS, a recommendation that Government should abrogate the power to grant concessions in forest reserves.[1] He took a critical view, however, of the destructive propaganda of the "educated natives" as represented by the ARPS and he found little interest generally in forest conservation among local people.[2]

The WALC eventually made a draft report in 1916. The Report was heavily in favour of governmental regulation of forest exploitation much in the same way as Belfield had been four years earlier.[3] It recommended that the Government should have power to control the exploitation of forests anywhere in the Gold Coast, not just in forest reserves. In addition, concessions should be replaced by a system of short term licences still granted by the native landowners but under the strictest supervision of the Forestry Department.[4]

The general recommendations of the reports by Belfied and the WALC reflect a contemporary concern to protect the

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[1] H.C. Belfield Report on the Legislation Governing the Alienation of Native Lands in the Gold Coast and Ashanti 1912, London, Cd.6278, pp.41, pp.22-27.

[2] ibid p.41.

[3] Draft Report on the Committee on the Tenure of Land in West African Colonies and Protectorates 1916, CO879/117 pp.165, p.94.

[4] ibid pp.94-5.

"natives" from the activities of irresponsible chiefs and the educated elites:

> "Notwithstanding the communal principles on which the native system of land tenure was based ... the result of the administration of the (not yet allocated) land by the chiefs and headmen has been that they have by degrees arrogated to themselves the profits arising from such administration, until at the present time the mass of the people derives from it no advantage other than the privilege of cultivating allotted portions."[1]

The Report of the WALC came too late to save the Forests Ordinance. By 1916, the delays and deliberations had rendered the Forests Ordinance effectively dead. A new Governor, Sir Hugh Clifford, had arrived in the Colony bringing with him a firm commitment to the policy of indirect rule. This policy frowned upon any intervention in the administration of land by the Colonial Government, including rights over forest resources.[2] The laudable goal of forest conservation was forced to give way to changing political dogma. The views of the technical experts went unheard and right from the start, the 1911 Forests Ordinance was a dead letter.

These findings are pertinent to the ongoing debate on forest conservation. The question which they prompt is whether the conservation movement and the scientific lobby are any less vulnerable to fluctuating political support in the modern world.

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[1] Belfield op cit p.7.

[2] Dispatch from Governor Clifford to the Colonial Office, 1916 CO96/583 pp.36-37.

(iv) The Forests Ordinance, 1927.

If forest conservation was to progress, then a policy appropriate to the dictates of indirect rule was now required. The thrust of this policy was that forest officers should act as advisors to the chiefs who would be encouraged to pass bye-laws for the protection of the forests within their respective jurisdictions under the provisions of the Native Jurisdiction Ordinance of 1883.[1]

In 1920, a special forestry conference was convened for the chiefs. At the conference the Conservator of Forests stressed that, in view of the rapid expansion of cocoa cultivation and the vital importance of cocoa revenue in the economy, there was an urgent need to reserve areas of forest land to shelter and protect cocoa and to ensure the continuation of the humid climatic conditions essential to the growth of the crop.[2] For the first time, this made the old fear of denudation seem particularly relevant to the circumstances of the Gold Coast. At the forestry conference the Conservator of Forests introduced a set of standard bye-laws which, after some modifications, met with the apparent approval of the chiefs. These prohibited the future extension of shifting cultivation and cocoa plantations inside forest reserves. Despite the chiefs' apparent enthusiasm, it was not until 1924, after further amendments, that the first

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[1] Native Jurisdiction Ordinance no.5/1883, s.5.

[2] Address on Forestry in Connection with the Cocoa Industry of the Gold Coast, M.C. Mcleod, Accra, 1920, reported in Forestry Department Annual Report 1920, p.6.

standardised bye-laws were issued by a chief.[1] Where older bye-laws had been issued in Ashanti no action had been taken to implement the law.[2] In the Central Province, where the risk to the production of cocoa from deforestation was greatest, the chiefs remained as recalcitrant as ever.[3]

The chiefs' ambivalence to forest conservation revolved around two opposing objectives. On the one hand, they needed to co-operate with the Colonial Government because the latter was willing to protect and enhance their political authority in accordance with the policy of indirect rule. On the other hand, many chiefs were reluctant to lose opportunities to profit from the grant of concessions and the sale of land to cocoa farmers.[4] Consequently, while they agreed in principle to forest conservation measures, the implementation of such measures was easily defeated by their actual neglect. The Forestry Department did not have enough staff present in the districts to keep the issue alive.[5]

In 1919, a new Governor arrived on the scene. Sir Gordon Guggisberg took active measures to promote the development of

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[1] Forestry Department Annual Report, 1924-5, p.3.

[2] Forestry Department Annual Report, 1923-4, p.6.

[3] Governor's Annual Address to the Legislative Council, 3/2/1925, Guggisberg, The Gold Coast 1924-6 1926, Government Printer, Accra.

[4] On the dilemmas of chiefs under colonial rule, see, K.A. Busia, The Position of the Chief in the Modern Political System of Ashanti 1951, Oxford University Press, London, pp.229.

[5] In 1920, there were only four European staff in the Department. Forestry Department, Annual Report 1920, p.3.

the Colony.[1] The Governor had served in the Gold Coast as a surveyor ten years earlier and he was shocked by the scale of deforestation which had occurred since then.[2] Although at first he fully endorsed the policy of persuading the chiefs to pass bye-laws to deal with this problem, by 1924 he was deeply concerned at the lack of positive results.[3] By 1926, only 307 square miles of forest reserves, out of an estimated need for 6,000 square miles, had been created.[4] To put an end to this deadlock, the Governor authorised the presentation of a draft new Forests Ordinance to the Legislative Council in August 1926. At its first reading, the draft was withdrawn to allow time for a further consideration of its terms.[5]

In December 1926, a forestry conference was called to give chiefs and "educated Africans" the opportunity of criticising the first draft of the Forests Ordinance. Some amendments were made to satisfy those chiefs who were interested in co-operation. Only the Central Province Council objected altogether to the Bill on account of its resemblance

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[1] Guggisberg was the first Governor to make and implement an ambitious ten year plan which included, among other things, the building of Takoradi Harbour, 233 miles of new railway and 3,388 miles of new roads. F.M. Bourret, Ghana-The Road to Independence 1919-1957, 1960, Oxford University Press, London, pp.246, p.30.

[2] Opening Address by the Governor to the Legislative Council, L.C. Minutes, 22/2/1926, CO98/47

[3] Gold Coast Legislative Council Debates, 1924-5 Government Printer, Accra, p.56.

[4] G. Guggisberg, The Gold Coast: A Review of the Events of 1920-1926 and the Prospects of 1927-1928, 1927, Government Publisher, Accra, pp.347, p.61.

[5] Minutes of the Legislative Council, 1926-1927, 30/8/1926, CO98/47 p.28.

to the Public Lands Bills of the 1890s. Having thus obtained the submission of a majority of chiefs, the Legislative Council speedily enacted an appropriately revised version of the Bill in March 1927.[1]

The new Forests Ordinance empowered the Governor to constitute any private or stool land a forest reserve at the request of the landowner, but, so that the Government would ultimately have its way, the Ordinance also enabled the Governor to declare any land a forest reserve if the Governor-in-Council on the advice of the Chief Conservator was satisfied that it was essential to protect that land in order to safeguard water supplies or the well-being of agricultural crops or supplies of forest produce in the vicinity of the reserve.[2] The Ordinance clearly stated that the ownership of land within a forest reserve would not be altered by reservation[3] but rights in a forest reserve were not to be alienated unless and until written notification had been given to the Conservator of Forests.[4] Reserves could be managed by the landowners under the direction of the Forestry Department or by the Government for the benefit of the landowners.[5] The Ordinance provided that before any proceedings to constitute

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[1] Forests Ordinance no.13/1927. See also, Minutes of the Legislative Council, 1927-1928, 3/3/1927 CO98/49 p.5.

[2] Ordinance no.13/1927 s.4.

[3] ibid s.16(1).

[4] ibid s.17.

[5] ibid s.16(2).

a forest reserve under the Ordinance could be initiated, six months notice would be given to the affected landowners. If the landowners acted within the next six months to create a forest reserve over the land by passing bye-laws under the Native Jurisdiction Ordinance, no further action would be taken by the Government unless and until the administration of the reserve was seen to be ineffective.[1] The provisions of the Ordinance were not to be applied in any reserve constituted under bye-laws.[2]

Although the Ordinance included measures to tackle two of the most contentious issues - the reservation of forest land and the administrative supervision of concessions therein - the provision allowing chiefs to create reserves under local bye-laws was a major loophole in the law because these reserves were wholly exempt from the regulatory stipulations of the statute. Thus, the efficacy of the statute in providing a comprehensive regime for the protection of the forest estate was somewhat illusory.

The enactment of the 1927 Ordinance partly reflects a diminished level of effective political opposition towards the Colonial Government. Kimble has ably traced the decline of the ARPS in the years after 1911.[3] By 1927, its influence was only felt in the disregarded contentions of the Central Provincial Council. By the 1920s, due to the anomalies of indirect rule, the chiefs were more or less dependent on the constitutional

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[1] ibid s.32(1).

[2] ibid s.32(3).

[3] A Political History of Ghana ... op cit pp.371-374.

support of the Colonial Government, a support which they could not afford to jeopardise. To some extent, their interests were safeguarded in the option to make bye-law reserves,[1] an option which gave chiefs a continuing say in the administration of forest land. This was consistent with the general policy of indirect rule. At the same time, European concessionaires were not so agitated because, with the exception of the provision requiring notification of any grants to be made to the Conservator,[2] their rights would be largely unaffected by the new law. The provisions of the Concessions Ordinance were more pertinent to their activities. With the decline of opposition forces, the Government was in a correspondingly stronger position to impose its own legislative programme. Despite its interventionist appearance, the Ordinance, by virtue of section 32, was carefully framed so as to be consistent with the dominant political philosophy of indirect rule. The enthusiasm of the Governor further ensured the successful enactment of the law.

The provisions of section 32 were the keystone of future policy in the Gold Coast. Chiefs were still going to be encouraged to create reserves under bye-laws but if they failed to do so then Government would act. In the years to come, by far the greatest number of forest reserves were constituted under bye-laws. At the end of the day, the threat of a statutory constitution was used to secure native forest reserves. Chiefs could not effectively oppose the threat

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[1] Ordinance no.13/1927 s.32(1).

[2] ibid s.17.

because, under the policy of indirect rule, their own interests were increasingly intertwined with the Government's. It was this threat of coercion, coupled with the weakness of the opposition, that finally gave effect to a policy of forest conservation. By the start of the Second World War the reservation programme of the Forestry Department in the High Forest Zone was practically complete.

(v) Conclusion.

> "Fortunately, the dedication of our predecessors throughout the 1920s and 1930s to the slow and patient process of negotiations with local chiefs and communities and in accordance with customary law and protection of community rights, led to the setting up of forest reserves."[1]

The reservation of over 11,000 square miles of forest reserves by 1940 is evidence of a belated but considerable effort to conserve the forests of the Gold Coast for the benefit of posterity. Reservation by itself, however, is not adequate proof of the success of the colonial programme. The problem of protection was inadequately dealt with by the bye-law system under which the vast majority of reserves were constituted so the existence of demarcated forest reserves in no way meant that a comprehensive policy of forest conservation was in force. Fortunately for the Colonial Government, some remote areas of dense tropical forest were still available for reservation. For the time being, the remoteness of these reserves was their best guarantee of protection from farmers. The advance of cocoa farming would

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[1] TEDB, Ghana - Forests, Wood and People, op cit p.4.

eventually disturb this status quo.[1]

Meanwhile, the price of meeting official targets was the use of coercive threats to secure the reservation of land. Although the chiefs' appeared to be acting voluntarily to declare forest reserves under local bye-laws, they did so in the knowledge that, should they refuse to act, the Government could opt for a statutory reservation of their forests. This policy of subtle coercion, a policy in line with the dictates of indirect rule, did little to popularise forest conservation in Ghana. In this respect, the colonial era left an unfortunate legacy for modern governments. The Colonial Government did not, however, survive to deal with the impact of its policy in the long term. Instead, it departed leaving a mixed record of achievements in the matter of forest conservation.

The historical record provides a precautionary warning about problems which may confront conservation and sustainable development policies today. The Public Lands Bills of the 1890s, for example, demonstrate the role which opposition groups representing specific economic interests may play in defeating conservation objectives. The Timber Protection Ordinance and the Forests Ordinance of 1911 illustrate some of the ways in which administrative under funding and fluctuating political support may undermine the implementation of forest legislation. The Forests Ordinance of 1927 provides one example of how the Colonial Government resorted to the use of

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[1] See the discussion of Forest Protection in the Western Region, infra Chp.7.

coercive techniques in order to implement a forest policy. Nevertheless, the threat of local opposition, the dominant political ideology of indirect rule and the perennial constraints of administrative under funding forced the Government to adopt compromise measures which fundamentally weakened the efficacy of the law.

These findings raise questions which are pertinent to the sustainable development debate of today. To what extent, for example, do the activities of interest groups with economic motives which conflict with the demands of sustainable development thwart the efforts of policy and law makers today? Is the Government willing to put up the money necessary to implement a sustainable development strategy in the forest sector? Is there any evidence of a long term, consistent, political commitment to forest conservation? Are coercive techniques still being resorted to? Is it ever justifiable that they should be? Will the adoption of compromises fundamentally weaken the efficacy of the law? It is to these and to other questions concerning the feasibility of sustainable development in the modern forest sector that the discussion in the remainder of this thesis is directed.

CHAPTER FIVE: THE 1962 LEGISLATIVE REFORMS.

In the previous chapter, the political obstacles to forest legislation in the colonial era and some of the limitations in the programme adopted by the Colonial Government were reviewed. The remainder of this study is concerned with modern developments in the forest sector. These begin with the 1962 legislative reforms which are briefly described in this chapter. In this introductory account, some minor points of academic interest are raised and the fundamental question of ownership is explored. The latter is a particularly significant question in view of the problems evident in the Western Region.[1] The extent to which the laws and institutions set up in 1962 embody the recommendations on environmental legislation made in the more recent Brundtland Report is also briefly considered. This institutional critique is developed in chapter six.

The 1962 reforms were primarily concerned to define the role of the national government in the ownership and control of forest resources but they also laid the foundation for a comprehensive framework for the exploitation of forest resources. In chapter eight, the efficacy of this legal and administrative framework set up to control the exploitation of timber resources will be assessed in greater detail.

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[1] Infra Chp.7.

(i) Rights to Land, Trees and Timber in Customary Law.

Before passing to a discussion of the 1962 legislation, it may be useful to summarise aspects of customary land law in Ghana generally and the customary law relating to trees and timber in force prior to 1962, in particular.

(a) Customary Land Law: Although there are differences of detail between the various communities, it is possible to briefly describe the principal interests in land which are found throughout Ghana.[1] These are the allodial interest (or paramount interest) of a stool or skin or family; the customary freehold interest (or usufruct or determinable interest) and a variety of tenancies of both long and short duration.

In Ghana, the allodial title is invariably vested in a

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[1] Land law in Ghana is governed principally by customary law. A distinction can be drawn however, between the "law in the books" and the law as daily practised in various communities. For detailed accounts of the general scheme of customary land tenure in Ghana, including thorough analyses of the relevant case law, the reader is referred to N.Ollennu, G. Woodman, Ollennu's Principles of Customary Land Law in Ghana Second Edition, 1985, CAL Press, Birmingham, pp.184; K. Bentsi-Enchill, Ghana Land Law 1964, Sweet and Maxwell, London, pp.399; S. Asante Property Law and Social Goals in Ghana, 1844-1966 1975, Ghana Universities Press, Accra, pp.303; R. Pogucki, A Survey of Land Tenure in the Customary Law of the Protectorate of the Northern Territories 1955, Lands Department, Accra, pp.60; G. Woodman, The Allodial Title to Land, (1968) 5 UGLJ 79-114, G. Woodman, The Scheme of Subordinate Tenures of Land in Ghana, (1967) 15 American Journal of Comparative Law 457-477. For examples of more descriptive, anthropological studies of customary law in particular communities, the reader is referred to studies of communities in northern Ghana cited in chapter 10 infra

community[1] which may be represented by a stool,[2] skin,[3] tindana[4] or family head. Whatever his title, the representative is a customary law trustee, holding the land for and on behalf of the community.[5] Essentially, therefore, the allodial interest is the indivisible interest of each community in all the land which its members occupy or which is held in trust for their future needs. Land which has not been allocated for farming is administered directly by the stool representative who is sometimes misleadingly called the "landowner". Ollennu states that all land in Ghana is held subject to the allodial interest of a community[6] but Woodman has recently suggested that where land is held subject to a customary freehold interest the latter interest effectively supersedes the allodial interest in that land.[7] Woodman's suggestion is more consistent with the description of the allodial interest given in the Land Title Registration Law, as a right of user subject to no restrictions or obligations

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[1] Ollennu op cit p.8.

[2] The term "stool" is used variously in southern Ghana to describe the community, the office of chieftaincy or the official seat of the chief.

[3] This term describes the stool equivalent in parts of northern Ghana.

[4] This term refers to the Earth Priest who is sometimes regarded as the "landowner" in northern Ghana. See infra p.365.

[5] Ollennu op cit p.8.

[6] ibid p.11.

[7] G. Woodman Other Interests in Land 1991, Unpublished Paper, pp.63-98, p.63.

other than those imposed by the law of Ghana generally.[1] Whether or not the allodial interest may be co-existent with a customary freehold interest in the same land, it is clear that, where the latter type of interest is in existence, the rights of the allodial community are very few indeed. In practical terms, the allodial interest is of importance mainly with respect to unoccupied land[2] and land held by tenants who may be required to pay a customary fee to the stool for the privilege of farming the land.[3] Communal rights to exploit the natural products of the land have been cited as another incident of the allodial interest.[4]

The customary freehold interest is a potentially perpetual right of user which may vest in an individual or, more commonly, a family.[5] Its origins lie in the right of each community member to bring into cultivation unoccupied land.[6] Once cultivated, the interest of the person(s) holding the rights of the customary freehold to that land only determine upon a clear abandonment of the land.[7] The interest is

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[1] PNDCL 152/1986 s.19(1)(a).

[2] The stool representative may make allocations of this land.

[3] Ollennu op cit p.54.

[4] ibid p.50; Woodman, the Allodial Title to Land ... op cit p.98.

[5] Ollennu op cit p.64.

[6] Woodman op cit p.65.

[7] ibid p.91. What exactly constitutes a clear abandonment has been a contentious issue, however, and may vary from case to case. Contrast, Konkomlemle Consolidated Cases (1951) DC (Land) ('48-'51) 312 at p.353 and Asem v Bosuo (1951) DC (Land) ('48-'51) 311.

inheritable and in many communities it is also alienable.[1]

A tenancy is the right which a stranger to the community is usually granted either by the representative of the stool over land not already allocated or by the family head or individual in possession of land subject to a customary freehold.[2] In the case of long term tenancies, the interest is inheritable but not alienable.[3] Short term tenancies, such as the annual tenancy described by Sarbah, run from year to year.[4] They are exclusive to the individual tenant and are a particularly convenient arrangement for the cultivation of annual crops.[5]

Various types of licence[6] and pledges[7] are among the other types of legal interest known to customary law.

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[1] Woodman op cit p.81; Ollennu op cit p.62. Bongo appears to offer one example of a community in which the outright alienation of the customary freehold interest is prohibited infra p.370. This is one illustration of the difference between the "law in the books" and the "law in action" supra p.96, Fn.1.

[2] Ollennu op cit pp.87-100; Woodman op cit p.98; Woodman, The Scheme of Subordinate Tenures ... op cit p.461. Alternatively, a stranger may purchase a customary freehold from a member of the community in possession of that interest. In addition, a member of the allodial community may be granted a tenancy over land held subject to a customary freehold interest by other members of the community.

[3] Ollennu op cit p.88.

[4] J.Sarbah, Fanti Customary Laws 1968, Frank Cass and Co., London, pp.317, p.68; Ollennu op cit p.95.

[5] Sarbah op cit p.69.

[6] Woodman, Other Interest in Land op cit p.100.

[7] Ollennu op cit pp.101-115; G. Woodman, Developments in Pledges of Land in Ghanaian Customary Law, (1967) 11(1) JAL 8-26.

(b) Customary Law Relating to Trees and Timber in Force Prior to 1962: The customary law relating to trees and timber in operation prior to 1962 recognised co-existent rights vesting in different persons. In general, members of the landowning community were entitled to collect minor forest produce for personal consumption on any land whether farmed or not. Stool authorities reserved the right to dispose of timber to concessionaires and licensees. Individual members of the community, and strangers when licensed by the stool, could make farms on any unoccupied forest land. The rights of the individual farmer over timber on his farm have been summarised thus:

> "He may fell and burn timber trees standing on the land; but if he wishes to utilise timber after conversion in a saw pit, he is traditionally required to surrender to the stool one third of the boards produced. Meanwhile, the sale of a tree from the farm to a merchant is usually the prerogative of the stool, though the merchant may find that first he must purchase the right to the tree from the chief and then pay the farmer for permission to exercise the right."[1]

The right of a landowner to a one third share of natural produce accruing from farm land is confirmed by Sarbah[2] and the right of the stool to dispose of timber on farm land is confirmed by Danquah[3] and the decision in Fynn v Lartey.[4]

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[1] H.A. Douglas, Gold Coast, in Gordon, The Law of Forestry 1955, London, HMSO, pp.574, pp.433-446, p.434.

[2] J.M. Sarbah, Fanti Customary Laws 1968, Third Edition, London, Frank Cass and Co. Ltd., pp.317, p.74.

[3] Danquah, Akan Laws and Customs 1928, London, Routledge, pp.272, p.221.

[4] (1947) DC (Land) ('38-'47) 280.

Allott found that, in practice, farmers could sell individual timber trees on their farms provided one third of the proceeds was paid to the stool.[1] In Kwame v Ghana and Enimil, it was held that even when stool land appears to have been sold outright, a one third share in the profit from a sale of timber was reserved to the vendor stool.[2] In Ghana, the sale of rights to rural land confers either agricultural, timber or mineral rights and the assumption is that a grant for one of these purposes does not pass any rights for the remaining two purposes.[3] Strictly speaking therefore, the vendor stool in Kwame v Ghana and Eminil should have been awarded all the profit accruing from the sale of timber but in this case, Coussey J. employed the custom of allowing a farmer to retain two thirds of the profit from natural produce to award to the grantee of land for agricultural purposes a two thirds share of the profits from a subsequent grant of timber. The reason for the award to the purchaser was to compensate for the damage to his land that would be caused by timber operations.[4] In effect, the award was the equivalent of that sum demanded by farmers for permission to exercise the right to fell timber on their farm land. A contrasting decision is that in Gliksten (West Africa) Ltd. v Appiah, where it was held that general compensation is not awardable if a concessionaire lawfully

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[1] A.N. Allott, The Akan Law of Property 1954, PhD. Thesis, London University, pp.807, p.160.

[2] (1947) DC (Land) ('38-'47) 275.

[3] Danquah, op cit p.222.

[4] Kwame v Ghana and Enimil, op cit at p.278.

enters upon land in the exercise of his right to fell timber.[1] The decision in this case, however, turned on the interpretation of the Concessions Ordinance and not customary law.

In some communities there were specific rules about the sharing between sub-stools and paramount stools of the proceeds accruing to stools from timber grants, usually on a ratio of two to one.[2] The division of proceeds from the exploitation of natural resources is as characteristic of customary law as the co-existence of separate rights in the same land. Both principles maximised the number of beneficiaries to profit from the use of land.

It will be recalled that the Concessions Ordinance reaffirmed the right of traditional landowners to hold and dispose of rights to timber in accordance with customary law.[3] The simple objective of the Concessions Ordinance was to secure for concessionaires a secure title in exchange for a fair reward to the landowners. A judicial inquiry into the terms of every concession was the method for achieving this result.[4] The Court had to ensure that a number of conditions were met before granting a certificate of validity which

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[1] GLR (1967) 447. See also the decision in Sono v Kwadwo (1982-1983) GLRD 103.

[2] P. Hill, The Gold Coast Cocoa Farmer 1956, London, Oxford University Press, pp.139, p.10.

[3] Supra p.74.

[4] Concessions Ordinance Cap 136 (1954 Revised Edition), s.6.

conferred a title good against the whole world.[1] Among the conditions which had to be satisfied, a concessionaire had to show that the proper persons under customary law had made the grant and that customary rights were protected in so far as they were consistent with the concession.[2] The Court was empowered to vary the terms of the concession and to impose equitable conditions.[3] No proceedings to enforce any concession could be taken unless that concession had been certified as valid by the Court.[4]

The customary rules governing the ownership and sale of timber rights, as preserved by the Concessions Ordinance, were swept away by the reforms of 1962. Only those rights which are consistent with the powers assumed by Government can still be exercised.[5] The sale of timber rights and distribution of revenue from timber grants are rights now solely the prerogative of Government and the award of compensation, which is the only fee concessionaires are liable to pay to farmers who have their tree crops destroyed as a result of timber operations, is governed solely by the provisions of timber grants.[6] Nevertheless, it is believed that many timber operators still approach either the local chief or a local

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[1] ibid s.32.

[2] ibid s.13.

[3] ibid s.15(1).

[4] ibid s.7.

[5] Hyeaman v Osei (1982-1983) GLRD 127.

[6] Cl.2(h) of the standard timber lease and Cl.2(i) of the standard timber licence.

farmer prior to the start of felling operations.[1]

(ii) The 1962 Legislation.

In 1961, the newly independent Government commissioned an inquiry into the existing system of concessions. The Report of the Commission stated that the Concessions Ordinance had become obsolete.[2] The terms of concession agreements were frequently oppressive to the grantors. There was no rational method employed in determining rents and royalties which frequently failed to reflect true economic values. Delays in the procedure for validating concessions were frequent and yet many concessionaires worked their concessions whether or not they had been validated. In these circumstances, the Ordinance failed to cater for the interests of the grantors and the nation.[3] The Commission recommended the amendment of the Ordinance to enable the review of existing agreements to procure more equitable terms in response to changing economic circumstances. In future, the Government should be responsible for issuing concessions on behalf of the traditional grantors. The most appropriate course of action would be the vesting of all minerals and possibly all timber in the Government.[4]

> "We hold the view that the main reason for public ownership of these rights is that chiefs and

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[1] This view was expressed to the author by several forest officers during interviews. See also, Agbosu, The Origins of Forest Law and Policy in Ghana ... op cit p.187.

[2] Report of the Commission of Inquiry into Concessions, 1961, Government Printer, Accra, pp.87, p.4.

[3] ibid p.5.

[4] ibid p.7.

> landowners out of their ignorance and improvidence have failed to protect themselves and their subjects against entrepreneurs. Government is thus the only authority to afford such protection by vesting in itself all minerals and possibly all timber in the country. We firmly believe that such a course of action would ensure fair agreements and would bring about an equitable distribution of all proceeds accruing from concessions."[1]

The Commission visualised a divorce between rights to trees and rights to the land on which they grow. The possibility of such a distinction was well recognised in customary law.[2] The Commission made other recommendations as to the duration and terms of concessions.

(A) The Concessions Act.

The 1962 Concessions Act was the Government's response to the Report of the Commission. The Act deals, inter alia, with the ownership of forest resources and the grant and review of timber concessions.

(a) Ownership. The Act vests "all rights with respect to timber or trees on any land...in the President in trust for the stools concerned".[3] It vests all land which has been or subsequently becomes constituted as a forest reserve in the President in trust for the stools concerned.[4] This includes land constituted as a forest reserve under any local government bye-laws.[5] The Act preserves all pre-existing

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[1] ibid p.11.

[2] ibid p.8.

[3] Concessions Act no.124/1962, s.16(4).

[4] ibid s.16(1),(2).

[5] ibid s.16(7).

rights in such land in so far as they are consistent with the Act and any other enactments in force.[1]

The Act further provides that all stool land which lies outside forest reserves and which was or is subject to a concession granted before 1962 is also vested in the President in trust for the stools concerned.[2]

(b) The grant of timber concessions. The Act empowered the President to execute any deed or do any act with respect to all land and all rights vested in him as trustee under section 16.[3] Regulations made under the Act specified the procedure to be followed for the issue of leases and licences over trees and timber.[4] The Minister responsible for lands was designated the responsible authority for the issue of leases and licences with respect to timber. Grants were to be made after consultation with a Board established by the Minister.[5]

(c) The review of existing concessions. The Act established an administrative tribunal to inquire into the terms of existing concessions.[6] The Minister was empowered to apply to this tribunal for a modification of boundaries or the determination of any concession valid in 1962 which exceeded the appropriate limitations of area specified in current

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[1] ibid s.16(1).

[2] ibid s.16(3).

[3] ibid s.16(5).

[4] Timber Leases and Licences Regulations LI 229/1962.

[5] ibid Para.3.

[6] Act 124/1962 s.8.

legislation.[1] The Minister was further empowered to apply to the tribunal for the determination of grants which exceeded the limitations of area specified by legislation in force at the time the grant was made; or if any concession holder unreasonably withheld consent to a variation of a term which the Minister considered to have become oppressive because of a change in economic circumstances; or if any concession holder was unable to develop or use the land in the manner intended by the concession.[2]

The tribunal was to submit to the Minister its recommendations concerning the modification or determination of any concession referred to it[3] and those recommendations were forwarded to the President who, by order, could confirm or vary the terms of the recommendation.[4] The President could determine any concession held by a foreign national or company if he considered that the concession was or might prove prejudicial to public safety or interests.[5]

(B) The Administration of Lands Act, State Lands Act and Minerals Act.

Another significant enactment in 1962 was the Administration of Lands Act which aimed to end the mismanagement of stool lands by traditional authorities. It

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[1] ibid ss.3(1),4(1).

[2] ibid s.3.

[3] ibid ss.3(2),4(6).

[4] ibid s.6(1).

[5] ibid s.5(1).

provided for the management of stool lands by the Minister and it empowered the President to settle any disputes concerning stool land.[1] If it appeared to be in the public interest so to do, the President could declare any stool land to be vested in him in trust.[2] Any disposal of land outside the landowning community became subject to the concurrence of the Minister.[3] The President was empowered to authorise the occupation and use of any stool land. The Act limited the grant of any timber rights over stool land to a period not exceeding thirty years and to a size per person not exceeding forty square miles or two hundred and forty square miles in the aggregate.[4] An amendment to the Act empowered the Government to allow these statutory limitations to be exceeded if it appeared to be in the national interest or in the interest of the relevant stool so to do.[5]Revenue from stool lands was to be collected by the Minister for distribution to local and traditional authorities.[6]

In addition to these statutes, the State Lands Act simplified the procedure for the acquisition of land in the national interest[7] and the Minerals Act vested the ownership

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[1] Administration of Stool Lands Act no.123/1964, ss.1,2.

[2] ibid s.7(1).

[3] ibid s.8.

[4] ibid s.12.

[5] Administration of Lands Act (Amendment) Decree NLCD 233/1968.

[6] ibid ss.17-20.

[7] State Lands Act no.125/1962.

and control of minerals in the President in trust for the people of Ghana.[1]

The reforms of 1962 set the scene for the post independence management of timber exploitation. Clearly a more interventionist role was envisaged. The provisions of the Concessions Act which remain operative are those dealing with the power of the Head of State to terminate foreign owned concessions,[2] the legal representation of foreign owned companies,[3] the prohibition on sub-assignments of concessions without the prior written consent of the Minister,[4] the power of the Minister to make appropriate regulations[5] and section 16. Substantial parts of the Administration of Lands Act are no longer in force.[6]

(iii) Comments on the 1962 Legislation.

A few preliminary points concerning the interpretation of the 1962 legislation can be made before turning to the central question of ownership:

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[1] Minerals Act no.126/1962.

[2] Act 124/1962 s.5.

[3] ibid s.9.

[4] ibid s.13.

[5] ibid s.14.

[6] Lands Commission Act 401/1980 s.25, repealed s.1 of this Act and PNDCL 42/1982 s.65, repealed ss.18-25. The latter were replaced with similar provisions, however. See ss.48 of PNDCL 42/1982.

(A) "Trees and Timber."

"Timber" defines primarily felled wood and cut wood.[1] "Tree" has a much wider definition which includes palms, bamboos and canes.[2] The Concessions Act states that all rights to all timber and all trees are vested in the Government but it seems most unlikely that it was the intention of Government to take control of palms, bamboos, brushwood and canes, let alone the vast estates of private cocoa, oil palm and other economic trees. Probably the Government did not even intend to acquire an interest in trees cut for the important firewood and charcoal trade unless those trees happened to fall within a forest reserve. Therefore, a more restricted term could usefully have been employed in section 16 with greater accuracy as to the intention of Government to acquire an interest specifically in timber trees. For example, the provision could have read, "all rights to all timber trees, whether standing, felled or cut...". Care would have to be taken to ensure that all species not at present but which may in future years become commercially valuable, were included in the definition of a timber tree and this could be achieved by providing that all species which grow to a specified girth limit constitute timber trees whether or not individual trees

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[1] Forests Ordinance Cap 157 s.2. Although the definitions given in Cap 157 were not expressly stated to apply to the Concessions Act, the same definitions are employed in later legislation such as the Forest Protection Decree NRCD 243/1974, s.10.

have yet or ever reach that girth limit.[1] On the otherhand, it is possible to argue that the Government deliberately aimed to keep the ambit of the legislation vague so as not to prejudice its options in the future, in which case a more restrictive definition would have been inappropriate.[2]

(B) Customary Rights to Timber or Trees.

The rights of the community to use minor forest produce were not expressly saved in the 1962 legislation except in the case of forest reserves.[3] The law states that the Government acquired "all rights" with respect to timber or trees on any land not within a forest reserve.[4] Does this phrase include customary rights to gather minor forest produce? On a strict interpretation of the law, it would appear that all customary rights to gather minor forest produce outside forest reserves were extinguished in 1962.

The abrogation of customary rights, a step which the Colonial Government always feared to take, appears both unreasonable and unnecessary. One possible explanation for such a sweeping and radical reform lies in the Government's desire to extinguish the customary right of farmers to fell or

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[1] The Forest Inventory Project has recently estimated that approximately 126 tree species have commercial potential but currently only about 40 are regularly exploited for timber. See further, The Timber Resource, infra Chp.8.

[2] The same argument applies with respect to the abrogation of customary rights to timber or trees made in equally sweeping terms as discussed below.

[3] Act 124/1962 s.16(1).

[4] ibid s.16(4).

burn timber trees as part of farming operations, a right which easily leads to the waste of valuable timber. In forest reserves this is generally not a problem because all farming is prohibited except within clearly defined village boundaries.[1] It seems anomalous however, that rights to collect minor forest produce may, with the requisite permission, be exercised inside forest reserves but not, according to a strict interpretation of the law, outside them. Despite the phrasing of the law, there is no indication that rights of community user have in practice been destroyed and it is a matter of concern to officials that the traditional right to burn or fell timber during farming operations is still being exercised.

Alternative policies which address this problem deserve serious consideration. On the one hand, the law could more clearly prohibit this particular activity specifying tough penalties for the illegal felling of timber trees on any land. The problem with this method lies in the difficulty of enforcing the law, particularly outside concession areas. Generous compensation payments to farmers who suffer damages to their crops as a result of timber concessionaires' activities might be a more effective measure to dissuade farmers from needlessly destroying timber trees during farming operations.

An alternative, more radical policy would be to divest the state of its poorly enforced, legal interest in timber trees on farmland. By vesting complete ownership rights in the

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[1] Cap 157 s.11.

farmer on the spot - a departure even from earlier customary law - farmers would gain a valuable interest in preserving, or at least rationally exploiting, valuable timber trees on their land. Research has shown that farmers are not incapable of taking a long term view of how to safeguard such valuable assets.[1] If farmers were entitled to receive a greater share in the profit to be made from felling timber trees it is likely that fewer trees would be needlessly destroyed. Farmers might even take to the much vaunted ideas of agroforestry and begin planting timber trees voluntarily on their land with the technical assistance of forestry officers.

A radical reform of this type would best be implemented over a three year period during which time all timber grants outside forest reserves would have to be phased out. Felling licences could be phased out almost immediately.[2] Timber licences, which are granted for a maximum of three years, could be phased out over a three year period during which time the exploitation of long term leases could be speeded up before their premature termination at the end of that time. The Government would then be free to vest title to timber on all land outside forest reserves in farmers where the land is allocated and in stools where it is not. In future, all operators would have to bargain for the right to fell timber from individual farmers on farmland outside forest reserves.

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[1] R. Chambers, Trees to Meet Contingencies: Savings and Security for the Rural Poor 1987, IDS Discussion Paper no.228, Sussex, pp.22.

[2] For a full explanation of the various types of timber grant, see, The Grant, Review and Determination of Timber Concessions infra Chp.8.

In order for the Government still to earn some revenue, all chain saw operators and loggers would have to be more effectively registered and taxed automatically.

There are several obstacles preventing the uptake of this more radical proposal. It is likely that stools would claim a good proportion of the revenue from the sale of timber by farmers on the basis of their pre-existing rights under customary law.[1] This would nullify the main benefit of the proposal, that is, the creation of a real financial incentive for farmers not to destroy timber trees on their farms. This makes the simpler proposal for increasing the compensation paid for damage to agricultural crops look like a more feasible option. In addition, lessees of well stocked, long term leases would probably oppose the premature termination of their grants but, the rate of illegal exploitation is, in many cases, now so rapid that opposition may be less than anticipated.[2] The prospect of the Government losing large amounts of revenue is also tenuous for the same reason. The more effective registration and automatic taxation of chain saw operators is a proposal which counteracts this argument.

An alternative proposal, and one more likely to find official favour, is for the management of all timber resources

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[1] Supra p.102. Other complications may arise in determining what proportion of revenue should be awarded to tenants in occupation of the land or to the nuclear as opposed to the extended family where the land is held subject to a customary freehold interest.

[2] The Forestry Commission has estimated that deforestation outside forest reserves may account for up to 30% of timber industry production, W. Keeling, Forests Pay as Ghana Loses Out Financial Times 8/2/1989.

outside forest reserves to be handed over to the relevant district assemblies. This proposal is consistent with a recommendation in the Draft Forest Policy favouring the participation of local government in concession procedures.[1] It is doubtful, however, whether district assemblies have the resources to manage the problem of illegal timber felling any more effectively than central government. It is argued elsewhere in this thesis that decentralising resources to local government bodies is a move which does not necessarily lead to a more participatory and democratic involvement of local people in their own affairs.[2]

At a very minimum, the problem of illegal and wasteful destruction of timber on farmland suggests that a review of the amount of compensation paid to farmers who suffer damage to their crops as a result of timber activities should be considered. Governments and conservationists cannot have their cake and eat it. If they want to encourage forest conservation and the rational exploitation of timber on agricultural land, they must be prepared to pay for the incentives which can facilitate it. Conservation, like everything else, has a price, but who is willing to pay it?

(C) "Stool Land".

The general scheme of interests in land in Ghana has been

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[1] Forestry Commission Proposals for the Revision of the National Forest Policy of Ghana 1989, Forestry Commission, Accra, pp.17, p.12. See also infra chapter ten.

[2] See the evidence from the Western Region infra Chp.7 and Bongo infra Chp.9.

widely discussed elsewhere and only one point of interest will be discussed here.[1] Some legal authorities have suggested that all land in Ghana is stool land.[2] This is possible because the allodial interest, the name most frequently given to the interest of the stool in stool land, is capable of co-existing with other interests in land.[3] In this scheme it is important to distinguish the different nature of the rights exercised by a stool over unoccupied stool land and occupied stool land. In the latter, the rights of the stool are practically nominal, especially if the land is subject to a customary freehold interest.[4]

The Administration of Lands Act provided a statutory definition of stool land which included:

> "Land controlled by any person for the benefit of the subjects or members of a stool, clan, company or community..."[5]

In 1982, PNDCL 42 included a reference to "a family as known to customary law" within the definition of stool land.[6] This brought unoccupied land in communities where the stool is not a landowning entity clearly within the ambit of the law

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[1] See references at supra p.96, Fn.1.

[2] Ollennu op cit p.11; Bentsi-Enchill, The Traditional Legal Systems of Africa op cit p.75.

[3] Ollennu op cit p.11; Bentsi-Enchill op cit p.75.

[4] One interpretation suggests that the incidents of the customary freehold interest are so substantial that they effectively extinguish the allodial interest in that land. Woodman, Other Interests in Land, op cit p.63. Supra p.97.

[5] Act 123/1962 s.31.

[6] PNDCL 42/1982 s.63.

relating to stool land.

Although these statutory definitions of stool land do not expressly confine themselves to the interest of a stool in unoccupied stool land, there are good reasons for thinking that this was the true purport of the 1962 legislation and succeeding legislation. Firstly, the policy behind the 1962 legislation was for the Government to control the activities of irresponsible stool authorities who, for example, appeared willing to alienate unoccupied stool land in total disregard for the agricultural requirements of other members of the stool.[1] It was not the intention of Government to take control of all agricultural land in Ghana, a move which would have led to the virtual eclipse of customary land law and the interests it defines. Secondly, the reference made to "any land" in section 8 of the Act as opposed to the term "stool land" employed throughout the rest of Act 123 indicates that the legislators believed that not all land was stool land. This interpretation is consistent with the phrasing of section 1 of the Concessions Act which provided that the Concessions Ordinance should only cease to apply to stool lands, thereby implying that land which is not stool land exists in Ghana.[2] It further accounts for the enactment in 1962 of two different procedures for the compulsory acquisition of land by the Government, one for stool land[3] and one for other land.[4]

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[1] Evidence of this policy is reflected in the Report of the Commission of Inquiry Into Concessions, op cit p.2.

[2] Act 124/1964 s.1.

[3] Act 123/1962 s.7.

The definitions of stool land in the 1962 Act and the 1982 Law failed to recognise and exclude the possibility that all land in Ghana is stool land. However, the 1986 Land Registration Law provides a new statutory classification of interests in land which greatly helps to clarify the matter. The Law refers to a number of registrable interests, among which is the allodial interest. This is defined as a right of user subject to no restrictions or obligations other than those imposed by the law of Ghana generally.[1] According to this definition, the interest of a stool, community or family in all its unoccupied land is that of an allodial interest but any land which is encumbered by any other type of legal interest cannot fall within the category of the allodial interest. This definition clearly restricts the ambit of the allodial interest to unoccupied land in contrast to the description given by some legal authorities.[2] It is submitted that the term "stool land" in the earlier legislation approximates closely, if not entirely, to the definition of the allodial interest in PNDCL 152 and not to the definition of the allodial interest as one which exists over all land in Ghana. This view is the only one which gives coherence to all the provisions of the 1962 legislation.

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[4] Act 125/1962 s.1.

[1] Land Title Registration Law PNDCL 152/1986, s.19(1)(a). See further, G. Woodman, Land Title Registration Without Prejudice: The Ghana Land Title Registration Law, 1986, (1987) 31 JAL 119-135.

[2] Supra p.116.

(D) The Future Application of the Concessions Ordinance.

At first sight, it appears anomalous that all the provisions of the Concessions Ordinance were continued in force by Act 123 with respect to land held subject to family and individual rights of ownership. However, the overall objective of the 1962 legislation appears to have been that in future all concessions would be dealt with under the Administration of Lands Act whenever stool land was involved, under the provisions of section 16 of the Concessions Act where timber resources outside stool land were concerned or under the Minerals Act whenever minerals were at issue.[1] In the meantime, all grants existing in 1962 would be preserved, modified or determined as the justice of the case demanded under the provisions of the Concessions Act. While the Concessions Ordinance therefore remained theoretically in force over land held by families and individuals, in reality the Ordinance was rendered superfluous by the new legislation.

(E) Stool Lands Subject to a Timber Concession in 1962.

Stool lands subject to timber concessions in 1962 were vested in the President in trust for the stools concerned by the Concessions Act.[2] Stool land made subject to a concession after 1962 does not vest in the Government but there is no apparent reason for distinguishing pre-1962 and post-1962

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[1] Act 123/1962 also required, in s.8, ministerial concurrence to disposals of any land involving the payment of valuable consideration made by a stool or any person in possession of any land acquired without payment of valuable consideration.

[2] Act 124/1962 s.16(3).

concessions in this way.[1] The management of all stool lands was anyway vested in the Government by virtue of the Administration of Lands Act[2] and all trees and timber on any land vest in the public trust by virtue of the Concessions Act.[3]

(F) The Limitations on Size and Duration of Timber Concessions.

The limitations of size and duration stipulated in Act 123 apply to "grants" of mining or timber rights. The use of this term raised speculation as to whether existing concessions were covered as well as future grants. By contrasting the use of the term "grant" with the term "hold" which was used in the equivalent section of the Concessions Ordinance, it was deduced that the limitations were only operative over any new grants made.[4] This restrictive interpretation accords with the overall objective of the Concessions Act which was to continue existing grants on the same terms in so far as they were considered to be fair to all parties. The Minister's power to apply to the tribunal for a

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[1] A uniform status for all stool land subject to concessions after 1962 could be achieved by employing s.7 of Act 123/1962. This enables the President to declare any stool land to be vested in him in trust whenever it appears to be in the public interest so to do.

[2] Act 123/1962 s.1.

[3] Act 124/1962 s.16(4).

[4] Report of the Commission Appointed to Inquire Into the Affairs of the Ghana Timber Marketing Board and the Ghana Timber Cooperative Union 1968, Government Printer, Accra, ADM 5/3/159, pp.150, p.19.

modification or determination of concessions which exceeded in area the current statutory limitations appropriate to that concession[1] further suggests that differential limits might apply to concessions depending, inter alia, on the date they were granted. Alternatively, these concessions were to be dealt with on a case by case basis.

(iv) The Nationalisation of Forest Resources ?

The 1962 legislation created a public trust over all forest resources in Ghana including land inside forest reserves and stool land subject to timber concessions in 1962.[2] Was this the acquisition by Government of national assets or a more limited measure preserving at least some of the legal interests of local communities in their land and forests?

In 1961, the Commission of Inquiry into Concessions recommended that all rights to timber and trees in forest reserves should be vested in the Government but the land itself should remain the property of the traditional landowners.[3] This recommendation was cautiously endorsed by the subsequent Government White Paper[4] but in the final Act the ownership of all natural resources in a forest reserve, as well as the ownership of stool land subject to timber

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[1] Act 124/1962 ss.3(1)(f),4(1).

[2] ibid s.16.

[3] Report of the Commission of Inquiry ... op cit p.12.

[4] White Paper on the Report of the Commission of Inquiry into Concessions no.4/1961 pp.6, p.1.

concessions in 1962, was dealt with by the same legal terminology, that is, the trees, timber and land were all vested in the President in trust for the stools concerned.[1] Thus, in forest reserves and specified stool land, the land and trees are not subject to different legal regimes.

The Forests Ordinance expressly provides that the ownership of land in a forest reserve is not altered by its constitution into a forest reserve.[2] That provision of the Ordinance was not expressly repealed by Act 124 but the Act did stipulate that all rights to land in a forest reserve are preserved only to the extent to which they are consistent with the terms of the Act.[3] The provisions of the Forests Ordinance must therefore be read with extreme caution as there was clearly an intention in Act 124 for the President to acquire some legal interest in specified land.

Little light is thrown on the nature of the public trust created by Act 124 by applying the equitable principles of trust law. Unlike the beneficiaries of a trust recognised in equity, stools do not appear to have any enforceable rights against the Government and they receive only a specified share of the revenue accruing from trust property. It has been held that "trust" is not a legal term of art in public law.[4] The rights of beneficiaries need not be substantial because equitable principles and remedies do not apply. Indeed, the

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[1] Act 124/1962 s.16.

[2] Cap 157 s.18.

[3] Act 124/1962 s.16(1).

[4] Tito v Waddell (no.2)(1977) 3 All ER (ChD) 129.

limitations on the rights of the traditional landowners are now so cumbersome that it could be concluded that the situation is, in a sense, the reverse of the position in equity - the stools are nominal owners only, their right to a share of the revenue being ex gratia the Government.

It is often said that in Ghanaian customary law a stool occupant holds stool land "in trust" for the stool community. The incidents of the customary law trust are different to trusts as known to equity.[1] In customary law, "trust" denotes the corporate, indivisible and perpetual ownership of the community in communal land. The trustee is merely the representative of the landowning community empowered to do various acts on behalf of and in the interests of that community.[2] The trustee cannot be sued by the members of the landowning community in respect of trust property because, in the eyes of the law, the trustee and the community are one.[3] An analogy to the concept of the customary law trust is a romantic one but it is fundamentally flawed because the rights of the Government over timber resources are practically complete and the source of its authority resides in the compulsory acquisition of national assets and not in the voluntary mandate of local communities.

Trusteeship was a dominant theme in the colonial era. In ideological terms, the concept implied that European rulers were responsible for "developing" the African continent on

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[1] Gyamfi v Owusu (1982-3) GLRD 165, at 168.

[2] Bentsi-Enchill, Ghana Land Law, op cit pp.41-44.

[3] ibid

behalf of the "natives".[1] The concept could therefore be used to justify the essentially racist, elitist and authoritarian nature of colonial government.[2] In practical terms, it meant that the role of the Colonial Government was to provide a facilitative legal framework for English entrepreneurs who wished to exploit the natural resources of the Colony.[3] While it is clear that on independence, developing country governments inherited and to some extent perpetuated elitist and authoritarian styles of government in practice,[4] the new governments were generally much more anxious to play a leading role in economic development than their predecessors. Facilitative laws were generally replaced by more ambitious programmatic laws in consonance with this political philosophy.[5] In view of this, it would be a mistake to identify the public trust created in the Concessions Act too closely with the concept of trusteeship inherited from the colonial era.

The decision in Gyamfi v Owusu may throw more light on the real nature of the trust created by Act 124.[6] In this

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[1] S. Merry, Law and Colonialism, (1991) 25(4), Law and Society Review 889-922, p.896.

[2] Seidman, The State, Law and Development, op cit pp.108-111.

[3] ibid p.108.

[4] D. Fashole-Luke, Trends in Development Administration: The Continuing Challenge to the Efficacy of the Post Colonial State in the Third World, (1986) 6(1) Public Administration and Development 73-85, p.75; Seidman op cit p.111.

[5] Allott, The Limits of Law, op cit pp.174-236.

[6] GLRD (1982-3) 165, at p.166.

case, it was stated that whenever the Government acts to vest stool land in the President in trust under section 7 of Act 123, it is in effect compulsorily acquiring land. This statement concerned the vesting of stool land under Act 123 but parallels could be drawn with the provisions of section 16 of Act 124.

Compensation is payable for the compulsory acquisition of land under the State Lands Act.[1] Although compensation has not been made or required for the acquisition of rights by Government in forest resources or stool land, it is arguable that the allocation of a part of the revenue accruing from stool land generally and from forest exploitation in particular, to local stools amounts to the same thing.[2] On the other hand, it could equally well be argued that the provision for ongoing payments in this way, is evidence that stools continue to hold a definite legal interest in stool land and forest resources.

It is noteworthy that section 16 of Act 124 does not appear in the original Concessions Bill. A possible explanation for this is that it was the intention of the Government to deal entirely with forest resources in the provisions of the Administration of Lands Act which vested the management of stool lands in the Minister but made no change in their ownership. The insertion of section 16 suggests that the Government finally opted for a more radical degree of

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[1] Act 125/1962 s.4.

[2] Act 123/1962 ss.17-23, now replaced by PNDCL 42/1982 s.48 and Act 124/1962 s.16(6).

control with respect to forest resources. National ownership of key economic assets was a policy endorsed by the Convention People's Party (CPP).[1]

In view of this general policy, it may seem surprising that the legislation of 1962 dealt with minerals by a different, albeit similar, legal terminology. The Minerals Act declares that, "the entire property in and control of all minerals in Ghana" are vested in the President, "on behalf of the Republic of Ghana in trust for the people of Ghana".[2] Interests in land were not affected by this measure.[3] Although provision is made for the payment of revenue from the exploitation of minerals into the Stool Lands Account for disbursement to traditional landowners, as is the case with timber revenue,[4] the language employed in Act 126, vesting all title to minerals in the President, seems more explicit than the language used in Act 124 with respect to forest reserves. A plausible explanation for this lies in the vulnerability of the newly independent Government to the old controversy concerning forest and land ownership. Although the government was keen to take control of forest resources, a cautious approach was called for in order to avoid antagonising chiefs and local communities. This was achieved by employing more

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[1] T. Killick, Development Economics in Action: A Study of Economic Policies in Ghana 1978, Heinemann, London, pp.392, p.39; K. Osei-Hwedie, Y. Agyeman-Badu, Essays on the Political Economy of Ghana 1987, Brunswick, Lawrenceville, U.S.A., pp.66, p.17.

[2] Act 126/1962 s.1.

[3] ibid s.2.

[4] Act 124/1962 s.16(6). Also, PNDCL 42/1982 s.48.

ambiguous terminology than in the Minerals Act and by including a reference to the interests of local communities in section 16 of Act 124.

Looking at all the evidence, it is not possible to make a decisive interpretation of the nature of the public trust created by Act 124. Clearly the intention of the Government in 1962 was to take control of the management of forest resources for the benefit of the nation, but the terminology employed in section 16 of Act 124 suggests that questions relating to the ownership of forest resources were of some sensitivity. The historical antagonisms surrounding the ownership of forest resources offer the most plausible explanation for this.

In 1982, the PNDC (Establishment) Proclamation (Supplementary and Consequential Provisions) Law, vested all public lands in Ghana in the Council, " on behalf of and in trust for the people of Ghana and their communities".[1] "Public lands" include any land in which the Government participates in its disposition.

Two points arise out of the change of legal terminology employed in PNDCL 42. Firstly, the term "public lands" is misleading. Where trees and timber have been vested in the Government but the land on which they stand has not, the clause at first sight looks inapplicable. However, the Interpretation Act defines land as including any estate, interest or right in, to or over land[2] and this may suffice to bring all trees and timber within the ambit of "public lands"

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[1] PNDC 42/1982 s.45(1).

[2] CA no.6/1962 s.32(1).

despite the well recognised principle of customary law that land and trees may be subject to separate ownership.[1] Nevertheless, would it not have been clearer if the provision in PNDCL 42 had expressly stated that "all public lands and all public natural resources" should vest in the Council in trust?

Secondly, the beneficiaries of the Council's trust appear to constitute a larger group, that is to say, all the people of Ghana and all Ghanaian communities, than the original public trust created for the benefit of the appropriate local stools. This is consistent with the policy of national integration enunciated in section 1(d) of PNDCL 42.

Questions of ownership are not merely academic ones of interest only to lawyers. In chapter seven, the ways in which the ambiguities and traditional antagonisms surrounding issues of ownership contribute to illegal and destructive activities in the Western Region are discussed.[2] In chapter eight, attention is drawn to the role which chiefs have played in speeding up the exploitation of forest resources in order to maximise their own sources of revenue.[3] The evidence presented in those chapters suggests that the time may now be ripe to

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[1] Ollennu op cit p.1. This supposition raises the question whether the land on which those trees stand has become vested in the Government under PNDCL 42/1982, s.45. The position would appear to be that the land itself is not "public land" because the Council does not participate in its disposition. The customary regime of separate ownership for trees and land appears to have been retained in this case.

[2] Infra p.196.

[3] Infra p.301.

specify more precisely the rights and duties of local communities with respect to forest resources.

Local communities should not be wholly excluded from the forest sector but the law should aim to reconcile their needs with the requirements of forest conservation. This implies a need to differentiate between theoretical ownership rights which, it is submitted, are a hangover from colonial days, and the need to integrate the local economy with the forest sector. Only the latter method can ensure that the benefits of rational forest exploitation are widely spread and popularly supported by local people.[1] The distribution of a proportion of forest revenues to local government and traditional authorities does not directly and effectively compensate local farmers for the lost opportunity to expand their farming activities.[2] At the same time, the receipt of a proportion of forest revenues by traditional authorities has not prevented the unscrupulous sale of interests in land by some individuals.[3] Their record does not commend the policy of ambiguity and compromise which appears to underlie the creation of the public trust in the 1962 legislation. A definite and final settlement of the issues might help to show

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[1] C. Du Saussey, The Evolution of Forestry Legislation for the Development of Rural Communities, (1983) 35(142) Unasylva pp.14-23; E. Eckholm, Planting For the Future: Forestry for Human Needs 1979, World Watch Paper no.26, World Watch Institute, Washington, pp.56, p.34.

[2] The same problem is evident in Kenya where the law gives revenue from game reserves to the local county councils. See, P. Omara-Ojungu, Resource Management in Developing Countries 1992, Longman, Harlow, pp.213, p.12.

[3] Forest Protection in the Western Region infra Chp.7.

that the Government is wholly committed to stamping out illegal practices once and for all.

(v) The Issue and Review of Timber Concessions After 1962.

The Concessions Act and the Timber Leases and Licences Regulations stipulated specific administrative procedures for the issue and review of concessions. Between 1962 and 1966 many concessions were recalled and new grants made but, unfortunately, the proper procedures were not adhered to. It appears that the Concessions Tribunal was never formally constituted and, in the absence of other controls, the whole procedure became subject to ministerial abuse. The 1968 Report of the Commission Appointed to Inquire into the Affairs of the Ghana Timber Marketing Board and the Ghana Timber Co-operative Union (Blay Report) revealed the extent of this abuse.[1] Concessions had been recalled for no lawful reason without recourse to any tribunal. They had been re-allocated to political allies without any regard to the ability of those persons to exploit the concessions. Often the new grantees had assigned their rights to legitimate timber operators who were being held to ransom by the increasingly corrupt administration.[2] Foreign owned companies had been the object

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[1] Access no.157/76, 1968, Government Printer, Accra, ADM 5/3/159 pp.150.

[2] For example, as a result of complaints concerning trespassers on one concession held by Gliksten (West Africa) Ltd. three of that company's concessions were recalled and reallocated to nineteen grantees some of whom were in no way related to the timber industry. ibid pp.4-7. On the question of corruption generally during the Nkrumah era, see, M. Owusu, Uses and Abuses of Political Power: A Case Study of Continuity and Change in the Politics of Ghana 1970, Chicago University

of greatest discrimination. The uncertainty in the industry which these arbitrary proceedings caused has been partly blamed for the decline in timber exports after 1960.

It has been argued that decolonization encouraged a decline into a political spoils system in many developing countries because newly emergent political leaders had to reward their political supporters and satisfy the high expectations aroused at independence with whatever means available to them.[2] Evidence presented by Levine shows that there is also force in the argument that underlying kinship and ethnic loyalties were a factor contributing to widespread corruption in Ghana.[3] Whatever the underlying causes, it is clear that the 1962 legislation provided a framework conducive to corruption. The laws hinged on the centralisation of administrative control, giving wide discretionary powers to political ministers. The concession allocation system took what should have been pragmatic, objective decisions away from sectoral institutions which could have been authorised to

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Press, Chicago, pp.364; H. Werlin, The Roots of Corruption - The Ghanaian Inquiry, (1972), 10(2), Journal of Modern African Studies 247-266.

[1] A.C.K. Dua-Anto, Ghana's Timber Trade 1957-1965, 1971, Unpublished MSc Dissertation (Econ), University of Ghana, Legon, pp.70, p.47.

[2] B. Garvey, Patrimonial Economics and Informal Bureaucracies: Public Administration and Social Reality in the Least Developed Countries of the 1990s: A Review Article, (1991) 11 Public Administration and Development 591-600, p.594; Fashole-Luke, op cit p.75.

[3] Levine, Supportive Values of the Culture of Corruption in Ghana, in A. Heidenheimer, M. Johnston, V.Levine,V. (Eds.) Political Corruption: A Handbook 1989, Transaction Publishers, Oxford, pp.1017, at pp.363-373.

allocate concessions according to fixed criteria enforcing strict impartiality. The law failed to provide for administrative accountability, to the judiciary, to independent watchdog institutions, or to the public at large. It allowed decisions on concession allocations to be made in a secretive and arbitrary fashion instead of demanding openess and conformity to criteria fixed in advance. These features of the law encouraged the rapid emergence of a political spoils system.[1]

The Blay Report recommended that the allocation of timber concessions should be returned to a judicial body or else assigned to a special concessions tribunal which would be assisted by independent forestry and industrial experts removed from direct political interference.[2] The solution adopted in the 1969 Constitution was the establishment of the Lands Commission which remains statutorily responsible for timber grants and which is not directly answerable to any Ministry.[3]

The Blay Report demonstrates the need for political and administrative accountability in concession procedures. At a minimum, this requires a clear demarcation of management responsibilities and procedures for the review of

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[1] For a further discussion of types of laws which may encourage corruption, see Seidman, The State, Law and Development, op cit pp.167-188.

[2] Blay Report, op cit p.20.

[3] 1969 Constitution op cit Art.163; PNDCL 42/1982 s.36. See further, The Lands Commission infra Chp.6, and The Grant, Review and Determination of Timber Concessions infra Chp.8.

administrative actions.[1] Clearly articulated goals and fixed criteria for decision-making are also desirable.[2] The retrenchment of state bureaucracies and a greater role for free market forces are among the more radical recommendations which have been put forward to address the problem of corruption in developing countries generally.[3]

(vi) Sustainable Development and the 1962 Legislation.

Little mention has been made in this chapter of the concept of sustainable development. The reason for this lies principally in the failure of the 1962 legislation to address this issue which has only received widespread attention in recent years. In 1962, the priority of the newly independent Government, in keeping with its time, was rapid economic development.[4] The emphasisin the legislation on the ownership and exploitation of forest resources reflects the economic and political priorities of the new Government as well as its comparative disregard for environmental issues. Nevertheless, in providing measures for the control of forest exploitation, the legislation inevitably created institutions and procedures which would determine whether or not forest resources would in future be exploited in a rational and sustainable fashion.

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[1] Werlin op cit p.264.

[2] P. Blunt, Strategies for Enhancing Organizational Effectiveness in the Third World, (1990) 10 Public Administration and Development 299-313.

[3] D. Fashole-Luke op cit p.76; IBRD World Development Report, 1983 1983, Oxford University Press, New York, pp.213, pp.115-124. Note the present reforms considered in Chp.8 infra

[4] T. Killick op cit pp.33-59.

On a general level, the assumption of control by the central government, under the ambiguous concept of trusteeship, provided an opportunity to establish a comprehensive framework for the conservation and exploitation of forest resources in accordance with sustainable development policies. The evidence of the Blay Report, however, shows clearly that, at least in the matter of concession allocations, responsible management decisions designed to promote the most efficient use of forest resources were not made. The evidence of corruption and mismanagement produced in the Blay Report may have been truly shocking in 1966 but twenty-six years later experience invites a more cynical response. The analysis of the "soft state",[1] the evidence of massive corruption and maladministration in developing countries generally[2] and the criticisms of the law and development cynics[3] combine to suggest that the public administration of national assets in developing countries does not necessarily lead to effective and rational policies controlling the exploitation of natural resources. In view of

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[1] Myrdal op cit p.208.

[2] Heidenheimer, Johnston, Levine (Eds.), op cit; D. Gould, J. Amaro-Reyes, The Effect of Corruption on Administrative Performance 1983, World Bank Staff Working Papers no.580, Management and Development Series no.7, IBRD, Washington, pp.41; J. Mooij, Private Pockets and Public Policies, in F. Von Benda-Beckman, M. Van der Velde, Law As A Resource in Agrarian Struggles 1992, Wageningen Agricultural University, Wageningen, The Netherlands, pp.319, pp. 219-239.

[3] Allott, The Limits of Law op cit pp.287-290; Snyder, Law and Development in the Light of Dependency Theory op cit pp.723-804; F. Von Benda-Beckman, Scape-Goat and Magic Charm: Law in Development Theory and Practice, (1989) 28 Journal of Legal Pluralism and Unofficial Law 129-145.

these dilemmas, it has to be asked whether the Brundtland Report was justified in placing so much faith in the willingness of government administrations to implement sustainable development policies.

It is difficult to fault the detailed recommendations on institutional and legal strengthening made in the Brundtland Report on the basis of the evidence presented in this chapter because, in many respects, the 1962 legislation did not and could not be expected to conform to the Brundtland ideals formulated twenty-five years later. Two points can be made, however. The first is a warning on the dangers inherent in high level political involvement in resource management.[1] Far from leading to integrated, cross-sectoral and rational decision-making procedures of the type advocated by the WCED, evidence from the Blay Report suggests that, without proper safeguards against abuse of power, short term, arbitrary decisions may result from the concentration of decision-making power in political institutions at this level. Secondly, the fact that some desirable features of environmental legislation - accountability, public participation, and procedures guaranteeing substantial rights of compensation[2] - were neglected in the 1962 legislation is not, it is submitted, an unfortunate mishap. Rather, it is evidence that the government of the day preferred to adopt a legal regime which maximised the opportunities for centralised, political control of timber

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[1] This recommendation is made in the Brundtland Report op cit p.314.

[2] Recommended in the Brundtland Report ibid p.330.

exploitation. It is possible that the 1962 legislators did not model their laws along more open, participatory lines because provisions of this type could weaken the Government's powers. It is submitted that economic constraints, underlying fears of political disintegration and the professional elitism of administrators are factors which may continue to make centralised governmental control of forest exploitation attractive to the Government today.[1] In these circumstances, despite the rhetoric of the Brundtland Report and the decentralisation ethos of the PNDC[2], the Government is likely to remain reluctant to implement more open and participatory laws for fear that they will constrain government powers over a key economic resource. Although this in no way diminishes the desirability of the Brundtland recommendations on these matters, it does suggest that there are serious obstacles which may preclude the adoption of the reforms recommended in that Report. This confirms the argument put forward in chapter one that the recommendations of the Brundtland Report may not be easily implemented in the political and economic circumstances of today.[3]

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[1] See, for example, the evidence produced in chapter seven to show that Operation Halt has been engineered from the top echelons of Government infra Chp.7.

[2] J. Haynes, The PNDC and Political Decentralisation in Ghana, 1981-1991, (1991) 29(3) Journal of Commonwealth and Comparative Politics 283-307.

[3] Supra p.20.

CHAPTER SIX: MANAGEMENT INSTITUTIONS.

> "Governments' general response to the speed and scale of global changes has been a reluctance to recognize sufficiently the need to change themselves. The challenges are both interdependent and integrated, requiring comprehensive approaches and popular participation. Yet most of the institutions facing those challenges tend to be independent, fragmented, working to relatively narrow mandates with closed decision processes."[1]

The Report of the World Commission on Environment and Development envisaged a central role for national and international management institutions in implementing sustainable development policies.[2] It stressed that the capacities of national resource management agencies must be strengthened if the need for sustainable development was to be met. This was a particularly urgent requirement in developing countries.[3] At the same time, opportunities for integrated, cross-sectoral, environmental decision-making at the highest political levels should be enhanced.[4] The rights of citizens to information and participation in decision-making procedures should not be sacrificed in implementing these reforms. On the contrary, these rights should figure prominently in environmental legislation.[5] Taken together, the recommendations of the WCED Commissioners add up to an

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[1] WCED op cit p.9.

[2] ibid p.46.

[3] ibid p.20.

[4] ibid p.313.

[5] ibid p.330.

ambitious, three pronged programme for institutional reform embodying the basic principles of institutional strengthening, integrated decision-making and participatory procedures which will improve institutional accountability and enhance decision-making generally.

The purpose of this chapter is to assess the institutional framework of forest management in Ghana in the light of the Brundtland recommendations. The analysis is a two way one which discusses, firstly, the extent to which the existing institutional framework is consistent with the Brundtland recommendations for management structures. Particular attention is paid to the adequacy of the legal powers vested in each institution and to the overall co-ordination and integration of statutory decision-making powers. The recommendations of the Forest Resource Management Project (FRMP), which has been concerned to improve the efficiency of sector institutions, are taken into account and considered. Secondly, where the Brundtland principles are not being followed, the analysis attempts to identify some of the underlying reasons which may account for their absence and which may deleteriously affect the chances of Brundtland style reforms being adopted. General comments on the feasibility and desirability of the Brundtland proposals for institutional reform flow from this analysis. Comments on the more fundamental question of whether existing institutions can be relied upon to implement sustainable development policies are reserved for later chapters where the practical achievements of the relevant institutions are discussed in greater detail.

(i) The Forestry Commission.

The Forestry Commission first came into existence in 1980.[1] Initially, the Commission exercised comprehensive powers in the forestry and wildlife sectors.[2] The Forestry Department, the Game and Wildlife Department, the Ghana Timber Marketing Board and the Forest Products Research Institute were all placed under the control and supervision of the Commission.[3]

The original Forestry Commission appeared to satisfy the Brundtland recommendations for institution building in a number of respects. It was given wide powers consonant with the Brundtland Report's plea for strengthened sectoral institutions,[4] and among its functions it was instructed to correlate forestry policy with land-use policy generally.[5] The law did not, however, make any provision for public participation in policy formulation. Administrative accountability of any type did not figure prominently in the law because the fundamental policy underlying the creation of the Commission was a recognition of the need for autonomous institutions which would not be vulnerable to political maladministration of the type evidenced in the Blay Report.[6]

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[1] Ghana Forestry Commission Act no.405 of 1980.

[2] ibid s.7.

[3] ibid s.27(1).

[4] WCED op cit p.20.

[5] Act 405/1980 s.7(f).

[6] The Issue and Review of Timber Concessions After 1962

However, this large measure of autonomy isolated forestry policy from the key political and economic institutions, contrary to the recommendations of the Brundtland Report.

The 1980 Act was repealed in 1982[1] and the Commission now functions according to the provisions of PNDCL 42. That enactment returned the over all control and supervision of the Departments of Forestry and Game and Wildlife to the Ministry of Lands and Natural Resources (MLNR), it reconstituted the Ghana Timber Marketing Board (GTMB) as an independent statutory board and left only the Forest Products Research Institute (FPRI) as a sub-division of the Commission.[2] The GTMB has since been abolished.[3]

The principal role of the Commission now is to formulate policy on all matters relating to forestry, to advise the relevant institutions and to monitor their activities.[4] Other duties of the Commission include - a duty to ensure that needless waste and destruction of forest resources is avoided; the collection of data on forests, forest exploitation and regeneration; liaison with national and international forestry organisations; and advising on game and wildlife resources.[5]

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supra Chp.5.

[1] PNDCL 42/1982 s.65.

[2] ibid s.65(3)-(5).

[3] Timber Export Development Board Law PNDCL 123/1985 s.23. It has been replaced by the Timber Export Development Board (TEDB) and the Forest Products Inspection Bureau infra p.167.

[4] PNDC (Establishment) Proclamation (Supplementary and Consequential Provisions) Law PNDCL 42/1982, s.34(1).

[5] ibid

The Commission is empowered to advise the Lands Commission on grants of public land which affect forest resources.[1] It is responsible for reporting to and advising the Council and the latter may assign other functions to the Commission as appropriate.[2]

The rationale for the fundamental changes made in 1982 appears to lie in the anxiety of the PNDC to exercise greater control over the machinery of government in order to ensure greater accountability in all spheres of government.[3] The powers of the relatively autonomous Commissions provided for in the 1979 Constitution were therefore reduced in favour of concentrating power in the Ministry of Lands and Natural Resources.

In practice, the Forestry Commission can boast only a limited record of achievements. Even after the radical reforms of 1982, there seems to have been a further space of time before the Forestry Commission found a constructive role to play. Today, its functions can be assessed under two heads - (a) policy and advisory functions and (b) monitoring functions. In addition, the problem of duplication merits consideration.

(a) Policy and Advisory Functions: Prior to 1988, the Commission advised the Lands Commission on all applications for timber grants, a useful function in view of the lack of specialized forestry personnel in the Lands Commission.

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[1] ibid s.34(1)(h).

[2] ibid s.34(1)(e,j).

[3] ibid S.1(c).

However, the isolation of the Commission from other sector institutions and its own lack of resources meant that the Commission was not always able to give reliable information particularly about the suitability of concession applicants. Pursuant to the work of the National Investigations Committee (NIC) the power to grant new concessions was suspended in 1989 and the authority to issue temporary permits was vested in the Ministry, which acts independently of the Commission's advice on this matter.[1]

In 1990, the Commission was engaged on the final drafting of the new Forest Policy. The substance of the Policy is discussed in chapter ten. The argument in this chapter is that the formal structure of the Commission makes it poorly equipped for this important task. The recommendations in the Brundtland Report concerning the need for integrated policy-making and participatory procedures constitute the basis for this view. The advice of the Commission is of a distinctly technical type.[2] Contrary to the recommendations of the Brundtland Report, there is no provision for public participation in policy formulation. There is not even much opportunity for involvement by regional and district forestry institutions or commercial timber interests in part because of the very limited presence of the Commission outside Accra.[3]

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[1] See further, The Grant, Review and Determination of Timber Concessions infra Chp.8.

[2] The Commissioners are recruited from among highly trained forestry experts.

[3] In 1990, the Commission was due to establish its first regional office in Kumasi.

The Forestry Commission represents a top-down approach to policy formulation emphasizing the technical and scientific approach to environmental management. The weakness inherent in this approach lies in the cross-sectoral and frequently political character of the environmental challenge:

> "Many LDC governments prefer to regard the environmental issue as a physical one requiring soil conservation, legislation and lots of technical assistance. Frequently the problem is much deeper, and concerns access to resources, the uneven distribution of wealth and power, and hopelessness."[1]

The structure and mandate of the Commission does not, it is submitted, satisfy the Brundtland proposal that ...

> "The ecological dimensions of policy be considered at the same time as the economic, trade, energy, agricultural, industrial and other dimensions - on the same agendas and in the same national and international institutions."[2]

The Commission is one more example of the centralising and elitist tendencies of public administration evident in many developing countries.[3]

(b) Monitoring Functions: The monitoring activities of the Commission have not yet been substantial. In 1990, the principal evidence that its monitoring functions were being implemented at all lay in its regular review of the accounts

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[1] R. Baker, Institutional Innovation, Development and Environmental Management: An 'Administrative Trap' Revisited, (1989) 9 Public Administration and Development 29-47 and 159-167, p.161.

[2] WCED op cit p.313.

[3] J. Wunsch, D. Oluwu, The Failure of the Centralized African State 1990, Westview Press, Boulder, pp.334, pp.18,31; Seidman, The State, Law and Development, op cit p.197.

of the Forestry Department.[1]

The Forestry Commission continues to operate as a relatively independent, technical institution. Complete autonomy is considered essential for the performance of its monitoring functions but the history of the Commission suggests that the corollary of autonomy is isolation from or indifferent reception by older and more powerful, pre-existing institutions. These sort of problems frustrated the work of the executive style Commission first established in 1980. With the removal of executive powers, the Commission must now depend on the voluntary co-operation of the other sector agencies or the influence which it derives from its close association with the Council (PNDC) and, more recently, from the political support of the MLNR.

(c) Duplication of Functions: It seems likely that the functions of the Commission will be substantially reduced once the Forest Resource Management Project (FRMP) comes fully into effect. One of the recommendations of the FRMP is the establishment of a Policy, Planning, Monitoring and Evaluation Unit (PPMEU) within the Ministry which will have overall responsibility for formulating and implementing policy.[2] There is a strong possibility that duplication of functions between the PPMEU and the Commission will occur once the PPMEU is fully in place.

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[1] The author would like to thank Professor Twufour and his colleagues for the provision of information on the work of the Forestry Commission during interviews in August 1990.

[2] IBRD Staff Appraisal Report, Ghana Forest Resource Management Project 1988, Report no.7295-GH, pp.119, p.31.

The Commission holds statutory responsibility for the FPRI[1] which conducts research into forest management, production and utilization but the FRMP Report has now recommended that the FPRI should become a semi-autonomous institution under the auspices of the Council for Scientific and Industrial Research (CSIR).[2] This will further reduce the responsibilities of the Commission. The Report further recommended the strengthening of research and training facilities in the FPRI and IRNR.[3] This may create competition in the area of high level technical advice. In addition, the Forestry Department has its own Planning Branch in Kumasi (now the Working Plans Branch).

If duplication of functions or /and the further marginalisation of the Commission is to be prevented, there remain three possible options for the development of the Commission -

(a) The Commission could be disbanded or assimilated into the PPMEU of the Ministry. Close co-operation between the Commission and the Ministry has characterised recent developments. There is certainly a need for the Ministry to use the expertise of the Commission.

(b) The monitoring function of the Commission could be strengthened with the Commission continuing to report directly to the Council. This would help to encourage accountability throughout the forestry sector. The insufficiency of the

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[1] PNDCL 42/1982 s.34(1)(3).

[2] Staff Appraisal Report, op cit, p.36.

[3] ibid p.35.

resources and powers assigned to monitoring agencies has been identified as an important factor contributing to the poor record of plan implementation in developing countries.[1] In order to strengthen its monitoring functions, the Commission's powers of investigation would therefore have to be enlarged. At the moment, the success of any monitoring activities depends on voluntary co-operation which has not always been forthcoming. In the future, the Commission could operate more on the lines of the NIC Sub-Committee on Timber,[2] but on a permanent basis. However, the view is tenable that part of the success of the NIC relates to the fact that it is not a permanent institution itself subject to corruption or inertia. The need for vigilance may not be best tackled through permanently institutionalising the system of review.

(c) The Commission could be assigned new powers to co-ordinate all other forest sector institutions. Improved co-ordination could increase the opportunities for integrated decision-making as recommended by the WCED Commissioners, if only within the forest sector as a whole. A mechanism for achieving co-ordination could lie in the establishment of a committee or an executive board representing all forestry and timber interests, similar perhaps to the Board of Commissioners established under the 1980 Forestry Commission

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[1] O. Saasa, Public Policy-Making in Developing Countries: The Utility of Contemporary Decision-Making Models, (1985) 5(4) Public Administration and Development 309-321, p.318.

[2] This is a Committee set up under the National Investigations Law, PNDCL 2/1982, to investigate malpractice in the timber industry. See further, The NIC Sub-Committee on Timber infra Chp.8.

Act.[1] To judge that system a failure after only two years was perhaps premature but the lesson which should have been learnt is that the heads of all relevant agencies should have equal status on an executive board for the sector. Perhaps the power to over-ride administrative officers at this level should be reserved for the highest political officers.

The statutory functions and powers of the Commission will need to be reviewed if the Commission is to move effectively in any of these directions. In the absence of reform or assimilation into the Ministry, duplication of functions or marginalisation of the Commission seem to be the most likely consequences of the FRMP reforms. The vision of strengthened institutions and integrated decision-making contained in the Brundtland Report would not be achieved in either case.

(ii) The Ministry of Lands and Natural Resources (MLNR).

The Ministry of Lands and Natural Resources (MLNR) is the executive organ of Government in all matters relating to forestry. It is politically responsible to the Council for the implementation of national forestry policy. It exercises overall political, administrative and financial control and supervision of the Forestry Department and the Game and Wildlife Department.[2] In the exercise of its functions it receives the advice and guidance of the Forestry Commission but it is not obliged to follow that advice.[3]

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[1] Act 405/1980 s.2.

[2] PNDCL 42/1982 s.34(4).

[3] ibid s.34(1)(i).

The Secretary of the MLNR sits on the national Committee of Secretaries which considers all aspects of national policy. He is responsible for the grant, revocation and renewal of petroleum and minerals licences.[1]

The Secretary is vested with a wide range of statutory powers in the forestry sector. He may make any regulations for the full implementation of the provisions and purposes of the Forests Ordinance. He may prescribe fees and fines for any matter covered by the Ordinance and he may define the powers and duties of forest officers. Regulations may also provide for the protection, management and utilisation of forest reserves including the conditions under which admitted rights may be exercised.[2]

The Secretary may terminate any timber concession if the holder of the concession commits an offence against section 30(4) of the Concessions Ordinance.[3] Only the written consent of the Secretary will render valid an assignment, sub-demise, mortgage or surrender of any rights granted by a concession.[4]

The Secretary is responsible for the Forest Improvement Fund into which all revenues from forest reserves are paid. He may make regulations prescribing the manner in which revenue

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[1] ibid s.40.

[2] Forests Ordinance Cap 157 (1954 Revised Edition) s.35(1).

[3] Act 124/1962 s.16(10).

[4] ibid s.13(1).

is collected and distributed from the Fund.[1]

Under the Trees and Timber Decree, the Secretary has power to constitute and abolish Protected Areas,[2] to grant licences for farming and other activities in Protected Areas[3] and to make regulations concerning the duties of and fees to be paid by concession holders, permitting farming and appointing forest guards in Protected Areas.[4]

Upon the application of an aggrieved person, the Secretary has the final power to review a refusal by the Chief Conservator of Forests (CCF) to register a property mark.[5]

The Secretary is empowered to make regulations prescribing and enforcing minimum girth limits; controlling the marking, transport and export of timber; prescribing uniform methods for calculating the volume of any tree or timber; controlling or prohibiting the purchase, sale, export or possession of timber illegally cut, felled or moved, for the imposition of fees and the protection of trees and timber, and generally for better effectuating the provisions and principles of the Trees and Timber Decree.[6]

Under the Forest Protection Decree, the Secretary has the power to dismiss any forest officer if he is satisfied that the officer in any way aided or abetted the commission of a

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[1] Forest Improvement Fund Act, no.12/1960, ss.3(1),10.

[2] NRCD 273/1974 s.12.

[3] ibid ss.13,14.

[4] ibid s.15.

[5] ibid s.5(2).

[6] ibid s.17.

forest offence.[1]

By virtue of PNDCL 42, the Secretary is entitled to receive the recommendations of the Lands Commission on national land-use policy;[2] to be notified of all grants of public land[3] and certain grants of stool land.[4] He determines the distribution of funds from the Stool Lands Account[5] and he makes biannual reports to the Council reporting and advising on grants of public land.[6]

With respect to the Forest Products Inspection Bureau, the Secretary authorises the levy of appropriate charges[7] by the Bureau and he is empowered to make regulations governing the measurement, grading, marking and tagging of forest products.[8]

Similarly, the Secretary may issue bye-laws for giving effect to the provisions of the Timber Export Development Board Law,[9] he may authorise the levy of fees by the TEDB[10] and he may also give general policy directions binding on the

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[1] NRCD 243/1974 s.4(2).

[2] PNDCL 42/1982 s.36(4).

[3] ibid s.36(7).

[4] ibid s.47(1)(2).

[5] ibid s.48(2).

[6] ibid s.36(10).

[7] Forest Products Inspection Bureau Law, PNDCL 117/1985 s.7(1).

[8] ibid s.9.

[9] Timber Export Development Board Law, PNDCL 123/1985 s.22(1).

[10] ibid s.14(1).

Board of Directors.[1] The Secretary may transfer or second to the Bureau or the TEDB such officers as he deems fit.[2]

The Secretary was made responsible for the full implementation of the Government's decision to acquire an equity participation in certain timber firms under the Timber Operations (Government Participation) Decree.[3]

On the face of it, the MLNR appears to be the dominant institution in the forestry sector holding considerable statutory powers. This appears to correspond with the Brundtland model of strong sector institutions capable of co-ordinating and integrating land-use decisions. Because the Secretary participates in the formulation of national economic policy, forestry interests should be represented at the highest political levels as recommended by the Brundtland Report. However, in practice, the exercise of executive functions by the Ministry is constrained by a number of factors -

(a) The tendency of Government to set up autonomous or semi-autonomous institutions to deal with specific aspects of forest sector management. Some of these institutions report directly to the Council and others are only bound to consult the Ministry on specific issues. While the Ministry remains accountable to the Council generally for the well being of the sector, the autonomy of sector institutions undermines its authority in practice and makes the task of co-ordination more

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[1] ibid s.21.

[2] PNDCL 117/1985 s.5(4) and PNDCL 123/1985 s.11(3).

[3] NRCD 139/1972 s.7.

difficult.

The principal reason for the creation of separate institutions has been the desire to combat political corruption.[1] Transferring the power to make timber grants from the Ministry to the Lands Commission is the most obvious example of this.[2] The tendency towards institutional fragmentation was decried in the Brundtland Report[3] but that Report failed to provide alternative policy advice on how to combat corruption, a pervasive and inescapable problem in the bureaucracies of most developing countries.

(b) The inadequate number of forestry personnel in the MLNR. Until recently the Ministry has not had the manpower or the resources to effectively supervise forest sector activities.[4]

The principal measure advocated in the FRMP Report to improve the supervision of forestry affairs by the MLNR was the establishment of the Policy, Planning, Monitoring and Evaluation Unit (PPMEU) within the Ministry.[5] When established, the PPMEU will formulate forest and land-use

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[1] Evidence of political corruption is considered at supra p.130. On alternative recommendations for safeguarding against corruption in concession allocation procedures, see, The Grant, Review and Determination of Timber Concessions infra Chp.8.

[2] Constitution of the Republic of Ghana 1969, Art.163(5).

[3] WCED op cit p.8.

[4] The author would like to thank Dr. Chatchu of the MLNR for the provision of information about the MLNR in interview on 5/10/1990.

[5] In 1990, the establishment of the PPMEU was said to be imminent. Interview with Dr. Chatchu, 5/10/1990, Accra.

policies; it will ensure the implementation of concession allocation procedures; it will keep under regular review the state of the industry and it will co-ordinate research on minor forest produce.[1] The need to clarify the respective roles of the PPMEU and the Forestry Commission has already been commented upon.

(c) The Ministry is too large and too centralized to give adequate attention to the decentralized activities of forest sector institutions. It is based in Accra and has responsibility for minerals and wildlife affairs in addition to forestry affairs. Its duties in respect of the exploitation of minerals seem to overshadow forestry matters.[2] Although the Secretary's leadership provides a link with national economic decision-making, as canvassed in the Brundtland Report, here again, forestry issues may be overshadowed by the economic importance attached to minerals for which the Secretary is also responsible. The neglect of forestry issues leads to irregular review of statutory instruments and protracted delays in their amendment. Fines, fees and technical specifications quickly become outdated in the absence of regular review. This renders the law ineffective. It is also a cause of lost revenue where, for example, royalties and rents can only be updated with the consent of the Secretary acting on the advice of the Council. The FRMP has proposed switching to a simpler procedure for administrative review of

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[1] Staff Appraisal Report, op cit, p.31.

[2] Before the FRMP was initiated there were no staff solely responsible for forestry affairs in the MLNR. Interview with Dr. Chatchu, 5/10/1990, Accra.

royalties and rents allowing them to be regularly revised according to fixed criteria.[1]

(d) In practice it is the Forestry Department which has the greatest impact in the forest sector. Only the Department has regional and district offices throughout the country. Many executive functions and decisions, especially those of a technical nature, are exercised and reviewed by the Forestry Department acting under explicit or implied delegation from the Ministry or according to its own statutory powers. For example, the recent decision to lengthen the felling cycle was made by the Chief Conservator of Forests (CCF) acting after seeking the advice of the Department's Working Plans Branch (formerly the Planning Branch). Changes in the minimum girth requirements were also made by the CCF as an exercise of his power to control exploitation.[2] One anomalous result is that although minimum girth requirements have changed the fine for breaching them remains at the 1958 level.[3]

The Brundtland Report recommended institutional strengthening and integrated decision-making. Attempts to strengthen the Ministry should address not only its staffing and resource problems but also the absence or inadequacy of real executive powers to monitor and co-ordinate all institutions working in the forest sector. In the long term, statutory powers to bring to account forest sector agencies

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[1] See further, Financial Controls, infra Chp.8.

[2] Cap 136 s.30.

[3] The Trees and Timber (Control of Cutting) Regulations LN 368/1958 Para.4.

may be more important than the Secretary's powers to make regulations of a purely technical nature. Responsibility for the latter may be more suitably left with the Department subject only to the need for a regular review of forest fines by the Ministry. When the proposals of the FRMP are fully implemented, the division of powers between the Ministry and the Commission may need to be more clearly spelt out.

(iii) The Forestry Department.

The Forestry Department is charged with the practical management, protection and conservation of forest resources, particularly in forest reserves.[1]

The Chief Conservator of Forests (CCF) advises Government on whether it is necessary to constitute any land a forest reserve.[2] A senior forest officer advises the Reserve Settlement Commissioner (RSC) on the need to reject any rights claimed in a proposed forest reserve.[3]

Timber concessions are held subject to any conditions or restrictions imposed by the CCF, or a competent representative of the CCF, to ensure the requisite protection, conservation and management of the forest resources situated in the concession area.[4] Special permission to fell trees below the minimum girth can only be given by a forest officer of a rank

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[1] Cap 157 s.18.

[2] ibid s.4.

[3] ibid s.11.

[4] Concessions Ordinance Cap 136, s.30 and Order no.55 of 1939.

equivalent to that of an Assistant Conservator.[1]

Under the Forest Improvement Fund Act, the CCF is responsible for the collection of all rents and revenues in respect of forest produce within forest reserves.[2] With the prior approval of the Secretary of the MLNR, the CCF is empowered to withdraw funds from the Forests Improvement Fund in connection with exploitation and silvicultural work.[3]

The CCF is responsible for designating locality marks for the areas of Ghana[4] and for approving and registering property marks for all persons engaged in the timber industry.[5] He has a discretionary power to refuse to register or to cancel property marks.[6] Any forest officer may arrest a person suspected of committing an offence relating to property marks if that person fails to co-operate.[7]

In protected areas[8] the CCF issues licences for farming and appoints forest guards to patrol them.[9] Any forest officer is empowered to arrest a person reasonably suspected of committing a forest offence in a forest reserve or a protected

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[1] LN 368/1958 Para.2.

[2] Forest Improvement Fund Act no.12/1960, s.4.

[3] Forests Improvement Fund (Amendment) Act 144/1962 s.2.

[4] Trees and Timber Decree, NRCD 273/1974 s.1.

[5] ibid s.2.

[6] ibid s.5.

[7] ibid s.16(1).

[8] See further, Protected Areas, infra Chp.7.

[9] The Timber Lands (Protected Areas) Regulations, LN 311/1959, Paras. 4,5,7.

area if that person gives false information or is likely to abscond.[1] District forest officers issue licences for the exercise of rights in forest reserves.[2]

In 1990, under the existing Forest Policy, the aims of the Department included sustained yield management of forest reserves, facilitating the most profitable utilisation of forest resources outside reserves, liaison with organisations interested in conservation, land-use planning and tree planting.[3]

The Forestry Department is essentially a decentralised department with many powers of the CCF being exercised by regional and district forestry officers. Its presence in the districts coupled with the broad powers of the CCF to control exploitation under any concession inside and outside reserves constitute the basis of practical forest management in Ghana. The realisation of the Brundtland Report's recommendations on strengthened sector institutions therefore offers the best opportunity for practical results at the field level if applied to the Department.

However, in recent years the Department has suffered from under staffing and inadequate logistical support. During the economic decline of the 1970s the budget of the Department fell in real terms and many Ghanaian foresters were attracted out of the country. In 1988 the Department had 57 vacancies in

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[1] NRCD 243/1974 s.5(1), NRCD 273/1974 s.16(1).

[2] Forest Protection (Amendment) Law PNDCL 142/1986 s.1.

[3] Forest Policy, 1948, Cl.2,4,5,8. See, Forestry Department Annual Report 1949, Government Printer, Accra, p.1.

the professional grades, 51 in the semi professional grades and 257 in the technical grades.[1] Low salaries and restricted opportunities for training in Ghana have been blamed. It was not until the establishment of the Institute of Renewable Natural Resources (IRNR) in 1982 that regular graduate level forestry training was available in Ghana.

In line with the Brundtland recommendations in favour of institutional strengthening, the FRMP is now improving manpower, training and logistical support for the Department.[2] In addition, the Forest Inventory Project (FIP) is contributing technical assistance to the Department. However, the designs of both these projects seem to imply a concentration of inputs at the regional not district level.[3] The danger is that not enough will be done to seriously address the problems faced by district offices which necessarily are at the forefront of routine management and protection activities. On the contrary, regional strengthening may further undermine district level morale and thus reduce the long term effectiveness of these projects. The need for greater decentralisation in development administration has been widely recognised[4] and has previously been endorsed by

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[1] Staff Appraisal Report, op cit p.98.

[2] ibid p.32.

[3] The FIP has concentrated its resource input at the level of the Working Plans Branch of the Department in Kumasi. The FRMP Report states that institutional strengthening will be directed at the regional level ibid p.27.

[4] D. Conyers, Decentralization: The latest Fashion in Development Administration? (1983) 3 Public Administration and Development 97-109; Wunsch op cit pp.293-313; Fashole-Luke, Trends in Development Administration (1986) 6(1) Public

the World Bank itself.[1]

Institutional strengthening is always dependent on a sound financial basis in the long term. The FRMP envisages a self financing Department on the basis of greater revenue accruing from increased forest fees.[2] The Forest Improvement Fund,[3] into which forest fees accruing from forest reserves are paid, provides an independent income to finance the activities of the Department but the Fund will only be adequate if rents and royalties are regularly updated and efficiently collected.[4] Until 1991, forest fees outside reserves were collected by the Lands Department and paid into the Stool Lands Account[5] but this system caused loss of revenue to the Government because of irregular collections. The Secretary of the MLNR has now directed the Department to collect all royalties due from the exploitation of timber outside reserves.[6] This revenue should also be deposited in the Fund in order to improve the financial status of the Department.[7]

The FRMP Report recommended that a Planning and

Administration and Development 73-85, p.78.

[1] IBRD, World Development Report, 1983, op cit p.120.

[2] Staff Appraisal Report op cit p.69.

[3] Act no.12/1960 s.4.

[4] See further, Financial Controls infra Chp.8.

[5] PNDCL 42/1982 s.48.

[6] Circular from the PNDC Secretary of the MLNR, 4/4/1991, Ref no.LNR.12/4 Departmental Records Juabeso-Bia.

[7] See further, Financial Controls infra Chp.8.

Monitoring Unit (PMU) be established under the CCF[1] and that responsibility for the grant of all timber rights should be transferred to a Concessions Unit to be established within the Department, subject only to the monitoring of the PPMEU of the Ministry.[2] The Department has never had responsibility for the grant of timber rights so this reform implies a need for suitably trained staff. The danger is that staff will be diverted from the ordinary work of the Department thereby intensifying staff shortages.[3]

Administrative malpractice is a risk in any system of concession allocations. In order to minimise the opportunities for malpractice, fixed criteria should be employed, situations calling for discretionary judgements should so far as possible be eliminated and administrative procedures should be formalised and non-secretive.[4] Administrators should be required to give written reasons for their decisions to all applicants. A provision for appeal to the Secretary of the MLNR, or to a court if there is a suspicion of malpractice, should be written into the law so that concession applicants

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[1] Staff Appraisal Report op cit p.32.

[2] ibid p.68.

[3] The poor record of the institutions previously responsible for concession allocations makes the recruitment of these experienced personnel undesirable. On the other hand, the MLNR now has a considerable amount of relevant information gathered by the NIC Sub-Committee on Timber which should be made available to the Concessions Unit of the Department. On concession allocation procedures, see infra p.276. On the work of the NIC Sub-Committee on Timber, see infra p.259.

[4] These recommendations are in line with suggestions made in IBRD ibid p.117; Seidman op cit p.245; Myrdal op cit p.247. See further, The Grant, Review and Determination of Timber Concessions infra Chp.8.

are in a better position to ensure for themselves that fairness and accountability prevail. The Secretary should regularly review the decisions which have been made but he should not be allowed to arbitrarily intervene in concession allocations. Although the opportunity for administrative abuse can never be wholly eliminated, these measures might help to ensure accountability throughout the system both 'upwards' to the highest political bodies and 'downwards' to concession applicants.[1]

Recommendations were made in the FRMP Report for the establishment of a Rural Forestry Division within the Department to co-ordinate rural forestry activities at the national level.[2] Additional training for district forest officers and agricultural extension staff of the Ministry of Agriculture was also envisaged. The objective is to achieve a unified extension service on rural forestry initiatives at the district level.[3]

The FRMP Report suggested that the Department should be represented in an advisory role in other forestry institutions in order to facilitate policy - research - management linkages.[4] This recommendation is commendable in view of the

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[1] This would be in line with the recommendations made by the World Bank on improving the responsiveness of bureaucracy, IBRD op cit p.117.

[2] Staff Appraisal Report op cit p.90.

[3] At the time of research, these proposals were still at a very early stage of development. For a discussion of rural forestry initiatives ongoing in 1990 the reader is referred to chapter nine.

[4] Staff Appraisal Report op cit p.36.

decentralised and practical experience of the Department, provided such measures are not allowed to waste valuable staff time. It is consistent with the recommendations on integrated decision-making made in the Brundtland Report.

(iv) The Lands Commission.

The Lands Commission is responsible for grants of public land made on behalf of the Council, including grants of all leases and licences relating to timber as well as felling licences[1] but not grants of stool land. The Lands Department is the implementing Secretariat for the Lands Commission.[2] The Commission is also responsible for formulating and monitoring national land-use policies.[3]

Grants of stool land to persons not entitled to the free use of that land under customary law are valid in accordance with statute only when the concurrence of the Lands Commission has been given.[4]

The Administrator of Stool Lands is a post within the Lands Commission.[5] He holds statutory responsibility for the collection of all rents, royalties and revenues due in respect of stool land, including all revenues accruing from concessions outside forest reserves. Actual collections are

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[1] PNDCL 42/1982 s.36(3).

[2] ibid s.36(1).

[3] ibid s.36(4)(5).

[4] ibid s.47(1).

[5] ibid s.48(1).

now made by the Department on his behalf.[1] He is also responsible for the management and disbursement of all these funds which must be paid into the Stool Lands Account. He has power to withhold payments due to any stool if he believes that the payments will be "frivolously dissipated".[2]

The involvement of the Lands Commission in timber concessions dates back to the 1969 Constitution. The rationale behind the law is that timber concessions should be free from political interference. However, without proper safeguards of the type outlined above,[3] administrative malpractice is just as likely as the abuse of political office. In practice the result of this institutional division between the management and exploitation of forest resources has been protracted delays in concession procedures because the co-ordination of so many institutions is required. The Lands Commission itself has no forestry experts but is dependent on the advice of the Forestry Commission and the special sub-committee which sits to decide on the most important applications.[4]

The role of the Lands Commission in making grants for the exploitation of timber was suspended in 1989 while the NIC Sub-Committee on Timber continued its investigations. The FRMP Report recommended that its powers should be transferred to

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[1] Circular from the PNDC Secretary of the MLNR, 4/4/1991, Ref no.LNR.12/4 Departmental Records Juabeso-Bia.

[2] ibid s.48(3).

[3] Supra p.160.

[4] The Grant, Review and Determination of Timber Concessions infra Chp.8.

the Forestry Department.[1] If this recommendation is implemented, then the statutory responsibility of the Administrator of Stool Lands for the collection and disbursement of forest revenues[2] should be transferred to the Department as well. Subsequently, all forest fees accruing from land inside and outside forest reserves should be dealt with in the same way, both being paid into the Forest Improvement Fund primarily to meet the expenses of the Department.

Although the Brundtland Report recommended that decisions in natural resource management should not be made in isolation from broader environmental considerations, the Lands Commission, in practice, did little to incorporate land-use policy or industrial and economic policy into concessions policy. In the absence of a national land-use policy and with no experts on the timber industry employed by the Lands Commission, the involvement of the Lands Commission was basically administrative. Obviously, co-ordination with land-use planning is desirable in the case of timber grants outside forest reserves but in the absence of a national land-use policy or plan this has not in practice been achieved.

This evidence suggests that before the recommendations of the Brundtland Report on integrated, system-wide decision-making are adopted wholeheartedly in any particular situation, a careful analysis of the capacities of all the relevant institutions should be made. In many circumstances, the

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[1] Staff Appraisal Report op cit p.68.

[2] PNDCL 42/1982 s.48.

manpower and resources of bureaucracies in developing countries may not be readily able to adapt to the Brundtland recommendations. A more immediate goal may lie in the rationalisation and simplification of administrative procedures so that malpractice, inertia and inefficiency are minimised. In these circumstances, the reform and modernisation of sector institutions should, it is submitted, receive priority. Compartmentalism at this level of resource management is acceptable if efficiency is thereby enhanced.

(v) The District Assemblies.

District Assemblies are the principal political fora in the 110 districts of Ghana, composed of elected and appointed representatives of the people.[1] The Assemblies are charged with development planning, programming and mobilization of the people in their districts.[2] They are responsible for the development, improvement and management of the environment in their districts.[3]

District Assemblies should have a useful role to play at the local level,[4] particularly in promoting rural forestry and re-afforestation. Rehabilitation and management of degraded communal lands is another possible assignment where these lands exist. Given the time constraints of forestry officers

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[1] Local Government Law PNDCL 207/1988.

[2] ibid s.6(3).

[3] ibid s.6(3)(e).

[4] The contribution of District Assemblies to local environmental campaigns is discussed in more depth in chapters seven and nine.

and their professionalism and remoteness from local people, the District Assemblies could take a leading role here, employing the technical and managerial advice of the Forestry Department. The FRMP is attempting to retrain forestry staff for a massive expansion into rural forestry, in liaison with the Ministry of Agriculture (MOA) and NGOs,[1] but the Forestry Department is not yet represented in all 110 political districts and nor is there financial provision in the FRMP for establishing forestry offices in every district although this is a long term national goal.[2]

District Assemblies and revolutionary organs such as the Committees for the Defence of the Revolution (CDRs) have played an important role in the re-afforestation of forest reserves which have been destroyed by illegal farming.[3] District Assemblies may also be instrumental in the settlement of local disputes concerning compensation for damage to crops arising out of timber operations and certainly in bringing to account the local institutions for the speedy discharge of this function.

The District Assemblies seem to offer an ideal opportunity for more public participation in environmental activities in line with the recommendations of the Brundtland Report.[4] However, there is a danger that their role will be

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[1] Staff Appraisal Report, op cit, p.84.

[2] PNDCL 207/1988 First Schedule.

[3] See further, Forest Protection in the Western Region, infra Chp.7.

[4] WCED op cit p.330.

limited to mobilising local people for tree planting activities or to making bye-laws to supplement existing forest offences.[1] In order to really satisfy the Brundtland model of participation, district assemblies should be encouraged to act as two way media, representing the views of local people to national institutions and not simply implementing nationally determined policy. The evidence presented in chapters seven and nine suggests that there is still a long way to go towards achieving this style of participation.

(vi) The Forest Products Inspection Bureau (FPIB) and the Timber Export Development Board (TEDB).

The FPIB is responsible for the grading, stamping, tagging and marking of logs and timber products.[2] It may make recommendations to the Secretary as to the appropriate rules and procedures to be followed on these matters.[3] It grades and values all timber products which are to be exported so as to prevent fraud.[4] All contracts for the export of logs and timber products are examined and registered by the FPIB.[5] The FPIB also registers all enterprises engaged in the timber and

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[1] Newspaper reports show that some district assemblies have been active in making bye-laws attempting to control local forest exploitation. See, for example, "Tree Felling Banned in Twifu District" People's Daily Graphic 16/11/1989, p.3; "Assembly Will Not Lift Ban" People's Daily Graphic 23/11/1989, p.3.

[2] Forest Products Inspection Bureau Law PNDCL 117/1985, s.2(c,e).

[3] ibid s.2(a,d).

[4] ibid s.2(g).

[5] ibid s.2(h).

wood processing industries.[1]

The FPIB is charged with the training and licensing of timber graders.[2] It is empowered to do all things reasonably incidental to its specified functions, including the levying of fees subject to the prior approval of the Secretary.[3] Officers of the FPIB may detain and inspect any vehicle believed to be carrying timber or wood products.[4]

The TEDB is responsible for promoting the export of timber products and for compiling and publishing statistical information concerning timber exports.[5] It is charged with developing markets for secondary species and making projections of market demand trends.[6] It is expected to liaise closely with timber marketing associations and the main timber producers.[7]

The Board of Directors of the TEDB is appointed by the Council.[8]The Secretary may give binding policy directions to the Board of Directors.[9] The TEDB is run on a commercial basis and it may levy reasonable charges with the prior approval of

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[1] ibid s.2(f).

[2] ibid s.2(k).

[3] ibid s.7(1).

[4] ibid s.10.

[5] Timber Export Development Board Law PNDCL 123/1985 s.2(a),(e),(g).

[6] ibid s.2(b),(d).

[7] ibid s.2(f).

[8] ibid s.4.

[9] ibid s.21.

the Secretary.[1] It is a body corporate capable of entering into contracts and acquiring and disposing of movable and immovable property for the purpose of carrying out its objectives.[2]

The FPIB and TEDB replaced the Timber Marketing Board (TMB). The TMB had had a chequered history.[3] It was originally created in 1960 to put an end to the exploitation and inefficiencies prevalent in the marketing of Ghanaian timber. From 1961-63, it was made the sole buyer and seller of logs for export[4] thus eliminating the role of expatriate middlemen engaged in the purchase and shipping of logs. The corruption and incompetence of the TMB were exposed in 1968.[5] There had been too much political interference in its activities. The Blay Report recommended that an organisation based on business lines be established to regulate the industry in place of the TMB.[6] The TMB was reconstituted in 1970 and given wide powers to promote "the most favourable arrangements for the purchase, grading, export and selling of timber".[7] It was specifically authorised inter alia, to stabilise the prices of wood

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[1] ibid s.3 and s.14(1).

[2] ibid s.1.

[3] See also, The Issue and Review of Concessions After 1962, supra Chp.5.

[4] Trees and Timber (Control of Export of Logs) Regulations LI no.130/1961, Para.1.

[5] Blay Report, op cit pp.21-30.

[6] ibid p.28.

[7] Ghana Timber Marketing Board Instrument, LI 660/1970, Para.3(1).

products, to control the number of timber mills and to require all timber exporters to register with the Board.[1] The members of the Board continued to be political appointees. In 1977, another attempt was made to vest the sole right to export timber in the Board.[2] This action once again coincided with a period of rapid decline for the industry.[3]

The TMB was disbanded in 1985. It had been criticised for fixing prices while neglecting other marketing problems. Its functions were split between the FPIB and TEDB but the two organisations continue to liaise closely.

The FPIB employs approximately 250 field staff at strategic road and rail checkpoints throughout Ghana. It also has officers stationed inside the major timber enterprises. This represents a considerably improved coverage on previous years but the task of detecting and stopping those engaged in the illegal timber trade[4] is a major one for which existing coverage is still inadequate.

The FPIB's responsibilities for registering all timber enterprises and all export contracts may be beyond its scope. The registration of timber enterprises requires a full investigation into the assets and capabilities of applicants so that only reputable firms will be awarded concessions

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[1] ibid Para 3(2),(3).

[2] Timber Industry and Timber Marketing Board (Amendment) Decree, SMCD 128/1977, ss.1,2,7.

[3] See further, Wide Fluctuations in Exports and Performance infra Chp.8.

[4] In accordance with PNDCL 117/1985 s.10. See also, Administrative and Quality Controls on Exploitation infra Chp.8.

and/or export contracts. To scrutinize all export contracts requires a sound knowledge of the market and also full knowledge of the supply situation for specific species. These tasks compete for manpower and resources with the decentralised and basically technical task of inspection. The investigations of the NIC Sub-Committee revealed that disreputable persons had been able to register as timber enterprises and also that some people had been able to register twice under different names.[1] In view of the wealth of information about the industry gathered by the NIC Sub-Committee which is now in the hands of the MLNR, a more appropriate agency for the registration of enterprises may be the Ministry. All exporters are anyway required to register with the Export Promotion Council (GEPC). If, in addition, the task of scrutinising export contracts was transferred to the TEDB acting in conjunction with the Ministry or the Department, then the FPIB would be able to concentrate on the important task of inspection.

The TEDB employs approximately 120 staff and it has an overseas office in London. It represents Ghana in the International Timber Trade Organisation (ITTO) and has sponsored Ghana's presence at international timber exhibitions. In negotiation with Ghanaian producers it sets minimum acceptable selling prices which exporters are expected to meet. It sponsors a 12 month guaranteed price to bulk purchasers of secondary species and has made proposals for promotional discounts on some species. The task of analyzing

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[1] The NIC Sub-Committee on Timber infra Chp.8.

and exploiting the international timber market is not an easy one however and in practice the measures which the TEDB can take to promote, for example, secondary species, are few. The timber market is highly competitive and purchasers are notoriously particular in their choice of species.[1]

The principal functions of the TEDB are the collation and dissemination of market intelligence.[2] There should be guaranteed adequate representation of the industry on the Board of Directors in view of the TEDB's powers to impose levies on the trade,[3] and in order for it to provide a useful and relevant service. This would ensure participation in line with the Brundtland recommendations.

The fact that the TEDB is bound to follow the policy directives of the Secretary and that the members of the Board are appointed by the Council disregards the old, yet still untried, advice of the Blay Report that a market oriented institution should be so far as possible independent of political control. This advice seems even more pertinent in the market oriented policy climate of today.

The FRMP Report identified the need to improve staff training and management in both the FPIB and the TEDB.[4] Technical assistance in the order of 120 staff months has been

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[1] Interview with Mr. Attah of the TEDB, 14/11/1990, Accra.

[2] PNDCL 123/1985 s.2.

[3] ibid s.7. For example, a number of business people could be nominated as directors by industrialists from the logging, milling and processing sub-sectors of the industry.

[4] Staff Appraisal Report, op cit, p.34.

allocated to the two institutions under the Project. This should contribute to sector institutional strengthening as recommended in the Brundtland Report.[1]

The recommendation here is that, in order to make the most of these reforms, the duties and powers of the two institutions should be rationalised. The FPIB should be responsible only for inspection while the TEDB should concentrate on the dissemination of market intelligence and the representation of industrial interests to government and international fora.

(vii) Training Institutions.

The Institute of Renewable Natural Resources (IRNR) attached to the University of Science and Technology provides higher education for forestry personnel. The Sunyani Forestry School (SFS) provides original training for forest officers.

The FRMP includes financial support for the IRNR and the SFS.[2] The curriculum of the former is to be made the subject of advice from a Board of Directors representing all forestry agencies and the timber industry.[3] A similar Board or Committee could have great potential in advising more generally on matters pertaining to the forest sector. This would be consistent with the recommendations in the Brundtland Report on integrated and co-ordinated decision-making.

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[1] WCED op cit p.20.

[2] ibid p.35.

[3] ibid p.100.

(viii) Accountability or Autonomy? An Assessment of the Overall Picture.

The forestry sector is characterised by a number of autonomous or semi-autonomous management institutions. Clearly, the Government has attempted to foster a separation of powers which will prevent abuse of office while at the same time providing in the law for a number of checks and balances to ensure accountability and some measure of co-ordination. However, the dangers of this system are -

(a) the potential for duplication of functions when many separate institutions are engaged in one sector. Possible sources of duplication lie in the future functions of the Commission and the PPMEU and PMU; between the IRNR and FPRI on advanced research; between the Commission and the TEDB on data collection; and between the Lands Department, the Forestry Department and the District Assemblies on controlling exploitation outside forest reserves;

(b) problems of enforcing political accountability where institutions function autonomously or semi-autonomously and problems of asserting a clear leadership role for any one institution. The relative autonomy of forestry institutions hampers the ability of the Ministry to exercise supervision, control and co-ordination in the forestry sector;

(c) the potential for dissipation of functions and manpower with unnecessary bureaucratization. Dissipation of functions may lead to unproductive isolation, and also rivalry and animosity between agencies whose respective duties are not clearly defined. It may slow down those processes which

necessarily require inputs from more than one institution, a notable example of this being the statutory procedure for allocating concessions. It may lead to the neglect of new issues, for example agroforestry, which do not clearly fall within the ambit of any one institution.

Duplication or dissipation of functions and problems of leadership, accountability and co-ordination can be avoided by a precise allocation of functions, frequently operating and effective co-ordinating mechanisms, a clear provision for effective leadership, and generally, whatever the legal provisions, by the willing cooperation of all agencies concerned. While the law does provide for a fairly clear demarcation of functions, it is weak on the issues of strong leadership, accountability and regular and effective co-ordination.

(ix) Lessons for the Brundtland Model of Institutional Development.

The Brundtland Report posited three goals for institutional reform in support of sustainable development. Firstly, it highlighted the need for integrated, cross-sectoral decision-making at the highest political levels so that environmental issues would be considered on the same agendas as economic and development policy.[1] The law in Ghana provides for this sort of integration because the Secretary of the MLNR who represents the forest sector is a member of the policy making Committee of Secretaries. However, it was noted

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[1] WCED op cit p.313.

that, at least within the MLNR, issues relating to minerals have sometimes overshadowed forestry issues.[1] Both the Lands Commission and Forestry Commission have wide objectives which cover aspects of land-use policy but here again it was noted that in the absence of a national land-use policy, the harmonisation of forestry and land-use policies was more theoretical than actual. Compartmentalism is a pervasive characteristic of developing country bureaucracies[2] but the evidence from Ghana suggests that it will take more than a re-definition of statutory duties to ensure the kind of integrated decision-making called for by the WCED Commissioners. The complexity of development problems, the urgency of economic crises and the shortage of professionals are formidable obstacles to integrated decision-making:

> "Maximum integration could mean all departments doing everything with all other departments at all levels; and maximum co-ordination could mean everyone meeting everyone else and discussing everything. Both integration and co-ordination have high costs. Both involve choices by default - choices not to use funds, administrative capacity and staff time in other ways. Both can blunt action and demoralise. There may be a law that the chances of a memorandum or report being implemented vary inversely with the frequency with which the words integration and co-ordination are used. for they evade the hard detailed choices of who should do what, when and how, which are needed to make things happen."[3]

These findings suggest the importance which should be attached to strengthening traditional institutions, such as

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[1] Supra p.153.

[2] Seidman op cit p.290; Baker op cit pp.29-47, p.29.

[3] Chambers, Rural Development ... op cit p.154. Also, Baker op cit p.33.

the Forestry Department, with their clearly defined roles and more practical orientation. The evidence suggests that, at least in the short term, the best chance of improving management effectiveness lies in strengthening these institutions.[1]

In the FRMP, Ghana has embarked on a programme to strengthen the principal institutions in the forest sector. A limitation of the FRMP, however, is its failure to concentrate on district level support where day to day management is so crucial for the effective protection of the forest estate. Centralised administration has been criticised generally for its inability to adapt to complex development problems.[2] In many respects it is the antithesis of participatory models of development.[3] It is surprising, therefore, that the Brundtland Report failed to criticise this style of management. Indeed, its recommendations on integrated decision-making at the highest levels can be criticised for encouraging more centralisation in policy making generally.

The Brundtland Report gives few detailed recommendations for institutional strengthening. In addition to man power and logistical support, the analysis in this chapter highlights the need to ensure accountability and efficiency in administrative procedures. Unnecessary red tape resulting from bureaucratic procedures involving too many institutions too easily leads to inertia, institutional rivalry and protracted

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[1] Baker ibid pp.159-167, p.167.

[2] Seidman op cit p.244.

[3] Wunsch op cit p.18; Seidman op cit p.321.

delays in procedures. Accountability both 'upwards' to political institutions and 'downwards' to the people who will be affected by the administrators' decisions can help to minimise malpractice.[1] If accountability and efficiency can be enhanced throughout the system, the prospects for effective methods of integrated decision-making will be greatly improved. Without these reforms, however, integrated decision-making may lead only to more inertia and more red tape. It is a weakness of the Brundtland Report that it fails to recognise the importance which should be attached to these sort of reforms.

Although the Brundtland Report failed to recognise the importance of institutional accountability generally, its recommendations on greater public participation in policy and decision-making fora[2] are consistent with the concern expressed in this chapter for greater accountability. In reality, public participation has not been a feature of forest administration. Developing country bureaucracies have been described as centralising, secretive and elitist.[3] They reflect and protect the interests of the ruling elites who are reluctant to allow reforms which may jeopardise their position.[4] These factors may frustrate reforms which are designed to promote greater participation in policy and decision-making.

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[1] IBRD op cit p.117.

[2] WCED op cit p.330.

[3] Seidman op cit p.240; Wunsch op cit p.18.

[4] Seidman op cit p.354; IBRD op cit p.126.

The District Assemblies are the best example of a participatory approach to decision-making at the local level. They should allow for forestry issues to be considered in conjunction with local economic, environmental and political problems. However, unless the assemblies act effectively as a two way means of communication, they risk losing the support of local people. Authentic participation can and may be sacrificed in the energy expended on mobilisation to achieve national policy goals.[1]

The Brundtland Report identified some of the reforms which could enhance institutional effectiveness but it did not consider the detailed implications or practical feasibility of its recommendations. The analysis made in this chapter suggests a number of modifications to the Brundtland strategy. In particular, institutional strengthening should be directed towards practical orientated institutions with greater emphasis on support for decentralised offices. Co-ordinatory mechanisms should be simple and not too time consuming. In addition, the need to improve accountability and efficiency has been highlighted.

The Brundtland Report failed to address the problems which may frustrate the implementation of its proposals for institutional reform. Inertia, corruption and bureaucratic self interest were among the problems identified in this chapter. The pervasive character of these problems seriously undermines the efficacy of government institutions and their

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[1] See further, the evidence from the Western Region and Bongo District infra Chps.7,9.

ability to adopt Brundtland style institutional reforms. The failure of the Report to address these problems was a serious flaw.

The Brundtland Report showed great confidence in the role which institutions can play in implementing sustainable development policies. This chapter has focused on the strengths and shortcomings of the Report's specific recommendations for institutional strengthening without seriously questioning the validity of that presumption. It is to aspects of this fundamental question of institutional effectiveness that the discussion now turns.

CHAPTER SEVEN: FOREST PROTECTION.

The successful protection of forest resources is an essential pre-requisite to their sustainable development in the long term. In this chapter, problems associated with the protection of forest resources, particularly those in forest reserves, are discussed.[1] Firstly, some comments are made on the legal framework of protection. Secondly, the chapter moves on to discuss some problems of law enforcement. The experience of the Western Region demonstrates the magnitude of the problems associated with forest protection, particularly for the Forestry Department.

The discussion in this chapter raises several issues relevant to the analysis made in the Brundtland Report and discussed in chapter one. The illegal intrusion of farmers into forest reserves raises the question whether poverty is the driving force for environmentally destructive activities as suggested in the Brundtland Report. The activities of the Forestry Department and other institutions raise important questions about institutional effectiveness which have a bearing on the Report's faith in institutional strengthening. Above all, events in the Western Region provide a valuable insight into the consensus versus conflict paradigm raised in chapter one.

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[1] On measures which are being taken to improve the long term supply of forest resources outside forest reserves, see, Minor Forest Produce and Rural Forestry infra Chp.8 and the review of NGO activities in Bongo infra Chp.9.

(i) Relevant Law.

(A) Forest Reserves.

The principal method of protecting and establishing forest resources is by the constitution of forest reserves.

A forest reserve is a reserve so constituted under s.17 of the Forests Ordinance or under any law relating to local government.[1] The Forests Ordinance and the Forests Protection Decree are the principal enactments dealing with the establishment and protection of forest reserves.

(a) Constitution of Forest Reserves: Any land may be constituted into a forest reserve in order to achieve any of the following purposes - to safeguard local water supplies; to assist in the well being of forest and agricultural crops grown in the vicinity; to secure the supply of forest produce to local people. The Chief Conservator of Forests (CCF) advises Government whether the public interest requires that forest resources should be protected or established by the constitution of reserves in order to meet these objectives.[2]

A proposal to constitute a forest reserve must be published in the Gazette[3] and publicized in the local district concerned.[4] By the same Gazette notice, a Reserve Settlement Commissioner (RSC) is appointed whose duty it is to inquire into and determine the existence, nature and extent of all

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[1] Cap 157 s.2 and Act 124/1962 s.16(7).

[2] Cap 157 s.4.

[3] ibid s.5.

[4] ibid s.7.

rights claimed in or over the land and trees concerned.[1] A dispute involving a question of land ownership may be settled by the RSC or transferred to a civil court at the discretion of the RSC.[2] If the appointed court or an appeal court fails to give judgement within three months of being seized of the dispute, the RSC may decide to settle the dispute himself.[3] The RSC is empowered to admit or reject any rights being claimed[4] or, in consultation with a senior forest officer, to exclude any land from a proposed reserve[5] or to commute into a lump sum any rights inconsistent with the nature of the proposed reserve.[6] Compensation is not due if the communal or allodial rights of a stool are to be restricted.[7] When the final judgement of the RSC - dealing with all these particulars - is published in the Gazette, the land becomes a forest reserve.[8]

An appeal to the Supreme Court (now the High Court) may be made by any person whose rights have been affected by the judgement of the RSC or by the CCF within six months of the judgement[9] and any alteration made by the court is deemed to

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[1] ibid ss.5(1),9(1).

[2] Forests (Amendment) Ordinance no.45/1954 s.3.

[3] ibid s.3.

[4] Cap 157 s.15(1)(e).

[5] ibid s.11.

[6] ibid s.12.

[7] ibid s.13.

[8] ibid ss.15,17.

[9] ibid s.16.

be an alteration of the Order constituting the reserve.[1] A subsequent Order published in the Gazette may revoke the Order constituting the reserve, freeing the land from all controls associated with reservation.[2]

(b) Protection: From the date of notification of the proposal to constitute a forest reserve no rights to, in or over stool land or produce within the proposed reserve may be alienated.[3] No clearing, cutting or burning in the area is allowed without the consent of the senior forest officer.[4] Rights in or over land held by families or individuals can only be transferred by succession or with the written consent of the RSC.[5]

Upon the constitution of the forest reserve, admitted rights within the reserve cannot be sold, leased, mortgaged, charged or transferred without notification being given to the CCF.[6]

The written consent of a competent forest officer is a precondition for the lawful exercise of any of the following: rights to fell, uproot, lop, girdle, tap, injure by fire or otherwise damage any tree or timber; rights to farm or build; to cause any negligent damage when felling, cutting or removing timber; to obstruct water courses; to hunt, shoot,

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[1] ibid s.17(2).

[2] ibid s.20.

[3] ibid s.6(a).

[4] ibid s.6(c).

[5] ibid s.6(b).

[6] ibid s.19.

set traps, fish or poison water; to process, convey or remove any forest produce; to pasture cattle or permit any cattle to trespass into the reserve.[1] All these acts are liable to a maximum fine of 10,000 cedis and/or a maximum of five years imprisonment (in the first instance) if committed without the requisite permission of a competent forest officer.[2] An offender against this law may be required to pay twice the commercial value of the trees, timber or forest produce involved to the MLNR and compensation to any person whose lawful rights he infringed.[3] Forest reserve boundary marks are protected from any interference by the same legal penalties.[4] The burden of proof that any forest produce has not been illegally taken lies with the person found in possession of it.[5]

The Forest Protection Decree imposes a duty on forest officers, the holders of admitted rights and other persons working in forest reserves to help prevent forest offences.[6] These people are also under a duty to assist in the prevention and control of fire in or near to reserves.[7] They may be fined

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[1] Forest Protection Decree NRCD 243/1974 s.1 as amended by Forest Protection (Amendment) Law PNDCL 142/1986.

[2] ibid s.1.

[3] ibid s.1(2),(3).

[4] ibid s.2.

[5] ibid s.7.

[6] ibid s.8(1).

[7] ibid s.8(2).

for failing to perform this duty.[1]

From an historical view point, the outstanding features of the Forests Ordinance are the provisions declaring the ownership of land in a forest reserve to be unaffected by its constitution as a reserve;[2] the requirement of exclusively environmental reasons for constituting any land into a forest reserve;[3] and the comprehensive, if not unwieldy, procedures for a settlement of all rights relating to land or produce in a proposed forest reserve.[4]

The term "private lands", defined as "land alienated from tribal or stool lands and owned or held by any individual or group of individuals,"[5] as employed in section 4 of the Ordinance, is of passing interest. Some authorities deny that stools can alienate their allodial title to land to individuals,[6] in which case the term may be read to imply a reference to land over which a determinable or lesser interest co-exists with the allodial interest of the stool.

Other obscure terms in section 4 are the reference to "the public interest" and "forest crops". "Public interest" was broadly defined in the 1979 Constitution as including "any right or advantage which ensures or is intended to ensure for

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[1] ibid s.8(2).

[2] Cap 157 s.18.

[3] ibid s.4(4).

[4] ibid ss.5-17.

[5] ibid s.2.

[6] Ollennu, Ollennu's Principles of Customary Land Law ... op cit p.58.

the benefit generally of the whole of the people of Ghana,"[1] but in the Ordinance the term seems to be attached to the environmental conditions required in paragraphs (a)-(c) and therefore does not provide broader grounds for justifying forest reservation. "Forest crop" is nowhere legally defined. Does this term include forest produce or is the meaning of the term restricted to agricultural crops of the high forest zone -cocoa, plantain etc.? If the latter meaning is implied, then the law does not allow the Government to constitute a forest reserve solely for the purpose of protecting timber supplies. However, there is nothing to prevent this last objective being an additional consideration and, for example, the boundaries of a forest reserve ostensibly constituted to protect a water source may in reality have be drawn much larger than is strictly necessary to meet that objective, the remainder of the land being used to meet commercial timber demands. The last purpose given for reservation - to secure the supply of forest produce to nearby villages[2] - misconceives the commercial and urban orientation of much minor forest produce exploitation.

It is unfortunate that lengthy land ownership disputes have almost always resulted in long delays in procuring the judgement of the RSC even when, before 1962, ownership was to be wholly unaffected by the constitution of the reserve! Sadly, traditional landowners are still disputing issues of land ownership within forest reserves. The most obvious

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[1] Constitution of the Republic of Ghana 1979, Art.213.

[2] Cap 157 s.4(4)(c).

explanation for this lies in the distribution of revenue from forest exploitation to traditional authorities on the basis of their territorial claims to reserved land. Doubts were raised in chapter five about the substance of the legal interest held by traditional authorities after 1962.[1] It was argued that the payment of a proportion of revenue to stools and local district assemblies was not an adequate or effective method of compensating local communities for the reservation of their land.[2] If, nevertheless, traditional authorities are to continue to be entitled to a share of the income from forest revenue, an alternative basis to this territorial assessment of rights to revenue should be sought. For example, a fixed, annual rent could be paid to every stool living in the affected local districts, whose boundaries are now politically demarcated, regardless of their territorial claims and graded only on recognised political differentials.[3] Alternatively, a one-off, compensatory payment could be made to stools which would extinguish once and for all their claim to a continuing legal interest to land in forest reserves.[4] Rights could be

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[1] Supra p.121.

[2] Supra p.129.

[3] For example, paramount stools could receive a one third share and sub-stools a two thirds share of the total allocated revenue in accordance with customary practice supra p.102. These shares could then be divided equally among the members of each category regardless of their territorial claims.

[4] A risk associated with abandoning altogether the system of making payments to traditional authorities is that the latter may consequently act irresponsibly to alienate what they still regard as stool land. An alternative proposal is suggested at infra p.225 for linking the payment of revenue to the contribution made by traditional authorities to the protection of forest reserves in their districts.

assessed on the basis of RSC's judgements with an opportunity for judicial review in contentious cases.

The commutation of lump sum payments in respect of extinguished rights[1] is not governed by any statutory principles for assessing the quantum of the award. The need to ascertain admitted rights[2] is now superfluous despite the provision for preserving customary rights in forest reserves made in the Concessions Act.[3] This is because the provision in the original Ordinance allowing admitted rights to be exercised without charge or licence[4] has been repealed and the Forest Protection Decree makes it an offence for anyone to exercise communal or individual rights of exploitation in a forest reserve without the prior consent of a competent forest officer.[5] Charges are made for licences to any person who wishes to take produce on a commercial scale, whether or not he is a local person. The provision for excluding farmland and villages located within forest reserves in many cases may not be sufficient to cater for present day demands for land which are influenced by the commercialisation of agriculture, population growth and emerging land scarcity.

Opinion in the Forestry Department is that maximum statutory penalties for forest offences are too low and that courts or tribunals have, until recently, shown reluctance to

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[1] Cap 157 s.12.

[2] ibid s.15.

[3] Act 124/1962 s.16(1).

[4] Cap 157 s.23.

[5] NRCD 243/1974 s.1.

impose stiff penalties. For example, fines based on the "commercial value" of trees are usually calculated by reference to royalty rates whereas the actual market value of the trees is very much greater than this. It is important that penalties for forest offences are kept under regular review. Some forestry personnel favour a return to the system of compounding of fines so that most forest offences could be dealt with administratively in the Department, but when tried in the past the system led to abuse.[1] Despite the burden of proof in favour of the Department,[2] it is difficult to get satisfactory evidence of forest offences before a court or tribunal. Forest guards may make arrests without a warrant[3] but where the situation has become particularly acrimonious, unarmed forestry officers already find it necessary to call upon the escort of armed police officers in order to make arrests. This raises the question whether forest officers should be armed in the same way as officers of the Game and Wildlife Department. The work of forest officers is distinguishable from that of game officers however, because the latter's principal opponents inside game reserves are hunters who are always armed.

(B) Protected Areas.

The Trees and Timber Decree, the successor to the

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[1] Forest Offences (Compounding of Fines) Act, no.83/1959.

[2] NRCD 243/1974 s.7.

[3] ibid s.5(1).

Protected Timber Lands Act,[1] now governs the constitution and protection of "protected areas".[2]

(a) Constitution of Protected Areas: In order to prevent the waste of trees or timber the Secretary may declare any well stocked timber land lying outside a forest reserve to be a protected area.[3] The executive instrument so issued becomes effective four weeks after its publication. The Secretary may revoke the instrument at any time when it appears convenient to withdraw the associated controls. This latter instrument takes effect immediately.[4]

(b) Protection: Within any protected area it is an offence, when committed without the prior written consent of the Secretary, to fell or damage any tree or timber, to farm or build, to set fires or to kindle a fire without taking precautions to prevent its spread.[5] Any person who offends against these provisions is liable to a maximum fine of only 1000 cedis and/or imprisonment not exceeding five years.[6]

Farming in a protected area may only be carried on subject to a licence issued by a regional forest officer on behalf of the CCF which may impose any conditions necessary to

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[1] Act no.34/1959

[2] Trees and Timber Decree NRCD 273/1974

[3] ibid s.12(1).

[4] ibid s.12(2).

[5] ibid s.14.

[6] In 1990, the rate of exchange was approximately 600 cedis to one English pound.

safeguard the protected area.[1] This requirement applies to farms made in the area prior to its constitution as a protected area and to all subsequent extensions of farming.[2] Any applicant for a licence, if refused, has a right of final appeal to the Secretary.[3]

Forest guards may be appointed by the CCF to control protected areas[4] and concessionaires working in the protected area must observe the prescriptions of the CCF.[5] Furthermore, any land in a protected area over which a grant of timber or trees has been made is subject to all the protective provisions of the Forests Ordinance.[6]

The procedure for establishing protected areas, in marked contrast to forest reservation, is entirely administrative and can be completed in four weeks.[7] Within the limits of the general objectives of protection, the Secretary is free to draw any boundaries or require any conditions when granting licences.[8] There is no procedure for determining the legal validity of rights claimed in a protected area and no possibility for judicial review of refused licence

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[1] NRCD 273/1974 s.13 and Timber Lands (Protected Areas) Regulations LN 311/1959 s.4.

[2] ibid 311/1959 Para.5.

[3] ibid Para.6.

[4] ibid Para.7.

[5] ibid Para.3.

[6] Act 124/1962 s.16(8).

[7] NRCD 273/1974 s.12.

[8] ibid ss.12,13.

applications.[1] It is never easy to strike a balance between administrative efficiency and legal accountability but the Forests Ordinance and the Trees and Timber Decree seem to represent two opposite extremes.

Any land in a protected area which is subject to a timber grant is protected by the relevant provisions of the Ordinance.[2] The penal provisions of the Ordinance were, however, repealed by the Forest Protection Decree so that in actual fact, few of the provisions of the Ordinance are applicable. Perhaps the Government in 1974 unintentionally neglected to stipulate that the penalties for forest offences contained in the Decree should also apply to land subject to timber grants outside reserves or perhaps it was simply recognising the fact that the Ordinance was never effectively enforced outside forest reserves. All timber grants are anyway held subject to the management stipulations of the CCF.[3]

(C) Other Land.

All land outside forest reserves or public lands, is held subject to the principles of customary law as modified by statute. All trees and timber are however vested in the Council in trust for the people and communities of Ghana,[4] and rights to trees and rights to trees or timber are granted by

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[1] LN 311/1959 Para.6.

[2] Act 124/1962 s.16(8).

[3] Cap 136 s.30.

[4] Act 124/1962 s.16(4) and PNDCL 42/1982 s.45(1). See above supra p.121.

the Lands Commission, or, in 1990, the MLNR.[1]

Wherever rights to trees or timber have been made the subject of a grant, land and produce lying within the area of the grant are subject to the protective provisions of the Forests Ordinance.[2] Outside areas subject to grants of timber or trees there are no specific, nationally determined penalties for cutting, felling, damaging or in any way exploiting any trees or timber.[3] However, a person who cuts timber, except under the appropriate licence, could be prosecuted for committing an economic crime against the State.[4] Grants of stool land in certain cases must be notified to the Lands Commission.[5]

The land in a protected area is subject to the principles of customary land law as is all land other than public land. Customary law recognises few rules for the protection and management of forest resources although closed hunting seasons and other restrictions on rights of community user are known to some communities.[6] Generally, customary law permits free

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[1] PNDCL 42/1982 s.36(3).

[2] Act 124/1962 s.16(8).

[3] Some District Assemblies have made bye-laws to control the activities of chain saw operators on any land. See, for example, "Tree-Felling Banned in Twifu District" People's Daily Graphic 16/11/1989, p.3.

[4] Public Tribunals Law PNDCL 78/1984, s.9. This Law has been used in cases involving industrial malpractice in the timber industry infra p.261 and illegal selling of land in forest reserves infra p.212.

[5] PNDCL 42/1982 s.47(1) and Administration of Lands Act 123/1962 s.8.

[6] G. Woodman, The Allodial Title to Land op cit p.91.

exploitation of forest resources by members of the allodial community in unoccupied stool land.[1] In most cases, it vests rights to exploit or control exploitation of economic trees, except timber trees, on farmed or fallow land in the holder of the determinable estate.[2]

When the Concessions Act vested all rights to all trees or timber in the President in trust for the stools concerned,[3] it failed to preserve customary rights to forest produce except in the case of forest reserves.[4] However, the Act failed to provide any stiff penalties for the cutting of mature timber during farming operations which take place outside forest reserves or land subject to a timber grant.[5]

The actual effect of the statutory provision applying the Ordinance to all land subject to a grant of timber or trees, whether or not the grant is over public land, has already been commented upon.[6]

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[1] Ollennu, Ollennu's Principles of Customary Law ... op cit p.50. See further, Minor Forest Produce and Rural Forestry infra Chp.8.

[2] Ollennu op cit p.66.

[3] Act 124/1962 s.16(4).

[4] ibid s.16(1).

[5] See also, Customary Rights to Timber or Trees supra Chp.5.

[6] supra p.193.

(ii) Forest Protection in the Western Region.

Although the law is in place to protect forest resources, especially in forest reserves, the effectiveness of the law is always dependent on the ability of the Forestry Department to enforce it. The shortage of manpower and essential equipment in the district offices has hampered the protective duties of the Department. The FRMP is addressing the manpower and logistical needs of the Department although, it has been suggested, not adequately at the district level.[1] An investigation into the scale and the causes of illegal forest encroachment in the Western Region reveals that the root of the problem lies more deeply than in the adequacy of Departmental resources alone. The FRMP does not even attempt to address these fundamental problems which are now being tackled under the auspices of Operation Halt.[2]

The Western Region is the best stocked timber producing area of Ghana with a total of fifty one forest reserves. The region is home to several of the country's largest timber firms. It is also a major cocoa producing area. In 1959, a report of a soil survey officer pointed out that the Western Region was then the last remaining uncultivated land suitable for cocoa cultivation in Ghana.[3] In the Sefwi-Wiawso and Juabeso-Bia districts, where the soils and climate were most

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[1] Supra p.158.

[2] Infra p.218.

[3] P.M. Ahn, The Principal Areas of Remaining Original Forest in Western Ghana and Their Agricultural Potential 1959, Department of Agriculture, ADM 5/4/164, pp.12, p.1.

suited to the cultivation of cocoa, forest clearing was already proceeding at 3-5% of the area per annum.[1] The indications were that the Juabeso-Bia district would be mostly cleared of forest within 15-20 years. Today, the Western Region produces more cocoa than any other region.

Throughout Ghana the expansion of cocoa cultivation has been at the expense of the tropical forest and the Western Region is no exception.[2] Today there are no longer vast areas of uncultivated forest except in the forest reserves.[3] This has caused some farmers to encroach into some forest reserves to an extent which, due to the remoteness of the area, would have been unimaginable in the colonial era. Today, some forest reserves in the region have been destroyed to the extent of 50-70% of their total area as the following figures show:

Estimated Scale of Farming in Certain Forest Reserves.[4]

Reserve	% Illegally Farmed	% Admitted Farms	Total % Farmed
Bodi	76.50	6.20	82.70
Tano-Ehuro	57.67	1.80	59.29
Manzan	59.11	32.19	91.30
Sukusuku	74.50	11.37	85.87
Bia-Tawya	57.76	18.47	76.23

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[1] ibid pp.8,9.

[2] ibid p.10.

[3] See Appendix Three for a map of forest reserves in the Western Region as a whole.

[4] Letter from the RAO, Western Region, to the MLNR, 12/1/1990 Departmental Records Juabeso-Bia.

There are special reasons why the Western Region has been the most seriously affected region and why some reserves have been more seriously affected than others.

In 1959, the Protected Timber Lands Act was passed. This was the predecessor and model for parts of the Trees and Timber Decree which is currently in force.[1] It enabled the Minister to declare any land which was primarily forest land but which was not a forest reserve, to be a protected area.[2] In order to prevent the waste of timber, farming in a protected area would be strictly controlled.[3] Immediately after the passing of this Act, the following areas of forest land in the Sefwi Wiawso district were declared to be protected areas - Bia-Tawya, Bodi, Manzan, Sukusuku and Tano-Ehuro.

The protection afforded by the Act was designed simply to ensure that timber would be efficiently felled prior to the destruction of the forest by farming activities. The intention of the Act was that after salvage felling, all protection would be removed and farming would be allowed to take over. However, forest officers inventorying the protected timber lands realised that these remote forest areas constituted the richest remaining timber areas in the country. It was therefore decided to constitute the protected areas into permanent forest reserves. In 1965, notice of the Government's

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[1] Supra p.190.

[2] Act no.34/1959 s.3.

[3] ibid ss.4,5.

decision was published in the Gazette.[1] In 1967, the judgement of the RSC was given in respect of the Bodi and Tano-Ehuro forest reserves [2]but it was not until 1972 that judgements in respect of Manzan and Sukusuku forest reserves were given.[3] The reason for the delay in the case of the last two reserves was confusion over the international boundary with Cote d'Ivoire along which parts of the boundaries of the two reserves ran. The border dispute held up the Forestry Department's attempts to accurately survey the area. Judgement in respect of the proposed Bia-Tawya Forest Reserve is yet to be given.

The elaborate procedures for constituting forest reserves were identified as another cause of the long delays. In 1974, the Secretary called for the simplification of the forest reservation procedure. A draft new Lands Decree provided that forest reserves could be constituted by the same procedure as for the acquisition of public lands whenever it was in the public interest to conserve forests. In this scheme, an executive instrument would suffice, upon publication, to immediately vest any forest land in the Government in trust for the people of Ghana free from any encumbrance whatsoever. Claims for compensation would be dealt with afterwards. Any

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[1] Land and Concessions Bulletin 12/3/1965.

[2] Record of Proceedings and Judgement in the Proposed Bodi Forest Reserve 15/12/1967, Dunkwa High Court; Record of Proceedings and Judgement in the Proposed Tano-Ehuro Forest Reserve 15/12/1967, Dunkwa High Court.

[3] Record of Proceedings and Judgement in the Proposed Manzan Forest Reserve 18/12/1972, Dunkwa High Court; Record of Proceedings and Judgement in the Proposed Sukusuku Forest Reserve 14/3/1972, Dunkwa High Court.

public officer would be authorised to enter the land and trespassers could be rapidly evicted.[1] The fact that this proposal never got to the statute book suggests that opposition to forest reservation was still intense and that issues of land ownership in forest reserves were still fiercely contested.

During the 1965-72 interlude, mass incursions into the proposed forest reserves appear to have been made by illegal farmers who purchased rights to the land from local stools and sub-stools. Many of these farmers were immigrants from other parts of the country who had already established cocoa farms elsewhere and who had the money and experience to make further investments in the land. Contrary to the ideas contained in the Brundtland Report, it was not poverty which drove these entrepreneurs on but the drive to expand commercial enterprises. It was a general belief that if the land could in fact be converted into cocoa farms then the Government would default on its decision to reserve the land. After all, it was in accordance with the objectives of the original protection orders under the Protected Timber Lands Act, that the land should eventually be given over to farming and, at least in the case of some reserves, soil surveys had shown the conditions to be ideal for cocoa cultivation.

In 1972, farmers in the proposed Sukusuku Forest Reserve petitioned the Regional Commissioner to have the land released

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[1] Circular from the Ministry of Justice, 29/3/1974, LRC Ref L.8/74, s.13 of the third draft Lands Decree.

for cocoa farming.[1] In view of the magnitude of these complaints (the petition was said to represent the views of 3,500 farmers), it would have been reasonable to have given their views a hearing at the inquiries of the RSC but this did not occur.[2] The judgements were given in Dunkwa and the records show that none of the highly contentious issues were considered or debated.[3] Although the fundamental concern of the Forestry Department was to preserve the supply of commercial timber, the reasons given in the judgement of the RSC for the constitution of the reserves were exclusively environmental as required by the Forests Ordinance. The ownership rights of the Paramount Stools were acknowledged but no attempt was made to demarcate territorial boundaries or to define the interests of the sub-stools in the land. In each case only one or two farms were recognised as admitted farms which had been in existence prior to 1965. No recommendations were made with respect to the massive influx of farmers since then. No consideration was given to the feasibility of reservation in such an acrimonious situation. No attempt was made to reconcile or balance environmental and agricultural needs. It may be argued that it was not within the ambit of the RSC's statutory duties to consider what the proper balance

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[1] Petition from Farmers in Sukusuku Proposed Forest Reserve to the Regional Commissioner, 14/6/1972, Departmental Records Juabeso-Bia.

[2] The RSC is under a statutory duty to consider all claims presented to him as to rights in proposed forest reserves Cap 157 s.9.. It is submitted that the issues raised by local farmers were so closely related to this duty that they should also have been considered.

[3] Supra p.199, Fn.2 and 3.

between forestry and agriculture should be. It is true that this is a political issue ultimately requiring a political determination but the official inquiry presents an ideal opportunity for public grievances to be fully and openly aired. This would be consistent with the two way, participatory style of decision-making favoured by the WCED Commissioners.[1] If a fair hearing had been given to all the issues and if practical compromises had been made at this time, then a more realistic reservation programme may have been adopted thereby preventing the conflict which surrounds the whole issue today.

The sale or acquisition of rights to land in a proposed forest reserve is illegal as is any farming activity which has not been sanctioned by a senior forest officer.[2] It was not necessary, therefore, to speed up the reservation process in order to check the upsurge of illegal activities. Nevertheless, no attempts were made to enforce the law prior to 1973. This was a vital error because it gave chiefs and immigrant farmers the opportunity to pursue their illegal activities on a massive scale.

In 1973, attempts were begun to expel illegal farmers from Sukusuku Forest Reserve. A total of fifty two arrests were made by the Department but great difficulty was experienced in persuading the local police to commence

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[1] WCED op cit p.331.

[2] Cap 157 s.6.

investigations for prosecuting the offenders.[1] Two months later, the Assistant Commissioner of Police in Tarkwa ordered the suspension of all investigations into forest offences, much to the disappointment of the Department.[2]

In 1974, the Government passed the Forest Protection Decree[3] and the Public Lands (Protection) Decree.[4] The former raised penalties for forest offences[5] while the latter provided a simple procedure for evicting trespassers from public land without prior recourse to a court of law.[6] These enactments would have considerably strengthened the hand of the Department but for the fact that all Departmental investigations were suspended pending the recommendations of a committee established to inquire into the circumstances surrounding the illegal alienation of land in forest reserves in the Western Region (the Nyinaku Committee).

The timing of the Committee's establishment is more than coincidental. It is evidence of the ability, noted in chapter one, of vested interests to render nugatory the impact of laws which may go against their own concerns.[7] In the situation

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[1] Letter from the ACF, Sefwi Wiawso, to the Deputy CCF, Western Region, 7/5/1973, Departmental Records Juabeso-Bia.

[2] Letter from the DCF to CCF, 31/5/1973, Departmental Records Juabeso-Bia.

[3] NRCD 243/1974

[4] NRCD 240/1974

[5] NRCD 243/1974 s.1.

[6] NRCD 240/1974 s.3. The 1969 Constitution defined "public lands" as including land vested in the Government in trust, Constitution of the Republic of Ghana, 1962, Art.162.

[7] Supra p.46.

under review, traditional authorities and wealthy farmers were profiting from the sale and acquisition of farming rights in forest reserves. A Committee of Inquiry would delay decision-making still longer allowing rampant illegal farming to continue unabated.

The Nyinaku Committee published its report in 1975. It found that the decision of the Government in 1965 had been made sufficiently well known to the chiefs and people concerned. Alienation of land and incursions into the reserves were made wilfully to undermine the intentions of the Government. The Omanhene of Sefwi Wiawso was a principal actor in the alienation of land, especially in the Bia-Tawya and Tano-Ehuro forest reserves where he was anxious to assert his title to the land against the stools of Aowin and Suaman. His sub-chiefs were also active in alienating land. Local customary law was unclear as to whether the sub-chiefs were entitled to act independently of the Omanhene in the grant of land. This encouraged powerful sub-chiefs to make alienations in order to undermine the authority of the Omanhene. The chiefs had encouraged tenant farmers in the belief that final reservation orders would not in fact be made. Farmers took advantage of the remoteness of the reserves, the delays in reservation and the leniency of court fines to encroach into the reserves.[1]

The Committee recommended that since the farmers knew they were trespassers, they should immediately be ejected

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[1] Report of the Committee Appointed Under EI 70, 24/6/1974, as Amended by EI 11, 5/11/1974, 1975, Government Printer, Accra, pp.61, at pp.30-32.

from the reserves, their farms should be destroyed and the land reafforested. The military should be called in to prevent any further encroachments. The Department should be better equipped as a matter of priority. Although the farmers would not be entitled to any compensation they should be refunded the fees paid to the local chiefs for permission to farm the land. The relevant Traditional Councils were to be held liable for making these refunds. The chiefs and their agents who had alienated the land should face criminal prosecution.[1]

The Committee further recommended that the constitution of a forest reserve should take effect immediately upon the publication of a single notice in the Gazette which should be widely publicised using all forms of media. All farmers in forest reserves should thereupon be ejected and compensation paid for this and the loss of other lawful rights after the constitution of the reserve. The right of chiefs to alienate stool land generally should be vested in the State in order to prevent the abuse of this power.[2]

The Government endorsed all the recommendations of the Committee concerning the illegal farming but it did not agree that there was a need to change the law relating to stool land.[3] Neither did it agree that the RSC should sit after the constitution of a reserve on the ground that the main purpose

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[1] ibid p.35.

[2] ibid pp.35-37.

[3] White Paper on the Report of the Committee of Inquiry into the Grievances of Farmers Being Ejected From Certain Forest Reserves in the Western Region, White Paper no.2/1976, Paras.6,12,13.

of the RSC's inquiry was to determine whether a given area should be reserved at all.[1] It is submitted, however, that although it is desirable that the inquiry of the RSC should consider this question, the judgements of the RSC in 1967 and 1972, in no way attempted to tackle this fundamental issue.[2] The position in law is that this decision is taken by the CCF and the Government before an inquiry is begun.[3]

In accordance with the recommendations of the Nyinaku Committee, the army was mobilised to support the Department's activities in the Western Region. Bonsu-Nkwanta, a market village within the proposed Bia-Tawya Forest Reserve was burnt to the ground as part of these operations. However, in 1977 efforts to recover the forest reserves suffered another major setback. In a letter to the CCF the Secretary of the MLNR directed that illegal farms should not be destroyed and farmers should be allowed to continue cultivating land in the reserves.[4] Within months, Bonsu-Nkwanta was completely restored. In 1980, Gliksten gave notice of the widespread belief that illegal farming was endorsed by the MLNR.[5]

The advice of the Secretary was wholly irrational. It clearly demonstrates the ability of vested interests to influence the highest levels of decision-making in order to

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[1] ibid Para.19.

[2] Supra p.199, Fn.2 and 3.

[3] Cap 157 ss.4,9.

[4] Letter no.SCR/G1-SF2, 23/5/1977 Departmental Records Juabeso-Bia.

[5] Letter from Gliksten to Sefwi-Bibiani District Council, 15/3/1980, Departmental Records Juabeso-Bia.

frustrate the impact of laws unfavourable to them. It has always been rumoured that important political persons own vast cocoa farms within the affected reserves[1] but records of land transactions are shrouded in secrecy. When public grievances were formally ignored, private interests found more covert ways of reaching decision-makers.

The self contradictory nature of the Government's actions illustrates the vulnerability of developing country governments to pressure from influential interest groups whose interests do not always coincide immediately with those of the political leadership. In this case, the government's interest lay in preserving timber resources which could provide valuable foreign exchange irrespective of fluctuations in the cocoa trade, a cash crop on which the economy was already too heavily dependent. Government also had stakes in the major timber companies by virtue of the 1972 Timber Operations (Government Participation) Decree.[2] The fact that the Minister gave in to the manipulations of influential farmers and traditional authorities suggests firstly that the exercise of ministerial discretion was still not free from unscrupulous influences.[3] More generally, it suggests that the military government simply could not afford to lose the support or acquiescence of powerful interest groups without risking its

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[1] "Operation Halt Launched at Bibiani to Reclaim Forest Reserve" People's Daily Graphic 20/8/90, p.16.

[2] NRCD 139/1972 s.7.

[3] Comparisons can be drawn with the Blay Report supra Chp.5.

own political survival. This is consistent with the argument of political scientists that not even a military regime can remain in power without fostering its own political legitimacy at least by pacifying vociferous elites.[1]

The ambivalence of Government policies serves to demonstrate that the state is not solely the apparatus of a single, united ruling class whose interest lies in the maintenance of capitalism.[2] It confirms the more complex analysis which suggests that powerful interest groups, whose most immediate economic interests may not always coincide with those of its political leaders, play a central role in determining the effectiveness of government policy.[3] In this sense, the state and its legal machinery are fora for the rivalry of competing interest groups, reflecting and responding to their influence.[4] The indecisiveness of the Government demonstrates that law and policy-making result from social conflict not consensus. Where there is no consensus, or where the rivalry is between opposing interest groups each with political influence, then the most likely result is political schizophrenia of the type exhibited by the Government in 1977. Parallels can usefully be drawn with forest conservation in the colonial era.[5]

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[1] C. Clapham, Third World Politics 1985, Croom Helm, London, pp.197, pp.39-44.

[2] This Marxist analysis of law was discussed at supra p.46.

[3] Cotterrell, The Sociology of Law, op cit p.105.

[4] Quinney, quoted in Lloyd, op cit p.620.

[5] Supra Chp.4.

Efforts to reclaim the forest reserves were not revived until after the change of Government in 1979. In that year the services of the army were once again sought by the Department but the influx of illegal farmers showed no respite.[1] The Bia-Tawya and Tano-Ehuro reserves were now the focus of attention. A few arrests were made in the proposed Bia-Tawya Forest Reserve. By 1980, forestry officers and Gliksten were appealing for a clear policy statement from the MLNR condemning the illegal farmers[2] but no such statement was forthcoming. In 1984, the Forestry Department took the initiative in establishing a task force comprised of forestry officers, Gliksten employees and members of local security services. This was after the nationwide drought in 1983. The Government was showing a renewed commitment to forest protection in the aftermath of the horrific bush fires which had swept the country destroying crops even in the forest zone. Twelve arrests were made in the proposed Bia-Tawya Forest Reserve. The farmers were charged with making illegal cultivations, illegal erections and illegally felling timber[3] but after eighteen months prosecutions had still not been

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[1] Letter from the ACF, Sefwi Wiawso, to the Omanhene of Sefwi Wiawso Traditional Area, 16/5/1979 Departmental Records Juabeso-Bia.

[2] Draft letter from the RAO to the District Chief Executive, April 1980 Departmental Records Juabeso-Bia.

[3] Particulars of 12 persons to be prosecuted at the Sefwi Wiawso Grade One District Court, 8/1/1985, Departmental Records Juabeso-Bia.

made.[1] The delay encouraged other farmers to intensify farming activities. Timber was now being deliberately destroyed and it was reported that the Chief of Boinzan had even sold land under plantation management by the Department.[2] From 1982 onwards serious attempts were made to prosecute illegal farmers in Tano-Ehuro Forest Reserve. Between 10-20 farmers per year were arrested and charged.

Curiously enough, action by the Department was welcomed by the Omanhene of Sefwi Wiawso who was no doubt angry with his sub-chiefs for making unauthorised alienations without his knowledge.[3] In 1986, the Department was also scolded by the Omanhene of Aowin Traditional Area for failing to protect the Tano-Ehuro Forest Reserve from destruction. He claimed that the Traditional Council should be compensated for the loss of revenue which the destruction of valuable timber implied.[4] The district forestry officer interpreted this allegation as "an attempt to hoodwink the public".[5] He suspected that the Omanhene had been selling land in the reserve claimed by the Sefwi Wiawso stool:

"The illegal farming activities in the Tano-Ehuro

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[1] Letter from the Principal to the Assistant Superintendent of Police, Asawinso, 18/7/85 Departmental Records Juabeso-Bia.

[2] Letter from the TO, Bia-Tawya, to the ACF, Sefwi Wiawso, 28/5/1989, Departmental Records Juabeso-Bia.

[3] Letter from the Omanhene to the CF, Sefwi Wiawso, 25/5/1979 Departmental Records Sefwi Wiawso.

[4] Letter from the Omanhene of Aowin Traditional Area to the CCF, 30/11986, Departmental Records Sefwi Wiawso.

[5] Letter from the DFO to the CCF, 8/4/1986 Departmental Records Sefwi Wiawso.

> Forest Reserve have political implications ... A case in point is the border dispute of the landowning Aowin and Sefwi Wiawso stools. Proper settlement of the case is a necessity. It will solve the problem of the refusal of arrest from farmers who claim to be in the Aowin portion of the reserve by Wiawso police and vice versa."[1]

The Paramount Stools themselves had irreconcilable personal interests to take into account in deciding upon their political support. They knew they were entitled to a proportion of forest revenues accruing from timber exploitation.[2] If more timber was legally exploited, their revenue from this source would be correspondingly greater. The clearest evidence of the extent of their territorial boundaries in customary law, however, lay in the extent to which farmers authorised by them or their sub-stools occupied the land. If, in addition, they were to receive any direct share in the profit from the sale of farming rights to land they had to prevent their sub-stools acting secretly without their authority. Nevertheless, unauthorised alienations were at least preferable to the sale of those farming rights by rival stools owing allegiance to another paramount stool. In view of these irreconcilable interests, it is not altogether surprising that the Paramount Stools were discovered selling farmland, agreeing to reservation and urging the Department to act punitively against their own sub-stools. They were hedging their bets, trying to secure a personal benefit to themselves whatever the outcome of events.

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[1] Letter from the DFO to the RFO, 23/4/1986 Departmental Records Sefwi Wiawso.

[2] PNDCL 42/1982 s.48(1).

Another Departmental anti illegal farming squad was formed in 1987. Investigations by the Department revealed that alienations of land in Tano-Ehuro Forest Reserve were primarily attributable to the activities of the Bopa, Chori Chori and Asantekrom sub-chiefs of the Sefwi Wiawso stool. At the end of 1986 the Chori Chori and Asantekrom chiefs were arrested and charged with doing acts with intent to sabotage the economy of Ghana[1] and fraud. They confessed that they had sold the land in order to prevent the Omanhene of Aowin selling Sefwi Wiawso stool land. Before the Western Regional Public Tribunal both chiefs were fined 58,000 cedis each. The PNDC had directed that prosecutions should be made through the tribunal system because tribunals would be faster and more severe but the fine of 58,000 cedis does not compare well with the estimated selling price of 48,000 cedis per one 2.3 hectare farm. At the same time, farmers were being fined between 10,000 and 30,000 cedis in the District Magistrates Court but even these fines were far below the real value of the timber they had destroyed.[2] The view of the Department's officers after these experiences was summed up in the 1987 Field Inspection Report;

> "A truly revolutionary action is needed to end once and for all the illegal activities in the reserves of the Western District. The courts and even the tribunals have been surprisingly ineffective over the years."[3]

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[1] Public Tribunals Law PNDCL 78/1984 s.9(f).

[2] Diary of Illegal Farming in Tano-Ehuro Forest Reserve Departmental Records Sefwi Wiawso.

[3] Field Inspection Report, Tano-Ehuro Forest Reserve, 16/11/1987 Departmental Records Sefwi Wiawso.

By 1986, it was apparent that the piecemeal and modest efforts of the Department were proving totally ineffective in the fight to stem the tide of illegal farming. On the contrary, a new and alarming dimension to the problem had arisen:

> "It is apparent that the farmers having exhausted the Tano-Ehuro Forest Reserve now intend extending their activities into the Santomang Forest Reserve ... the Department will have to take some stringent measures to stop the farmers from destroying the Santomang Forest Reserve also."[1]

The Santomang Forest Reserve is one of the much older established reserves, of which there are several in the area, which up until the 1980s had not been seriously threatened by illegal farming. Respect for the boundaries of the long established and undisputed reserves has generally been in marked contrast to the widespread disregard for those reserves which were proposed after independence and after affording them only temporary protection under the Protected Timber Lands Act. A reasonable explanation for this contrast lies in the Government's failure to keep to the policy of the Act which was to release the land for farming in the long term. Opposition to forest reservation was directed at the most recently constituted reserves because, in addition to the economic incentives to continually expand farming activities, farmers and traditional authorities felt that they had been cheated of their legitimate rights to farm the land after salvage felling had occurred. It was hoped that the Government

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[1] Letter from the TO, Sui Range, to the DFO, 31/1/1986 Departmental Records Sefwi Wiawso.

would change its mind again and abandon its enforcement programme once the scale of illegal farming was realised.

The realism of the farmers was not matched by Government. The call for a more radical approach was not lost on the PNDC, a Government noted for its revolutionary ideals. In 1989, the PNDC ordered that all farmers occupying land illegally should lose it to the State.[1] Illegal farmers were given a deadline to quit the reserves by May 1989. Before the deadline materialised farmers in the Tano-Ehuro Forest Reserve petitioned the MLNR, their old champion. They claimed that they had lawfully purchased the land in the 1950s, that they were permanent residents in the area, that they had built three schools within the reserve, that they produced 1,398.59 tons of cocoa from their farms for the benefit of the national economy and that in view of all this their old established farms in the reserve should be allowed to remain.

> "If the Government deprives us of our landed properties which by our sweat and dint of hard labour have been in our possession for a considerable length of time now then we are damned for ever since we cannot possibly lay hands on any alternative farm lands to cultivate cocoa farms thereon to sustain us and our dependents."[2]

This time, however, the view of the PNDC prevailed. In November 1989 ,a letter from the MLNR over turned the decision made by the Secretary in 1977 and restored official approval for the recommendations of the Nyinaku Committee.

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[1] Letter for circulation from the DFO, Sefwi Wiawso, 10/2/1989, Departmental Records Sefwi Wiawso.

[2] Petition to the MLNR re Cocoa Farms in Tano-Ehuro Forest Reserve near Asantekrom, 19/5/1989 Departmental Records Sefwi Wiawso.

> "Since the reserves were constituted to serve a particular purpose, both ecological and environmental and since the continued destruction of forests is detrimental to the ecological balance which is so much the concern of all Ghanaians at this time, Government has decided that ... the main recommendations of the Nyinaku Committee ... should be carried out."[1]

It seems likely that the PNDC really was primarily motivated by fears of environmental degradation. The horrors of the 1982 drought and the growing international concern for the protection of tropical forests fostered its anxiety. In addition, the slump in world cocoa prices confirmed the futility of increasing cocoa production at the expense of alternative exports.

There are several reasons why, for once, the Government could not be diverted from its goal. The PNDC has been outspoken in its opposition to corruption at every level of Government.[2] It came to power in opposition to the established interests of the wealthy, some of whom are rumoured to have interests in illegal cocoa farms in the Western Region. Instead, it looked to the common man for its support base and it created grass roots political organisations to penetrate the rural areas.[3] In the absence of a political support base incorporating the most influential interest groups in Ghanaian

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[1] Letter from the MLNR to the CCF, 6/10/1989 Departmental Records Juabeso-Bia.

[2] Policy Guidelines of the PNDC 1982, Ghana Information Services Department, Accra.

[3] G. Mikell, Peasant Politicisation and Economic Recuperation in Ghana: Local and National Dilemmas, (1989) 27(3) Journal of Modern African Studies 455-478; Y. Graham, The Politics of Crisis in Ghana: Class Struggles and Organisation, 1981-1984, (1985) 34 Review of African Political Economy 54-68.

society, it has been prepared to use authoritarian and coercive methods to stem political dissent and to achieve its policy objectives.[1] In recent years, it has fostered but not depended on the political support of traditional authorities. Consequently, the Government could not be side tracked because it was not sympathetic to the leading opposition interests and it did not consider itself to be dependent on their political support.[2]

At a meeting of regional political officers and representatives of forest sector agencies in 1990 the details of the Government's current strategy were worked out. It was decided that:

> "In view of the large scale dimension of farming activities and the resultant large settlements and infra structural developments, the destruction of the illegal farms with undue haste would result in serious social and economic dislocations the consequences of which would not be in the national interest ... In the attempt to restore and secure the forest reserves, care should be taken not to alienate the people from Government."[3]

The policy decided at that meeting was that all young farms in the reserves not yet bearing fruit should be completely destroyed as should illegal extensions to admitted

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[1] R. Jeffries, Leadership Commitment and Political Opposition to Structural Adjustment in Ghana, in D. Rothchild (Ed.) Ghana: The Political Economy of Recovery 1991, Rienner, Boulder,pp.285, p.165; E. Rado, Notes Towards A Political Economy of Ghana Today, (1986) 85(341) African Affairs 563-572, p.569.

[2] Rado identifies the principal elements on which the PNDC relies for its support as consisting of the military, a proportion of the professional and managerial class and the Western donor community, Rado ibid p.569.

[3] Letter from the RAO, Western Region, to the MLNR, 12/1/1990 Departmental Records Juabeso-Bia.

farms. All persons farming illegally in the reserves and all chiefs who illegally sold land in the reserves should be prosecuted. The services of the police, CDOs, CDRs and the District Assemblies should be called upon to provide security cover for the operations of the Department. Older farms should be phased out over a period of five years during which time the land should be planted up with timber species by means of intercropping with the mature cocoa trees. Farmers should be made responsible for the well being of the young trees. Uncooperative farmers should be immediately dispossessed. An intensive educational programme was planned to encourage farmers to accept this modified taungya/agroforestry system. At the meeting attention was also drawn to the resource requirements of the Department. The Department did not escape criticism for failing to enforce regulations for the protection of reserves in the past.[1]

The details of the policy reveal an attempt to combine pragmatism and coercion. The decision not to destroy mature cocoa farms meant that the current crop would not be wasted. It was also an inducement to encourage established farmers to co-operate in the planting of timber trees which often require shade for their early growth. The destruction of younger farms would put a halt to the further colonisation of the reserves. Here, no mercy was to be shown whether or not farmers were prepared to assist in taungya operations.

The destruction of young cocoa farms but not old ones is not an equitable measure, however. The young farms which have

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[1] ibid

not yet given fruit are those from which no return on investment has been made and therefore their destruction represents a loss to the owners which cannot be offset by past profits. The new generation of cocoa farms may include smaller farms of young farmers who have no other independent source of income whereas the older farms in some cases belong to vast estates held by stranger farmers who, having made their money elsewhere in Ghana, profited greatly from an early arrival on the scene. According to the findings of the Nyinaku Committee, such farmers were not unaware that the land they purchased was in the process of being reserved by the Government but nevertheless they were prepared to gamble on their ability to destroy the forest more rapidly than the Government's ability to protect it.[1] It is these people who have already gained the most at the expense of the country. Young farmers today have simply followed their example after observing for themselves the dithering political support for forest reservation.

A District Assembly task force was established in Sefwi Wiawso at the initiative of the District Assembly in 1989 to implement this policy, known as "Operation Halt". The District forest officer was made Secretary to the task force. In January 1990, after the regional officers' meeting, two trips were made to Tano-Ehuro Forest Reserve. Illegal farmers gave statements and information was taken about the persons from whom they acquired the land. In February 1991, a task force set up in Juabeso-Bia District began to implement Operation Halt in the proposed Bia-Tawya forest reserve.

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[1] Nyinaku Report op cit p.31.

Up to November 1990, by far the most dramatic action was that which occurred in the neighbouring district of Bibiani. On August 17, 1990, the local District Secretary led a task force comprising representatives of the Traditional Council, District Administration, District Assembly, Settler Farmers' Association, youth associations, police, militia, CDRs, Department of Agriculture and Department of Forestry and other volunteers into the Tanosro Extension Forest Reserve to destroy all non fruiting cocoa trees therein. Efforts to reafforest the reserve with timber species were begun at the same time. Meetings were held with 2,000 farmers to discuss the care of newly planted seedlings.[1] A few weeks after the episode complaints were voiced by farmers of mature plantations that their trees were also destroyed in the operation. It was reported that the local school was pulled down and that local militia had been harassing farmers to prevent them from going to their farms.[2]

Before the Bibiani episode, doubts were voiced as to whether local support would be forthcoming because so many people are involved directly or indirectly in the illegal farming. The establishment of markets, roads and even banks and Cocobod stores has given the settlements in the reserves an air of permanency and legitimacy. The rallying of grass roots support for Operation Halt in these circumstances is therefore quite remarkable. Two questions need to be asked - (a) how was support for the operation won at the local level,

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[1] People's Daily Graphic 20/8/1990, p.16.

[2] People's Daily Graphic 11/10/1990, p.1.

and (b) will it be possible to sustain the momentum of the campaign and to reafforest the reserves?

The factors which prevented the subversion of PNDC policy in the highest echelons of government indicate reasons for the initial success of Operation Halt. The PNDC has a reputation for authoritarian action in the face of dissent. In the "culture of silence" which has characterised politics in Ghana for the past decade, opposition to policy initiatives has been far from encouraged.[1] While the powerful interest groups which dominated politics prior to 1982 have been rebuffed, the PNDC has established a network of "revolutionary" organisations to further its objectives even in the rural areas. These have absorbed the young unemployed and landless farmers as well as some civil servants who earn an income independently of agriculture.[2] The Mobi-Squads, for example, recruited returning migrants from Nigeria after the massive expulsions of Ghanaians in 1982. Initially, these volunteers were employed in anti-smuggling activities which earned them a small income.[3] At the same time, it won for the PNDC a loyal support base which was not wholly dependent on existing social networks. More than ever, it created political divisions in

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[1] B. Agyeman-Duah, Ghana, 1982-86: The Politics of the PNDC, (1987) 25(4) Journal of Modern African Studies 613-642, p.625; Jeffries op cit p.165.

[2] A. Bing, Popular Participation Versus People's Power: Notes on Politics and Power Struggles in Ghana, (1982) 31 Review of African Political Economy 44-57; Z. Yeebo, Ghana: Defence Committees and the Class Struggle, (1985) 32 Review of African Political Economy 64-72; Graham op cit pp.54-68.

[3] G. Mikell, Equity Issues in Ghana's Rural Development, in Rothchild op cit pp.88-100.

rural societies.[1] With the establishment of the district assemblies, the indications are that the PNDC has consolidated its penetration into rural areas. This is because, although the assemblies include elected representatives, each Assembly is headed by a District Secretary who is a political appointee. This is in addition to the one third maximum of representatives who are chosen by the PNDC.[2] The evidence that the district assemblies have acted to implement Operation Halt without encouraging a full and open debate in a democratic fashion, despite the probability that many elected representatives are related to illegal farmers, is a good indication of the extent to which the assemblies are influenced by the directions of the PNDC as channelled through the district secretaries. The ideal of democratic and local participatory decision-making embodied in the Brundtland Report,[3] is seriously modified in practice in the present political system because district assemblies and other grass roots organisations have not been used as vehicles for two way processes of communication.[4] In reality, it is submitted, they have acted more like the machinery of central government transposed to the rural areas encompassing and sustaining a top-down style of government.[5] This accounts for their role in

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[1] ibid p.90.

[2] Local Government Law PNDCL 207/1988, s.3, s.21.

[3] WCED op cit p.331.

[4] Rado op cit p.571; Yeebo op cit p.71.

[5] "Verdict on Assemblies" West Africa 3-9/2/1992, no.3881, pp.181-182, p.182; "Transition and Its Meaning" West Africa no.3920, 2-8/11/1992, pp.1864-1865, p.1865.

pioneering the implementation of Operation Halt.

Several factors combine to suggest that in the long term the latest campaign will be no more effective than its predecessors. The policy is not comprehensive. For example, there has been no clear policy statement on what action should be taken with respect to the towns along with their banks, schools and other institutions, sited in reserves. Massive evictions in the past have failed to achieve any lasting impact and such measures only serve to further alienate the Government from local people but so long as these towns exist, there will continue to be a demand for farmland. Another loophole in the policy lies in allowing the mature farms to continue in existence for the time being. This encourages farmers to remain in the area and gives them more time to thwart the Government's plans for their eventual eviction. The imminent change to a democratic form of government suggests that new opportunities for bureaucratic delays may present themselves and that the policy, unpopular locally, may not survive long into the future.

The plans for re-afforestation hang on whether the co-operation of local farmers can be obtained by using the threat of immediate eviction. If the reward for co-operation is the immediate destruction of some cocoa trees and the eventual eviction of farmers from their land, the effort may simply not be worth making. In the past, taungya operations in fully established forest reserves have not worked well in this region because timber seedlings were simply neglected. The Department does not have the manpower to closely monitor and

supervise replanting activities at the farm level. The threat of eviction, if implemented, will only be effective if non co-operators are in a minority because, in reality, the Department is dependent on farmers for the replanting and husbandry of timber seedlings. Relations between the Department and illegal farmers are fraught with suspicion, to say the least, so there is every reason to believe that a majority of illegal farmers may continue to undermine the efforts of the Department in any way they can. If non co-operation is the norm, there is no reason to think that the prosecution or eviction of a dozen farmers a year, especially if fines imposed on those convicted are not sufficiently punitive, will serve to deter illegal farming activities any better than in the past. The large scale burning of cocoa farms is not a viable option because of the fear of bush fires and because timber trees do not grow well in an environment denuded of vegetation.

The future after the transition to democratic government of the revolutionary organisations which have been at the forefront of the campaign is not clear. In a truly democratic environment, it seems unlikely that locally unpopular measures will be pursued with the same vigour as the 1990 campaign, yet at the first sign of relaxation, it is not unlikely that the illegal occupants will rapidly return to the land which they have paid to farm.

Fundamentally, the policy does nothing to address the structural, society wide problems which the policy implies. This is its most serious weakness. If farmers are not

effectively compensated for the time and money which they have invested in the land, if there is no public sympathy for the forestry cause and, most importantly, if there is no alternative employment available for the farmers who do not have farms in other parts of the country, then farmers will not readily co-operate in the destruction of their means of livelihood. Without their co-operation, massive re-afforestation is unlikely to be realised but if the land is not quickly replanted, it will not be many years before local farmers once again encroach into the dormant and useless reserves and the whole saga begins again.

Operation Halt, it is submitted, adopts a strategy which has implications for law enforcement and re-afforestation, which, on the basis of past experience, seem beyond the capacity of local organisations to effectively implement over the long term. The strategy was determined in Accra and sanctioned by a non democratic, hierarchical government which has been able to mobilise its political supporters at the local level in the short term. It does not take into account the long term and quite drastic social problems which it may cause and because it does not offer jobs, rewards or compensation for local people it is a policy initiative which invites reversal once democratic government is restored.

If the Government wants to find a successful policy which will not waste its time and resources while further antagonising local people, then it should take a more realistic view of this complicated affair. It should admit the magnitude of its mistakes and consider what it really has the

resources to achieve. Fundamentally, its greatest mistake has been continual indecisiveness over the past thirty years. This has led to long spells of inaction punctuated by radical outbursts which have provided no long term solution in the face of steady and intense opposition from illegal farmers. If whole reserves have been converted to farmland and settlements then, it is submitted, it is now too late to salvage this land. A more feasible strategy is to strengthen the capacities of the local district forestry departments which should now concentrate on protecting the existing, long established forest reserves which remain mostly intact. This job by itself is enough to stretch the resources of the Department. International funding should be allocated to this end and the maintenance of long term, logistical support for district forestry offices should be made a priority.

Areas of reserved land which have been seriously encroached upon by illegal farmers should be de-reserved in return for a guarantee by traditional and district authorities that they accept some responsibility for helping to prevent any future encroachments into forest reserves. The payment to them of a proportion of forest revenue could be made dependent on their success in implementing this policy. In the future, farmers who encroach illegally into forest reserves should have all their farmland, wherever located, confiscated as a matter of course. However, in view of the secrecy surrounding matters of land ownership in this region, it has to be admitted that the task of identifying the real farm owners and of ascertaining the extent of their other property would be

formidable. The compulsory registration of titles in this area under the Land Titles Registration Law[1] could facilitate the implementation of this proposal but there would be very little incentive for farmers to obey the law in this case.

Sanction orientated strategies of this type, it is submitted, would be more effective if, at the same time, more positive measures were introduced as part of a package to induce greater conformity to the law.[2] Their continuation could, for example, be made dependent on local co-operation in protecting the remaining forest reserves from illegal encroachments.

Prevention is always better than cure. A measure in line with this strategy would be more official support for the rehabilitation of mature cocoa farms because this would help to side track the desire for continual expansion into virgin forest. The high cost of agro-chemicals is of relevance here. If their cost continues to increase, it will frustrate efforts to improve productivity on existing farms, a goal which, if put into effect, could help to discourage expansion into virgin forest.

New investment opportunities should be promoted so that land acquisition is not the only avenue for profitable investments. For example, opportunities in the marketing of cocoa and supply of agro-chemicals may arise pursuant to the Government's liberalisation policies.

In addition, agricultural and forestry departments should

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[1] PNDCL 152/1986

[2] Seidman, The State, Law and Development op cit p.102.

liaise closely at the local level to introduce agroforestry techniques[1] and to win support for the environmental objectives of forest reservation. Their policies should be re-assessed so as to better complement each other. For example, the new varieties of cocoa seed being promoted by the Ministry of Agriculture require little shade, an attribute not entirely conducive to agroforestry.

Fundamentally, there is a long term need to integrate the local economy much more closely with forest exploitation.[2] Only in this way will the logic of sustainable development really appeal to local people who must forego the immediate opportunity to expand their farming activities. This goal would require, at a minimum, the adoption of a long term, comprehensive plan which would take into account the economic, land-use and environmental inter-linkages which lie at the heart of this issue. This would end the history of piecemeal confrontation which has served only to foster bitterness and resentment for the work of the Forestry Department. Government should finally abandon the use of coercive techniques reminiscent of the authoritarian, colonial strategy and move gradually towards the implementation of a more holistic development programme very much in line with the philosophy of the Brundtland Report.

When the analysis is enlarged in this way to take into

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[1] This was also a recommendation of the FRMP Report, supra p.161.

[2] The opportunities for small scale producers in some aspects of timber processing and in the exploitation of minor forest produce in forest reserves are discussed in chapter eight infra

account the underlying, cross sectoral issues, many opportunities for international environmental support, directly and indirectly, present themselves. Many of the policy recommendations just made could, for example, be implemented initially with the help of international aid.

(iii) Conclusion.

The multitude of problems facing the Department in the performance of its protective functions has been made clear in this account. The manpower and resources of local district offices have never been sufficient to cope with large scale intrusions into forest reserves. The ability of the Department to rehabilitate deforested areas has not been proven. Political support from the Government has been inconsistent or even blatantly obstructive at times. The courts, tribunals and police have given little assistance to the Department. This has left the latter completely isolated and in an impossible position for the greater part of the period since 1965. Delays in official procedures have encouraged farmers to pursue their illegal activities. Uncertainties as to land ownership by stools and tenant farmers, boundary disputes and the lack of written evidence of land transactions available to the Department have enabled secrecy and lies to confound the investigations of the Department. The legal fiction that land in a forest reserve vests in the traditional landowners and their acknowledged right to revenue arising out of that title are factors which have encouraged stools to grossly abuse their position by competing with each other in the sale of

land to tenant farmers. Evidence of land ownership and alienation by specific persons has been hard to amass. In these circumstances, the real culprits who purchased the land can often not be traced. The chiefs' stranglehold on land ownership and political society at the local level keeps strangers and officials anxious not to offend them. Their influence and that of the wealthy and influential tenant farmers has been instrumental in diverting and postponing policy implementation. There is a not unreasonable fear of violent repercussions on forestry officers who try to destroy the status quo.

Underlying all these issues is the fact that cocoa is a lucrative crop for individuals as well as Government. The soils and climate in this area are well suited to the cultivation of this crop. In recent years the region has become more commercialised and more heavily populated than was the case when the earlier forest reserves were established in the colonial age. In these circumstances, it seems likely that it will never be possible to constitute those former protected areas which are now heavily farmed, into productive forest reserves.

The account in this chapter suggests that poverty is not the only motivating factor behind environmentally destructive activities. Where low income labourers are working the land, they are frequently acting merely as caretakers for absentee farm owners. On the contrary, it is because the interests of the wealthy are affected that the matter has been allowed to drag on for so long. They have fostered delays and U-turns

which have rendered nugatory the impact of government policies. This confirms the view that law and policy are fora in which competing interest groups fight to protect and promote their own interests sometimes at the expense of environmental protection.

The result of these political manoeuvrings is that the opportunity to preserve the original forest in some reserves has now been lost for ever. Government should therefore reassess its strategy and adopt a more pragmatic policy which, so far as possible, takes into account the complex, underlying factors affecting the situation. This is consistent with the Brundtland approach.[1] It requires, however, a radical reorientation of policy towards a long term view taking into account the whole development of this region. There has been no indication to date that Government has, in actual fact, moved any closer to this view.

Development bureaucracies have been noted for their compartmentalism, incremental decision-making and short term strategies.[2] These problems were identified in the Brundtland Report[3] and are clearly in evidence in this affair. The evidence in this chapter suggests that although Brundtland style reforms are clearly desirable in this case, there are formidable problems impeding them both at the policy and implementation stages.

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[1] WCED op cit pp.62-65.

[2] Seidman op cit p.240.

[3] WCED op cit p.9.

CHAPTER EIGHT: THE LEGAL CONTROL OF FOREST EXPLOITATION.

> "Individual governments can better use renewable resources such as forests and fisheries to ensure that exploitation rates stay within the limits of sustainable yields and that finances are available to regenerate resources and deal with all linked environmental effects ..."[1]

One of the principal contributions of the sustainable development debate to theories of environmental protection is its emphasis on the controlled exploitation of natural resources. Where the resource is potentially renewable, the Brundtland Report argued in favour of responsible management to secure a perpetual supply of the resource so that, at a minimum, basic needs can be met indefinitely.[2]

Sustained yield management is a principal objective of the science of forestry. It is a goal which has been formally incorporated into Ghanaian forestry policy since 1949.[3] The objective of this chapter is to consider the extent to which the relevant laws and policies relating to forest exploitation serve to implement the goal of sustainable development.

This discussion relates well to a number of issues raised in chapter one. In particular, the question whether economic growth in the 1980s led in practice to a real concern for the environment is pertinent to the Brundtland premise that economic growth is one essential pre-requisite for sustainable

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[1] WCED op cit p.82.

[2] ibid p.45.

[3] Forestry Department Annual Report 1949, Government Printer, Accra, p.1.

development.[1] The discussion in chapter one on the role of conflicting interest groups in law reform and law implementation is also relevant.[2] The conflict model of law in society suggests that if the concerns of relevant interest groups are not consistent with the requirements of sustainable development, they will attempt to prevent the enactment, or alternatively to frustrate the implementation, of laws and policies which embody the principles of sustainable development. Has this been the case with forest exploitation in Ghana? If so, what can be done to interest these groups in sustainable exploitation? What are the underlying constraints which may frustrate sustainable development even when the correct laws and policies are in place? Will improvements in management suffice to implement a sustainable development strategy? If not, what recommendations can be made to help improve conformity to the law and to enhance the long term prospects for sustainability?

Because sustainability implies exploitation as well as protection, the strategy of this chapter is unashamedly to ground legal analysis in the realities of the economic world in which timber exploitation is pursued. In so doing, the intention is to expand upon questions of legal and scientific technicalities in order to identify the underlying factors which may promote or frustrate sustainable development policies. Fundamental to a structural analysis of this type, is not only an assessment of the laws for managing the forest

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[1] WCED op cit p.51.

[2] Supra p.44.

estate but also an inquiry into the composition and performance of the local timber industry whose activities may fundamentally affect the success or failure of sustainable management strategies. This requires an assessment of the whole range of problems which face the industry and those who try to control it.

In the first part of this chapter, the constitution of the forest from a commercial viewpoint is introduced. The principal features of the timber industry in Ghana and the most topical problems which presently confront it are then discussed. An assessment of the relevant legal measures is then made incorporating aspects of the preceding discussion. The exploitation of minor forest produce is also briefly discussed, followed by a summary of the principal conclusions drawn in this chapter.

Official statistics are incorporated into the discussion. In many cases, the Forest Inventory Project has improved data collection making these statistics quite reliable but, throughout the discussion, special mention will be made in those cases where the element of doubt remains great.

In practice, there are many obstacles to the sustainable exploitation of the forest estate. Economic realities all too often lead to the adoption of short term, unsustainable policies while private interests undermine official management strategies. Rationalisation of the industry as well as more effective enforcement of forest regulations appear to be pre-requisites to sustainable forest exploitation but unfavourable international and national economic circumstances seem to

prevent industrial restructuring. These factors also undermine attempts being made to improve domestic management.

(i) The Timber Resource.

Ghana now has approximately 17,000 km^2 of forest reserves and 3,700 km^2 of unreserved forest in the High Forest Zone.[1] These forests contain at least 680 tree species of which 126 species are currently or potentially of commercial value. However, the major part of the timber exploited at the present time consists of only 40 species.[2] The extent to which the most popular export species are being over cut is demonstrated in the following figures:

Estimated Resource Life For Some Commercial Species.[3]

Species	Girth Limit	Resource > Girth Limit m^3	Annual Growth m^3/yr	Rate of Extraction m^3/yr	Resource Life yrs
Odum	11ft	1 408 000	28 650	172 983	10
Edinam		468 000	7 155	33 167	18
Sapele		702 000	13 496	41 135	25
Utile		465 000	8 081	31 891	20
Mahogany		692 000	31 488	66 877	20
Wawa	7ft	26 356 000	135 779	366 064	114
Dahoma		5 254 000	75 569	14 915	**
Kyenkyen		3 726 000	33 331	14 801	**
Mansonia		695 000	2 753	5 830	226

** Growth exceeds felling rate.

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[1] TEDB, Ghana: Forests, Wood and People op cit p.6.

[2] TEDB Status Report on the Ghana Timber Industry 1990, Unpublished Brief, Takoradi, pp.12, p.2.

[3] D. Alder, Natural Forest Increment, Growth and Yield, in Ghana Forest Inventory Project: Proceedings of a Seminar in Accra, 29-30/3/1989 1989, Accra, pp.90, pp.47-58, p.49.

The conclusion to be drawn from these figures is self evident. The exploitation of some popular redwoods such as Odum, Sapele and Mahogany must be drastically curtailed if they are not to become extinct in the near future while exploitation of other commercial yet not so popular species should be increased in order to take advantage of the resources available. The problem for Ghana is that the international timber market is a buyer's market, traditionally very selective in its choice of species.[1] The present Government has demonstrated its commitment to encouraging the export of secondary species which are relatively abundant in Ghana in the establishment of the TEDB[2] but the institution is constrained by the dictates of the international market.[3]

The Annual Allowable Cut (AAC) is the amount of timber which can be harvested each year from a forest without depleting the growing stock. It is calculated from the annual incremental growth of a variety of commercial species and the estimated total volume of those species. The accuracy of the AAC is reduced if the range of species actually exported is less than the range included in the calculation of the AAC. The AAC for Ghana has recently been estimated at 1.25 cubic metres per hectare per annum which means that an estimated

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[1] P. Hurst Rainforest Politics: Ecological Destruction in South-East Asia 1990, Zed Books, London, pp.303, p.264; J. Wyatt-Smith The Managment of Tropical Moist Forest for the Sustained Production of Timber: Some Issues 1987, IUCN/IIED/WWFN Tropical Forest Policy Paper no.4, IUCN Publications Service, Cambridge, pp.19, p.9.

[2] PNDCL 123/1985 s.2(b).

[3] Interview with Mr. Attah, TEDB, 14/11/1990.

1.45 million cubic metres of timber can be cut from Ghana's forests each year without depleting the resource base.[1] Production in 1988 was 1.137 million cubic metres.[2] Although this figure falls within the AAC, it fails to take into account timber felled or damaged but never removed from the forest. It has been estimated that the actual cut approximates more closely to 2.7 million cubic metres, a figure clearly in excess of the AAC.[3]

The limited nature of the resource base in Ghana will not allow the indefinite growth of the timber industry. If the policy of sustained yield production is to prevail, and this is the main objective of the FRMP, then the timber industry must be rationalised so that demand for raw materials does not outstrip available supplies. In future, the industry will have to utilise more secondary species, increase secondary processing and improve efficiency in order to reduce waste and maximise returns from the limited resource base.

(ii) The Timber Industry: Characteristics and Performance.

The timber industry is a major earner of foreign exchange in Ghana. In 1988, 536,213 cubic metres of wood products were exported earning for the country US$ 97 million. Another 242,000 cubic metres of timber were consumed locally. The

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[1] Alder op cit p.55.

[2] Status Report on Ghana Timber Industry op cit Appendix One.

[3] Staff Appraisal Report op cit p.68.

sector accounts for approximately 5-6% of GDP.[1] At the present time, there are 200 companies engaged in logging activities, 100 companies engaged in saw milling, 9 companies engaged in plywood production and 13 companies engaged in veneer production. There is only one chipboard manufacturer.[2] Some of the distinguishing characteristics of the industry are summarised below.

(A) The Separate Ownership of Logging and Processing Enterprises.

Since the earliest days, timber exploitation has been characterised by the presence of well capitalised, European concessionaires and under capitalised, local operators usually working on a much smaller scale. Differentiation increased when European firms began to invest in capital intensive processing mills after the Second World War. After independence, discrimination in the award of concessions compelled foreign owned companies to concentrate on further processing while purchasing raw materials from concession holding Ghanaians.[3] Further processing by local operators usually consisted of pitsawing[4] (now replaced by chain saw operators) or furniture production for the local market.

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[1] ibid p.1.

[2] TEDB op cit p.4.

[3] Evidence of discrimination was produced in the Blay Report. See supra p.130.

[4] Pitsawing involves digging a pit in the forest beside the tree to be felled and immediately sawing the tree into lumber once felled.

The result of this history is still evident today. The industry is clearly differentiated between logging, processing and furniture-making enterprises. Thus, the preponderance of furniture manufacturers are local companies employing less than 20 persons. Meanwhile, in the milling sub-sector, although there is a greater distribution between small and large companies,[1] the largest private companies continue to be foreign owned. In these large, foreign owned companies the dominance of a small number of persons related by family and business links is striking. However, some of the largest processing enterprises are now owned by the State.[2]

The logging sub-sector is further differentiated between legal and illegal operators. The former include the large, nationalised companies and private Ghanaian concessionaires who either export their logs or sell directly to processing companies, including those foreign owned companies which do not have their own concessions. The latter are Ghanaian operators working outside the formal concession procedure, feeding local markets with timber which has been chain sawn in the forest. Trespass by chain saw operators into concessions outside forest reserves is common. Chain saw operations are only legal when a felling licence has been granted by the

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[1] Department of Statistical Services, Ghana Directory of Industrial Establishments, 1988 1989, Accra, pp.306, pp.60-90.

[2] These include Gliksten (West Africa) Ltd., Takoradi Veneer and Lumber Ltd.and African Timber and Plywood (Ghana) Ltd., Subin Timbers Ltd. and Central Logging and Sawmills Ltd.. See Timber Operations (Government Participation) Decree NRCD 139/1972, s.1.; Forfeiture of Assets and Transfer of Shares and Other Proprietary Interests (Subin Timbers Ltd. and Central Logging and Sawmills Ltd.) Law PNDCL 31/1982, s.1,2.

Lands Department. These are occasionally awarded for the felling of a specified number of trees on land not falling within a concession but the majority of chain saw operations have not been authorised under this procedure. In addition, a number of District Assemblies now require the registration of local chain saw operators. This is in addition to the requirement that chain saw operators should register with their local branch of the FPIB.[1]

The differentiated structure of the industry has facilitated a situation in which it is difficult for processing mills which do not hold concessions to secure regular supplies of wood from their frequently less well organised counterparts in the logging sub-sector.

(B) Structural Inefficiencies.

In 1934, it was reported that the timber industry was full of insecurity and badly organised. The trade was mostly in the hands of under capitalized Africans who were not able to compete effectively on the world market. African timber cutters received cash advances from European middlemen engaged in the shipment of logs mainly to Britain. Whether the logs cut would be of an acceptable quality to the purchaser, whether timely shipment would be available and whether the local timber cutters would ever get their full payment were all matters of chance. These circumstances did not encourage skilled workmen to enter the business and the end result was the flooding of the market with low grade timber, poorly sawn

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[1] PNDCL 117/1985 s.2(j).

if at all and never fully seasoned.[1]

It was these kind of problems which prompted the establishment of the Timber Marketing Board after independence.[2] Although the performance of the industry has since improved, the industry remains badly organised in respects not always too dissimilar to the past. Many companies continue to be under capitalised; the industry has a poor loan recovery record and there is still a shortage of skilled labour.

The most obvious structural inefficiency is the excess capacity in the saw milling and logging sub-sectors. Many mills are estimated to be running at between 40-50% of capacity.[3] The Economic Recovery Programme was partly responsible for the revival of small scale logging companies.[4] The shrinking resource base and the more stringent application of silvicultural controls suggest that restructuring of the industry is now inevitable with the least efficient firms being liable to collapse.

The presence of widespread malpractice in the industry[5] perpetuates structural inefficiencies. The poor loan recovery record has made finance for investment in improved technology

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[1] F.M. Oliphant, Report on the Commercial Possibilities and Development of the Forests of the Gold Coast, 1934,Government Printer, Accra, pp.13.

[2] Supra Chp.5., p.169.

[3] Staff Appraisal Report op cit p.6. Correspondence with some timber firms in 1990 indicated that this estimate (made in 1988) was improving.

[4] Infra p.248.

[5] Infra p.260.

scarce. The industry therefore exhibits excess capacity in the logging and milling sub-sectors but a lack of investment in more sophisticated types of further processing.

(C) Wasteful Technologies.

The industry has always been accused of wastefulness in its use of timber resources. In 1951, a Fact Finding Committee on the Timber Industry in the Western Region reported that waste of timber often resulted from the activities of incompetent operators working on a minimum of capital. Further waste resulted from delays in the movement of timber due to the lack of suitable transport and the inadequate facilities at Takoradi Harbour. There were further inefficiencies in building work and furniture manufacture.[1]

More recently, it has been estimated that 25-50% of all timber cut is left on the forest floor while as much as 40-60% of the timber that reaches the factory floor may also be wasted.[2] Sources of waste in the forest lie in the failure to utilise big branches, the practice of burning the base of trees before cutting, the practice of only cutting above breast height and leaving large top off-cuts and the practice of leaving wood split in felling on the forest floor.[3] Often

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[1] Report of the Fact Finding Committee on the Timber Industry in the Western Province of the Gold Coast 1951, Government Printer, Accra, pp.viii-xii.

[2] R. Chatchu, Allowable Cut From the Forest, in Ghana Forest Inventory Project ... op cit pp.63-71, p.64.

[3] C.Y.Faakye, Survey into Logging Waste in a Selected Forest Reserve of Ghana 1988, Dissertation submitted for the Diploma in Natural Resource Management, UST, Kumasi, pp.56, p.2.

the principal reason why this timber is left in the forest is the lack of machinery able to process it.

Inefficient and out of date machinery is also the principal reason for the level of wastage reported in processing. While many operators do not consider as waste that which can be sold or used as firewood or offcuts and that which they do not have the capacity to process, more sophisticated machinery could undoubtedly convert the timber into higher value products.[1]

Some foresters believe that small logging and saw milling enterprises are less efficient than their larger counterparts.[2] Small operators cannot afford to employ efficient machinery and skilled manpower. They are likely to be under capitalised and less co-operative with the regulatory agencies. Their overhead costs are likely to be proportionately greater. However, large scale loggers and millers also work inefficiently if their sole concern is to take only the best quality timber of a few select species in order to meet specific export contracts.[3] Only a small number of the very largest firms are able to process all grades of timber using the most efficient machinery. In fact, both large and small scale operators employ wasteful techniques and many foresters argue that the size of the enterprise need not be

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[1] See also, D.Otoo, Logging Waste on a Felling Area of a Small Scale Logger in Ghana 1978, BSc Dissertation, UST, Kumasi, pp.29; O.Attah, Utilisation of Mill Residues in Ghana: A Case Study in Kumasi 1987, BSc Dissertation, UST, Kumasi, pp.33.

[2] Otoo, op cit p.3.

[3] Faakye op cit p.7.

the principal factor determining efficiency.[1] However, large concessionaires do have a reputation for more closely following silvicultural requirements and for more reliable payment of forest fees. On this basis alone, it can be argued that, in future, priority in the award of concessions should go to larger operators who have proved themselves reliable.

It seems likely that under the current pressure to improve efficiency, larger concessionaires will be in a better position to upgrade their technology and to improve manpower training. This seems to be the assumption made in the FRMP Report which recommends the regrouping and enlargement of concessions so that larger concessionaires will be able to take full advantage of economies of scale.[2] However, more investment in the necessary technology and training is an essential pre-requisite to increased efficiency by larger concessionaires. The FRMP does not include measures to address this long term, structural need. The high interest rates charged locally make it difficult to forsee an early investment in new technology of this type.

The need for efficiency generating investments is also evident in milling enterprises. If the necessary investment is forthcoming there are many opportunities for increasing the value added to mill residues, among other things. For example, briquettes can be produced from sawdust. The manufacture of chip board and high value curls are also areas deserving

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[1] This view was put to the writer by members of several forest sector institutions.

[2] Staff Appraisal Report, op cit p.16.

attention. A great opportunity for investment in this type of equipment was lost in the early stages of the Economic Recovery Programme.[1] Smaller milling enterprises are less likely to be able to raise the capital for investment in efficiency improving technologies. One possible development is for these companies to concentrate on milling secondary species which can be economically worked despite inefficiencies in milling procedures. Primary species would then be reserved for those companies which can most efficiently process the timber. In addition to this limited presence in the saw mill sub-sector, there should continue to be a role for the small scale operator who is able to utilise off-cuts and wood residues in a more profitable fashion. Labour intensive uses of offcuts and mill residues, such as furniture manufacture, may be the most promising field of enterprise but it must be remembered that while the local market for charcoal and firewood is guaranteed, the ability to market higher value goods both locally or regionally is dependent on good marketing facilities and increased purchasing power.

The drive for greater efficiency suggests that a rationalisation of the industry is now inevitable. Although the value of generalising about the relative efficiencies of large and small scale operators is limited, there are good reasons for thinking that a reduction in the number of small scale loggers and millers is overdue. The future for small scale operators appears to be more promising in the areas of

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[1] Infra pp.248-254.

labour intensive further processing and in the manufacture of secondary species for domestic and regional markets.

(D) Wide Fluctuations in Exports and Performance.

The Ghanaian timber industry has always been subject to large fluctuations in performance. This is best seen in the record of timber exports during this century. For example, the volume of gross timber exports in 1911 was approximately 31.1 thousand cubic metres but two years later, timber exports of 84.96 thousand cubic metres were recorded. During the 1920s and 1930s, timber exports slumped reaching a nadir point of 6.8 thousand cubic metres in 1933.[1]

Export trends have been dominated by international market conditions. For example, buoyant international demand during and immediately after the Second World War led to an unprecedented timber export boom during these years. In 1950, the volume of logs and lumber being exported was 294.24 thousand cubic metres and 58.9 thousand cubic metres respectively. Led by strong international demand, the timber industry continued to grow at an incredible rate after 1950. By 1960, the volume of logs and lumber being exported was now 818.73 thousand cubic metres and 236.19 thousand cubic metres respectively. After 1960, however, fluctuations once again became more prominent. Domestic factors were now more significant than the vagaries of international demand.

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[1] Statistics compiled from Dua-Anto, Ghana's Timber Trade, 1957-1958, 1971, Msc (Econ) Dissertation, University of Ghana, Legon, pp.70.

Log and Sawn Timber Exports 1960-1966.[1]

Year	Log Exports ($000m^3$)	Sawn Timber Exports ($000m^3$)
1960	1 084.7	273.9
1961	955.6	366.6
1962	589.4	350.8
1963	796.2	323.6
1964	706.2	354.1
1965	669.4	283.4
1966	523.7	254.4

The principal reasons for the decline in log exports after 1960 were analysed in the Blay Report. The chaos created by the corrupt allocation of concessions and the unhealthy interference in the affairs of the industry by the GTMB and the Timber Co-operative Union were not the only pertinent factors.[2] The high rate of taxes, the steep rise in royalties and the inadequate port and harbour facilities were also blamed.[3]

With the institutional changes made after 1968 and high world demand, conditions in the industry once again improved. Log production reached an all time high in 1973. In that year, 2.1 million cubic metres of timber were exported of which 1.08 million cubic metres constituted log exports and 290,000 cubic metres constituted lumber exports. The world recession contributed to a downfall in exports thereafter from which the

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[1] Report of the Fact Finding Committee on the Timber Industry ... op cit Table 1.

[2] See also, The Issue and Review of Concessions After 1962 Supra Chp.5.

[3] Okona Ewool op cit pp.49-52.

timber industry has never fully recovered. The deteriorating economic situation in Ghana in the late 1970s saw the further decline of the industry. By 1982, timber production had reached its nadir point. In that year, log exports were down to 53,000 cubic metres and lumber exports were 47,000 cubic metres.[1] Factors contributing to this slump included the deteriorating state of logging and processing equipment for which spare parts were unavailable, poor road, rail and harbour infra structure and the over valued cedi.

The performance of the industry in the 1980s has been marked by a dramatic recovery from this position. In 1988, 239,000 cubic metres of logs and 197,000 cubic metres of lumber were exported. The success of the Economic Recovery Programme, which is discussed below, is the main reason accounting for this dramatic recovery.

Logging activities require little starting up capital so it is an activity which often figures prominently in the early stages of economic recovery but, of course, these same enterprises are susceptible to economic downturns. In short, the industry is a highly vulnerable one, sensitive to both the international and domestic economic situation.

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[1] TEDB, Status Report on Ghana Timber Industry op cit Appendix One.

(E) The Timber Industry Since 1980.

In 1983, the present Government started its Economic Recovery Programme (ERP). A series of macro economic reforms were instituted.[1] The cedi was devalued and exporting industries were permitted to retain a proportion of their foreign exchange earnings for the purchase of spare parts. A new Investment Code was enacted in 1985 which provided that the timber industry was one of the sectors prioritised for investment.[2] Timber companies were exempted from the payment of import duties on equipment imported exclusively for use in the company.[3] Under the first phase of the ERP (1983-86), US$128 million was made available as loans to the industry on preferential exchange rates. The greater part of the finance (54.4%) contributed to the purchase of logging equipment.[4] These measures resulted in a dramatic recovery in the sector.

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[1] There is a considerable literature on the impact of structural adjustment lending in Ghana. See, for example, K. Ewusi, Structural Adjustment and Stabilization Policies in Developing Countries: A Case Study of Ghana's Experience in 1983-1986 1987, Ghana Publishing Corporation, Tema, Ghana, pp.91; J. Toye, "Ghana" in P. Mosley, J. Harrigan, J. Toye, Aid and Power: The World Bank and Policy Based Lending (Volume Two) 1989, Routledge, London, at pp.443, pp.150-200; K.Newman, Ghana: Can the Adjustment Reforms be Sustained? (1991) 16(3-4) Africa Development 183-205.

[2] Investment Code PNDCL 116/1985, s.12.

[3] ibid s.12(i).

[4] TEDB op cit p.5.

Timber Exports 1982-1990 (000m³).[1]

Year	Logs	Lumber
1982	53	47
1983	61	56
1984	70	72
1985	130	96
1986	196	117
1987	298	188
1988	239	197
1989*	202	176
1990*	500	200

* Projected

However, this dramatic recovery has not been trouble free. The principal implementing agency, Silviconsult,[2] has been criticised for the criteria which it used to recommend companies for loans. The Investment Centre has been found responsible for granting tax concessions meant for large scale processing industries to small scale loggers and saw mills. The TEDB and the FPIB have been charged with perpetuating the entrenched malpractice which pervades the industry. It has been estimated that between 1985 and 1987 the number of independent logging companies rose from 90 to over 300 so that paper companies could take advantage of the loans.[3] The NIC has now revealed something of the scale of illegal practices in the timber industry and the loss of revenue to Government in consequence thereof.[4] Perhaps the most disturbing aspect of the

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[1] ibid Appendix One.

[2] This was the consultancy firm appointed by the IBRD to recommend loans to forest industries. W. Keeling, Forests Pay as Ghana Loses Out Financial Times 8/2/1989.

[3] "Timber Scandals", West Africa no.3733, 6-12/3/1989, p.345.

[1] The NIC Sub-Committee on Timber infra p.259.

rehabilitation programme was the emphasis placed on logging investments without any corresponding investment in the type of further processing facilities which the country so badly lacks and is so keen to encourage. The above figures demonstrate quite clearly that log exports were the mainstay of the recovery, particularly in its early stages.

These findings raise important questions about the motives of international multilateral development banks:

> "Aiming investment at maintaining the international status quo and supporting donor nations' domestic industries cannot be ruled out as a major objective of (World) Bank policy."[1]

Under the ERP, funding was provided in order to speed up forest exploitation so as to maximise short term foreign exchange earnings without any regard to the deleterious environmental consequences of a shrinking resource base. The programme failed in every respect to meet the national policy goal of increased domestic wood processing but without lending to support this sort of fundamental restructuring the economy will continue to be highly vulnerable to fluctuating demand and falling international commodity prices. It will be no threat, however, to the wood processing industries of donor countries.

An important opportunity for increasing the value of the country's exports has been lost. Unless further processing is encouraged and the level of wastage is reduced, foreign exchange earnings will fall as production is reduced to a level compatible with the AAC. In the long term, the failure

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[1] P. Hurst op cit p.254.

to support industrial restructuring will intensify the supply crisis which the declining stock of primary species threatens to create.

The World Bank has been criticised for neglecting the environmental consequences associated with project lending but the analysis here shows that policy based lending may have equally serious environmental consequences.[1] The Brundtland Report was correct, therefore, to draw attention to the need to take into account the possible environmental impacts of policy based lending.[2]

Evidence relating to the role played by Silviconsult, the World Bank appointed implementing agency, suggests that credits were liberally provided but poorly supervised with the result that funds disappeared into private pockets while Government lost vital revenue:

> "It is unreasonable to expect the (World) Bank or any other development agency to end corruption ... but they could stop funding it."[3]

The Brundtland Report called for more aid and for more responsible aid.[4] The recent history of the ERP in Ghana exemplifies this need.

It is ironic that the Government has now embarked on a World Bank sponsored Forest Resource Management Project the principal objective of which is to ensure that Ghana's forests

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[1] ibid p.262.

[2] WCED op cit p.78.

[3] Hurst op cit p.255.

[4] WCED op cit p.77.

are managed on a sustained yield basis.[1] The main components of the Project include reforms in the system of allocating concessions[2] and in the method of calculating forest fees,[3] measures for strengthening forest sector institutions and the management of forest resources[4] as well as measures to support rural forestry.[5] The major impact of the Project on the timber industry is expected to lie in the increased efficiency which will become necessary due to higher forest fees.[6] It is no credit to the World Bank, however, that the FRMP excludes a more positive component designed to encourage industrial restructuring in the timber sector.

It is naive to assume that sustainability will be attained without directly addressing the fundamental structural imbalances in the timber industry. The evidence of malpractice in the disbursement of recent loans shows how private interests in short term gains can distort the impact of aid programmes. The fact that 54.4% of the finance was spent on logging equipment suggests that there is now an even stonger lobby whose interest lies in the immediate exploitation of precious timber resources. This lobby must be squarely confronted in order to prevent it undermining the

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[1] Staff Appraisal Report op cit p.1.

[2] See further, The Grant, Review and Determination of Concessions infra p.276.

[3] Financial Controls infra p.293.

[4] Management Institutions supra Chp.6.

[5] Minor Forest Produce and Rural Forestry infra p.303.

[6] Staff Appraisal Report op cit p.24.

attempt to enforce sustainable exploitation policies. Measures to assist in the upgrading of competent production outfits may help to win over the more capable and serious entrepreneurs to the aims of long term, sustainable exploitation. Such measures will reduce the vulnerability of the Government to international and local pressures favouring excessive exploitation.

The experience of the 1980s offers a graphic example of how revived economic growth can have detrimental implications for the environmental resource base unless and until appropriate planning and environmental safeguards are built into economic decision-making. This finding is consistent with the Brundtland proposals for changing the quality of growth[1] and on co-ordinating economic and environmental decision-making.[2] It provides a graphic warning, however, of the danger inherent in a reading of the Brundtland Report's emphasis on the importance of revivng economic growth[3] in isolation to its recommendations on changing the quality of that growth.[4] In addition, it adds weight to the argument raised in chapter one that, contrary to the view of the WCED Commissioners, poverty is not the sole or necessarily the principal agent of environmentally destructive activities in many situations.[5]

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[1] WCED op cit p.52.

[2] ibid p.313.

[3] ibid p.51.

[4] ibid p.52.

[5] Supra p.34.

(F)The Ban on the Export of Primary Species in Log Form.

In 1978, the Government banned the export of fourteen primary species in log form. This was in order to encourage the export of timber in higher value products. The ban has continued in force and a total of nineteen primary species now fall within its ambit.

It is difficult to measure the impact of the ban. It preceded the biggest slump in the history of the industry but this decline is usually attributed to the economic situation in Ghana generally at this time. Before the introduction of the ban, it was believed that one of its positive results would be the greater supply of logs to the sawmills. They were suffering from a shortage of raw materials even though Ghana was exporting unprocessed logs. However, it has been reported that in the absence of reforms in the system of concession allocations the expected improvement in supply did not materialise. Many logging companies simply went bust because they could no longer get financial advances from exporters of unprocessed logs.[1]

When the industry began to pick up after the injection of new investment, log exports predominated in spite of the ban. Investment was prejudiced towards logging equipment despite the Government's policy of encouraging further processing. Exporters had their options limited on both sides. They were entreated to export processed timber but they were provided with equipment to produce only logs. Not too surprisingly

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[1] E.G. Foli, The Relationship Between Concession Holdings and Processing Capacity in the Sunyani Area 1986, BSc Dissertation, UST, Kumasi, pp.70, p.48.

therefore, the export of wawa logs, a species which because of its abundance in Ghana was not included in the ban, figured prominently in the early stages of the recovery. Thus, in 1984, wawa constituted 63% of all logs exported; in 1985, it constituted 54.5% of all log exports; in 1986, it constituted 50% of all log exports and in 1987, it constituted 42% of all log exports.[1]

Nevertheless, statistics on the exports of logs and lumber show that there has been an increase in the export of sawn lumber during the 1980s even though this has not been paralleled by a corresponding decrease in log exports overall. The value of sawn lumber exports now approximates to the value of log exports.[2] This suggests that log exports of secondary species are increasing rapidly while stricter conservation of primary species need not result in diminished returns to timber companies.

Many companies have been able to adapt to the requirement that primary species must at least be sawn before export. The larger companies with integrated wood processing facilities have clearly had the advantage here. Representatives of some companies have expressed their personal support for the ban.[3] The ban is widely supported by public officials.

The thrust of the Government's policy is now being

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[1] Forestry Department, Annual Reports 1985-1988, Standard Form B. The reliability of these statistics is open to doubt, however, as false returns have been made.

[2] Infra p.256.

[3] A.G. Timbers Ltd., African Timber and Plywood Ltd. and Naja David Veneer and Plywood Ltd. (in written correspondence).

directed towards encouraging more remunerative types of further processing. The wisdom of this policy and the significance of higher value exports at the present time can be seen in the following figures:

Type and Value of Timber Exports in 1988.[1]

Product	Volume $000m^3$	Value £ 000s	Average Value £ per $000m^3$
Logs	340.15	26 051	76.6
Sawn Timber	169.64	25 643	151.2
Veneer	20.91	4 985	237.5
Plywood	1.01	166	157.0
Machined Timber	4.46	1 842	412.6

Note.

Logs include boules and curls
Veneer includes rotary, sliced and reconstitued veneer
Machine timber includes mouldings, door panels and lipping, flooring, toys and furniture parts

From January 1994, it is intended that exports of green or air dried sawn timber will no longer be permitted.[2]

Arguments against the ban on unprocessed primary species often refer to the high level of waste recorded in Ghanaian saw mills. This can be up to twice the amount wasted in sophisticated saw mills in developed countries.[3] International demand is persistently for logs which can be processed according to specific designs in the country of purchase. The solution to the former problem must lie in improving the efficiency of Ghanaian saw mills. One solution to the second

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[1] Ghana: Forests, Wood and People, op cit p.2.

[2] Government Circular August 1990.

[3] R. Chatchu, Allowable Cut From the Forest, Ghana Forest Inventory Project ... op cit pp.63-71, p.67.

problem is to encourage greater liaison with purchasers. For example, representatives of a British firm are stationed at Mim Scanstyle to ensure that their design specifications are met.

The FRMP Report proposed that instead of the absolute ban, a series of high taxes could be imposed on exporters of logs of primary species.[1] This would increase revenue to the Government and may be effective to curb exports in log form. However, the most important objective of the ban is to increase the value of exports by domestic processing which, if effective, will add dramatically to Government revenue and at the same time provide jobs for Ghanaians. In view of the multiple economic advantages of further processing, it is submitted, the Government should not risk losing the opportunity of achieving this objective by allowing the export of primary species on payment of high taxes. The following statistics suggest that there is no foundation for the assumption made by the Report that the ban has been ineffective:

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[1] Staff Appraisal Report, op cit p.18

% Contribution of Certain Species to Log Exports.[1]

Species*	% Contribution to Log Exports. 1975	1980	1984
African Mahogany	8.2	0.54	-
Makore	5.8	0.38	-
Edinam	6.1	0.04	-
Sapele	7.7	0.31	-
Utile	15.3	0.68	-

* These species are included in the ban.

However, the reliability of these figures is particularly suspect. It is known, for example, that shipments of primary species have been made under false labels.[2] The evidence that only very limited supplies of some primary species now remain standing in the forest[3] suggests that illegal practices may have been common.

In view of the critical shortage of some primary species, maintaining the ban can be recommended but, at the same time, enforcement must be improved. Measures to strengthen the FPIB should help to curtail illegal practices in the future but an equally important long term measure should be support for industrial restructuring. Additional processing and greater use of secondary species would reduce the pressure on primary

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[1] Forestry Department Annual Reports 1976-1984.

[2] C. Martin The Rain Forests of West Africa: Ecology, Threats, Conservation 1990, Birhauser Verlag, Berlin, pp.235, p.40.

[3] Supra p.234.

species but the industry needs financial inducements to encourage investment in the appropriate technology.

The international market is obstructive to the goal of industrial restructuring. The market's choice of species is selective and, in addition, developed countries maintain tariff barriers on processed timber in order to protect their own industries.[1] National and regional West African markets offer potential for Ghanaian products so the TEDB should step up its efforts to facilitate trade links within West Africa in addition to participating in multi-party negotiations to reduce tariff barriers and encourage fairer international trade.[2]

(G) The NIC Sub-Committee on Timber.

The National Investigations Committee (NIC) was established in 1982, after the overthrow of the civilian government, to inquire into allegations of corruption and abuse of office.[3] The Public Tribunals Law created a number of special offences relevant to the type of economic crimes which the NIC investigates.[4] Any person under investigation by the NIC or any person who is being prosecuted under the Public Tribunals Law may confess to the alleged crime and offer to make restitution to the State in lieu of further investigation

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[1] Hurst op cit p.266.

[2] See further infra pp.265-270.

[3] National Investigations Committee Law PNDCL 2/1982, ss.1,3.

[4] Public Tribunals Law PNDCL 78/1984, s.9.

or prosecution.[1] The Council may arrest any person or freeze the assets of any person if it will facilitate the work of the NIC.[2]

In 1988, a Sub-Committee of the NIC began investigations into fraudulent and corrupt practices in the timber industry. Its discoveries have shown that malpractice is widespread and that the resultant financial loss to the State has been very great. The resemblance which some of the identified abuses bear to the sort of malpractice identified by the Blay Report,[3] with the exception of ministerial abuse of discretion, is striking. For example, one of the most frequent abuses discovered by the NIC was the illegal sub-letting of concessions.[4] Another common abuse was the under-invoicing of timber exports while imports of essential machinery were over-invoiced in order to take advantage of foreign exchange retention accounts. Another abuse occurs when Ghanaian companies set up phoney purchasing companies abroad. Tax obligations are avoided by selling timber to these companies at reduced prices which quickly rise when the timber is immediately resold.[5]

Efforts are now being made to crush malpractice in the industry pursuant to the findings of the NIC. In 1989, the work of the NIC bore fruition in the conviction of members of

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[1] ibid s.13(a) and PNDCL 2/1982 s.8.

[2] ibid s.4.

[3] Supra p.130.

[4] Infra p.279.

[5] "Timber Scandals" op cit p.344.

the Bitar family on various counts including doing acts with intent to sabotage the economy of Ghana.[1] In this case, it was shown that the accused had failed to declare the true length and value of numerous shipments of sliced veneer made by Logs and Lumber Ltd. The resultant loss of revenue to the State was estimated at approximately £298,251 and DM216,965.12.[2] The accused were further charged with acts of forgery[3] by which they had been able to hoodwink the FPIB and illegal acquisition of property.[4] Crane Bouquet Ltd., an accredited agent of the TEDB, had participated in contracts in an unauthorised fashion taking advantage of laxity on the part of the TEDB.

> "There can be no doubt on the evidence that the FPIB and the TEDB appeared to be lame and permissive bodies and their rules and regulations were not made or adhered to with any degree of confidence or authority or vigilance."[5]

The accused were fined various amounts and ordered to restore to the State amounts up to £2.5 million. The first two accused were also sentenced to three years and eighteen months imprisonment respectively.[6] In 1989, the State filed notice of its attention to appeal on the sentences imposed because they

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[1] The People v W.Bitar, N.Bitar, G.Bitar, J.Bitar, K.Obeng, Logs and Lumber Ltd., Crane Bouquet Ltd., Timber and Trading Agency (International) Ltd. Case no.42/1989, National Public Tribunal, Accra, 23/8/1989.

[2] ibid p.2.

[3] Contrary to s.20(1) and s.158 of the Criminal Code, Act 29/1960 and s.16 of PNDCL 78/1984

[4] Contrary to s.9(1)(k) and s.16 of PNDCL 78/1984

[5] Case no.42/1989 op cit p.29.

[6] ibid p.80.

were considered to be too lenient.[1] Another eight persons, including four lawyers acting for the accused in this case, were immediately taken into custody after the judgement was delivered for their role in offering bribes to members of the tribunal in connection with the case.[2]

Other cases investigated by the NIC have culminated in various, substantial sums of money being returned to the State as reparation in lieu of prosecution. In November 1989, Nana Woode of Holex Products Ltd. and Priorities Ghana Ltd., was ordered by a National Public Tribunal to refund DM 6.5 million and US$300,000 to the State within 30 days. Nana Woode had pleaded guilty on a charge of economic sabotage.[3]

These examples show how private interests, whose profit maximising motives conflict with the long term rationality of sustainable development, have easily and effectively undermined government regulations and procedures. The work of the NIC Sub-Committee and the publicity afforded to the Bitar case are examples of the radical action which is required in order to stamp out extensive malpractice.

In addition to the efforts of the NIC, the need for institutional strengthening of the FPIB cannot be over stated. It is important now to fully expose the activities of illegal enterprises and to take action to prevent their future

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[1] "Appeal Against Sentences" West Africa no.3761, 18-24/9/1989, p.1577.

[2] "Timber Trial Verdict", West Africa no.3759, 4-10/9/1989, p.1488.

[3] People's Daily Graphic 13/11/1989, p.9, Ghanaian Times 4/11/1989, p.3.

participation in the industry.

Officialdom has a number of legal and administrative penalties which should be used to clean up the industry. According to the severity of their crimes, entrepreneurs who have acted illegally could be struck off the register of timber operators,[1] or their property marks could be withdrawn[2] or their export contracts could be cancelled.[3] Their right to re-register in future years could be circumscribed. The industry is already over-subscribed so preferential treatment should be afforded to lawful and co-operative industrialists. Administrative malpractice and incompetence must be eradicated in order to make the market for concessions and export contracts a fair and competetive one.[4] More open and less discretionary procedures will also be necessary and are likely, at least with respect to concession allocations.[5]

However, a sanction orientated strategy is rarely effective by itself. Such a strategy fails to address the underlying need to co-opt powerful interest groups into the system of lawful, rational, forest exploitation. If, in

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[1] PNDCL 117/1985 s.2(j).

[2] NRCD 273/1974 s.5.

[3] PNDCL 117/1985 s.2(h).

[4] The Bitar Case offers one example of how private interests have previously been able to distort the functioning of the market. This does not mean, however, that market mechanisms are themselves undesirable but that those private interests which have the potential to distort the market should be regulated and controlled by well disciplined and accountable administrative institutions.

[5] The Grant, Review and Determination of Concessions infra p.276.

addition, the Government shows itself keen to co-operate with lawful operators, listening to their views and facilitating their enterprise, then these operators will provide a powerful support base for measures to clean up the industry and set exploitation more firmly on a sustainable path. Lawful operators should, for example, be encouraged to upgrade their technologies using investment opportunities as a "carrot" to encourage good behaviour. In the long term, working with these industrialists to enhance government-business relations and to improve their economic performance may prove to be the most enduring method of eradicating unlawful business practices, provided always that communication links are not dishonestly exploited for private ends.[1]

Extensive consultation with private businesses has not been a charateristic of the PNDC era:

> "If the private sector is to play a greater role in Ghana's economic recovery it must become an integral part of the decision-making process ... The business community has no direct voice in the leadership of the PNDC, is not adequately represented on important boards and committees and does not feel 'respected' let alone 'courted'."[2]

Greater involvement by the industry in the marketing and advisory work of the TEDB would be a first step towards improving government-business relations in the timber sector. Administrative malpractice must be guarded against by, inter alia, improving the accountability of the Board and the FPIB.

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[1] Measures to improve the openess and accountability of government procedures, especially in concession procedures, should help to forestall this development. See infra p.281.

[2] R. Tangri, The Politics of Government-Business Relations in Ghana, (1992) 30(1) Journal of Modern African Studies 97-111, p.107.

Moves to improve the accountability of institutions throughout the sector should help to enhance government-business relations.

(H) Problems in the International Timber Trade.

A number of the characteristics of the international tropical timber trade frustrate Ghana's objectives of increasing the export of processed timber and secondary species.

At the present time, because the world production of timber is high, trading prices have been falling.[1] Market prices are determined by short term considerations of supply and demand without regard to the real cost of sustained production in the long term. Developed countries shop for the cheapest tropical timber without regard to the real cost of sustainable production. This makes it economically impossible for supplier countries, acting individually, to implement sustainable development policies because of the risk that, in so doing, the cost of their products will cease to be attractive on the world market.

One solution lies in mutual action being taken by all supplier countries acting together. The International Tropical Timber Agreement provides a framework for discussion among producer and consumer countries including Ghana.[2] It should immediately address this challenge by working to harmonise

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[1] Hurst op cit p.264.

[2] International Tropical Timber Agreement, 1983 18/11/1983, UNCTAD Doc. TD/Timber/11 Misc.11, 1984.

production policies and to fix international prices at a level consistent with sustainable production. Multilateral trade agreements are, however, notoriously difficult to negotiate.

An additional strategy lies in the campaign recently initiated by environmental lobbies in some developed countries to persuade their governments and industries to shop selectively for tropical timber which is produced on a sustainable basis.[1] This campaign seeks to persuade consumers not to buy timber which has been cut from forests which are being exploited in an unsustainable fashion. In the long term, the campaign should help to create a market for timber which is more realistically priced to take into account the costs of sustainable production.

In the short to medium term, however, the campaign involves a number of uncertainties and contradictions. It is unclear, for example, what exactly constitutes 'sustainable exploitation' for the purposes of the ban. Bearing in mind the slow growth of tropical timber, over what time scale should a country's observance of sustainable forestry be assessed and using what statistics, the Annual Allowable Cut (AAC) as estimated in 1980 or in 1990 ? Such statistics are inherently misguiding because they may cover more or fewer species than will actually be exploited and they may not allow for the waste of timber and the destruction of growing trees which occurs during exploitation. A low level of production may hide the existence of very wasteful production practices. Does the

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[1] Friends of the Earth, Rainforest 1989, Campaign Pamphlet, Friends of the Earth, London.

requirement of sustainable exploitation extend to forests outside the permanent forest reserves which, if not salvage felled may be altogether lost due to farming activities ? If so, how is a country supposed to balance its agricultural and forestry requirements ? If silvicultural requirements exist on paper what is the test of their effectiveness ? Clearly it is desirable that working plans should be in place before the exploitation of any reserved forest begins but if some forests are being exploited in accordance with working plans while others in the same country are awaiting this complicated, technical guide, should all forest exports consequently be included in the ban ? Will minimum girth requirements and satisfactory felling cycles suffice in the absence of working plans which may be beyond the ability of some countries to keep up to date ?

Ghana is included as one of the countries whose exports are subject to the operation of the ban but it is difficult to see how the line is to be drawn between the sustainable and non sustainable exploitation of its forest resources. Although it is clear that over exploitation has occurred in the past, strident efforts are now being made to redress the balance. Stringent measures are being implemented to guarantee the sustainable exploitation of the permanent forest estate. The view was expressed to this writer that any hindrance to the export of timber is a threat to the continued existence of forest reserves because the revenue obtained from timber exploitation is one of the more direct returns on the nation's

investment.[1] Without some direct financial returns from forest reserves, the environmental reasons for reservation may not suffice to persuade decision-makers of the value of retaining this protection during times of economic crisis and recession. Removals by the timber industry amount to only 0.4% of the total biomass produced in a forest reserve.[2]

The environmental lobby is urged to campaign for international funding for measures to promote the sustainable development of the tropical forest in Ghana instead of simply condemning the efforts of the nation to reap some financial benefit from its commitment to forest conservation. Such measures could include long term financial and technical assistance, particularly in support of district level forestry departments; aid for industrial restructuring so as to encourage further processing in producer countries and programmes in support of rural forestry and agroforestry.[3] Debt-for-nature swaps are another promising type of assistance if fears of "environmental colonialism" can be assuaged.[4] NGOs have a reputation for being more responsive and more flexible

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[1] Interview with Mr. Francois, CCF, September 1990, Accra.

[2] Ghana: Forests, Wood and People, op cit p.7.

[3] See infra chapter nine for examples of NGO activities. In view of the inter-related nature of development and environmental problems, recommendations are made in that chapter to the effect that NGOs should support all round development activities in addition to specifically environmental projects.

[4] H.Bedarff, B.Holznagel, C.Jakobeit, Debt for Nature Swaps: Environmental Colonialism or a Way Out from the Debt Crisis that Makes Sense?, (1989) 22(4) Verfassung Und Recht in Ubersee 445-459.

in their development assistance than multilateral development banks. Environmental programmes require an equally co-operative policy based on two way communication processes and sufficient flexibility to meet the specific needs of individual countries.

Financial assistance is not the only, nor perhaps the principal, type of support which the environmental lobby can provide. Environmental groups must actively support developing countries in their endeavour to secure a realistic price for their timber which takes into account the long term costs of sustainable production. Otherwise, the tropical timber boycott will continue to be seen in purely negative terms by developing countries who are constrained in their ability to supply sustainably produced timber because of its higher cost.

The obstacles to industrial restructuring created by developed countries' tariff barriers and the limited demand for secondary species in developed countries are problems close to home for many environmental NGOs. They can assist developing countries by lobbying their own governments to reduce tariff barriers on processed tropical timber and to increase support for industrial restructuring in producer countries by the provision of appropriate equipment and expertise. This could provide a market for developed country technology.[1] At the same time, it will encourage further processing, reduce levels of waste, create jobs and improve

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[1] It is acknowledged that 'tied aid' has disadvantages for developing countries but in the present economic climate it seems to be an inescapable condition, at least for bilateral assistance.

financial returns to developing countries. These measures will give developing country governments the necessary leeway to implement responsible sustainable development policies.

None of these challenges are simple ones. They will require an increasingly sophisticated campaigning strategy on the part of environmental pressure groups. The Brundtland Report correctly identified the important impact that trading relationships may have on the environment.[1] It recommended a greater role for NGOs.[2] The problem now lies in implementing an effective campaign which will reap changes in developing and developed country policies without endangering the infant timber industry in developing countries and the long term viability of forest reservation and management.

(I) A Summary of Problems in the Timber Industry Today.

An inquiry into the constitution of the Ghanaian tropical forest has revealed that the most immediate problem for Ghana is its rapidly diminishing supplies of primary species.[3] This has deleterious implications for the environment and the timber industry. Immediate priorities should be to protect the resource base and to encourage the replanting of indigenous, primary species as well as the greater exploitation of secondary species instead of primary species. Incentives and not just prohibitions are urgently required in order to address these issues.

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[1] WCED op cit p.80.

[2] ibid p.326.

[3] Supra p.234.

A comparison of the most recent estimation of the Annual Allowable Cut and figures showing the actual annual cut, taking the level of wastage at source into account, suggests that Ghana will have to reduce its rate of timber cutting overall if it is to put production on a sustainable path.[1] Some secondary species, however, could be more intensively exploited. These findings confirm the importance which should be attached to increasing the exploitation of secondary species. More fundamentally, the industrial base must be restructured so that, through technological improvements, the level of waste will be reduced and increased revenue will accrue from further processing as opposed to resource mining.

The principal characteristics of the timber industry have been discussed in some depth so as to reveal the structural, social and economic problems which affect the legal control of timber exploitation.

The separate ownership of logging and processing facilities was found, in some cases, to hinder access to raw materials by milling companies.[2] The logging sub-sector is over-subscribed in part because small logging companies have been able to obtain finance and concessions by influencing official procedures.

Excess capacity in the logging and milling sub-sectors are structural inefficiencies in the industry.[3] The speculative character of many small logging firms has given

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[1] Supra p.236.

[2] Supra p.239.

[3] Supra p.240.

the industry a poor reputation for loan recovery with the consequence that few facilities are available to genuine companies who wish to upgrade their logging, milling and processing equipment in order to reduce waste and increase the production of higher value timber goods.[1]

The use of wasteful technologies throughout the industry must be phased out in order to reduce the waste of valuable timber resources.[2] Increased forest fees under the FRMP should encourage a drive for greater efficiency. Larger and longer concessions should advantage the larger production outfits but they will need credit facilities in order to make the necessary technological improvements.[3] Small scale operators could be encouraged to invest in further processing activities to meet the needs of the local market.[4] The FRMP was criticised for its failure to include more direct measures to assist the necessary industrial restructuring.[5]

Wide fluctuations in the performance of the industry were seen as a long standing characteristic. The industry is sensitive both to the vagaries of the local economy and to fluctuations in international demand.[6] In view of these factors, decision-makers should accept that adequate financial provision for sustainable management must be made

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[1] Supra p.240.

[2] Supra p.242.

[3] Supra p.243.

[4] Supra p.244.

[5] Supra p.243.

[6] Supra p.245.

independently of whether or not forest exploitation meets short term targets for productivity and revenue contribution.

The ability of the industry to make a rapid recovery in production was proven during the 1980s.[1] The deleterious consequences of such a rapid upturn in production were numerous, however, and were closely related to aspects of the ERP which promoted foreign exchange earnings while neglecting the need to ensure responsible lending, accountability, sustainable management of the forest estate and long term investment in industrial restructuring.[2] Support for logging enterprises served to strengthen the hand of loggers engaged in short term, resource mining instead of promoting industrial restructuring. The interests of these concessionaires lie in quick profits, whatever the cost to environmental sustainability. It is the presence of conflicting interests, between quick financial profits and sustainability, which lies at the heart of many of the problems in the forest sector today. This threat to the environment does not correspond with the poverty led analysis of environmental degradation contained in the Brundtland Report.

The FRMP is attempting to remedy the management crisis which the exploitation of the 1980s highlighted but it was criticised for failing to provide long term financial support for industrial restructuring.[3] The whole saga of the 1980s demonstrates that economic growth can be environmentally

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[1] Supra p.247.

[2] Supra p.249.

[3] Supra p.251.

destructive unless adequate safeguards against over exploitation are in force at the same time.[1]

The ban on exports of primary species in log form was seen as commendable but attention was drawn to the need for much better enforcement of the ban.[2] In the long term, industrial restructuring to encourage further processing and the greater use of secondary species are the most promising methods of reducing pressure on primary species but, in addition to the paucity of credit facilities available to facilitate this progression, international market conditions limit the options open to local producers. The regional West African market could prove to be a good market for secondary species and finished goods from small Ghanaian outfits.[3]

The NIC Sub-Committe on Timber has exposed the extent of malpractice throughout the industry.[4] The activities of irresponsible timber operators demonstrate how easily well intentioned laws enacted to implement sustainable development policies can be undermined. Continuing efforts must now be made to enforce the law, to clean up the industry and to afford preference to law abiding entrepreneurs. It is important to improve government-business relations so that an important interest group may emerge whose concern is to support a strategy of sustainable exploitation free from corruption. Otherwise, the activities of irresponsible

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[1] Supra p.253.

[2] Supra p.258.

[3] Supra p.259.

[4] Supra p.259.

operators, whose motives are simply to maximise quick profits, are likely to continue to frustrate attempts to impose sustainable management policies.[1]

A number of constraints in the international market were briefly discussed. Low commodity prices, selective demand and tariff barriers were the principal factors identified which frustrate Ghana's attempts to put exploitation on a sustainable footing, to sell more secondary species and to increase revenue from further processing.[2] The tropical timber boycott could improve the market for higher priced, sustainably produced timber in the long term but NGOs were alerted to the need for positive measures in support of sustainable management, higher prices and improved marketing opportunities for processed timber from developing countries.[3]

It is within this framework, characterised by numerous constraints, that the legal control of exploitation must operate. The next task is to consider the substance of the legal framework and the ways in which the problems identified in the industry frustrate a smooth implementation of the law.

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[1] Supra p.264.

[2] Supra pp.265-270.

[3] Supra p.268.

(iii) The Legal Framework of Control.

(A) The Grant, Review and Determination of Timber Concessions.

The history of forest legislation in Ghana shows that governmental control over the grant of timber concessions has always been a controversial subject.[1] The Concessions Ordinance was the main instrument of control introduced by the Colonial Government but that Ordinance contained so many exclusions and provisos that it was easily avoided or simply contravened. The reforms of 1962 were designed to remove the cumbersome procedures of the Ordinance and to remedy its ineffective and unjust results but the Report of the Blay Commission exposed how the new legislation was abused.[2] Therefore, in the 1969 Constitution, the procedure for the grant and control of concessions was transferred to an autonomous institution, the Lands Commission, in the hope that public grants would henceforth be free from political interference.[3] In 1990, the Lands Commission continued to hold statutory responsibility for the grant of timber concessions[4] subject to the operation, instituted in 1989, of a temporary ban on the issue and renewal of concessions.

According to statute, all applications for grants of rights to timber should be submitted to regional sub-

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[1] Supra Chp.4.

[2] The Issue and Review of Timber Concessions After 1962 supra Chp.5.

[3] Constitution of the Republic of Ghana 1969, Art.163.

[4] PNDCL 42/1982 s.36.

committees of the Lands Commission.[1] Because the regional sub-committees have not yet been established applications, before the ban, were being submitted through the regional branches of the Lands Department which acts as the Secretariat to the Lands Commission.[2] Thereafter the application before the Lands Commission was dealt with entirely in Accra. The Forestry Commission,[3] the Forestry Department and the FPIB were consulted. The role of the Forestry Department was to report on the stocking of the concession and the feasibility of exploitation with due regard to such factors as the likely disturbance to farming activities in the area. The role of the FPIB was to check the business credentials of the applicant and the role of the Forestry Commission was to give independent advice on the basis of all the relevant information. A special sub-committee sat to decide finally on the award of any major concession. Although fixed criteria were not employed by the committee when making its decision, the previous concession holder was assured of priority consideration in an application to renew a concession. Generally, the advice of the Forestry Commission seems to have prevailed.

All grants had to be notified to the Council and to the Secretary.[4] The Council was at liberty to disallow any grant

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[1] ibid s.36(8).

[2] ibid s.36(2).

[3] ibid s.34(1)(h).

[4] ibid s.36(7).

within one month of receiving notice of it.[1] Any person aggrieved by a decision of the Council could apply to the tribunal established under the State Lands Act for an advisory opinion which would be forwarded to the Council.[2] No grants were disallowed using this procedure.

Timber grants took the form of either a lease or licence. A timber lease is valid for a maximum of 25 years and it confers rights to land and the timber thereon. A timber licence is valid for three years, covers an area not usually greater than 8 square kilometres and confers only rights to trees. Both leases and licences provide for the determination of the grant in the event of a breach of their terms[3] or the breach of statutory requirements[4] including a failure to observe silvicultural conditions imposed by the CCF.[5]

A third type of timber grant is the felling licence granted by the local Lands Departments to small scale operators who wish to cut a certain number of trees on a piece of land outside forest reserves and not being land subject to a lease or licence.

The concession allocation procedure defined in PNDCL 42 required the co-operation of many agencies. The objective of this arrangement was to minimise the opportunities for

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[1] ibid s.36(11).

[2] ibid s.36(12).

[3] Clause 4(a) of the standard lease or licence.

[4] Clause 4(e) of the standard lease and clause 4(d) of the standard licence.

[5] Clause 2(d) of the standard lease or licence.

corruption but the result was long delays in the award of concessions. Periods of up to two years have been quoted.[1] Furthermore, despite these delays, allocations were not always made on the basis of accurate information. None of the agencies concerned had adequate resources to effectively assess the credentials of applicants. Concessions were awarded to incompetent concessionaires who sub-let their concessions unlawfully while legitimate timber operators, particularly non-Ghanaians, were denied concessions.[2]

Despite the prohibition on sub-letting without the consent of the Secretary,[3] as many as sixty four concessions were found by the NIC to have been sub-let.[4] Fifteen concessionaires had obtained a total of 302,240,784 cedis from sub-letting their concessions. Out of an assessable tax of 166 million cedis only 5.41 million cedis had been paid by these concessionaires.[5] Forty three reputable saw mills who did not have their own concessions purchased concessions under illegal sub-letting agreements. Logging entrepreneurs who purchased their concessions at below market rates made fantastic profits by selling to processing outfits starved of raw materials.[6] The underlying factors which cause sub-letting are - the long established division in the industry between predominantly

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[1] E. Foli, op cit p.46.

[2] The NIC Sub-Committee on Timber supra p.259.

[3] Act 124/1962 s.13.

[4] Peoples Daily Graphic 6/10/90 p.7.

[5] People's Daily Graphic 27/9/1990, pp.1,8.

[6] ibid

Ghanaian concessionaires and saw mill and processing enterprises, some of the largest of which are foreign owned; the discrimination in the award of concessions in favour of Ghanaian enterprises which are not always better equipped to do the job than their foreign counterparts in the saw milling and processing industry; and the inability of the FPIB to accurately assess the competence of applicants for registration as timber operators and the inability of the Commission to accurately assess the competence of concession applicants.

In December 1988, a PNDC directive forfeited to the State all concessions which had been illegally sub-let. In January 1989, the grant of new concessions was suspended and timber operations in concessions which had been sub-let were halted. At the same time,the assets of nine companies were frozen and six other companies were closed down while the NIC continued its investigations.[1] All other concession holders were required to present documents to the NIC. Subsequently, temporary felling permits were issued to legitimate companies who had been left without access to sufficient raw materials to satisfy contracts which had been awarded to them.[2] In 1990, the Ministry was responsible for the issue of all permits and it performed this function in consultation with the NIC Sub-Committee on Timber.

The allocation of concessions to disreputable enterprises

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[1] "Timber Regulations Clarified" African Economic Digest 10(5), 6-12/2/1989, p.6.

[2] People's Daily Graphic 6/10/1990,p.7.

and the numerous cases of sub-letting indicate the extent to which speculative entrepreneurs have been able to use official procedures to pursue their personal ambitions for profit to the financial and environmental detriment of the country. Access to concessions is the foothold which allows speculative entrepreneurs to enter the industry. Subsequently, they are able to manipulate the system to entrench their interests and to reap massive personal profits in some cases. The pervasive extent of industrial malpractice makes it absolutely essential that the threat from disreputable entrepreneurs is fought at source. This highlights the need for fundamental reform of concession procedures.

In 1990, the concession allocation system was under review by the Law Reform Commission. In the FRMP Report, proposals were made for the establishment of a Concessions Unit in the Forestry Department to be responsible for the allocation and review of concessions.[1] Proposals were also made for the reform of concession procedures. The Report favoured the greater use of market mechanisms so that, among the criteria used to choose between concession applicants, the applicant offering the highest concession rent would be afforded a preferential weighting of not less than 50%. Other criteria to be taken into account included technical capacity and financial standing but ownership of existing processing capacity was not considered to be essential.[2]

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[1] Staff Appraisal Report op cit p.16. See also, The Forestry Department supra Chp.6.

[2] Staff Appraisal Report op cit pp.15-16.

The move to a market oriented allocation of concessions should simplify procedures, reduce delays, restrict the exercise of discretion and curtail opportunities for corruption. The measure is in line with the general policy of the structural adjustment era which is to reduce state intervention and to rely more heavily on market mechanisms. However, efforts to clean up the industry and to prevent maladministration must at the same time be sustained so that it will not be possible for unscrupulous interests to distort the efficacy of market mechanisms.[1] In order to prevent an industrial cartel emerging, the Department should regularly review the level of rents being offered, setting and upgrading minimum acceptable rents on the basis of the various costs of production.[2]

Despite the evidence of malpractice in the procedures employed in the early 1960s to review concessions, the recent work of the NIC Sub-Committee on Timber[3] has demonstrated the continuing need for an active procedure whereby timber grants can be modified or terminated if their terms are breached or whenever evidence of illegal business practices is discovered. The terms of timber grants already permit this so the need is clearly for a more effective implementation of their terms.[4] Thought should be given to establishing a regular procedure

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[1] Supra pp.160,263, infra p.290.

[2] The FRMP Report envisaged regular reviews of concession rents every five years. Staff Appraisal Report op cit p.16.

[3] Supra p.259.

[4] Clause 4(a) of the standard timber lease or licence.

for reviewing the capacities and activities of concession holders once the Sub-Committee on Timber ceases to function. Any procedure must safeguard against administrative abuse by requiring clear evidence of specified abuses or failings on the part of the grantee, with the opportunity for judicial review on the application of the affected concessionaire.

The Law Reform Commission may also wish to consider a rationalisation of the types of concession available. It was suggested in chapter five that the Government's claim to ownership of timber resources outside forest reserves could be renounced over a period of time and title vested in farmers.[1] Whether or not this proposal is taken up, it is likely that the number of timber and felling licences outside reserves will decline drastically in the next few years as less timber remains standing outside forest reserves. Over time, it should therefore be possible to rationalise the concession procedure so that there is only one type of timber grant, that is, the long term lease. This is in line with the policy of the FRMP which is to encourage larger and longer concessions.[2] In view of the current excess capacity in the logging sub-sector of the industry,[3] the failure of uncompetitive and unreliable logging companies, a likely result of this rationalisation, does not represent an unacceptable loss to the national economy.

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[1] Supra p.112.

[2] Infra p.285.

[3] Supra p.240.

(B) Limitations on the Size and Duration of Concessions.

The Administration of Lands Act requires that timber grants on stool land must not exceed thirty years in duration or a maximum area of forty square miles or two hundred and forty square miles in the aggregate when granted to one person or company.[1] Larger concessions can be granted if the normal limits appear to be prejudicial to the public interest or to the interest of any stool.[2]

Limitations on the size of concessions were first stipulated in the Concessions Ordinance in 1939.[3] The concern of the Government at that time was to prevent monopolistic tendencies by speculators and concessionaires. Size limitations indirectly encouraged the greater participation of small and medium size concessionaires but they were criticised by the bigger firms whose advantage lay in economies of scale. With the greater participation of larger, capital intensive, European firms during and after the Second World War, the Government was persuaded to waive these limitations on a case by case basis so that timber concessions could be profitably worked using new technologies. Act 123, as amended, has continued this state of affairs.

The limitations on size of concession holdings, as

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[1] Act 123/1962 s.12.

[2] Administration of Lands Act, 1962 (Amendment) Decree NLCD 233/1968.

[3] Concessions (Amendment) Ordinance no.19/1939, s.22(1).

specified in the Administration of Lands Act,[1] have been contravened. The NIC Sub-Committee discovered that certain persons have used several trade names in order to obtain concession holdings larger than statute permits.[2]

The FRMP Report has now recommended that concessions should be awarded for periods of up to fifty years and individual concessions should be for not less than 10,000 hectares (38.61 square miles).[3] The rationale for these proposals is that concessionaires will be more interested in good management and re-afforestation if they have a longer title to the same piece of land which can be continually worked in rotation, but the shift to a forty year felling cycle means that only a small part of a fifty year concession may be worked twice by the concessionaire. Hence the incentive for good management remains minimal. Leases for an even longer duration could therefore be considered. Effective measures for regular reviews would be essential, however, because, in an industry so vulnerable to market fluctuations, concessions of longer duration are not a sufficient guarantee that long term planning and responsible exploitation will prevail.

An alternative proposal under consideration in 1990, was for the normal period of a lease to be reduced to ten years while the procedure for renewal would be simplified. This would ensure a regular review of the performance of concessionaires but it is not clear whether preference would

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[1] Act 123/1962 s.36(12).

[2] Interview with Dr. Chatchu, MLNR, 15/10/1990, Accra.

[3] Staff Appraisal Report, op cit p.68.

be given to the highest bidder, in which case the environmental incentive might be lost, or to the previous concession holder. Whichever proposal is finally chosen, it is most important that regular reviews of financial and silvicultural performance are provided for.

A statutory minimum size for concessions will help to realise the policy of reducing the number of small scale loggers presently in the industry and is certainly to be commended. It may be argued that such a policy favours high technology, labour extensive, export dependent companies but the constraints of sustainable exploitation make the need to reduce excess capacity in the logging sub-sector urgent. Although they have not always proven themselves more efficient, larger companies are at least more easily monitored for silvicultural and financial purposes.[1] Further processing industries which meet local demands have been urged as an alternative avenue for small investors. The paucity of measures under consideration to assist in this restructuring has already been commented upon.[2]

(C) Administrative and Quality Controls on Exploitation.

For administrative and other purposes, every person who wishes to fell trees for conversion or export must first register a property mark with the Forestry Department.[3] Each

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[1] Supra p.243.

[2] Supra p.244.

[3] NRCD 273/1974 s.2.

area of Ghana has been assigned a locality mark.[1] All logs cut from any tree felled for conversion or export must as soon as possible be inscribed with the property mark of its owner, the locality mark of the area in which it was felled, a stump number (being the serial number of the tree cut by that timber operator) and a log number (showing the number of logs obtained from any one tree).[2] The stump of any felled tree must also be inscribed with the appropriate property mark[3] so that upon inspection of any log its appropriate stump may be easily located.[4]

It is an offence to cut or fell any growing tree for conversion or export without owning a registered property mark;[5] or to buy, sell, export or be in possession of any log not properly marked;[6] or to loan, borrow, transfer or obtain a property mark except with the written permission of the CCF.[7] A maximum fine of 5,000 cedis and/or five years imprisonment as well as forfeiture of any trees or timber involved in the offence is specified for these offences.[8] A failure to obtain any requisite permission in connection with timber exploitation is grounds for determining any timber

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[1] ibid s.1.

[2] ibid s.6.

[3] ibid s.6(1).

[4] ibid s.10.

[5] ibid s.2.

[6] ibid s.8.

[7] ibid s.9.

[8] ibid s.11(1)(3).

grant.[1] It is also an offence to fraudulently mark any timber or trees as the property of some person or to alter, deface or obliterate any mark placed on trees or timber. Both these crimes are liable to a maximum fine of 10,000 cedis and/or five years imprisonment in the first instance.[2]

To ensure uniform standards of measurement and reliable quality products, all timber operators are required to obtain certificates of measurement for timber which is the subject of any transaction whatsoever.[3] The FPIB is the institution responsible for issuing these certificates[4] and for maintaining quality standards throughout the industry.[5] Uniformity in the grading of products is especially important in the export industry and the inspection procedures should also help to eliminate fraud.[6]

Property marks are required to prevent theft of timber. The wide discretion assigned to the CCF to refuse to register or renew property marks[7] allows him indirectly to halt the activities of concessionaires who, for example, fail to pay fees regularly or who go bankrupt. An exercise of this power

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[1] Cl.4(e) of the standard timber lease and Cl.4(d) of the standard timber licence.

[2] Forest Protection (Amendment) Law PNDCL 142/1986 Para.(b).

[3] Trees and Timber (Control of Measurement) Regulations LI 23/1960 as amended by LI 1090/1976.

[4] ibid Para.1.

[5] ibid Para.2(c).

[6] ibid Para.2(g).

[7] NRCD 273/1974 s.5(1).

does not terminate the concession although all concessions can be terminated for financial or other misbehaviour under the terms of every timber grant. Usually, therefore, the power to refuse to register a property mark is only employed on a temporary basis.[1] The CCF is not required to give reasons for his decision and review is only by the Secretary.[2]

The law relating to administrative and quality controls has been flouted both by registered timber operators and by illegal chain saw operators.

The principal abuse relating to property marks revealed by the NIC Sub-Committee has been the sub-letting of property marks by fraudulently registered holders.[3] The abuse is closely related to the illegal sub-letting of concessions. Both activities are clearly prohibited in the law.[4] The NIC Sub-Committee also found that grading and measurement controls have been frequently contravened. Timber operators have been able to pass off primary species as secondary species in order to escape the ban on the export of unprocessed primary log species. Operators have also abused the "tolerance limit" (the allowance made for shrinkage of wood during transport) so that actual volumes of wood exported have been greater than those recorded for tax purposes. Quantities of wood exported have

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[1] In interview, the CCF stated that this measure is rarely employed. Interview with Mr. Francois, CCF, Accra, 28/12/1989.

[2] NRCD 273/1974 s.5(2).

[3] Peoples Daily Graphic 6/10/90, p.7.

[4] NRCD 273/1974 s.9, Act 124/1962 s.13, Para.2(e) of the standard lease and Para.2(e) and (f) of the standard licence.

been under declared, as in the Bitar Case.[1]

The evidence produced by the NIC demonstrates how easily and how frequently laws designed to control the industry and facilitate sustainable exploitation have been flouted. Fundamentally, this level of malpractice results from the presence in the industry of unreliable and unco-operative entrepreneurs who are not interested in the long term sustainability of the resource base.

Specific and adequate legal penalties are absent in some cases - for contravening the ban on log exports for example - but the wide ranging offence of economic sabotage has been used in some instances.[2] In addition, the authority to cancel or to refuse to register property marks[3] and the power to refuse to register timber operators[4] are powerful deterrents within the administrative sphere. Clearly termed administrative regulations should be formulated specifying circumstances in which these powers will be exercised. These circumstances should include any abuse of silvicultural, administrative or quality controls and they might extend to any abuse of the terms of a concession or any contravention of statutory provisions. These regulations should complement whatever procedure is chosen for the regular review of existing concessions. The authorities would then be in a position to choose the most appropriate sanction in each case

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[1] Supra p.261.

[2] PNDCL 78/1984 s.16. See the Bitar Case supra p.261.

[3] NRCD 273/1974 s.5.

[4] PNDCL 117/1985 s.2(j).

- the suspension of a recalcitrant operator's property mark, the determination of one or more of the concessions in the possession of an incompetent or unreliable logger or the cancellation of an operator's registration so as to prevent his participation in any aspect of the industry in the case of gross misbehaviour. For each sanction, the causes triggering its implementation and the procedure and responsible agency should be clearly defined so as to minimise the possible abuse of discretionary powers.

Nevertheless, the law is generally in place to secure a reasonable measure of quality and administrative control. Until recently, a failure to exercise the existing powers seems to have been more characteristic than their abuse. This has forced the MLNR to act directly, for example, in recalling all concessions which have been sub-let. Institutional strengthening is now a measure included in the FRMP to improve law enforcement. In particular, the need for institutional strengthening of the FPIB is highlighted by the evidence that quality control has been inadequate.

Law reform and institutional strenghtening to improve law enforcement are measures which, in view of the scale of illegal activities, only scrape at the surface of the problems in the industry. Of potentially greater impact, it is submitted, are the reforms in concession procedures. If entry into the industry by speculative concessionaires can be prevented at this early stage, then reputable and co-operative enterprises who are law abiding in their exploitation of the forest, will be afforded the priority they deserve. In

addition, measures to support technological upgrading in these enterprises deserve serious consideration because such measures could act as a "carrot" for good behaviour while improving the competitiveness and efficiency of honest companies.

Administrative controls are also undermined by the extensive activities of chain saw operators particularly outside forest reserves. Although property marks, stump numbers, locality marks and log numbers apply only to logs, all these details should be transferred to the certificate of log measurement which must accompany all timber in transport or in any transaction.[1] A person who fells trees illegally and quickly converts the wood into lumber should therefore be identifiable by the absence of a valid certificate of log measurement. However, the road inspection coverage of the FPIB is not sufficient to check the large scale traffic in illegally cut timber which finds its way into the towns and villages along the minor roads and tracks. Conversion of timber in the forest by chain saw operators is the basis of this under cover trade. These operators thrive because they are able to supply the local market with lower priced timber than official outfits which have higher costs of production.

Proposals made previously for the renunciation of government title to timber outside forest reserves[2] are relevant to the second category of illegal activities. It would be consistent with the basic needs orientation of the

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[1] LI 23/1960 Para.2.

[2] Supra p.112.

Brundtland Report[1] to recognise that local people have an inherent right to satisfy, so far as possible, their need for affordable timber out of domestic supplies. It would reduce the present acrimony between concessionaires and farmers who have crops destroyed during timber operations if licences outside forest reserves were gradually allowed to lapse.

Whether or not these recommendations are heeded, there is a pressing need to reduce the demand for wood in the long term[2] and to protect forest reserves from illegal encroachment once timber supplies outside forest reserves are exhausted. Rural forestry initiatives, agroforestry and plantation forestry should be encouraged now in order to alleviate pressure on forest reserves in the future.[3]

(D) Financial Controls.

The principal fees paid by the holders of timber leases and licences are royalties - charged per tree felled - and rent - charged per hectare of land held by the grantee each year.[4] All rents and royalties due in respect of concessions are collected by the Forestry Department.[5] Rents and royalties

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[1] WCED op cit p.45.

[2] Infra p.304.

[3] See the discussion of relevant projects in Bongo infra Chp.9.

[4] Forest Fees Regulations LI 1089/1976, Paras.1,2.

[5] Forest Improvement Fund Act no. 12/1960, s.4 and Circular from the Secretary responsible for the MLNR, 4/4/1991. Rents and royalties due in respect of stool lands were, prior to the above Circular, collected by the Lands Department in accordance with PNDCL 42/1982 s.36(3).

received from concessions in forest reserves are paid into the Forest Improvement Fund. Funds from the Forest Improvement Fund are to be used for costs incurred in connection with exploitation and silvicultural work.[1] Rents and royalties from land outside forest reserves are paid into the Stool Lands Account which is managed by the Administrator of Stool Lands.[2] Disbursements are made from the Stool Lands Account to traditional authorities and district assemblies in respect of timber exploitation within their jurisdictions.[3] Other fees include a small silvicultural fee charged each year for each hectare of land being exploited for timber, differential rates applying to land inside forest reserves and land outside them.[4] Silvicultural fees are paid into the Forest Improvement Fund to meet the cost of silvicultural work.[5] Silvicultural fees may be waived if a timber operator carries out silvicultural work[6] or reduced if the value of the timber does not justify the fee.[7]

The principal problem with respect to forest fees is how to ensure that they reflect the true economic value of the timber being felled despite rapidly changing currency values

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[1] Forest Improvement Fund (Amendment) Act no.144/1962, s.2.

[2] PNDCL 42/1982 s.45(1).

[3] ibid s.45(2).

[4] Act no.144/1962 s.4.

[5] ibid s.5(1).

[6] ibid s.6(2).

[7] ibid s.6(1).

and high inflation. At the moment, the cumbersome procedure for review involves obtaining the consent of the PNDC before each increase. Inevitably, forest fees have dragged far behind changing economic circumstances, especially during the early 1980s. While some operators in the timber industry were able to make enormous profits from cheap access to raw materials, the revenue to Government was minimal.

Another consequence of the minimal forest fees being charged in the early 1980s was the increased incentive for dishonest persons to register and obtain concessions solely with the intention of sub-letting rights of exploitation at true market values. The NIC Sub-Committee discovered, for example, that one Anthony Timbers sub-let its concession to Naja David for 18.5 million cedis but paid only 176,176 cedis to Government.[1] Subsequent to these and other findings, the NIC Sub-Committee recommended an increase in royalties based on the actual rates that reliable timber firms were forced to pay to acquire adequate raw materials for processing. Consequently, when concessions which had been sub-let were recalled and reallocated to competent applicants, a charge equivalent to their market value was recouped and entered into a Special Forest Improvement Fund. Within one year of the directive forfeiting to the State all concessions which had been sub-let an amount of 600 million cedis had been realised from this charge.[2]

The FRMP Report proposed a new formula for determining

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[1] Peoples Daily Graphic 6/10/90 p.7.

[2] ibid

and revising forest fees, in which regular revisions of royalty rates would be based on a formula linked to the FOB average weighted value of exportable logs.[1] Authorization of new rates would lie within the power of the CCF or the Secretary acting without recourse to the Council. As noted previously,[2] proposals were made for concession rents to be based on a competitive market system in which concessions would be awarded to the applicant willing to pay the highest rent, among other factors. Rents would be adjusted every five years according to a formula which would take into account the FOB values and local costs of production. The Ministry has suggested that silvicultural fees should be abolished in order to simplify fee collection.[3] It is hoped that these reforms will encourage more efficient production processes while weeding out inefficient and dishonest speculators.

In view of these suggested reforms, it may also be an appropriate time to reconsider what proportion of the revenue accruing from timber exploitation on stool land should be distributed to the traditional "landowners" and what proportion should be retained for the proper management of the permanent forest estate. One of the objectives of the FRMP is to put the Forestry Department on a self financing basis in the long term.[4] It has been argued that disbursements of revenue to local institutions are not an effective method of

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[1] Staff Appraisal Report, op cit p.70.

[2] Supra p.281.

[3] Staff Appraisal Report op cit p.67.

[4] ibid p.48.

integrating local communities into the forest economy.[1] It is submitted that, in view of the irresponsible record of some landowners,[2] priority should be afforded to increasing the income of the Department, especially now that the Department has been made responsible for the collection af all forest fees outside forest reserves. In addition, whatever payments are made to traditional authorities and district assemblies should be made subject to their co-operation in forest protection.[3]

(E) Silvicultural Controls.

Timber operators are subject to a number of controls when exercising their rights over trees or timber in order to protect the forest estate.

The Secretary is empowered to make regulations providing for the management, utilisation and protection of forest reserves and forest produce therein;[4] for the protection of trees or timber generally;[5] and for controlling or prohibiting the cutting or felling of trees below specified minimum girths.[6] Minimum girth requirements have been formulated and no person may cut or fell, buy, sell or export or be in possession of timber which has been cut from a tree below the

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[1] Supra p.129.

[2] Forest Protection in the Western Region supra Chp.7.

[3] Supra p.225.

[4] Cap 157 s.35(1),(3),(5).

[5] NRCD 273/1974 s.17(1)(f).

[6] ibid s.17(1)(a).

specified minimum girth for that species.[1] The onus of proof that timber has not been cut from a tree below the minimum girth lies on the person found in possession of the timber.[2]

The Forestry Department is charged with managing the forest reserves.[3] Before proceeding to the exercise of any rights under any timber grant, a grantee is required to ascertain from the CCF what prescriptions apply with respect to the exercise of his rights to trees or timber.[4] The CCF may at any time alter or add to the prescriptions.[5] It is an offence for a grantee to begin exploitation before ascertaining the necessary prescriptions or to contravene any prescriptions imposed by the CCF once exploitation begins.[6] The Secretary may terminate any grant if the grantee is found to have contravened such prescriptions.[7]

Techniques of silvicultural management are the subject of research by the FPRI. The optimum method of tropical forest silvicultural management is far from clear and activities such as selective felling to encourage the regrowth of primary species have now been abandoned due to the risk of losing good

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[1] Trees and Timber (Control of Cutting) Regulations LN 368/1958, Paras.2,3. More precise requirements have been given in later administrative directives.

[2] ibid Para.3(1).

[3] Cap 157 s.18.

[4] Cap 136 s.30 as preserved by Act 124/1962 ss.1,16(9) and para.2(d) of the standard lease or licence.

[5] Cap 136 s.30(3).

[6] ibid s.30(4).

[7] Act 124/1962 s.16(10).

secondary species. Natural regeneration is now the preferred method of the Department. This makes the enforcement of regulations on minimum girths all the more important because it is these regulations which prevent immature trees being cut before they have had the maximum opportunity to produce new seeds. In 1990, minimum girth requirements were tightened and special permits are now necessary to fell any tree of a primary species within specified girth limits.[1]

Minimum girth requirements have not been uniformly applied to trees felled during timber operations but not taken from the forest. The destruction of very young trees of economic species during felling operations is not recorded or penalised. Wasteful logging methods and the unplanned and unnecessary building of logging roads all undermine the protection afforded by current silvicultural methods. The temporary permits being issued by the Ministry now require that logs can only be rejected if certified as not utilizable by a District Forest Officer. Any logs left to deteriorate in the forest or in the saw mill now attract the export value of the log in foreign exchange.[2]

Fiscal measures of this type can provide an important incentive to reduce waste and to meet stricter silvicultural requirements. There remains an unmet need, however, to improve training and technology in the industry so that the new silvicultural requirements can be met. Preferential credit facilities to encourage technological upgrading offer a long

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[1] By direction of the CCF, 1990.

[2] Para.6 of the Interim Permit to Operate a Concession.

term solution to wasteful production processes.

The NIC Sub-Committee found that timber operators had successfully managed to contravene minimum girth requirements.[1] This underscores the need to exclude wasteful, dishonest and unreliable loggers from the industry by measures, inter alia, to improve concession allocation procedures.

Measures to improve law enforcement in forest reserves are clearly welcome, but, in addition to strengthening the resources available to district forestry officers, thought should be given to the responsibilities of concessionaires. For example, if concessionaires were strictly liable for breaches of minimum girth and other requirements within their concession areas, whether or not there was evidence that they actually committed the offence and whether or not they were in possession of the immature timber illegally felled, then penalties could be imposed long after the commission of the offence by reference to stumps of felled trees and to stock maps which are prepared before exploitation begins. Strict liability may not be fair outside forest reserves where illegal felling is rampant but in forest reserves it would surely encourage concessionaires to take a long term view of exploitation. At the moment, proof of silvicultural abuses, except where the offender is caught in possession of the illegally felled timber, is one of the problems associated with enforcing the law.

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[1] Interview with Dr. Chatchu of the MLNR, Accra, 5/10/1990.

The enforcement of an appropriate felling cycle is another simple and potentially effective silvicultural method. The felling cycle should stipulate the minimum length of time required between periods of exploitation in order to allow natural regeneration.

In the early 1970s the felling cycle was reduced from 25 to 15 years.[1] This was in part to allow the exploitation of over mature timber but it was also to satisfy the demands of loggers and traditional "landowners" who called for a faster exploitation of richly stocked forest reserves.[2] In applying this pressure on the Department, both groups had their own interests closest to heart. Logging companies wanted quick profits from the sale of valuable primary species. Traditional authorities also stood to gain because they traditionally receive a proportion of the revenue accruing from royalties paid in respect of forest exploitation in their areas.[3] The fact that the Department readily succumbed to pressure from these interest groups once again suggests the vulnerability

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[1] Martin op cit p.40.

[2] Interview with Mr. Francois, CCF, Accra, 28/12/1989.

[3] The Forest Improvement Fund Act, following the Forests Ordinance, originally provided for disbursements to be made out of the Forest Improvement Fund to traditional landowners. See, Act 12/1960 s.5 and Cap.157 s.18. This practice seems to have continued despite the removal of any explicit reference to this type of disbursement in the Forest Improvement Fund (Amendment) Act, no.144/1962. Authority can still be found in s.18 of the Forests Ordinance for the disbursement of at least two thirds of annual revenue from forest reserves to the "owners" of the land but this provision seems to be inconsistent with the Forest Improvement Fund (Amendment) Act which states that all revenue from forest reserves should be paid into the Forest Improvement Fund to meet "costs incurred in connection with exploitation and silvicultural work". See Act 144/1962 ss.1,2.

of sustainable development policies to conflicting, short term economic interests.

Working plans are potentially the most accurate method of securing sustained yield exploitation. These provide a detailed scheme for the sustained exploitation of forest land in harmony with appropriate felling cycles. In the deteriorating economic circumstances of the 1970s, financial support was not forthcoming to allow the adaptation of earlier working plans to a 15 year time scale. Thus, working plans ceased to operate as envisaged. It is only now that the Forest Inventory Project and the FRMP are providing support for the preparation of new working plans.[1] Meanwhile, the felling cycle has been increased to 40 years,[2] a clear indication that the fifteen year felling cycle could never have been justified on silvicultural grounds alone.

Working plans are a considerably more sophisticated and more complicated silvicultural tool than minimum girth requirements and felling cycle stipulations. However, should history repeat itself, difficulties may be experienced in continually revising and updating these plans in future. The adoption of working plans does not, therefore, diminish the need to ensure that regulations stipulating the appropriate minimum girths and felling cycle are effectively implemented and continually reviewed.

Silvicultural requirements of any type are not effectively enforced outside forest reserves. The rule here

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[1] Staff Appraisal Report, op cit p.79.

[2] By direction of the CCF, 1990.

has been salvage felling so that valuable timber can be saved from destruction during farming operations. Although minimum girth requirements are supposed to apply even where salvage felling has been authorised, in practice they have never been effectively enforced. The prospects for any kind of valuable regrowth outside forest reserves are, as a result, extremely bleak unless measures to encourage rural forestry initiatives prove successful.

(F) Minor Forest Produce and Rural Forestry.

Minor Forest Produce includes firewood, charcoal, building poles (not sawn), bushmeat, fruits, plants and all produce for use or consumption derived from the forest. It has been estimated that the current production of firewood, charcoal and building poles amounts to approximately 12.6 million cubic metres equivalent per annum.[1] No reliable figures exist on the production of other minor forest produce.

In general, the exploitation of minor forest produce outside forest reserves is governed by customary law. This frequently provides for free rights of community user where the land is uncultivated. Where the land is cultivated, rules vary between communities as to the exact division of rights between the community and various people with more specific rights. Where firewood has become a scarce commodity communal rights to collect deadwood on private land have disappeared.[2]

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[1] Staff Appraisal Report op cit p.6.

[2] Bongo and Gowrie offer examples of this development infra Chp.9, p.393.

The cutting of firewood on a commercial scale usually requires the prior permission of the allodial owner and/or the usufruct farmer if the land is subject to a customary freehold estate. District Assembly bye-laws have in some cases further modified the general norm of free rights of community user over minor forest produce.[1]

The FRMP estimated that, without changes in patterns of exploitation, Ghana would have an overall deficit in the supply of firewood by the end of this century.[2] Measures to avert this tragedy have been initiated. These include the promotion of energy efficient cooking stoves, more efficient charcoal production methods and alternative cooking fuels such as Liquified Purified Gas (LPG). Incentives to encourage industries to switch to electricity or LPG should be included in this campaign.

Plantation forestry, agroforestry and rural forestry initiatives of all types have the potential for improving the supply of MFP in the future. The FRMP Report made recommendations for increasing the level of institutional support for these activities.[3] A detailed discussion of the impact of rural forestry initiatives in one part of the savanna zone is reserved for chapter eight.

Inside forest reserves, the Forests Ordinance provides a procedure whereby customary rights in, to or over land or

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[1] For example, some District Assemblies require a licence to tap raffia palms to be obtained from the Assembly.

[2] Staff Appraisal Report op cit p.6.

[3] The Forestry Department supra Chp.6.

forest produce in a proposed forest reserve are extinguished or admitted by the findings of the RSC, with effect from the publication of the order constituting the reserve.[1] It also enables land within a reserve to be excluded from the reserve. Such land is not governed by the provisions of the Ordinance.[2] The Concessions Act preserved all rights in forest reserves subject to the terms of the Act[3] but the Forest Protection Decree later made it an offence to exercise many if not all rights in, to or over land or forest produce in a forest reserve without the prior written consent of a competent forest officer.[4] Fees may be charged for the issue of licences to exploit forest produce.[5] Forestry staff are not competent to issue hunting licences.[6] Fees charged for permits vary from region to region.

It has already been observed that the provisions for admitted rights in forest reserves are no longer relevant and that excluded village lands may not suffice to meet the demands of a growing population.[7] In practice, persons caught taking minor forest produce without a written permit in a forest reserve will rarely be prosecuted but may be subjected

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[1] Cap 157 ss.15,17.

[2] ibid s.11.

[3] Act 124/1962 s.16(1).

[4] NRCD 243/1974 s.1 as amended by PNDCL 142/1986 Para.(a).

[5] Cap 157 s.33(1)(j).

[6] Only Staff of the Game and Wildlife Department may do this.

[7] Supra Chp.7, p.189.

to an on the spot fine while the produce will be seized. The law does not provide for on the spot fines of this type.

One of the suggestions of the FRMP Report was that more ways should be found of involving local people in the management of forest reserves.[1] This is consistent with recommendations made in chapter seven favouring the closer integration of local communities in forestry affairs.[2] The trend, however, has clearly been towards more restrictive entry into forest reserves. Stiffer penalties for forest offences and regulations designed to wholly exclude entry into forest reserves have been made in response to the increasing threat of illegal encroachments by farmers and chain saw operators. While this threat cannot be ignored, it is desirable that the exploitation of MFP in forest reserves should be increased because this sort of exploitation offers a low impact, productive use of forest reserves which enhances their value as a local resource and as a national asset providing further justification for their existence.[3] If it is not possible to allow unimpeded entry by local people into forest reserves, entry which no doubt already occurs to some extent, then the ease and potential benefits of using the licensing procedure should be better publicised locally to encourage more people to participate in MFP exploitation. This would be one way of more closely integrating local people into the forest economy, an objective which must be addressed if

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[1] Staff Appraisal Report op cit p.84.

[2] Supra p.227.

[3] Browder op cit p.126.

the logic of forest reservation is to be appreciated locally as well as nationally.

To date, there has been no attempt to optimize the utilisation of minor forest produce from forest reserves nor any attempt to control exploitation for a sustained yield nor even to inventory the resources available. Permits for exploiting minor forest produce are issued to any honest applicant and while it is assumed that more could be issued without detriment to the sustainability of the resource base, the scale of illegal exploitation is unknown. The FRMP hopes to improve data collection on minor forest produce.[1] This information should be used to keep the proposed intensification of MFP exploitation within the constraints of sustainable exploitation and to add weight to the economic arguments in favour of forest reservation in Ghana.

The preservation of biodiversity, particularly in tropical forests, has now become an international issue.[2] Forest reserves in Ghana, except in the areas where no disturbance is allowed for protective reasons,[3] do not ensure the strict level of freedom from disturbance which is necessary to preserve wholly intact the tropical forest ecosystem. This was never their intended purpose however, and, in view of the large area of land reserved to forestry (17,000km^2), is not, it is submitted, a reasonable objective.

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[1] Staff Appraisal Report, op cit p.8.

[2] Convention on Biological Diversity, 3-14/6/1992, Rio de Janeiro, (1992) 31 ILM 818.

[3] For example, exploitation is prohibited on steep slopes and alongside watercourses.

Consequently, there is a need to maintain the two existing high forest national parks and to guarantee their complete protection from any type of exploitation.[1] Concessions in the Bia North and Bia South Reserves, which were formerly part of the Bia National Park, should not, therefore, be renewed. These reserves should as soon as possible be restored to the Bia National Park in order to improve its viability as a home for the only remaining herd of small forest elephants in Ghana.

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[1] These are the Ankasa National Park and Bia National Park. See further, E. Asibey, J. Owusu, The Case for High Forest National Parks in Ghana, (1982) Environmental Conservation 9(4) 293-304.

(v) A Summary of Problems in the Legal Framework of Control.

This chapter has described some of the characteristics of the timber industry in Ghana exposing economic, fiscal and administrative problems. It has reviewed the legal and administrative framework of control drawing attention to instances of abuse and areas of neglect.

The statutory procedure for the grant of concessions was found to be slow, cumbersome and, on the evidence, not free from error.[1] The need to reform these procedures was found to be essential because the present statutory system has enabled unreliable entrepreneurs to get a foothold in the industry from which they subsquently pursue a number of illegal activities. A reorientation of concession allocation procedures to incorporate market mechanisms was applauded as one initiative which could help to reduce the opportunities for maladministration. The case for a permanent and active procedure for the review of concessions was considered[2] and a rationalisation of concession types was urged so that eventually the long term lease will be the only type of grant.

Statutory limits on the size and duration of concessions were under review in 1990. Whether shorter or longer leases are made in future, the need for procedures incorporating regular reviews of financial and silvicultural performance was stressed.[3] Larger concessions were welcomed as a measure which

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[1] Supra p.279.

[2] Supra p.282.

[3] Supra p.286.

would help to rationalise the over subscribed logging sub-sector.

Administrative and quality controls are in place to control the activities of timber producers but the work of the NIC Sub-Committee has revealed the extent to which these rules have been contravened. Illegal activities of two types were discussed. In the first category are the illegal activities of registered timber operators who are exploiting the system in order to make quick, personal profits.[1] Measures to improve the efficiency of the regulatory institutions, in particular, the FPIB, were discussed but the root of the problem lies in the ease with which dishonest entrepreneurs have been able to enter the industry, purchase concessions and obtain loans for logging activities. Radical enforcement measures of the type employed by the PNDC continue to be necessary but so too are measures to clean up concession procedures, to improve administrative performance and to encourage honest entrepreneurs in their attempts to upgrade their technology. Support for honest entrepreneurs should help to drive dishonest speculators out of the business so long as corruption is not allowed to distort the effectiveness of market mechanisms.[2]

The second category of illegal activities stem from the buoyant local demand for cheap wood. This is satisfied by the activities of chain saw operators who cut timber illegally for sale in local markets. A suggested measure was the de-

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[1] Supra p.289.

[2] Supra p.292.

regulation of activities outside forest reserves which already seem to be out of hand but the underlying challenge is to reduce the demand for wood while developing rural forestry, agroforestry and plantation forestry in order to meet future requirements and to alleviate some of the likely pressure on forest reserves in the future.[1]

It was noted how the previously low rates charged for rents and royalties encouraged unscrupulous and inefficient entrepreneurs to enter the industry.[2] Simplified procedures for more regular updates of rents and royalties under consideration in 1990 were applauded for their potential to encourage the more efficient use of timber resources by the industry. These reforms should help to reduce the scale of speculative activities.[3]

Another issue urged for consideration was a reduction in the amount of revenue disbursed to traditional authorities and district assemblies. The payment of any revenue should be made dependent on the successful contribution of these institutions to forest protection.[4]

The evidence that silvicultural requirements have been contravened demonstrated the need for more effective enforcement measures, regular reviews of silvicultural regulations and a continuing use of simple measures in

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[1] Supra p.293.

[2] Supra p.295.

[3] Supra p.296.

[4] Supra p.296.

addition to sophisticated working plans.[1] Fiscal penalties should encourage moves to reduce the level of waste occurring during exploitation but, more fundamentally, positive measures, such as preferential credit facilities, are necessary to facilitate technological upgrading and staff training.

The ability of vested interests to obtain reductions in the felling cycle was noted as yet another example of how interest groups whose motives are not sympathetic to sustainable management may frustrate the goal of sustainable management.[2]

There is evidence that an overall deficit in the supply of firewood is threatening Ghana by the end of the century.[3] The more efficient use of firewood and charcoal and greater use of alternative forms of energy are measures currently being promoted to address this problem. In addition, rural forestry intitiatives are being encouraged in the hope that they will provide firewood and other wood products for future generations.[4]

It was suggested that, in general, a more intensive exploitation of MFP in forest reserves could be permitted because this represents a low impact, income generating activity which helps to justify the reservation of forest

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[1] Supra p.302.

[2] Supra p.301.

[3] Staff Appraisal Report op cit p.6.

[4] Supra p.304.

land.[1] In order to preserve maximum biodiversity in a select proportion of the forest estate, freedom from all forms of exploitation should be guaranteed to areas chosen as national parks.

(vi) Conclusion.

The objective of this chapter was to identify the fundamental constraints which affect the implementation of laws designed to promote the sustainable exploitation of the forest estate in Ghana. In line with the conflict model of law discussed in chapter one, various interests which conflict with the objective of sustainable development were identified. Firstly, attention was drawn to the presence of interest groups in the local industry whose motives are not consistent with sustainable management objectives.[2] Secondly, attention was drawn to the constraints imposed by the international market for timber and by the economic situation in which developing countries find themselves generally.[3] The evidence in this chapter suggests that it is the existence of these interests and constraints which has led in the past to widespread malpractice, the adoption of unsustainable policies and the neglect of long term, structural changes which could facilitate sustainable development.

The current efforts of the Ghanaian government to update

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[1] Supra p.306.

[2] Supra pp.259-265.

[3] Supra pp.265-270.

and enforce the law to eradicate pervasive malpractice in the industry are commendable.[1] In addition, the FRMP is attempting to improve law enforcement and to strengthen sector institutions. Of potentially even more significance are the proposed reforms in concession procedures and revenue collection. The move to incorporate market mechanisms into official procedures should help to eradicate discretionary judgements, maladministration and the allocation of concessions and loans to dishonest, speculative entrepreneurs.[2] In the long term, these measures should help to expel those business interests which do not favour sustainable development from the industry.

In order to speed up this process, financial support for industrial restructuring is essential. Industrial restructuring should improve efficiency and encourage further processing but, most importantly, it should help to force unreliable entrepreneurs out of the over subscribed logging and saw milling sub-sectors. This requires a more careful monitoring of development assistance. Without attention to fundamental structural reform, the outlook for sustainable exploitation in Ghana remains bleak because, although law enforcement and management capacities will be improved, no measures are being taken to assist the local industry to make the improvements in efficiency which, in the long term, could generate the essential support base for a sustainable

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[1] See in particular, the work of the NIC Sub-Committee on Timber discussed at supra pp.259-265.

[2] Supra p.281.

development strategy.

Ghana's domestic reforms are not being matched by reforms at the international level. Reforms are necessary in the pricing of tropical timber, in the selection of species and in developed countries' tariff barriers which discourage the import of processed timber.[1] In addition, international aid must take the environmental implications of policy based lending into account while NGOs should sponsor positive measures to promote sustainability.

In the past, the structural adjustment programme and debt servicing obligations facing Ghana forced decision-makers to maximise immediate foreign exchange earnings without regard for the long term sustainability of their resource base.[2] In recent times, foreign assistance has done little to facilitate the further processing of raw materials in Ghana, a development which could improve Ghana's foreign exchange earnings, reduce the level of waste in the industry and facilitate the greater use of secondary species, measures conducive to sustainable development in the long term. Ghanaian leaders are keen to encourage this kind of long term economic development but they are constrained by the realities of their country's critical economic situation.

If the international community really is now committed to improving environmental management in Ghana and other developing countries, it would do well to listen to the calls of the latter for more debt relief, long term investment in

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[1] Supra p.269.

[2] Supra pp.248-253.

economic development and fairer terms of trade.[1] Without these sort of measures, the threat to the tropical forest in Ghana remains despite the national endeavour to put forest exploitation on a sustainable footing. This is because international constraints, like the interests of unscrupulous entrepreneurs on the domestic front, frustrate the implementation of long term sustainable development policies. Low commodity prices, tariff barriers and the pressure to service foreign debt keep the price of tropical timber too low to make sustainable management economically feasible. In addition, these constraints frustrate Ghana's ambitions for restructuring the industry so as to improve efficiency and to encourage further processing, goals which would enhance the long term prospects for sustainable development in the forest sector.

The Brundtland Report identified the economic constraints to sustainable development for developing countries generally[2] but it failed to acknowledge the entrenched nature of the resistance to change which stems from the developed countries' lack of commitment to international economic and trade reforms. This constraint threatens the long term viability of measures being taken locally to strengthen the policies, laws and management capacities of institutions engaged in the control of timber exploitation in Ghana. This finding suggests that unless all the interests which conflict with sustainable

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[1] See also the recommendations of the WCED op cit pp.69-70.

[2] ibid p.36.

development are squarely confronted, the prospects for sustainable development are bleak and the legal and institutional measures recommended in the Brundtland Report for its attainment are inadequate.

CHAPTER NINE: RURAL FORESTRY INTIATIVES IN BONGO - A CASE STUDY IN THE NORTH-EAST SAVANNA.

The FRMP Report estimated the present production of non-industrial forest products in Ghana to be 12.6 million cubic metres equivalent with an approximate value of $90 million, a value approaching that of annual hardwood exports at the time of the research.[1] In addition, the calculations employed by the FRMP indicate that increasing demand for firewood may create a deficit of 11.6 million cubic metres by the end of the century. In view of this, the FRMP made specific provision for measures to improve the institutional framework and technical support for ongoing and proposed rural forestry projects. It recommended the creation of a Rural Forestry Division in the Forestry Department and the intensification of forestry extension through a strengthening of the Ministry of Agriculture.[2]

Additional support for rural forestry initiatives stems from the Draft Forest Policy which includes recommendations to encourage private and community forestry.[3] The existence of several relatively small, ongoing rural forestry projects was noted in the FRMP Report.[4] The multitude of potential benefits accruing from tree planting activites in rural areas and the

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[1] Staff Appraisal Report op cit p.6.

[2] ibid p.84.

[3] Forestry Commission Proposals for the Revision of the National Forest Policy of Ghana 1990, Forestry Commission, Accra, pp.17, p.6.

[4] Staff Appraisal Report op cit p.20.

importance which should be attached to such measures are now widely recognised.[1] Organised efforts to promote tree planting by the "development community" are still generally in an early stage of development, however. This makes an inquiry into existing tree planting initiatives in Ghana particularly instructive.

Rather than attempt a nation-wide survey of rural forestry initiatives throughout Ghana, the discussion in this chapter focuses on rural forestry initiatives in Bongo, a political district in the north-east of Ghana.[2] This district was chosen in part because its physical, social and economic characterisitcs contrast so sharply with the conditions prevailing in southern Ghana and the Western Region. In addition, a variety of rural forestry initiatives are currently underway in the district. These raise a number of interesting issues, including those of project design and management. In particular, aspects of the local customary land law which have a bearing on the implementation of tree planting programmes have been chosen for an in depth discussion of the contribution of law to sustainable development measures of this type.

In this chapter, an attempt is made to assess the impact of current programmes in the district with particular reference to relevant legal issues. Another objective of the

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[1] FAO Tree Growing By Rural People 1985, FAO Forestry Paper no.64, FAO, Rome, pp.130, pp.9-11.

[2] For the purposes of this discussion, "rural forestry" or "community forestry" are terms employed generally to mean all types of programmes and projects geared towards tree planting and tree husbandry by members of the public.

chapter is to make comments on certain aspects of the Brundtland Report which seem relevant to this discussion. In particular, the widespread poverty in this district puts the Brundtland remarks on the links between poverty and environmental degradation, between basic needs and development, on the agenda for discussion.

The chapter is divided into three parts. Firstly, the principal physical, social and economic characteristics of the area are described. An attempt is made in this section to put rural forestry initiatives into their broader development and environmental context by summarising the principal environmental concerns in this district. Secondly, this chapter discusses specific rural forestry initiatives in the district, paying some attention to issues of project design and implementation. A more thorough analysis is reserved for one particular project, tree planting for dam protection around the Vea Dam at Gowrie. This particular project raises a number of issues and allows for comments to be made on the links between development, environmental protection and the satisfaction of basic needs in this district. This discussion also serves to illuminate the role of the District Assembly in land-use affairs. Thirdly, aspects of the local customary law which have a bearing on environmental programmes generally and tree planting programmes in particular are analysed in some depth. Some comments are made on the desirability of reforming specific areas of customary law.

(i) Background Information.

(A) Physical Characteristics.

Bongo lies in the savanna zone close to the border with Burkina Faso, approximately 11° north of the equator. The district is bounded on the east by the Red Volta River. The Yaratanga River flows through the district supplying the Vea Irrigation Dam. The average annual rainfall is approximately 40" (1,016 mm).[1] There is one wet season which begins in March and ends in October. The district experiences considerable annual fluctuations in the distribution of rainfall within that period. Adu calculated the rate of relative variability of rainfall to be in the order of 12-14%.[2]

The natural vegetation in this area is degraded tree savanna.[3] Permanent cultivation and annual burning have been implicated in the conversion of this part of the Guinea savanna zone to a Sudan savanna zone type.[4] Grasses interspersed with widely spaced, fire resistant, deciduous

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[1] Benneh, Population, Disease and Rural Development Programmes in the Upper East Region of Ghana, in Clarke, Khogali, Kosinski Population and Development Projects in Africa 1985, Cambridge University Press, London, pp.329, Chp.15, p.207. Adu recorded an average annual rainfall of 898.70 mm over the period 1949-1960 at Zuarungu, Adu Soils of the Navrongo - Bawku Region 1969, Soil Research Institute (CSIR), Kumasi, pp.96, p.6.

[2] ibid p.5.

[3] ibid p.11.

[4] Taylor The Vegetation Zones of the Gold Coast 1952, Government Printer, Accra, pp.12, p.10; Ramsey and Innes, Some Quantitative Observations on the Effects of Fire on the Guinea Savanna Vegetation of Northern Ghana Over A Period of Eleven Years, (1963) 8(1) African Soils 41-86, p.60.

trees now characterise the natural vegetation. Naturally occurring trees of economic significance include the shea nut (Butyrospermum parkii), baobab (Adansonia digitata) and dawa dawa (Parkia biglobosa).

The area is generally low lying with rocky outcrops. The soils of the district derive from Granitic and Birrimian rocks. The former is high in phosphate and potash contents providing naturally fertile soils[1] but permanent cultivation has led to low productivity, soil infertility and soil erosion. There is evidence of gully erosion and laterite formation in many parts of the district.[2]

(B) Demographic and Social Characteristics.

In 1984, the district had a population of approximately 95,390.[3] Population density varies throughout the district. In some upland areas population density exceeds 160 per km^2 but in valley bottoms it may fall to 40 per km^2.[4] Formerly the latter areas were infested with the simulium fly which spread the disease Onchocerciasis and discouraged settlement.

The majority of people living in this district belong to either the Gurunsi, Boosi, Nabdam or Tallensi clans.[5] Together

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[1] Adu op cit p.3.

[2] ibid p.4.

[3] Department of Statistical Services 1984 Population Census of Ghana - Preliminary Report 1984, Central Bureau of Statistics, Accra, pp.114.

[4] Benneh op cit p.207.

[5] A clan is a large unit comprising several lineages who share common ancestors of such great distance that precise genealogical links can no longer be traced. A lineage is all

these clans constitute the Fra Fras.[1] Each clan speaks a dialect of the Mole-Dagbane (Gur)language group.[2] All the clans are agnatic and exogamous. It is generally believed that the Gurunsi, whose foremost representative is the tindana,[3] are the aboriginal inhabitants of the district while the Boosi are later immigrants from the more southerly Mamprusi Kingdom who brought with them the office of chieftaincy.[4] This is why

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the members of a descent group who trace their origin to a common ancestor, K. Bentsi-Enchill, The Traditional Legal Systems of Africa, op cit p.77. In this district, clans are divided into sections which seem to approximate to Bentsi-Enchill's definition of a lineage.

[1] Fortes doubted the applicability of the word "tribe" to describe the Fra Fras. "Tribe" usually connotes a community with a cohesive language and culture but in the Upper East one dialect merges with another and there are no precise territorial boundaries. M. Fortes, The Political System of the Tallensi, in Fortes and Evans-Pritchard, African Political Systems 1940, Oxford University Press, London, pp.239-271, p.239.

[2] Fortes The Dynamics of Clanship Among the Tallensi 1967, Oxford University Press, London, pp.270, p.6.

[3] A tindana ("Earth Priest") makes sacrifices and is responsible for the well being of his clan. He also has functions with respect to land but controversy exists on whether these are purely religious functions or whether they include secular functions of land administration infra p.365.

[4] Chiefs exercise customary law and political jurisdiction over all the local clans. Some conflict of opinion exists on the earliest antecedents of the Gurunsi and Boosi. The reader is referred to comments made in A. Atobiga The Acquisition and Alienation of Property Among the Fra Fra (Gurunsi) 1979 LLB Dissertation, University of Ghana, Legon, pp.57, p.7; Eyre-Smith A Brief Review of the History and Social Organisation of the Peoples of the Gold Coast 1933, Government Printer, Accra, pp.45, pp.5-7; Fortes, The Dynamics of Clanship Among the Tallensi ... op cit; Northcott Report on the Northern Territories of the Gold Coast 1899, HMSO, London, pp.163, p.12. Combining the evidence, it seems likely that the Boosi have their origin in the Songhoi Kingdom from which their ancestors migrated firstly to Mamprusi, establishing a Kingdom whose descendants were to rule over the Gurunsi, Moshi and Dagomba. The Gurunsi may be the aboriginal inhabitants of Bongo or early migrants who share cultural similarities with

the chiefs of Bongo are associated with the royal house of the Mamprusi Kingdom, the appointment of the Paramount Chief of Bongo always being made by the Mamprusi Chief in Nalerigu.[1]

Bongo is the district capital possessing a number of facilities including a health clinic, a large Roman Catholic church, a post office and a petrol pump. Several government departments have offices in Bongo and more are planning to move to the district when the necessary office space and housing has been built.

Gowrie is a densely populated area of the district lying between Bongo and Bolgatanga, the regional capital. It is home to the Vea Irrigation Dam and ICOUR Agroforestry.[2]

Adaboya is a much less densely populated part of the district lying close to the Red Volta and including large areas of bush land parts of which have not been farmed for many years due to the risk of Onchocerciasis. The Onchocerciasis Control Programme has freed the area of this risk in recent years making more land available for farming.[3]

There are fifteen small dams in the district. Water pumps have been installed throughout the district to provide clean drinking water. Plans are under way to extend pipe borne water

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autochthonous clans living within the Moshi Kingdom.

[1] This account was given by the Regent of Bongo.

[2] Infra p.349.

[3] This Programme is an internationally sponsored regional project which involves larvicidal spraying of the affected river valleys. See NOS Onchocerciaisis: Onchocerciasis Control Activities 1989, Brief by the NOS, pp.7.

from the Vea dam to Bongo township and Gowrie.[1]

(C) Economic Activities.

The principal occupation of the majority of inhabitants is settled agriculture. Farms are basically of three types - compound farms, farms away from the house and bush farms.[2] Compound farms may be cultivated by all the members of one house or they may be divided into units between brothers who farm the land separately with their wives, sons and unmarried daughters.[3] Individual farms can be made away from the compound.[4] Women participate in all farming jobs except bullock ploughing. Most farming jobs are not mechanised.

The staple crops grown on compound farms are early and late millet intercropped with guinea corn and cowpeas. Vegetables are grown along the borders, against the walls of the house and in small plots beside the house. Compound farms are easily manured using household compost but they are not normally fallowed. Bush farms and farms away from the house may be used to grow cash crops (rice, maize, groundnuts intercropped with bambarra beans) or staple crops. They may occasionally be fallowed and some are fertilised with compost

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[1] "146 Million Cedis Voted to Extend Potable Water To Bongo" People's Daily Graphic 10/11/1989, p.16.

[2] Benneh, Small Scale Farming Systems in Ghana, (1973) 43(2) Africa 134-146, p.134.

[3] For examples of different family and farming arrangements, see infra Appendix Two.

[4] These farms may be held subject to a tenancy agreement infra p.375 or as part of the customary freehold interest in land away from the compound infra p.369.

while a small minority receive artificial fertilisers. The use of artificial pesticides on farms is practically unknown.[1]

Compound farms in Bongo central, due to population pressure and land fragmentation, may be smaller than half an acre but bush farms, where they exist, may cover several acres. Commercial farmers are engaged in irrigation farming at the Vea dam.[2]

Insufficient rainfall or badly distributed rainfall continue to mean a poor harvest leading to high food prices and widespread hunger in the following year. Even in a good year, many farmers are left with insufficient produce to sustain their families through to the next year's harvest. In another densely populated district in the Upper East it was found that after a moderately poor harvest, 45% of households had insufficient food to last throughout the hungry season (April - July, but starting earlier in bad years).[3] In May 1991, the Government sent 1.2 billion cedis of food to the Region to help alleviate severe food shortages.[4]

Successive development policies have not been able to

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[1] Benneh op cit pp.142-143. For another good account of the local farming system, still largely relevant, see, C. Lynn Agriculture in North Mamprusi 1937, Department of Agriculture, Bulletin no.34, Gold Coast, pp.93.

[2] Some aspects of the Vea Irrigation Project are discussed in more detail at infra p.349.

[3] Report on the Distribution of Relief Foods During the Hungry Season (May/June/July) in Bawku District 1973, Unpublished Document. See also, Hunter, Seasonal Hunger in a Part of the West African Savanna: A Survey of Bodyweights in Nangodi, North-East Ghana, (1967) 41 Transactions of the British Institute of Geographers 167-185.

[4] Famine Relief West Africa no.3844, 6-12/5/91, p.722.

overcome the problem of perennial food shortages in Bongo. One writer has suggested that the situation may be worsening.[1] This is because the promotion of cash crops has encouraged farmers with spare land and capital to invest in commercial crops for sale outside the district in preference to the staple crops which are eaten locally. The improved purchasing power of townspeople in Bolgatanga and beyond draws this surplus food out of the villages. These factors raise the price of staple crops in village markets at a time when the rate of inflation is high and the population is growing.

The long dry season, haphazard weather conditions, shortage of land and poverty of the soil encourage diversification into animal husbandry of all types and non farming activities, including petty trading, house-building and various odd jobs. Nevertheless, migration remains the only meaningful opportunity for many young men. This may be seasonal but more often it involves long term migration by unskilled youths. Many migrants from the Upper East Region end up as landless farm labourers in the Western and Brong Ahafo regions. There have even been cases of parents sending their young children to work in the south.[2]

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[1] Shepherd, Farming and Drought in the North-East West Africa no.3157, 16/1/1978, p.96; Shepherd, Ghana's Northern Food Crisis West Africa no.3136, 15/8/1977, p.1661.

[2] Child Recruitment Again Peoples' Daily Graphic 25/1/1990, p.6.

(D) Environmental Problems and Priorities.

From the preceding information it is possible to identify some of the major environmental issues in this district.

The high population density in many parts of the district has contributed directly or indirectly to localised land shortages, under employment and outward migration of young adult workers. Settled agriculture, in part a response to high population density, has not been accompanied by adequate soil conserving measures.[1] The result has been soil degradation leading to low soil fertility, low agricultural productivity and, in some cases, serious soil erosion.[2]

Soil infertility reduces crop yields. Low crop yields impoverish the farming community. Many people experience food rationing or hunger every year. They are trapped in a well recognised cycle of poverty.[3]

The shortage and the poverty of agricultural land increases the importance attached to animal husbandry as an alternative source of security but over stocking has reduced the fertility of grazing land and the quality of stock. These interlocking crises demonstrate the truth of the Brundtland premise that, at least in some circumstances, poverty itself is a cause of environmental degradation.[4]

The extension of settled agriculture has reduced the

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[1] Lynn op cit p.51.

[2] Adu op cit p.4.

[3] Chambers provides a perceptive analysis of the "deprivation trap", Chambers Rural Development: Putting the Last First 1983, Longman, Essex, pp.246, p.111.

[4] WCED op cit p.28.

amount of communal and bush land. Annual cultivation and intensive grazing prevent new tree growth taking hold. Bush fires also prevent the rapid recovery of tree growth.[1] Meanwhile, the growing population places an increasing burden on existing tree resources to supply wood products. In the densely populated parts of the district, wood scarcity long ago caused crop stalks to replace wood as the basic cooking fuel but the use of crop stalks for cooking precludes mulching[2] on farms and reduces the amount of dead vegetation which is returned to the soil.

The long dry season and variability of annual rainfall mean that water scarcity is often an issue. Many bore holes dry up during the dry season and some wells have had to be deepened although there is no conclusive evidence that the water table throughout the district is sinking.[3] A year with little rainfall or with badly timed rainfall spells disaster for local agriculture. Tree loss has reduced the ability of the soil to store ground water. Many rivers are seasonal, their slopes denuded of the permanent vegetation which could help to regulate their flow.[4]

The natural vegetation appears to have been degraded by

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[1] Ramsey and Innes op cit p.60.

[2] This is when the surface of the soil is covered so as to protect it from sun, rain, evaporation and erosion.

[3] The Regional Water Authority records show that seasonal levels at some observation wells in the district have become higher but the variability of rainfall from year to year prevents reliable analysis. The author would like to thank Mr. Anafo of GWSC, Bolgatanga, for the provision of this information.

[4] Adu op cit p.4.

permanent cultivation and annual burning. This has raised fears of desertification, often associated with the southward drift of the Sahara[1] but more direct contributory factors are the reduction of tree cover and degradation of agricultural and pastoral land.

A factual analysis of environmental problems provides a framework for environmental planning but in order to set realistic priorities for action it is also important to heed the views of local people. Time and again development programmes have demonstrated that it is only when the active participation of local people is incorporated into project design that long term success will be achieved.[2] The evidence seems to suggest that the same is even more true of environmental programmes.[3] The writer therefore attempted to discover the views of local people.[4]

Farmers' comments quickly made it clear that environmental problems relating to agriculture vary from farm to farm. Soil erosion and pest attack, for example, were only

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[1] This was as much a concern in the colonial era as today. See, for example, Stebbing, The Encroaching Sahara: The Threat to the West African Colonies, (1935) 85 The Geographical Journal pp.507-524.

[2] Chambers op cit pp.140-167; M. Edwards, The Irrelevance of Development Studies (1989) 11(1) Third World Quarterly 116-135.

[3] SADCC Soil and Water Conservation and Land Utilisation Programme People's Participation in Soil and Water Conservation Report from a SADCC Seminar, 2-6/3/1987, Report no.10, Maputo; Eckholm, Planting forthe Future op cit pp.56, p.47; Adams, Green Development op cit p.202. See also, the recommendations of the Brundtland Report op cit pp.38,330.

[4] On the various methods employed to gather information and their shortcomings, see supra Chp.2.

serious problems for some farmers or in some years. Farmers frequently stated that their basic problem was shortage of food during the dry season. Many farmers saw the lack of income earning opportunities during the dry season as a serious problem contributing to this situation. This suggests that the solution to food shortages is not seen solely in terms of environmental or agricultural improvements.

A surprisingly large number of farmers did not rate the size of their farm or the infertility of their soil as very serious problems. This was not necessarily because they were ignorant of these issues but perhaps partly because the potential for improvement, in their view, was lacking. For example, compounds possessing a shortage of young, adult labour could not afford to increase the acreage of their farms even if the land became available; the cost of artificial fertilisers is prohibitive for most farmers and the use of crop stalks for cooking as well as the small size of farms limits the amount of organic compost which can be made. Backward linkages such as these appear to determine the ability of farmers to make improvements in agriculture.[1] The fact that individual farmers face different problems and in varying degrees suggests that the agricultural problems of individual farmers cannot be dealt with in a uniform manner. Flexibility is therefore required in programmes designed to

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[1] The interlinkages which characterise poverty are recognised by Chambers in his discussion of the deprivation trap. Chambers op cit pp.108-114,152-163.

address their needs.[1]

Access to land, labour and capital are important factors which determine individual responses to environmental problems and programmes including tree planting projects.[2] In order for all farmers, especially the most vulnerable, to adopt tree planting initiatives, attention should be paid to these underlying constraints which may determine farmers' responses. In some cases these constraints may be best tackled through general development programmes whose direct benefit to the environment is not immediately apparent but even programmes directly aiming for environmental improvement cannot afford to ignore these constraints. On the contrary, they should be designed with these constraints in mind. For example, low cost measures which show quick improvements in soil fertility and hence agricultural productivity are desirable in this district because they tackle the basic constraints of land shortage, low agricultural output and widespread hunger.

Both the factual analysis and farmers' responses make it clear that environmental problems are inter related and inseparable from general problems of development. The fact that many farmers wished to increase their income from non agricultural sources strengthens the argument that at least

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[1] J. Kramer, Sustainable Rural Livelihoods, in C. Conroy and M. Litvinoof, The Greening of Aid: Sustainable Livelihoods in Practice 1988, Earthscan Publications and IIED, London, pp.302 at pp.47-63, p.52.

[2] L.Fortmann, J. Riddell Trees and Tenure: An Annotated Bibliography for Agroforesters and Others 1985, ICRAF/ Land Tenure Center, Nairobi/ Wisconsin, pp.135, p.vii; Barrows and Roth, Land Tenure and Investment in African Agriculture: Theory and Evidence (1990) 28(2) Journal of Modern African Studies 265-297, p.294; WCED op cit p.143.

part of the solution to environmental problems lies outside the direct man-environment relationship. To echo the philosophy of the Brundtland Report, all round social and economic development may be a pre-requisite for improved environmental quality.[1]

This analysis suggests some of the opportunities and constraints which face tree planting projects in this district. Trees are needed to improve soil fertility and agricultural productivity, to provide firewood, building poles, shade, fruit, fodder, medicines and other produce, to improve water retention and prevent soil loss along river banks and to upgrade common land. Other developments are also urgently needed in Bongo, however. In particular, there is a need to increase income generating opportunities outside agriculture and a need to address the needs of the poorest households whose very existence is marginal. While tree planting programmes can, in theory, help to improve the condition of the poorest, in practice they may not be the only or the most suitable means of achieving this, especially if access to land and natural resources by the poorest people is in any way limited. The overall impact of development programmes should therefore remain broad based and flexible so that needs which only indirectly relate to environmental degradation can be addressed simultaneously with those which do.

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[1] WCED op cit p.70.

(ii) Rural Forestry Projects in Bongo District.

(A) Preliminary Definitions and Issues.

Rural forestry intiatives have been usefully sub-divided into three categories by the FAO. In the first category are "communal forestry programmes". These are defined as tree planting programmes in which rural communities or user groups participate co-operatively in their planning and implementation.[1] They are often targeted for communally owned land, such as grazing land, and there is usually a commitment to a broad sharing of the potential benefits within the community.[2] They may serve a number of objectives other than purely environmental ones. For example, they may be seen as a means of institution building, of increasing local self reliance and of improving the supply of minor forest produce to the local community. In reality, however, it may prove difficult to satisfy all these objectives and some goals may have to be sacrificed to ensure the overall success of the project.

Some of the problems which commonly confront these programmes include the weakness or unrepresentative character of existing institutions, the difficulty of gaining the initial and continuing commitment of members of the community who may not believe that they stand to gain and the challenge to make a fair distribution of the proceeds once harvesting

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[1] FAO op cit p.51.

[2] ibid p.51.

begins.[1] It may be difficult to obtain land, whether communal land, such as grazing land, or private, surplus farmland on which to establish woodlots. If communal land is obtained, it may already be severely degraded. This makes tree establishment a particularly difficult objective. In addition, projects of this type may require the unwelcome curtailment of existing communal rights, particularly free grazing rights. The consequences of this action may be of unequal impact, particularly hitting the poor.[2] Communal forestry projects of many types have been attempted in Bongo District. The work of ICOUR Agroforestry, in particular, raises questions relating to the use of grazing land and farmland for tree planting activities.[3]

"Farm forestry for household use" is the second category of tree planting initiatives identified by the FAO. This category covers programmes which promote tree growing by individual households, primarily for their own use.[4] The need to supply a variety of multi-purpose trees is particularly important in these schemes as is the need for projects which can respond to the demands of local people. Issues of land tenure and the small size of many poor peoples' farms may frustrate the implementation of these programmes. For example, tenants, women and under privileged groups may be denied access to land on which to plant trees or they may be denied

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[1] ibid pp.62-65.

[2] ibid p.57.

[3] Infra p.349.

[4] FAO op cit p.47.

the potential benefits if they do plant trees.[1] In practice, problems such as these may mean that programmes of this type will not reach the poorest members of the community whether or not this is seen as an important project goal.

Tree planting for household use has been encouraged in this district by all the projects discussed in this chapter, with some degree of success. Potential and actual legal impediments to this type of tree planting are discussed in more detail in the third section of this chapter.

Agroforestry initiatives which seek to promote the integrated production of silvicultural, agricultural and pastoral requirements on farmland are perhaps the most exciting development in this category. Agroforestry systems have the potential to improve soil fertility and increase the production of firewood and other tree products. The concept is still at an early stage of development, however. Bongo Agroforestry has taken the lead in introducing agroforestry techniques in this district.[2]

The third category of rural tree planting programmes identified by the FAO is "farm forestry for the market". This category covers any programme which has the main objective of encouraging farmers to grow trees as a cash crop.[3] These projects pre-suppose a market for tree products, often focusing on firewood and timber. Access to land, capital and markets are conditions for their successful uptake. They may

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[1] ibid p.73.

[2] Infra p.339.

[3] FAO op cit p.47.

alleviate local wood shortages and the associated pressure on communal resources and they may also be less dependent on wide-spread, intensive technical support. On the other hand, without special measures to improve access to land by the poorest members of the community, they will rarely provide an income-generating opportunity for small farmers and the landless poor. On the contrary, they may increase competition for land and they may eventually undermine the market for wood products which is frequently exploited by poorer members when, for example, they collect firewood on communal land for sale during the dry season.[1] They may also create environmental problems if the species chosen are soil exhausting or demand too much water for the local environment.[2] Projects of this type have not yet been initiated in Bongo District.

In addition to tree planting programmes, the degradation of grazing land evident in some parts of the district suggests the need for better management of existing resources if these are to continue to make a contribution to the livelihoods of local people. Some of the local initiatives which have been taken to tackle this problem are discussed later in this chapter.[3]

Whatever the design of the project, the FAO identified the need for responsive programmes which answer to the ideas, needs and aspirations of local people.[4] Adequate logistical

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[1] ibid p.84.

[2] ibid p.85.

[3] Infra p.393.

[4] FAO op cit p.47.

support and long term planning are other basic requirements. Although many incidental benefits may accrue from tree planting activities, clear goals and specific priorities are required if the principal objective of establishing trees is to be achieved.[1]

(B) Bongo Rural Development Project (BRDP).[2]

Bongo Rural Development Project was an Oxfam supported project which ran from 1979 to 1989.[3] Its principal objective was to encourage and support self help activities through voluntary, co-operative organisations. Between 1979 and 1985, BRDP assisted in the establishment and running of fourteen co-operatives with a total membership of 1,556 co-operators in 1985.

Among the concerns of BRDP was the need to increase the productivity of small scale, co-operative farmers. To this end, elements of an ecological farming package were being given more and more attention by BRDP in its later years.[4] One of the attractions of the chosen conservation methods was their cheapness which made them available on a long term basis to even the poorest farmers. At this level, it was self evident that conservation measures and local development

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[1] ibid p.47.

[2] The author would like to thank Mr. Jones-Awunui, Project Organiser, and members of Anafobisi and Adaboya co-operatives for the provision of information relating to BRDP.

[3] Oxfam, BRDP: History and Project Proposal BRDP: Volume One 1979, Unpublished Report made to Oxfam, Oxford.

[4] Oxfam, 1988 Supplementary Report, BRDP: Volume Two 1988, Unpublished Report made to Oxfam, Oxford.

goals, such as increased food production, were complementary objectives.

The ecological package, run in cllaboration with Bongo Agroforestry, included measures to encourage interested members of each co-operative to establish co-operative tree nurseries where seedlings could be raised for sale or free distribution, at the option of the contributors, to local people generally. Other components of the ecological package included measures to encourage the greater production of compost and increased use of stone terracing on farms.

In 1989, Oxfam withdrew its financial support for BRDP. It appeared that, having supported so many activities, BRDP resources had become too thinly dispersed to realise sufficiently concrete achievements to satisfy the project donors. Nevertheless, BRDP's flexible and open ended approach to local development problems was exemplary. The tree planting components of the project were continued by Bongo Agroforestry.

(C) Bongo Agroforestry.[1]

Bongo Agroforestry is a Swiss sponsored project begun in 1987, with the long term objective of promoting agroforestry farming techniques which are capable of sustaining and increasing local food production. In practice, local demand has dictated that the project focus more urgently on general tree planting activities.

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[1] The author would like to thank Franz Zemp and Thomas of Bongo Agroforestry for the provision of information about this project.

In the early years, the project supported group tree planting in woodlots and along eroded valleys. The lack of clear leadership frustrated many of these schemes. Out planting was repeatedly followed by neglect in the protection and watering of seedlings during the dry season. Added to this, some landlords, who had not always been consulted in advance, refused to have the trees growing on their land and so they pulled them up. In 1990, the project was only continuing to assist two group planting schemes. Both groups belong to the 31st December Women's Movement (DWM) which is politically committed to tree planting.

The principal activity since 1987 has been the establishment of "flying nurseries". These number approximately twenty small nurseries spread throughout the district. The stock of seedlings being raised in each nursery varies from 50-10,000 plants. These nurseries are focal points for group training in tree raising skills. Extension is prolonged and relatively intense - the same people are visited fortnightly over a period of at least three years. The intention is that local people should acquire the skills and the commitment to raise their own trees from seed. Planting by individuals on their own farms is encouraged rather than group planting.[1]

Flying nurseries are an ambitious development which at the present time are proving hugely popular. They maximise group control, decision-making and training. They also

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[1] The project leader estimated that whereas the survival rate of trees planted by groups may be as low as 5%, with individual planting the rate may be as high as 60%.

circumvent the need to transport seedlings across the district. Their future, however, may only be as certain as the future of the groups which are developing them. Each year three or four groups lose interest and drop out. Once groups disband, there remains the possibility that individuals will continue to grow seedlings employing the skills they have learnt as members of the group but the economic benefits of so doing are uncertain. Local demand has not yet developed to the stage where seedlings, except fruiting varieties, are commercially marketable.

The project has its own very small nursery. In co-operation with flying nurseries in Bongo central, staff sell fruit tree seedlings in communities without nurseries during the rainy season. Approximately 18,000 seedlings are distributed in this way.

A small number of contact farmers have established agroforestry systems on their farms in collaboration with project staff. There is also a demonstration farm at the project headquarters where appropriate models of agroforestry are being adapted to local conditions.

Bongo Agroforestry has helped to popularise tree planting in this district. Nevertheless, many farmers continue to object to agroforestry techniques on the grounds that trees consume space and create too much shade for annual crops. Although woodlots and windbreaks may partially justify these fears, in a well organised agroforestry system these problems can be eradicated by the choice of species planted. In a community where firewood and fodder are highly prized and soil

degradation is a serious threat to sustainable productivity, agroforestry has great potential. Intensive extension is necessary, however, to persuade farmers that overall agricultural productivity will not fall when large numbers of trees are planted on their farms and to familiarise farmers with the recommended tree species.

One of the principal constraints is the time scale on which this project is planned. Agroforestry is a revolutionary development in the context of Bongo and its development will be the work of generations not years. The need for quick results with which to impress project donors cannot be easily reconciled with long term environmental objectives. Another constraint is the contact farmer method of extension which, in other contexts, has proved itself slow to show the desired results of emulation among neighbouring farmers.[1] Group meetings and group farms may be fertile ground for promoting agroforestry techniques but, needless to say, the job is more than project staff can begin to accomplish alone.[2]

In the longer term, customary laws which prohibit tree planting by tenants and which discourage the enclosure of farmland may present legal obstacles to the success of agroforestry techniques. These issues are discussed in more detail below.[3]

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[1] The Focus and Concentrate Programme in the Bolgatanga District: Evaluation of an Extension Programme 1972, Research Report Series Paper no.7, University of Cape Coast, pp.90, pp.51-53.

[2] The project provides for only two members of staff. The MOA is planning to promote agroforestry in the near future.

[3] Infra pp.387,390.

(D) Collaborative Community Forestry Initiative (CCFI).[1]

The Collaborative Community Forestry Initiative (CCFI) is a Peace Corps programme run in co-operation with USAID, the Adventist Development Relief Agency (ADRA) and the Ghanaian Forestry Department. The basic objective is to establish self financing nurseries in various districts in northern Ghana to supply local demand for seedlings. The project also provides nursery training and extension advice in support of tree planting. One American volunteer and fourteen local nursery staff are engaged by the project.

In 1989, the first year of operation in Bongo, CCFI raised and distributed 24,000 seedlings. In the second year, production of seedlings was increased to approximately 80,000 trees. During the dry season, time was devoted to extension campaigns in collaboration with Bongo Agroforestry. More than fifty communities fall within the range of Bongo CCFI but up to 1990 regular extension was possible in fewer than ten communities. The Project was hampered in this respect by the lack of any transport facility other than a bicycle. This also hinders the distribution of seedlings which must normally be organised by the villagers concerned. To assist in planning, distribution and monitoring, a small committee of village representatives was established in 1990. Up to 1990, the majority of seedlings had been distributed to village organisations including BRDP co-operatives, 31st DWM groups and mobisquads. Survival rates had not been monitored.

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[1] The author's thanks are due to Constance, the project leader in Bongo, for the provision of information relating to this project.

In 1990, CCFI was promoting community woodlots for firewood and timber supply. These have the advantage of spatial concentration which should simplify watering and protection activities. Neem, teak, cassia and leuceana are among the species favoured for woodlots. However, group tree planting efforts, sponsored formerly by BRDP, have not in the past been particularly successful in this district so project staff may be over optimistic in their plans for establishing community woodlots. The shortage of land is one of the problems. Often the only land available for woodlots is grazing land which is already seriously degraded, largely unsuitable for anything else. This accentuates the problems of husbandry. It also implies de facto alterations to the existing rights of grazing and free access. These alterations may not be uniformly acceptable to all members of the community, particularly members not directly involved in the tree planting project. As of 1990, no attention had been afforded to group rules as to watering and protection nor to distribution and marketing arrangements for tree produce in the future. These were said to be matters for the groups to decide among themselves but this policy might lead to an unfair distribution of project benefits.[1]

In programmes of this type, the task of balancing the rights of every community member to exploit resources on communal land with the need to reward those members who have made a special effort to water and protect young trees is a difficult one. It is desirable that the whole community should

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[1] FAO op cit p.64.

be assured of access to the trees when mature because this assurance will help to reduce opposition to the temporary curtailment of existing rights, such as the right to graze animals freely, which might otherwise destroy the trees. This makes it important that sufficient trees are planted to meet local demand and also that alternative, perhaps more immediate measures are employed to reward the most active project participants. Such measures could include gifts of fruit trees or watering cans or cash payments if provided on a consistent basis.[1]

Another activity begun in 1990, with the assistance of Bongo Agroforestry and other institutions was a school tree planting competition. Schools were invited to compete for prizes by planting and caring for woodlots each numbering about fifty trees or more. Several schools were showing an interest at the start of the 1990 rainy season.

Local people are keen to plant trees in Bongo and many are aware of their multiple benefits. Accordingly, CCFI has been received enthusiastically as the successful distribution of seedlings in the first year of its operation demonstrates. The pressure to increase seedling supply has reduced the amount of time which can be spent on extension, however. One Peace Corps volunteer cannot possibly satisfy the demand for training which the current level of production implies. Nursery workers could be trained as trainers but their concentration in Bongo is a limiting factor.

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[1] Not, for example on the uncertain basis that food aid was provided, infra p.346.

Remuneration of local staff and tree planting volunteers has been poorly organised. In 1990, local staff received food aid and a small cash reward linked to the successful care of their allocated seedlings but whereas the original intention was that there would be a rapid turnover of staff so that the total number of trained people would be increased, the original employees have clung to their "jobs" as permanent positions. "Lay offs" would now cause considerable ill feeling.

The experiment with providing food aid to voluntary groups engaged in tree planting has also been disappointing. Jealousies were aroused when only some of the groups were remunerated in this way. When, in 1990, the decision was taken not to provide more food aid for tree planting, extension activities were met with some level of apathy. As of 1990, the project had failed to establish training and self help as its working principles with the result that it was forced to volte-face and re-orient peoples' expectations.

A supervisory committee has been established with the assistance of the District Assembly. Its functions include the co-ordination and promotion of the project in the community. In the long term, it is hoped that the District Assembly will be able to participate more fully in the overall management of the nursery but more detailed plans have not been made.

The project's objectives are too narrowly drawn. The rapid expansion of the nursery has been pursued without any knowledge of local capacity to usefully absorb the increased supply. Without greater attention to after care the current

enthusiasm for tree planting may quickly dwindle if success rates remain low. Although the project leader was aware of this, lack of flexibility in the design and requirements of the project prevent its adaptation to local needs. A more sensitive approach and an expanded set of project goals are desirable to improve on the long term prospects for this project.

(E) ICOUR Agroforestry.[1]

This project was initiated by the Irrigation Company of the Upper Regions (ICOUR) sited at the Vea Dam, Gowrie. It is now sponsored by the United Nations Development Programme (UNDP) for a period of five years, 1988-1992. In 1990, the project employed a total of eight permanent staff, seventeen casual labourers and thirty tree guards. The latter are local farmers paid, inter alia, to protect growing trees around the dam from grazing animals.

The priority of the project is to raise trees around the dam in order to slow down the rate of siltation in the dam. This aspect of the project is discussed below. Other Project activities include the establishment of a nursery containing approximately 80,000 seedlings including only a small number of fruiting varieties. All seedlings are distributed free of charge usually to interested groups such as the local DWM and to the tree guards as a work bonus. In 1990, project extension workers were encouraging all the local villages to form tree

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[1] The author is grateful to the ICOUR project manager and ICOUR Agroforestry nusery manager for the provision of information relating to this project and the Vea Dam.

planting groups. Free technical advice is given to interested groups. Liaison with other tree planting projects in the District is purely incidental. There is a possibility that UNDP will renew its funding for the Project after 1992.

In 1988, approximately 23,000 seedlings were out planted and in 1989, approximately 45,000 seedlings were out planted with approximately 19,000 of those seedlings being planted around the shore of the Vea Dam. Survival rates were said by project staff to be approaching approximately 60%.[1] Reasons accounting for this include the intensive level of monitoring after planting out, the practice of beating up (replacing lost trees regularly) and the use of diazinon to control termite attack on young trees. In addition, trees are planted out early in the wet season so that they are well established before the dry season sets in, minimising the need for watering during the dry season. The principal reason accounting for loss of trees is destruction by grazing animals.

Overall, the Project represents a more professional and better financed approach to tree planting activities which is evidently having some success, at least in establishing trees. The benefits to the local community, however, are not so clear. To demonstrate this point, a fuller discussion of issues arising out of tree planting activities around the Vea Dam is necessary.

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[1] A similar rate was claimed for individual planting by Bongo Agroforestry supra p.340, Fn.1.

(F) Tree Planting for Dam Protection - A Study of ICOUR Agroforestry and Bongo District Assembly.

The controversy concerning tree planting activities for dam protection centres on the Vea Dam at Gowrie. This is a medium scale irrigation development which was begun in 1965 and completed in 1980.[1] It is managed by a government organisation, the Irrigation Company of the Upper Region (ICOUR), which leases irrigated land in plots ranging from 0.2 - 0.6 hectares. Tomatoes and rice are the principal crops although diversification is now being encouraged.[2]

The irrigation project at Vea has been plagued with problems throughout its short history. Firstly, all decisions associated with the design and location of the dam were taken without any prior consultation with local farmers and traditional authorities. In the densely populated area around Gowrie, compulsory resettlement and dispossession was inevitable but compensation was only paid for houses which had to be demolished. This was because all land in northern Ghana at that time was, according to the formal law, already vested in the Government in trust for the people.[3] What compensation was paid to the chiefs on behalf of the people was not carefully assessed in proportion to the loss suffered in each case and it did not, in every case, reach all the affected

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[1] The dam covers a maximum surface area of 405 hectares and the irrigated land amounts to 850 hectares.

[2] ICOUR ICOUR: To Promote the Production of Food Crops 1988, MOA, Accra, pp.8.

[3] State Property and Contracts Act C.A.6/1960, s.26.

farmers.[1]

Without hope of formal redress, local farmers took the law into their own hands. Irrigated farms were burned in some cases but a more permanent form of action has been the persistent re-entry by local farmers onto their upland farms during the wet season where they have continued to cultivate their traditional staple crops. This has rendered completely nugatory the beneficial effects of irrigation on the upland during the wet season. The value of the dry season crop has not been sufficient to compensate for the reduced commercial crop in the wet season. In almost every year, a seasonal glut of tomatoes brings prices down so low that production is barely viable in some years. The Pwalagu Tomato Canning Factory has not over the years been able to provide a steady market for the annual crop due to its internal problems of mismanagement, financial insolubility and lack of spare parts.[2]

In recent years the dam has been faced by increasingly severe problems of siltation. The depth of the dam at Gowrie has been regularly measured since 1986. In 1989, it was estimated that, without concerted action, the depth of the lake by 1991 would be only half that of 1986 and that by 1995, the dam would only contain half the amount of water required to irrigate the land presently under irrigation. Also

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[1] K. Kasanga Agricultural Land Administration and Social Differentiation: A Case Study of the Vea, Tono and Fumbisi Belts, North-Eastern Ghana 1990, Unpublished Paper, pp.65, pp.17-23.

[2] "Pwalagu Tomato Canning Factory to Be Re-Activated" People's Daily Graphic 13/2/1990, p.16.

threatened is the supply of pipe borne water to Bolgatanga and the livelihoods of fishermen living around the dam.[1] Technical experts therfore recommended tree planting around the dam site and the abandonment of all farming activities within a 100 metre radius of the dam in order to slow down the rate of siltation.

The establishment of ICOUR Agroforestry in 1986 had as its principal objective these goals. In the agreement setting up UNDP sponsorship for the Project, one of the conditions for international funding was a commitment by the Government of Ghana that farming around the dam would cease. The duty to implement that international obligation was quickly passed on to Bongo District Assembly.

From 1988 to 1990, the matter was raised regularly at meetings of the Assembly. At the very first meeting of the Assembly, an ICOUR representative put the case for the immediate enactment of a bye-law prohibiting farming around the dam. The issue of compensation to displaced farmers was raised and the Assembly was invited to make recommendations. It was clear, however, that neither central Government nor ICOUR had made financial provision for compensation.[2]

The dam at Gowrie is not alone in the matter of siltation. In varying degrees, every dam in the district is affected by this problem. At the Second Ordinary Session of the Assembly it was therefore decided that the catchment areas

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[1] Speech made by Mr. Perrin of ICOUR Agroforestry to Bongo District Assembly Minutes of the Bongo District Assembly First Ordinary Session, 4/5/1989.

[2] Minutes of the Bongo District Assembly ibid

of all dams in the district should be re-demarcated as a first step towards protecting them from siltation. The Economic Development Sub-Committee of the Assembly was meanwhile asked to take up the issue of compensation.[1] Assistance from URADEP was obtained for desilting three local dams but one started to refill immediately. UNDP and the International Fund for Agricultural Development (IFAD) later identified eight dams which they were prepared to desilt.[2]

In November 1989, the District Secretary stressed that the need to pass a bye-law protecting dam sites was now urgent and that delays could no longer be justified as a failure to act could lead to UNDP withdrawing its support for ICOUR Agroforestry. In December of the same year, the Presiding Member advised the Assembly to pass the necessary bye-law. One member again raised the question of compensation but he was informed that affected farmers had already been compensated and that many of them were now being employed as tree guards. Members were reminded of their statutory duty not to stand in the way of Government policies.[3]

In mid 1990, the anticipated bye-laws were passed at last. Chapter Two of the Bongo District Assembly Bye-laws prohibits any person from doing anything which may result in the silting up or pollution of any dam or dug-out in the

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[1] Minutes of the Bongo District Assembly Second Ordinary Session, 24-25/7/1989.

[2] Minutes of the Bongo District Assembly Fourth Ordinary Session, 28-29/12/1989.

[3] PNDCL 207/1988 s.6(6).

district.[1] In particular, all farming activities within 100 metres of any dam or 30 metres of a dug-out are expressly prohibited.[2] A fine not exceeding 30,000 cedis or imprisonment not exceeding five months is the specified penalty for people who contravene the prohibitions and, in addition, any crops grown illegally are liable to be confiscated.[3] The bye-laws were passed unanimously without comment. The issue of compensation was left in abeyance.

The claim made in the Assembly that affected farmers had already been compensated refers to the compensation settlements made at the time the dam was built. There are problems, however, in equating the two issues even though many of the farmers involved are the same.

Firstly, the statement assumes that the land within a 100 metre radius of the dam formed an integral part of the original acquisition by the Government but, even officially, this may not have been the case because boundaries were not clearly demarcated. The failure to observe defined legal procedures has contributed to the problem arising today.[4]

Whether or not the land was officially acquired as a part of the original programme, all that is clear to local farmers is that, after the dam was built, they continued to farm some of the land and to graze their animals around the fringe of

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[1] Bye-Laws of the Bongo District Assembly 1990, Chapter Two, s.14.

[2] ibid s.15.

[3] ibid ss.17,18.

[4] Kasanga op cit p.23.

the dam. In their view, the confiscation of that land is now a separate issue, whatever the position in law.

Another problem with the claim that compensation had already paid is that only those farmers who lost building land and growing crops were eligible for compensation at the time the dam was built. This in itself was considered unfair by local farmers whose only security in life is their guaranteed right to farm ancestral lands in perpetuity for free. In a subsistence, land hungry, agricultural society where all the available farmland has already been allocated, the significance of a perpetual title to land, however small its area, cannot be over estimated, yet farmers were not compensated for this, their greatest loss.

The 1979 Constitution revested land in northern Ghana in the traditional authorities[1] and made the public acquisition of land subject to the payment of full compensation in accordance with the State Lands Act.[2] This is of no assistance to the farmers, however, because ICOUR claims that the land was acquired prior to 1979 when the dam was originally built and, even if the land was not so acquired, there has been no attempt to acquire the land but only to prohibit farming activities and free range grazing on the land.[3]

The issue today is categorically different to that for which compensation has been paid. It does not relate to a change of ownership, the loss of buildings or crops but to the

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[1] Art.188 Constitution of the Republic of Ghana 1979.

[2] Act 125/1962 s.4.

[3] Cf. Kasanga op cit p.25.

loss of farming and grazing rights. The loss of farming rights is of greatest concern to local farmers because it is a threat to the affected farmers' means of livelihood. Perhaps the only adequate compensation for these farmers would be the award of free and potentially perpetual titles to land elsewhere.[1] In such a densely populated area, this option does not seem to be very feasible. Perhaps grazing land away from the dam could have been offered as alternative farmland but this land is far away from the affected farmers' homes and much in demand for communal purposes.

Originally, it was intended that farmers who lost land from the dam would be given irrigated land but few farmers actually received land and the rents charged by ICOUR soon forced many of those who were given land out of production. Unless the problem of high rents is satisfactorily resolved, not even the award of land behind the dam could offer a feasible solution. Few farmers would believe that the title they were acquiring was adequate compensation for the loss of a perpetual right to farm their own land for free. Not even the alternative available employment in guarding trees, despite the very reasonable rate of pay,[2] can compensate adequately for the loss of a permanent title to land. Tree guards, after all, are not guaranteed a job after the life of

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[1] This would be consistent with the nature of the rights of the customary freehold interest which they have lost. On the customary freehold interest in this district see infra p.369.

[2] In 1990, tree guards were paid 8,600 cedis per month by ICOUR (not UNDP). Their employment is revocable if their allocated trees are not sufficiently well protected in practice.

the project.

The fundamental problem is that, whatever benefits the dam has brought to the rest of society, these farmers have lost more than they have gained from the construction of the dam. In the final analysis, should the dam completely silt up and the whole project fail, the affected farmers no doubt believe that they personally would be no worse off than at the present time. Indeed, they would have highly fertile land to return to!

Once again, it is the problem of conflicting interests which underlies this issue. On the one hand, the Government and UNDP are concerned to safeguard the dam but, on the other hand, local farmers desperately need their farmland in order to earn their livelihood and satisfy their basic needs. The problem is a graphic example of how, contrary to the implication of the Brundtland Report, environmental and basic needs requirements do not always present themselves in a readily reconcilable form.

However urgent the need to address the problem of siltation in the dam may be, justice requires that, at the very least, some form of compensation should be made to local people who so far have gained so little from the irrigation project. If their views had been taken into account at the initial stages of planning for the dam, the fundamental injustice of planning a sophisticated irrigation project in the middle of a land hungry, impoverished agricultural community would perhaps have been realised. Now that the dam is in place, however, the injustice to local people can be

partly remedied by considering the whole range of options available to prevent siltation. These include the installation of better desilting equipment or a compromise solution in which trees are planted as part of an agroforestry scheme which allows some agricultural activity.

In addition, measures which will provide benefits of the type desired by local people could be introduced as part of a package of integrated development measures. This would be in line with the call made in the Brundtland Report for an integrated, holistic view of development and environmental issues.[1] Such measures could help to introduce farmers to additional sources of income such as fishing or pig farming. At the end of the day, however, the extent of land hunger and the central role of agriculture in the local economy make it difficult to recommend measures which can adequately compensate local people for the loss of their land.

The fact that the 1990 Bye-Laws were passed unanimously despite a failure to adequately resolve the issue of compensation suggests that the District Assembly had little choice but to pass this locally unpopular bye-law.
District Assemblies are subject to the general guidance and direction of the Council on matters of national policy.[2] The cursory treatment of such an important issue by elected institutions shows that they are a long way from being truly democratic and autonomous institutions. It is questionable how far the actions of the Assembly, the Government and UNDP can

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[1] WCED op cit p.37.

[2] PNDCL 207/1988 s.6(6).

be said to truly reflect the recommendations of the Brundtland Report:

> "Recognition by states of their responsibility to ensure an adequate environment for present as well future generations is an important step towards sustainable development. However, progress will also be facilitated by recognition of, for example, the right of individuals to know and have access to current information on the state of the environment and natural resources, the right to be consulted and to participate in decision-making on activities likely to have a significant effect on the environment."[1]

In the present case, it appears that the Assembly, as of 1990, had only served to worsen the district's fundamental problem of land hunger while acting in the name of conservation. Environmental problems of this complexity, it is submitted, cannot be adequately addressed by implementing unpopular laws which deal only with the symptoms but not the causes of environmental deterioration.[2] This approach fails to satisfy the call made in the Brundtland Report for measures which address basic needs to be included as an integral part of sustainable development policies:

> "Physical sustainability cannot be secured unless development policies pay attention to such considerations as changes in access to resources and in the distribution of costs and benefits. Even the narrow notion of physical sustainability implies a concern for social equity between generations, a concern that must logically be extended to equity within each generation."[3]

The call for sustainable development suggests that

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[1] WCED op cit p.330.

[2] The same argument was made with respect to the strategy of Operation Halt in the Western Region supra Chp.7.

[3] WCED op cit p.43.

environmental protection cannot be afforded a priority that is inconsistent with meeting basic needs. In this case, either the affected farmers should be adequately compensated or some other lasting compromise should be sought. Agroforestry, windbreaks on the river banks and improved desilting equipment are among the options which deserve consideration.

Finally, it is a sad reflection that a benevolent organisation such as UNDP should be able to dictate such oppressive terms in its international agreements when, with a little prior research, the needs of local farmers could have been provided for. Prior consideration of the social and economic costs to the poorest members of society arising out of development projects is a basic requirement for these organisations which is long overdue. Environmentally friendly projects, such as ICOUR Agroforestry might appear to be, are in no way less immune to this requirement than any other type of development project.

(G) A Summary of Project Design Issues.

A brief review of tree planting initiatives in Bongo District confirms the desirability of the FAO's general recommendations for tree planting projects.[1] In particular, they confirm the need for clear cut priorities to be settled at the start of the project. Management and institutional issues must also be clarified at an early stage.

Certain aspects of CCFI demonstrate these points. The

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[1] Supra p.337.

conditions for food aid and the short term nature of employment at the nursery are issues which, because they were not clearly explained at the start of the project, threatened in 1990 to frustrate the goals of broad based training and activities motivated by self help.[1]

Management issues have also presented obstacles to communal planting schemes. While some landlords have objected to tree planting activities, in other cases, the incentives to water and protect young seedlings have not been sufficient to ensure a good survival rate for trees planted as a communal endeavour.[2] The problem of motivation may be reduced in the case of trees planted by much smaller, well motivated groups, such as the DWM and voluntary co-operatives but problems of access to land may remain.

An alternative approach is that of the flying nurseries now promoted by Bongo Agroforestry. These mix communal and individual involvement by establishing nurseries on a small plot of land subject to group management while planting out is for individuals on their own farms to organise.[3] The adaptation of the project to promote these popular flying nurseries demonstrates the value of maintaining a flexible approach to methods of goal implementation.

All the projects, it is submitted, would be more successful if greater attention was paid to general extension on tree husbandry and protection. Staffing constraints were

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[1] Supra p.346.

[2] Supra p.340.

[3] Supra p.340.

the usual obstacle to more extension activities.

Long term financial and technical support is a particularly pertinent recommendation for tree planting projects because of the relatively long time span required for tree growth. Projects to promote agroforestry must, in addition, be based on a long time span because of their quite radical implications for existing farming practices.

Public participation is frequently cited as the most fundamental pre-requisite for the success of "bottom up" development projects of the type under review.[1] The preceding discussion has demonstrated that, despite the rhetoric, many projects continue to be designed without sufficient regard to the views of the local community at the stage of project planning and decision-making as well as implementation.

Tree planting around the Vea Dam is the project most vulnerable to this criticism. In this project, international, national and local institutions have been insensitive to local circumstances with the consequence that widespread hostility has been aroused. The desirability of more open, democratic and participatory methods of decision-making is exemplified by this project. These were goals recommended by the Brundtland Report.[2] The district assemblies were established to meet these sort of objectives but the actions of Bongo District Assembly in 1990 show to what extent this decentralized, democratic philosophy has been compromised by the

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[1] SADCC, People's Participation in Soil and Water Conservation op cit; Eckholm op cit p.47; Seidman, The State, Law and Development op cit p.333.

[2] WCED op cit p.330.

centralising, hierarchical style of government which appears, in reality, to have charaterised the PNDC era.[1]

Bongo Agroforestry demonstrates a more flexible, learning and adaptive approach to project design which embodies participatory principles and which may, in the long term, achieve lasting success without antagonising local people. Long term financial support for this project is greatly to be recommended.

In addition to issues of project design and management, all the projects raise a number of legal issues. It is to these issues that the discussion now turns.

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[1] "Verdict on Assemblies" West Africa 3-9/2/1992, no.3881, pp.181-182, p.182; "Transition and Its Meaining" West Africa no.3920, 2-8/11/1992, pp.1864-1865, p.1865.

(iii) Customary Law, Environmental Problems and Tree Tenure.

Customary land law is the part of the law which has the greatest practical impact on environmental issues in Bongo. It determines the allocation and distribution of rights to land and it defines the powers, rights and duties of individuals and groups with respect to most other natural resources. These issues are relevant to any discussion of rural forestry projects in the district because they have the potential to frustrate or facilitate their goals and agendas:

> "Given the multiplicity of conflicting claims that are found attached to the land it is imperative for those seeking change to find out at which levels the control of land allocation is lodged ... (and) whose rights are added to or detracted from by planting trees."[1]

This realisation makes a brief study of the general principles of customary land law in this district desirable with particular attention being paid to rights to trees and other aspects of the law which may influence the implementation of rural forestry programmes. Among these, the rights of tenants to plant trees,[2] the nature and extent of communal rights of exploitation and the management of and access to communal grazing land[3] are among the legal issues which the preceding discussion of ongoing tree planting projects has raised for further consideration.

For the purposes of this discussion, which is orientated

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[1] Fortmann op cit p.xii. See also FAO, op cit p.27.

[2] Supra p.342.

[3] Supra p.344.

to a consideration of legal and environmental interactions, it was not considered necessary nor, given the constraints of time and resources, possible to make a comprehensive, authoritative investigation of all aspects of local customary land law in this district. Traditional authorities in three villages, Bongo, Gowrie and Adaboya, were interviewd, however, and attempts made to cross check and confirm the general validity of their evidence in interviews with local people.[1] In presenting the most relevant parts of this evidence to the reader, the intention is not to finally determine complex issues of legal uncertainty which are remote to the discussion of environmental issues.[2] Much less ambitiously, the intention is to put environmental issues into a legal context by describing broadly, the extent and character of the relevant rights and obligations in customary law.

The general scheme of interests in the land law of Ghana has been very briefly introduced to the reader in chapter five.[3] The generally accepted three fold classification of customary interests in land - allodial, customary freehold[4] and tenancy - described in that chapter has been adopted as the framework for the following summary and analysis of customary law in Bongo District. In addition, legal rights to

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[1] The method and problems of this research have been discussed in chapter two.

[2] One such controversy relates to the identity of the allodial landowner in this district. See comments at infra p.365.

[3] Supra p.96.

[4] Also known as the determinable or usufruct interest.

trees and common rights of exploitation, subjects which have a particular bearing on tree planting programmes, are afforded special consideration.

(A) The Allodial Interest.

It will be recalled that the allodial interest in land is the indivisible right of the community to all the land which its members occupy or which is held in trust for their future needs.[1] In every case, the community is represented by a person or persons who, inter alia, make grants of land not already allocated. This person(s) is sometimes referred to as the "landowner" although the real character of his interest is that of a trustee administering the land on behalf of and for the benefit of the allodial community.[2]

Writers are at variance as to who is the allodial "landowner" in the various communities of northern Ghana. Ollennu takes the controversial view that throughout northern Ghana the allodial title to land is vested in the occupant of the skin who is the equivalent of the stool occupant in southern Ghana.[3] He cites the case of Azantilow Sandemanab v Nayeri Mamprusina in which it was ruled that the allodial title to land was vested in the chiefs and not the tindanas but the finding in that case was expressly restricted to the

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[1] Supra p.97. See also, Bentsi-Enchill, The Traditional Legal Systems of Africa, op cit p.75.

[2] Ollennu op cit p.8.

[3] ibid p.10.

Builsa community.[1] Other writers have been careful not to generalise in this way and it is widely recognised that, at least in some communities in northern Ghana, the allodial title vests in tindanas.[2]

The 1979 Committee on Land Tenure in the Northern and Upper Regions attempted to identify the allodial landowner in each of the separate communities in northern Ghana. The Report of the Committee states that in the Fra Fra Traditional Area the allodial title vests in the tindanas in the Nangodi and Sekoti divisions but in the chiefs in the Bongo and Tongo divisions.[3] This finding contrasts with one decision of the High Court where it was said, obiter dictum, that the tindana is the allodial landowner in the Balungu/Lungu area of Bongo.[4] Atobiga is firmly of the view that among the Gurunsi it is the tindanas who are the allodial owners of the land.[5]

Another possibility is that the allodial title to land vests in individual sections. Fortes provides some support for

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[1] ibid p.9. Azantilow Sandemanab v Nayeri Mamprusina (1952) DC (Land) ('52-'55) 20.

[2] Pogucki A Survey of Land Tenure in Customary Law of the Protectorate of the Northern Territories 1955, Lands Department, Accra, pp.60, pp.8-12,55; Cheshire Observations on the Land Tenure System in the Northern and Upper Regions 1975, Land Administration Research Centre, University of Science and Technology, Kumasi, p.C2.

[3] Report of the Committee on Ownership of Lands and Position of Tenants in the Northern and Upper Regions 1979, Accra, p.28.

[4] Akurugu v Ania, Amoa and Akugre Land Suit Case no.4/1984, Bolgatanga High Court Records.

[5] Atobiga, The Acquisition and Alienation of Property Among the Fra Fras op cit p.9.

this view.[1] If this is the correct view, then the tindanas and chiefs hold only jurisdictional rights,[2] the former being religious officers and the latter political officers. On the other hand, Fortes' evidence may only confirm the communal basis of the allodial interest which is characteristic of the allodial interest everywhere in Ghana or, alternatively, the considerable practical importance which attaches to the customary freehold interest in this district as in other parts of Ghana.

In 1989, interviews were conducted with traditional authorities in Adaboya, Bongo and Gowrie during which respondents were invited to describe the respective roles of the Chief and Tindana in their own villages.

In Adaboya, the Chief and the Tindana, interviewed on separate occasions, made some mutually consistent statements to the effect that the Tindana is the primary authority on most land matters.[3] In Bongo, the Regent expressed the view that the relationship between the Paramount Chief and local Tindana was one of "brothers" but decisions on land matters,

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[1] "Chiefs and tendaanas have no over-riding rights of ownership entitling them to rent, tax or tribute." Fortes, The Political System of the Tallensi op cit p.250.

[2] Allott and Kludze recognize the essential difference between the jurisdictional and proprietary rights of chiefs. Allott The Akan Law of Property 1954, PhD. Thesis, London University, London, pp.494, p.85; Kludze Ewe Law of Property 1973, Sweet and Maxwell, London, pp.324, pp.146-148.

[3] For example, the Tindana and the Chief gave consistent evidence to the effect that the Tindana is for the land and also for all shea and dawa dawa trees. On the other hand, some apparently irreconcilable statements were also made. For example, the Tindana laid cliam to grazing land but so did the Chief Appendix One

with the exception of religious affairs, were taken by the Paramount Chief, who as a matter of formality, would inform the Tindana of his decision.[1] In Gowrie, the position of Chief and Tindana is always held by the same man and, consequently, clear distinctions between the two roles are no longer possible.[2] In each village, close liaison between the Chief and the Tindana was usual. In addition, the importance afforded to the role of section heads in matters of land administration was striking.

While this evidence does not convincingly settle the academic dispute, it does suggest that differences in the exact divisions of legal powers may be even more locally distinguished than has previously been suggested.[3] This would help to account for some of the controversy stemming from previous accounts. More importantly to the analysis in this thesis, the realisation that there exist highly localised variations in power configurations suggests how important it is for project co-ordinators to make very specific inquiries in every case. The desirability of this task is underscored by the evidence given below of the rights and powers which the chiefs and tindanas exercise with respect to trees and communal resources. In addition, the task of inquiry is an important one because these authorities carry not only legal powers but, perhaps more significiantly, varying degrees of

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[1] Appendix One

[2] The Chief/Tindana did attempt to draw out some of the theoretical distinctions. See Appendix One

[3] Report of the Committee on Ownership of Lands ... op cit

political and religious influence about which outsiders can rarely afford to remain ignorant.[1]

(B) The Customary Freehold Interest.

The customary law freehold is the usual interest which a member of the land owning community holds in the portion of community land which has been acquired by or allocated to him or his ancestors.[2] It has been described as a right which is inheritable and alienable.[3]

In this district, for almost all practical purposes, it appears to be the landlord of each compound belonging to the section who enjoys the rights of the customary freehold interest in the land attached to his compound.[4] He holds these rights on behalf of and for the benefit of all the members of the compound.[5] It is an indefeasible, inheritable and

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[1] For example, a local superstition formerly prevalent, was that the planter of mango trees will die. A condemnation of this superstition by the relevant religious authorities could, it is submitted, help to diminish this fear. On the religious roles of tindanas see, Rattray op cit pp.256,313.

[2] On the nature of the customary law freehold in Ghana generally, see, Ollennu op cit pp.62-68, Woodman, Other Interests in Land op cit pp.63-98, Asante, Interests in Land in the Customary Law of Ghana - A New Appraisal op cit pp.848-885.

[3] Ollennu op cit p.62.

[4] Pogucki op cit p.30.

[5] Ibid p.29. However, it is possible that in strict customary law, the customary freehold interest vests in sections as a whole, in which case it would be more accurate to say that the compounds of each section hold only those specific rights which are the practical expression of the section's interest. Support for this view can be found in Atobiga op cit p.35. From the evidence presented to the author, it was not possible to determine whether the importance attached to the section heads stemmed from rights

potentially perpetual interest.[1] All the traditional authorities agreed, however, that they would refuse to recognise any attempt to alienate the entire customary freehold interest for valuable consideration.[2] The customary freehold interest in compound land only reverts to a more distant member of the section upon the voluntary abandonment or complete extinction of the family in immediate possession of the land.[3]

Land attaching to the compound may be farmed by the whole compound as one group or separately by the families of each brother if the latter have made a division of the land but have continued to live together.[4] Sons were said to have a

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associated with kinship ties, or the allodial interest or the customary freehold interest.

[1] Cheshire op cit p.C3; Pogucki op cit p.33.

[2] Cf. Woodman, Other Interests in Land op cit pp.79-85. The Chief of Gowrie explained that evidence of a cash transaction would imply that the land was pledged or loaned but not irreversibly alienated on a permanent and irredeemable basis Appendix One A grantee who claimed that he had given valuable consideration for a grant of land would thus be prejudicing his own security of tenure by providing crucial evidence that the grant was not a permanent one. The indications which imply that an irredeemable grant has been made are signs that building rights and rights to self-seeded trees on the land have passed to the grantees. This does not prove that cash transactions are or were unknown. What, for example, would be the proper interpretation of a case in which the building rights and rights to self seeded trees had been transferred as part of a long term grant made for valuable consideration? Pogucki op cit at p.34, states that although sales of land were known in Bongo, they appeared, at the time of his research, to be dying out.

[3] Pogucki op cit p.33.

[4] Pogucki ibid p.29. Contrast the farming system adopted in Azure's House and Akiriba's House Appendix Two

duty to help their fathers until the death of the latter.[1] Women have no independent legal rights to family land.[2] They help their fathers/husbands to cultivate the family farm before attending to their individual farms.[3] The present writer found one instance in which an unmarried sister was allotted a small part of the family land by the landlord to be cultivated as her individual farm, the duration of her tenure being at the will of the landlord.[4] On the death of their husbands, women commonly remain in their husband's house cultivating his land with or on behalf of their sons.[5]

There are discrepancies in accounts of the customary law relating to succession in this district.[6] Pogucki states that compound farms in this district are divided among the surviving grown up brothers.[7] Rattray maintains that the brother of the deceased has a right to the farm but "if he is

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[1] See the evidence of the Chief of Adaboya and the Chief of Gowrie Appendix One This accounts for the position of Mba in Azure's House Appendix Two

[2] Pogucki op cit p.52. See also the evidence of the Regent Appendix One

[3] These farms are usually held on the basis of year to year tenancies infra p.377.

[4] Akake in Ayalkoom's House Appendix Two

[5] Pogucki op cit p.62. Rattray reports that widows never leave the compound of the heir op cit p.267 but Ayewuni in Azure's House Appendix Two returned to her father's compound on the death of her husband.

[6] Local people generally seemed to be unaware of the provisions of the Intestate Succession Law, PNDCL 111/1985.

[7] Pogucki op cit p.44.

a good man" he will give a share to the eldest son.[1] Farms made by an individual on land away from the compound will be inherited by the eldest son of the deceased.[2] Atobiga states that, if the deceased was not survived by any brothers, on the death of their father, sons may decide to leave the compound and divide the land equally among themselves.[3] Cheshire found that succession is patrilineal with land passing from fathers to their sons.[4]

Information gathered by the present author, from the Chiefs of Adaboya and Gowrie suggests a modification to the rules identified by some writers vesting succession to land in the brother. Where the farm is made by the elementary family, it is common for the sons to demand an equal distribution of the land among themselves upon the death of their father.[5] It is only when the deceased was actually farming with his brothers up until the time of his death that the next oldest brother will become responsible for the whole farm.[6]

Customary succession laws which insist on partible inheritance are sometimes identified as a cause of

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[1] Rattray op cit p.268.

[2] ibid; Pogucki op cit p.45.

[3] Atobiga op cit p.52.

[4] Cheshire op cit p.C3.

[5] Appendix One If all the sons have the same mother there is a greater chance that the brothers will remain united. This is the position in Akiriba's House Appendix Two It is more common for the land to be divided among the sons as in Azure's House Appendix Two

[6] The existence of different inheritance patterns for different farming arrangements was identified by Pogucki in Lawra, northern Ghana op cit p.45.

environmental degradation.[1] It is suggested that partible inheritance, in situations of settled agriculture and growing population, may lead to fragmented farms, over cultivation and impoverished soils. These problems were cited to the author in some parts of the District, particularly around Bongo. Pogucki, however, reported instances where, because the land of the deceased was so little, the eldest son inherited the whole farm.[2] The problem of fragmentation may also be at least partly resolved by sons opting not to divide the compound farm or by the long term migration of some compound members who may then fall out of the line of inheritance.[3]

Customary land law has sometimes been caricatured as law which perpetuates communal interests in land with the implication that individual farmers, lacking security of tenure, have no incentive to invest in the long term development and conservation of their farmland.[4] An implication of this analysis is that individual farmers will be reluctant to plant trees because they represent a long term investment. It is clear from this account, however, that the substance of the customary freehold title in this district

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[1] Abalu, The Role of Land Tenure in the Agricultural Development of Nigeria, (1977) 15 Odu 30-41, p.38.

[2] Pogucki op cit p.44.

[3] ibid

[4] Lowe Agricultural Revolution in Africa? 1986, Macmillian Publishers Ltd., London, pp.295, p.155; Omutunde, Economic Analysis: The Legal Framework and Land Tenure Systems, (1972) 15 Journal of Law and Economics 259-276, p.262. On the position in customary law, Tijani v Secretary of State for Southern Nigeria (1921) 2AC (PC) 399; Konkomlemle Consolidated Cases (Ashrifi v Golightly) (1951) GLC 312.

rests in each independent "household"[1] whose security of tenure is practically complete.[2] It is only when the landlord has allotted portions of the family land to family members such as unmarried sisters that their specific interest can be described as insecure because the allotment can be terminated at any time.[3] However, in this situation the landlord is responsible for the general welfare of all his family members so the latter can be confident that the land will, other circumstances permitting, generally remain in their hands for so long as they require it. The significance of their apparent insecurity of tenure should not, therfore, be over estimated. In practice, there are many other factors which tend to discourage individual investment, particularly shortages of manpower and capital.[4] In addition, there are many soil conserving measures - composting and stone terracing, for example - which may improve environmental quality in the short term and which do not, therefore, depend upon a secure, long term title to land.

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[1] In this context the term is taken to mean the appropriate farming household eg. the nuclear family living and farming as one household (Adi'bono's House), the extended family living and farming together as one household (Akiriba's House), or the nuclear families of each brother living together but farming as separate households (Azure's House). See infra Appendix Two.

[2] The security of the customary freeholder in Ghana is discussed generally in Ollennu op cit p.64; Woodman, Other Interests in Land 1990, pp.65,80.

[3] For one example, see, Ayalkoom's House infra Appendix Two.

[4] R. Barrows, M. Roth, Land Tenure and Investment in African Agriculture: Theory and Evidence, (1990) 28(2) Journal of Modern African Studies 265-297, p.294.

(C) Customary Law Tenancies.

As in other parts of Ghana, a customary tenant in this district may be a stranger to the community, a friend of the family or even a member of the landowning section who is not immediately entitled to farm the land.[1] Two distinct types of tenancy are common. The first may aptly be described as permanent tenancy while the second type are of temporary duration. Traditionally, all types of tenancy were granted free of charge.[2] Some (younger) farmers now charge strangers (or rich men) for the privilege of farming on their land.[3] With the exception of permanent tenancies, customary tenancies in this district appear to be revocable at the will of the grantor, they are not inheritable and they do not confer rights in rem.[4]

A permanent tenancy typically occurs where strangers,[5] usually a family, settle permanently on the land, building a home on part of it and farming the rest.[6] The grant is by

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[1] Ollennu op cit p.87.

[2] "Land can be borrowed; it can not be rented," Fortes op cit p.250.

[3] Atobiga op cit p.15.

[4] Cheshire op cit p.C4. See also the evidence given by Francis in Ayalkoom's House Appendix Two and the evidence of the Chief of Gowrie Appendix One

[5] A stranger is a person who has no inherent right to occupy the land, Ollennu op cit p.70.

[6] The testimony of the Chief of Gowrie Appendix One seems to accurately reflect the practice of the law on this point.

express agreement.[1] Cheshire describes how these families may become closely integrated into the community, their security of tenure improving over time to a point where the tenancy is both inheritable and potentially perpetual.[2] It is important, however, that the grantees do their utmost to remain on good terms with their grantors.[3] It has been said with respect to Ghanaian law generally that a tenant who denies the title of his licensor forfeits the right to continue in possession of the land.[4] In one case, the High Court in Bolgatanga ruled that a customary freeholder was entitled to dispossess a tenant who disputed his title.[5] Damages for trespass were awarded to the successful plaintiff. However, the Regent of Bongo stated that in a dispute of this type, he would do his utmost to enable a tenant to remain on the land. Furthermore, a permanent tenant should never be evicted without prior recourse to the Chief.[6] This policy of mediation is in accord

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[1] Cheshire op cit p.C4 and the Report of the 1979 Committe on Land Tenure ... op cit p.29, describe the procedure for the grant of permanent tenancies. See also the information gathered on Akiriba's House and Azure's House Appendix Two

[2] Cheshire op cit p.C5. See also, Woodman, Other Interests in Land op cit pp.107-108, on the position of tenants generally in Ghana.

[3] Cheshire op cit p.C4.

[4] Sarbah op cit p.68; Woodman op cit p.118 and cases cited therein.

[5] Akurugu v Ania, Amoa and Akugre Land Suit Case no.4/1984, Bolgatanga High Court Records.

[6] Appendix One

with some recent developments in the case law.[1]

A temporary tenancy may be granted by members of a section who have spare land which they cannot or do not wish to cultivate to friends who "beg" for land.[2] The grant is personal and inalienable.[3] The grantor is entitled to take back the land at any time.[4] The grant may be valid for only one year[5] but if the parties continue on good terms and there is no material change of circumstances in the position of the grantor, it is possible that the original agreement will be allowed to continue for several years.[6] Every year, at the end of the harvest, a tenant may make a gift of crops from the land to the grantor in order to seal good relations and to enhance his prospects of being allowed to cultivate the land in the following year.

In its annual variety, this type of tenancy approximates closely to the sowing tenancy described by Sarbah[7] but whereas it is implied by that writer that the tenant under a sowing

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[1] Agbloe II v Sappor (1947) 12 WACA 187; Kano v Atakpla (1959) GLR 387; Adji and Co. v Kumaning (1982-3) GLRD 132; Blewudzi v Dzotsi (1979) GLR 173.

[2] Atobiga op cit p.15; Pogucki op cit p.52. Ayalkoom's House Appendix Two See also the evidence of the Chief of Gowrie Appendix One

[3] Cardinall op cit p.63.

[4] Cheshire op cit p.C4; Cardinall op cit p.63. Ayalkoom's House Appendix Two

[5] Atobiga op cit p.15.

[6] Cardinall op cit p.62; Cheshire op cit p.C4. See also, the arrangement which Adi'bono has with a friend, Adi'bono's House Appendix Two

[7] Sarbah op cit p.68.

licence is not permitted to grow cash crops, a tenant in Bongo district seems free to cultivate cash crops in the absence of an express prohibition.[1] The obvious explanation for this difference is the fact that the local cash crops (mainly rice and groundnuts) are not permanent crops.[2]

When a woman is given a small plot of family land to farm for herself by her landlord[3] it may be more accurate to describe the grant as a tenancy arrangement than as an allotment which constitutes an integral part of the customary freehold interest because women have no immediate right to a portion of the family land. Thus, in Akologo v Adachema the interest of the descendants of a woman who had been allotted a portion of family land by her own father was construed as that of permanent tenancy and not the customary freehold. The nephews of the woman were therefore entitled to collect the fruit of dawa dawa trees on the land but not her sons. The point was made clear that inheritance to land cannot run through the female line.[4]

Proponents of moves toward western style modernisation

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[1] Women and group farmers often cultivate cash crops on farms held under short term tenancies. Adi'bono grows groundnuts on his begged land, Adi'bono's House Appendix One Cheshire, however, found that strangers were not entitled to grow tree crops or cash crops op cit p.C4.

[2] Atobiga mentions that it is also possible for a tenant to be permitted to grow one crop on the land while the landlord grows a different crop on the same land, Atobiga op cit p.15.

[3] Akake, for example, in Ayalkoom's House Appendix One

[4] Land Appeal Suit no.1/1980 Bolgatanga High Court. This was confirmed by the Chief of Gowrie Appendix One

argue in favour of creating a dynamic market in land.[1] The advantage of a commercial market for land is seen to lie in the opportunity it affords progressive farmers to expand and consolidate their farms. Environmental quality should then improve as long term, modern investments become feasible and as fewer people attempt to live off the land.[2]

It has previously been stated that traditional authorities in this district abhor the concept of land sales.[3] Accumulation of land is possible, however, because of the many types of tenancy arrangement recognised in customary law. Their drawback is, however, that temporary tenants may not have sufficient security of tenure to encourage long term investments in land, including soil conserving practices such as tree planting, in the same way that an absolute alienation would permit.[4] However, it has already been pointed out that there are many other factors which tend to discourage individual investment and, in any case, there are short term, low cost soil conserving measures, such as composting, which may improve environmental quality within the constraints of the existing legal framework.

Assumptions about the benefits of a market in land - including land consolidation and long term investment - should

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[1] Omotunde op cit p.262.

[2] Migot-Adholla et.al., Indigenous Land Rights Systems in Sub-Saharan Africa: A Constraint on Productivity? (1991) 5(1) World Bank Economic Review 155-175, p.156.

[3] Supra p.370.

[4] For a further discussion of this point, see infra p.388.

also be weighed against the prospect of landless labour, land hoarding and land speculation which may indirectly result from measures which facilitate a market in land. If land is freely marketable, a danger is that the poorest, marginal farmers will quickly be bought out either by more enterprising and successful farmers or by people investing in land for additional security. While the former scenario may be desirable if the main goal of development is to rapidly increase agricultural productivity without regard to the disrtibution of benefits from agricultural development and without regard to the environmental risks associated with, for example, large scale, modern farming techniques,[1] it is a prospect which implies a large measure of dislocation for the poorest people in agricultural societies. The prospect of landless, unemployed labour poses indirect threats to the environment, as pointed out in the Brundtland Report.[2] Where customary law restricts the free alienation of land it does so in order to prevent the emergence of a landless class and in order to preserve for future generations an interest in the land of their forefathers. Thus, in a very concrete way, it makes provision for meeting the basic needs of present and future generations. Rather than risking the further impoverishment of many small scale farmers by promoting

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[1] Comments on the environmental damage caused to land in northern Ghana by large scale rice farmers are made in, Goody, Rice Burning and the Green Revolution in Ghana, (1979-1980) 16(2) Journal of Development Studies 136-155.

[2] WCED op cit p.55.

measures to encourage a free market in land,[1] a more equitable strategy would be the promotion of appropriate technology and co-operative ventures which will gradually upgrade local, small scale, agriculture within the existing framework of land tenure. Integrated rural development measures at this level were recommended by the WCED.[2]

(D) Rights to Trees.

The rights of individuals to own and harvest specific types of trees under existing customary laws have an important bearing on the exploitation of existing resources as well as on tree planting schemes designed to promote environmental protection. For example, in its allocation of rights to tree produce, customary laws may sometimes discourage farmers from planting trees on their farms.[3] Either an absentee landlord will demand to receive the produce or, alternatively, any member of the community may be entitled to reap the fruits. In either case the incentive to the individual farmer to plant trees is lost. To what extent is this interpretation of customary law applicable to Bongo District?

Customary law in this district appears to distinguish between rights of tree ownership and rights to the produce of trees.[4] Other important distinctions are between shea and dawa

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[1] Title registration and individual proprietorship are among the measures called for. See, Abalu op cit p.40; Lowe op cit p.155.

[2] WCED op cit p.143.

[3] FAO op cit p.25.

[4] A distinction recognised by Pogucki op cit p.39.

dawa trees (or sacred trees), other self-seeded trees and planted trees. Because of the central importance of this aspect of customary law to rural forestry initiatives, the present author made extensive inquiries as to the nature of interests in trees in this district. Firstly, the evidence of the traditional authorities on the question of tree ownership will be presented and considered. This will be followed by an analysis of rights to the produce of self-seeded and planted trees.

(a) Tree Ownership: On the ownership of self-seeded trees, the following evidence was given:

Evidence of the Tindana of Adaboya:[1] All shea and all dawa dawa trees belong to the Tindana. In the bush, where these trees are abundant, anyone can eat their fruits but the Tindana has reserved the right to collect shea nuts and dawa dawa fruits on compound land. A landlord should come to a special arrangement with the Tindana if he wishes to be allowed to collect the fruit of shea and dawa dawa trees on his farm.[2] Even when these trees are planted by the farmer there should be a special arrangement in order to prevent the trees vesting in the Tindana.[3] The Tindana also claimed to be

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[1] Appendix One

[2] For example, a landlord may offer the tindana a fowl and in return be granted the right to collect dawa dawa and shea fruit. A transaction of this type has no bearing on the interests of the parties in the land.

[3] This evidence is only reconcilable with the actions of Namobire, who has confidently planted shea trees on some bush land in Adaboya, in so far as he claims to be on good terms with the appropriate representative of the (allodial) landowner, Akiriba's House Appendix Two

the owner of all other self seeded trees on grazing[1] and bush land[2] whatsoever but he allows anyone to harvest their products. The Tindana should be informed when any trees are planted in the bush or on grazing land in order to prevent them vesting in him.

Evidence of the Regent of Bongo:[3] The Regent claimed that all trees anywhere in Bongo are owned by the Chief even though, in practice, there is no instance in which the Chief reserves the right to collect tree produce. As an illustration of his ultimate ownership, the Regent suggested that in a dispute concerning the right to gather tree produce, he has the power to confiscate that right for himself if the disputants fail to come to a settlement.

Gowrie:[4] The Chief/Tindana claimed that he is the owner of all trees growing naturally on bush or grazing land. He is entitled to receive a share of the fruits harvested from shea and dawa dawa trees growing on any farm land but in actual practice, this right is not enforced. Anyone can collect the fruit of any trees growing on bush or grazing land but no one, not even the Chief, is allowed to collect that fruit on a

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[1] Grazing land is land set aside from agriculture for the use of the community to graze animals etc. See infra p.392.

[2] Bush land is farm land away from the compound which has not been recently farmed. The Tindana claimed to be for all bush land but it was not discernable at what point, if ever, the customary freehold title of the previous farmer or his family could be said to have reverted to the allodial landowner. It is possible that the Tindana was only laying claim to the ultimate reversionary title which he is said to have in all land Pogucki op cit p.34.

[3] Appendix One

[4] ibid

commercial scale. If a person wants to plant trees on bush or grazing land, he should consult with the Chief in order to secure an exclusive title to reap their produce. Trees are like human beings and whoever looks after the people also looks after the trees.

The ownership of trees stands out as being of paramount importance in this district because it appears that tree ownership is vital evidence of ultimate land ownership.[1] The informants invariably seemed to claim that the ownership of trees (as opposed to the right to collect their produce), at least in theory, was the prerogative of the allodial landowner.[2] The evidence that the Tindana of Adaboya, who claims to be the ultimate owner of land in that village, reserves to himself and the members of his section, the right to collect the fruit of shea and dawa dawa trees growing on any farm land within his jurisdiction is perhaps the clearest demonstration of this point.

(b) Rights to the Produce of Trees: Although issues of

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[1] This is confirmed by Pogucki op cit p.38. Claims to the ownership of particular tree species are not confined to Bongo. Cardinall op cit p.61, found that shea butter trees in Tale land were owned by the chiefs while locust bean trees near Zuarungu were owned by the tindanas. Pogucki draws attention to the variety of arrangements found within northern Ghana op cit pp.38-40. In southern Ghana, a finding of quicquid plantatur solo non solo cedit was recorded in Asseh v Anto (1961) 1 GLR 103. See Woodman, Rights to Fixtures in Customary Law (1970) 7 UGLJ 70.

[2] See, in particular, the evidence of the Chief of Gowrie Appendix One If this implication is correct, claims to tree ownership can provide vital clues as to the identity of the allodial landowner in each village. The above evidence indicates that the allodial title to land vests in the Tindana in Adaboya, in the Chief in Bongo and in the Chief alone or in conjunction with the Tindana in Gowrie.

tree ownership are important in this district, rights to the produce of trees appear to be of more practical value. In most cases described to the author, the landlord holding a customary freehold interest, was considered to own the fruit of economic trees growing naturally on compound land, including kapok, shea and dawa dawa trees.[1] The exception to this rule is the right exercised by the Tinadana in Adaboya to collect shea and dawa dawa fruits from trees on any farmland. When land is granted to tenants, the landlord holding the customary freehold in the land usually reserves to himself and his family the right to the produce of self seeded economic trees on the land.[2] If the tenancy is likely to be of a permanent duration, the Tindana of Adaboya suggested that an express arrangement may instead be made to share the produce of the trees.[3] The Chief of Gowrie stated that, in the case of permanent tenants, the tenants would normally collect tree produce.[4]

Rights to pluck fruit from non economic, self seeded trees on any land appear to be free to everyone[5] although the

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[1] Pogucki op cit p.39; Cheshire op cit p.C3. This corresponds to Ollennu's statement of the law op cit p.66. See the evidence given by Abugre, Abugre's House and Francis in Ayalkoom's House Appendix Two and the Chief of Gowrie Appendix One

[2] Cardinall op cit p.62. The Chief of Gowrie confirmed this tendency by pointing out that the act of collecting tree produce serves as evidence of the title of the customary freeholder Appendix One

[3] Appendix One

[4] ibid

[5] Pogucki op cit p.39.

present author met with one case where a landlord was taking active measures to restrict the access of children to fruit trees on his land during the wet season.[1]

Dead wood and timber from trees growing on farmland appear to be reserved generally for the compound which farms the land.[2] Dead wood and timber may be collected by anyone from grazing land and, in practice, also from bush land.[3]

Pogucki states that the planter of trees is generally regarded as their owner.[4] The Chief of Adaboya said that although this is generally true, trees planted by a woman are the property of her husband.[5] This rule was confirmed by several landlords who also took the view that all trees planted on compound land are the property of the landlord.[6] They claimed that although they would allow the women of the house to harvest any marketable fruit, they would expect the women to account for the proceeds to them. In one compound, where the land is divided for farming purposes and where the

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[1] Akasali in Adi'bono's House Appendix Two

[2] Pogucki op cit p.39. See also the evidence of Francis in Ayalkoom's House Appendix Two and the Chief of Adaboya Appendix One One landlord in Adaboya said that anyone can take dead wood from his compound land, Akiriba's House Appendix Two

[3] Pogucki op cit p.39. See also the evidence of the Chief of Adaboya, the Regent of Bongo and the Chief of Gowrie Appendix One

[4] Pogucki op cit p.39.

[5] Appendix One In addition, shea and dawa dawa trees will be claimed by the Tindana unless a special arrangement is made by the planter with the Tindana or his representative. The Regent of Bongo claimed to be the owner of any tree whether self seeded or planted Appendix One

[6] Akasali in Adi'bono's House, Francis in Ayalkoom's House and Ayanga in Azure's House Appendix Two

trees were planted by two of its male members, the landlord, while not denying his title to the trees, stated that he would first share the fruit among family members and then allow any surplus to be sold with all the revenue being given to their planters.[1]

From this summary, it is clear that in the majority of situations it is the landlord on behalf of the family as a whole, who controls not only farming operations but also rights to tree produce. Thus, for individual landlords there is no insecurity in their rights to compound land or the produce of trees planted thereon. There is no legal impediment to discourage them from planting trees on the compound land.

It is arguable that this coincidence of rights over land and trees discriminates against the individuals within the compound, particularly women, who have no independent legal rights to land or tree produce. It appears that, so long as women plant trees on compound land, they will gain no personal economic benefit from their produce in the years to come. This might help to explain the evident enthusiasm of many local women for planting trees on communal land. However, it was evident that women have also been active in planting trees on compound land. Although in this case there is no direct, personal, economic reward for their labour, the prospect of fruit, timber and shade for the family as a whole may be the incentives motivating their endeavours. Their actions are demonstrative of the essentially group basis of agricultural activity, at least with respect to the compound farm. The

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[1] Ayanga, Azure's House Appendix Two

dominance of the group interest is most clear in the case of small households and in compounds where all farming tasks are undertaken jointly but even when the land is divided between the compound members for farming purposes, many farming tasks are shared. The compound farm provides the household diet in which all members have a stake. The search for independent economic motives, grounded in individual legal rights of control, may be partly unwarranted in view of this.

On the other hand, there is no doubt that women throughout the district are anxious to improve their independent sources of income. If they were permitted to retain the revenue obtained from the sale of produce from trees which they have planted, the incentives to persevere with tree planting and tree husbandry in the early years after initial planting would be very much greater. At the same time, the broad developmental goal of improving the financial position and legal status of women in this area would be furthered.

The second case in which local land law may act as a deterrent to tree planting activities is in the case of tenancy agreements. Close associations are drawn locally between rights to trees and claims to the customary freehold interest in land. It seems likely, therefore, that many grantors would not tolerate the planting of permanent crops by short term tenants on their land as this would be seen as a threat to the easy termination of the grant if not a claim to the customary freehold or allodial interest in the land itself. The activities of permanent tenants do not, in every

case, appear to be so restricted. In Azure's house, the landlord claimed to be the owner of trees planted by his members on land held under a permanent tenancy agreement.[1] This contrasts with the doubts expressed by Namobire, in Adaboya, on his right, as a permanent tenant, to plant trees anywhere on his compound farm.[2]

The conventional wisdom that security of tenure to land is a pre-requisite to tree planting appears to be borne out in the case of short term tenants. Women, for example, seem to prefer to plant trees on their husbands' land around the compound, where at least the group title is secure, rather than on their individual farms because the latter are made on land which is only temporarily begged from friends or relatives. In either case, it will be noted, women cannot gain legal rights to the produce of the trees they plant because they are not allowed to hold long term, individual legal rights to land.

The fact that so much land in the district is held under customary tenancies presents a problem for agroforestry schemes. Most farmers who have planted trees have chosen to do so on family land around the house yet the fertility of the soil is often greater here than on more distant fields begged from friends. Some tenants seem to be restricted in their rights to plant trees even around their compound.[3] If suitable

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[1] Appendix Two If the family ever left the land, it was thought most likely that ownership of the trees would pass with the land back to the grantor section.

[2] Appendix Two

[3] As in Akiriba's House Appendix Two

forms of agroforestry are to be adopted in this district then flexible types of share cropping might be encouraged. These could, for example, take the form of an agreement dividing the right to tree produce between the farmer and the original landlord. An amicable prior agreement should be all that is required provided the traditional authorities are willing to enforce contracts of this type. The possibility of special agreements dividing the right to the fruit of self-seeded trees between tenants and their landlords was recognised by the Tindana of Adaboya and the Chief of Gowrie.[1]

The tenure impediment in tree planting schemes should not be overstated. The majority of farmers do not yet appear to plant trees solely or mainly as a conservation measure. Many farmers simply do not choose to plant trees on distant farms because of the difficulty of watering and protecting seedlings so far from the house. Women have not been discouraged from planting trees on their husbands' land even though they will never own the land, the trees or the fruit of those trees. They plant in the knowledge that profit accruing to their husbands from the sale of fruit may, in times of need, contribute to the purchase of millet for the whole family. There are, in fact, far more practical problems - termite attack, water shortages, browsing animals - which continue to undermine the success of tree planting programmes.

For the time being, it is submitted, attention can conveniently be focused on establishing trees on compound land where security of tenure to trees and land, for the family

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[1] Appendix One

considered as a single entity, is generally not a problem. Where permanent tenants are forbidden to plant trees around their homes, thought could be given to interesting their landlords in share cropping agreements.

(E) Common Rights of Exploitation.

Systems of customary law often allow the free exploitation of some natural resources, including some types of tree produce, by any member of the community. Critics of these generally unregulated community rights of user argue that, in situations of high population growth, they inevitably lead to over exploitation of the resource base.[1] Enclosure of private farms and "privatisation" of grazing land have been suggested as possible solutions to problems of over exploitation.[2]

The degradation of grazing land and shortage of firewood evident in some parts of Bongo District suggest that over exploitation has occurred. An attempt will be made here to identify the relevant communal rights and to consider appropriate reforms which have or could be made to prevent continuing over exploitation.

Common rights should be and are distinguishable from rights exercised exclusively by members of the allodial community such as the right, noted above, of the members of the allodial community in Adaboya to collect dawa dawa fruits

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[1] Omutunde op cit p.271.

[2] Lowe op cit p.253.

and shea nuts.[1] A further distinction is between rights which may only be exercised over bush land and grazing land and rights which may be exercised over any land. Throughout the district there are areas of land specifically demarcated for use by the whole community for grazing and other purposes. Within the boundaries of this "grazing land", farming by anyone is prohibited. The ownership of this land was claimed variously by the Chief/Tindana in Gowrie, by the Regent in Bongo and by the Tindana and the Chief in Adaboya.[2] Nevertheless, in practical terms, the rights of these authorities were no more extensive than any other member of the community.[3]

The Chief of Gowrie gave evidence of a number of common rights which were not disputed by the other traditional authorities. These were said to include the right to graze animals anywhere during the dry season and on designated grazing land during the wet season. He also stated that anyone can collect roofing grass in the bush, that manure can be gathered by anyone from anywhere and that anyone can walk on any land during the dry season and along any path during the wet season.[4] The right to pluck the fruit of self seeded, non economic trees anywhere and to collect dead wood, fruit and fodder from self seeded trees in the bush and on grazing land

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[1] Supra p.382.

[2] Appendix One

[3] See, for example, the statement of the Chief of Gowrie that he is not able to collect the produce of trees growing on bush or grazing land on a commercial scale Appendix One

[1] ibid

were also said to be of a common nature.[1]

The privatisation of rights to trees in response to growing scarcity may account for the general rule in this district that dead wood on compound land can only be collectd by an outsider to the compound with the permission of the relevant landlord.[2]

In some cases, people have found ways of working within the existing framework of common rights to promote conservation measures on their farms. For example, trees are individually walled during the dry season to prevent their destruction by freely grazing animals. Individual families have not been prevented from walling off dry season gardens. This last development suggests that the voluntary enclosure of farmland, as part of measures to promote agroforestry for example, may become acceptable in the years ahead. This would gradually modify the extent of dry season, communal, grazing rights.

In an attempt to stem the further degradation of grazing land, the traditional authorities have enacted rules to regulate the practice of common rights. They have, for example, prohibited the cutting of live wood in the bush.[3] Unfortunately, this has led to rumours of live trees being

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[1] ibid Cardinall found that the right to take honey from any tree excluding those on compound land was of a common character op cit p.64.

[2] This rule was stated by the Chief of Adaboya and the Regent of Bongo Appendix One Pogucki previously found that self seeded trees were always subject to common rights of use for timber and firewood op cit p.39.

[3] Appendix One

burned in the night to increase the supply of dead wood. The problem is that, once again, legal solutions have been sought which touch only the symptoms of the problem without addressing the underlying causes of environmental degradation. Little attention has so far been paid to the enforcement of the law. No offenders had been reported to the traditional authorities at the time of research.

Another problem which affects the efficacy of this law is the lack of clarity on details. The Chief of Adaboya was of the view that his special permission is required before live wood on any land can be cut but the Chief of Gowrie said it is lawful for a person to cut live branches from trees which he plants himself.[1] The Chief of Gowrie's interpretation of the law would seem to be preferable if the planting of timber trees is to be encouraged. In Bongo, it was observed by the author that the cutting of small branches to collect leaves for fodder and the cutting of bark for medicinal purposes did not seem to be penalised.

Despite the introduction of "customary" regulations it was clear to the author that common land has been degraded to a poor state which will require active measures for its rehabilitation. Grazing land, especially in the most densely populated parts of the district, is frequently located in river valleys where the implications of soil degradation and soil loss are very serious.

Measures to address the underlying causes leading to degradation are necessary so that local people will have a

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[1] ibid

real option to conform to laws designed to protect communal grazing land. Tree planting on private land should help to reduce some of the existing pressure on communal land by providing a multitude of tree products. Tree planting on areas of grazing land could help to improve their overall productivity and prevent serious river valley erosion. However, communal tree planting schemes on grazing land have been largely unsuccessful in the past, at least for Bongo Agroforestry.[1] In addition to problems of husbandry and management in projects of this type,[2] the use of this land for free range grazing poses a problem for tree protection. Individual trees are often walled off to prevent their destruction by animals but this solution may be too labour intensive for larger projects. In Gowrie, farmers have simply been told not to let their animals loose around the dam. Even though farmers are allowed to cut grass, there is still resentment at the curtailment of traditional rights.

By working closely with local communities it may be possible to reach more acceptable solutions. In a community forestry project in northern India, for example, villagers opted to stall feed their animals in order to protect newly established trees on grazing land. The "carrot" to encourage this behaviour was equitable access to irrigation water also newly provided under the project.[3] There has been no such

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[1] Supra p.340.

[2] Supra p.344.

[3] P. Mishra, Madhu Sarin, Social Security Through Social Fencing, Sukhomajri and Nada, North India, in Conroy op cit pp.22-28, p.24.

attempt to work closely with local communities around the Vea Dam. The absence of integrated and participatory development processes is the principal factor accounting for such different responses to restrictions on communal grazing rights.

(F) Reform of Customary Law?

Customary land law is often blamed for holding back economic development and contributing to environmental degradation. Proponents of this viewpoint argue that customary laws discourage individual initiative so that productivity remains low, long term investments are not made and the resource base is gradually degraded.[1] They typically argue in favour of law reform to strengthen individual title to land, to encourage a market for land, to prevent the fragmentation of farms, to privatise the management of natural resources and to initiate the enclosure of common land.[2] These measures, they argue, will lead both to the most efficient long term use of land and conservation of the resource base.[3]

The review of customary law in this chapter has not confirmed the validity of these criticisms. In many cases customary law does provide security of tenure, at least for

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[1] Omutunde op cit p.259-276.

[2] These views are symptomatic of the series of law and development studies in the 1960s which viewed development narrowly in terms of western style modernisation. For a critique of law and development studies of this era see, Snyder, Law and Development in the Light of Dependency Theory, op cit pp.723-804.

[3] Abalu op cit pp.30-41.

individual farming households. Where specific customary laws have the potential to discourage environmentally beneficial activities, any attempt to assess their real impact should take into account the overall social and economic context. The law is only one of many factors which may contribute to or hold back sustainable development.

It follows from this analysis that the law, by itself, cannot provide a catalyst for change if measures associated with the desired legal reform are not in place or provided for.[1] A system of title registration, for example, is unlikely to prove successful in a largely illiterate, small holder, farming society.[2] Long term security of tenure is an irrelevant incentive to investment if the most popular conservation measures are short term ones such as composting and use of artificial fertilisers; the free alienation of land may spell disaster if there is no alternative employment to farming; over cultivation cannot be averted by prohibiting partible inheritance if the number of dependents per farmer is increased as a result; the privatisation of the commons may only be successful if adequate supplies of essential raw materials can be guaranteed for all local people.

This analysis highlights the need for integrated, holistic development programmes which tackle the underlying causes of environmental degradation instead of merely using

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[1] I. Gershenberg, Customary Land Tenure as a Constraint on Agricultural Development: A Re-Evaluation, (1971) 4 East African Journal of Rural Development 51-62, p.61.

[2] S. Coldham, The Effect of Registration of Title Upon Customary Land Rights in Kenya, (1978) 22 JAL 91-111.

the law to attack environmental problems on the surface. Tree planting programmes may help to confront underlying problems such as soil infertility and low agricultural productivity but there is a need for these programmes to be more responsive to the views of local farmers. There is also a need to continue supporting development programmes which tackle the problems of poverty more directly, in particular for programmes to increase income generating opportunities. The appropriate time for law reform, it is submitted, is when development programmes which tackle the underlying constraints to environmental improvement are underway.

It is now widely recognised that, contrary to the conventional view, customary law has frequently proved to be sufficiently flexible to accommodate the demands of economic change:

> "Because tenure rules are the result of existing social relations they are always dynamic. As social realities change, so do the the interpretations of existing tenure rules and new rules are created."[1]

Although it is not possible within the context of this thesis to consider in depth the debate on the process of customary law reform,[2] it may be possible here to summarise,

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[1] Fortmann op cit p.x. See also, Migot et al. op cit p.171.

[2] Although it is generally acknowledged that customary law is not a static regime, the debate as to how best it can be reformed continues. On the one hand, it is argued that any degree of formalisation - written records, greater use of precedents, unification - stultifies the development of the law. On the other hand, many African governments are anxious to quicken the pace of change and have resorted to progressive statutory interpretations of customary law designed to over rule existing practices. See, Allott, The Changing Law in a Changing Africa, (1961) 11(2) Sociologus 115-131.

in conclusion to this section, some developments which may be likely or desirable in response to the various types of tree planting projects which are currently underway in this district. The fact that practical measures are already underway to encourage tree planting makes recommendations on these legal issues consistent with the view that law reform should co-incide with ongoing developments in society.

(a) New laws to improve the collective management of communal resources and better enforcement of existing laws. Prohibitions imposed by the traditional authorities do not appear to have saved grazing land from over exploitation. Temporary restrictions on common rights of exploitation are desirable so that trees can be planted on grazing land, thereby improving their long term productivity. Whether or not the enforcement of declarations by the traditional authorities is stepped up and/or appropriate bye-laws are passed by the District Assembly, efforts should be made to harness the active support of local communities for any measures which curtail existing customary rights.[1]

(b) Modifications of the law in order to guarantee to farmers who plant trees, especially tenants and women, a share in the fruits of their labour. Informal share cropping arrangements might encourage tenants to plant trees on degraded agricultural land. Another dimension to this issue is the need for clear rules regarding the maintenance, protection and exploitation of trees planted by groups on grazing land.[2]

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[1] Supra p.395.

[2] Supra p.344.

(c) A modification of the law allowing free range grazing over private land during the dry season. It is envisaged that this will occur as the enclosure of private land becomes more prevalent so that protection from browsing animals can be afforded to dry season and perennial crops and trees. The evidence that some farmers have walled off dry season gardens without opposition suggests that enclosure of some land may gradually become more common. This will greatly facilitate the kind of multiple tree establishment associated with agroforestry.

(iv) Rural Forestry Initiatives and Issues of Sustainable Development.

A study of environmental policies and programmes in Bongo endorses some of the general findings and recommendations of the Brundtland Report.

The Report of the WCED argued that poverty forces poor people to adopt environmentally damaging life styles.[1] To some extent this is the case in Bongo District where communal land is being over grazed and soil is being degraded by over cultivation. On the other hand, environmental problems associated with the Vea Dam, for example, have an underlying basis in poorly planned programmes of agricultural modernisation in which poor people have had little or no influence.

The Brundtland Report argued that policies which promote more equitable access to resources could help to overcome

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[1] WCED op cit p.28.

supply problems[1] but in Bongo, where population growth, stagnant agriculture and land degradation combine, a basically equitable system of land tenure has not prevented environmental degradation. Equitable access to resources cannot by itself guarantee sustainable development. What is needed in addition are integrated, low cost and broad based agricultural development projects to raise the productivity of small scale and marginal farmers. This recommendation is consistent with those of the WCED.[2]

The WCED took the view that a revival of economic growth is essential for the funding of environmental improvement programmes.[3] In Bongo, not all environmental packages are dependent on preceding improvements in material well being. For the majority of farmers, inexpensive improvements in farming techniques, such as tree planting, better composting and soil conservation practices, offer more viable, long term solutions than, for example, the increased use of expensive, inorganic fertilisers. On the other hand, the adoption of environmental protection measures without regard for the most pressing economic needs of local people is a strategy which cannot satisfy the basic needs objectives of sustainable development. The tree planting programme around the edge of the Vea Dam is the clearest example of this.[4] Environmental problems in Bongo require an approach to development which

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[1] WCED op cit p.44.

[2] ibid p.143.

[3] ibid p.50.

[4] Supra p.349.

includes but is not limited to or dependent on preceding wealth creation.

The evidence from Bongo confirms the view of the WCED that programmes to promote environmental protection should be holistic in view and integrated in response.[1] This requires environment and development programmes which are flexible in design, long term in their support and responsive to the needs of local farmers. These recommendations are pertinent to the various tree planting projects currently being implemented in the district.

In a broader context, development in the non-agricultural sectors of the economy may be a crucial requirement for improvements in the quality of the local environment.[2] This is because more employment opportunities outside agriculture would render fewer people critically dependent on subsistence agriculture. This is recognised by local people. This means that NGO programmes which have as their principal aim support for income generating activities outside agriculture should not be afforded a lower priority than high profile environmental projects. The success of the latter, which frequently take a narrow approach to environmental problems, is in no way assured whereas some other social and economic projects have proved hugely popular and relatively successful.[3]

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[1] WCED op cit p.313.

[2] A requirement recognised in the Brundtland Report at p.143 ibid

[3] For example, BRDP included health, craft and lending components which were very popular locally.

The Brundtland Report argued in favour of more participatory development processes.[1] While the desirability of this recommendation was wholly endorsed in this chapter, the analysis made of ongoing programmes suggests that there is still a long way to go in this direction. In particular, the District Assembly can be criticised for its failure to fully represent and act upon the wishes of local people in the matter of dam protection. The Assembly appears to have let national policy take an over riding priority in much the same way as, for example, Operation Halt has been endorsed by district assemblies in the Western Region.[2]

(v) Conclusion.

In this chapter a number of ongoing rural forestry initiatives in Bongo District have been reviewed. An attempt was made to put these projects into their overall social, economic and environmental context by providing the reader with some general information about the district. An analysis of environmental problems and priorities in this district revealed that environmental and development problems are interlocking and multi-faceted. Rural forestry initiatives can help to address some of these problems. Their implementation must be flexible, however, in order to meet the different needs of different farmers and in order to take into account the backward linkages and underlying factors which may frustrate the successful implementation of project objectives.

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[1] WCED op cit p.63.

[2] Supra Chp.7.

In the discussion of ongoing tree planting projects, some weaknesses in their design and management were exposed. These confirmed the desirability of establishing clear objectives at the start of the project while maintaining flexibility in the methods employed to achieve these ends. The need for long term financial and technical support seemed indisputable in the case of tree planting projects. In addition, it became apparent that more could be done to incorporate the views of local people in the early planning and decision-making stages of project development.

The account of tree planting for dam protection exposed the controversial role played by the District Assembly which has adopted locally unpopular bye-laws to protect the dam under pressure from the central Government and the UNDP. A failure of the project to address the underlying problem of land hunger was noted. The project also failed in every respect to heed the views of local people. This strategy is inconsistent with the basic needs and participatory orientation of the sustainable development model propounded by the WCED. A much greater effort should be made to work hand in hand with local people to reach mutually acceptable solutions to complex environmental problems.

The third part of this chapter examined aspects of customary law which could have a bearing on many types of environmental projects, particularly tree planting projects. It was argued that, in many respects, the conventional criticisms of customary land law which link it to subsistence agriculture and environmental degradation, are unfounded. Any

attempt to assess the impact of customary law on the environment should take into account the overall social and economic context in which they operate. Legal measures to protect the environment cannot succeed if the underlying causes of environmental degradation are not confronted. Changes in the law should arise out of broad based development initiatives which tackle the underlying constraints to environmental improvement, such as land hunger and low agricultural productivity. Such changes might include temporary restrictions on communal grazing rights, recognition of share-cropping agreements which allow tenants to plant trees on their farms and appropriate modifications to the law on free range grazing to allow for the enclosure of more private farmland.

Overall, the analysis of environmental problems and priorities, the discussion of current tree planting projects and the investigation into legal and environmental inter-relationships all exposed the need for an integrated and holistic approach to development and environmental protection. This approach suggests the need for a variety of long term, participatory and flexible programmes which take cognisance of the underlying causes of environmental degradation. This is precisely what the Brundtland Report argued for, but the evidence from Bongo suggests that current environmental programmes do not adequately embody these ideas. In particular, measures to promote the satisfaction of basic needs and participatory decision-making processes are frequently lacking. Once again, although the Brundtland

proposals look faultless in theory, there is still a long way to go in order to make those goals realisable at the local level.

CHAPTER TEN: FOREST POLICY FOR THE 1990s.

Originally, the forest policy in the Gold Coast aimed at the conservation of a significant part of the tropical forest to preserve climatic conditions and water supplies and to minimise erosion. This was the major premise of Mr. Thompson as early as 1909.[1] The rational exploitation of the permanent forest estate on a sustained yield basis was a secondary but not insignificant concern. In 1949, the official forest policy added the most efficient exploitation of the unreserved forest to the objectives of forest administration.[2] Today, the aims of the 1949 Forest Policy are thought to be too narrow and a new forest policy has been drafted to address the issues of the present day.

The draft forest policy, unlike its predecessors, attempts to provide a comprehensive policy document covering all areas of concern to the forest sector and including an action plan for the better implementation of its objectives.[3] The document has been rigorously thought out and represents the very latest thinking on forest policy generally while not neglecting issues peculiar to Ghanaian circumstances. From the preceding analysis of ongoing reforms in the sector it may be possible to give an indication of what the new policy can

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[1] Supra Chp.4, p.79.

[2] Forestry Department Annual Report 1949, Government Printer, Accra, p.1.

[3] Proposals for the Revision of the National Forest Policy of Ghana (Draft Forest Policy) 1989, Forestry Commission, Accra, pp.17.

realistically hope to achieve and to suggest the way forward in the light of recent experience.

The proposal for the revision of the national forest policy lists five major changes since 1949 in the circumstances in which forest policy must operate. These are - the serious reduction in the area of forested land, the increased demand for forest produce of all types, advances in science and technology, institutional changes since 1949 and biological changes.[1] The Draft Forest Policy contains a number of recommendations covering, inter alia, management, exploitation and rural forestry policies for the forest sector.

Proposals are made for the strengthening of management institutions in the sector. Adequate remuneration is a factor mentioned as well as the co-ordination of programmes and adequate and continuous funding of sector institutions.[2] Action to secure these objectives will include the establishment of a Sector Co-ordination Committee including heads of forest sector institutions and representatives of the industry.[3] A special Forest Fund is envisaged to help finance development, management, research and training.[4]

The need for institutional strengthening was considered in chapter six. Co-ordination, accountability and efficiency are the appropriate goals to be aimed for. The FRMP is

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[1] ibid p.1.

[2] ibid p.8.

[3] ibid p.16.

[4] ibid p.17.

attempting to address these issues. Its proposals for greater reliance on market mechanisms in concession allocation procedures[1] and to determine forest fees[2] have the potential for reducing discretion and curtailing maladministration. While Ghana should and will reject solutions imposed by foreign agencies, no time should be lost in implementing appropriate administrative reforms.

Logistical support for under staffed and under funded sector institutions is also essential. Although the FRMP includes measures of this type, the Project was criticised for the inadequate level of logistical support targeted for district forest offices.[3] The problems in the Western Region, discussed in chapter seven, underscored the relevance of this criticism. The problems discussed in chapter eight suggest the importance which should be attached to making logistical support continuous and adequate, especially during periods of intense forest exploitation.

On silvicultural management, the Draft Forest Policy envisions the continuous inventory of forest reserves and the more intensive monitoring of logging activities.[4] The method of estimating the Annual Allowable Cut will be improved by including as many species as possible in the calculation.[5] The

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[1] Supra p.281.

[2] Supra p.296.

[3] Supra p.158.

[4] Draft Forest Policy op cit p.12.

[5] This will make the AAC estimate artificially high if species which have a potentially commercial value but which are not currently being exploited are all included in one

need for continual research figures prominently in the Policy.[1]

The emphasis in the Draft Forest Policy on continuing research into silvicultural management in tropical forests is justified in view of the many uncertainties in this field. Whatever techniques are used, they should not be beyond the capacities of the Forestry Department to administer, even in times of economic stringency. The greater use of fiscal measures in support of silvicultural regulations was applauded in chapter eight as one measure which could help to reduce the high level of waste in the industry.[2]

The problems of protecting the permanent forest estate are not dealt with in any great detail in the Draft Forest Policy. This is surprising in view of the seriousness of the problems discussed in chapter seven. In view of the scale of illegal encroachment into some reserves a more realistic, more comprehensive and more integrated strategy than that of Operation Halt was canvassed. It was suggested that reserves which are almost wholly deforested should be de-reserved in return for a guarantee by traditional and district authorities that they will accept a share of the responsibility for preventing any future encroachments into forest reserves.[3] The need for more positive measures to improve agricultural productivity outside forest reserves was highlighted as was

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estimate supra p.235.

[1] Draft Forest Policy op cit pp.3,8,15.

[2] Supra p.299.

[3] Supra p.225.

the desirability of comprehensive development planning to improve the co-ordination and harmonisation of agricultural and forestry activities.[1] Underlying these recommendations was a recognition of the need to integrate local communities more carefully into the forest economy so that the fundamental logic of conservation and sustainable development policies will appeal to local people. This realisation is consistent with comments made in the Draft Forest Policy:

> "The participation and involvement of individuals, communities, community organizations and local authorities is essential to the effective conservation and development of forest resources and to deriving optimum benefit from their utilisation. The majority of the people have not shown sufficient appreciation of the importance of forests and the necessity for the management and conservation of forest resources. Public education and the promotion of measures to increase public participation are therefore essential to successful forest management and conservation."[2]

The Draft Forest Policy does not make clear what level of protection should be afforded to remaining timber resources outside reserves. It makes no explicit recommendations on how to combat the buoyant illegal timber trade but seems instead to rely on rural forestry initiatives as the bedrock of future supplies for the nation.[3]

Suggestions have been made in this thesis for the de-regulation of activities outside forest reserves in recognition of the important role which the illegal timber

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[1] Supra p.227.

[2] Draft Forest Policy op cit p.3.

[3] ibid p.10.

trade plays in supplying affordable timber to local people.[1] This would entail the phasing out of timber grants over land outside forest reserves and, preferably, the renunciation of the government's title to forest resources outside forest reserves.[2] This would allow the regulatory institutions to focus on controlling activities in forest reserves, it would prevent the sort of acrimony which often arises between farmers and concessionaires when the former are not compensated for damage caused to their crops during logging operations and it could encourage private investment in trees and timber.

Ambiguity on issues of forest protection results from the lack of an overall land-use policy in Ghana which sets clear priorities between the different potential land-uses and which, among other things, deals with the difficult issue of providing alternative means of livelihood for those who are genuinely made to suffer by the reservation of land or conservation of timber for forestry purposes. The fact that the Forestry Commission, which drew up the Draft Forest Policy, does not have primary responsibility for land-use planning overall is one of the factors contributing to this unsatisfactory state of affairs.[3] Institutional isolation of the type identified with respect to the Commission was condemned in the Brundtland Report.[4] The FRMP Report

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[1] Supra pp.112, 292.

[2] Supra p.112.

[3] Supra p.142.

[4] WCED op cit p.9.

recommended the establishment of a Policy, Planning, Monitoring and Evaluation Unit (PPMEU) in the Ministry of Lands and Natural Resources which, when fully established, may provide a better forum for the determination of forest policy.[1] In addition, this thesis has exposed the need for more decentralised, district level planning with greater attention paid to local needs and circumstances.[2]

The Draft Forest Policy makes several recommendations with respect to the timber industry. The aim here should be to develop more efficient production methods, reducing waste, expanding resource utilisation, increasing the production of value added products and encouraging the use of a wider selection of species.[3] Training of manpower at all levels will be necessary.[4]

Chapter eight has drawn attention to the need to rationalise the industry along the lines recommended in the Draft Forest Policy. The Policy is silent, however, on the means of implementing these urgent requirements. Under the FRMP, increases in forest fees and improvements in concession allocation procedures are policies designed to further these goals.[5] These policies would seem to favour larger operators although the ultimate test is efficiency. Little, however, is being done by way of manpower training or financial support to

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[1] Supra p.152.

[2] Supra p.227.

[3] Draft Forest Policy op cit pp.6-7.

[4] ibid p.7.

[5] Supra pp.281,296.

hasten the necessary industrial restructuring for the adoption of more efficient techniques. The ERP has a shameful record on its financial support. It will be recalled how 54.4% of credits contributed to the purchase of logging equipment despite the Government's declared support for further processing.[1] Ghana cannot afford to waste opportunities such as these. Serious consideration should be given to improving the methods of selecting industrial borrowers when favourable credit facilities are avaiable and to the type of investment which is really acceptable. Foreign governments should be more flexible on the type of aid which they are prepared to give. In addition, they must recognise and reform the international constraints - low prices, tariff barriers, selective demand and onerous debt servicing obligations - which continue to frustrate Ghana's attempts to implement a strategy of sustainable exploitation.[2]

In order to meet the increased demand for all kinds of forest produce the Draft Forest Policy sees the need for a much greater emphasis on the development of forest and tree resources outside forest reserves.[3] Local communities and individuals should be encouraged to participate in the planting, care and utilisation of trees, especially multi-purpose trees. Incentives for private and community plantations should be developed and obstacles to tree tenure should be removed. Increased co-operation with agricultural

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[1] Supra p.248.

[2] Supra pp.265-270.

[3] Draft Forest Policy op cit p.3.

research institutions to develop agroforestry techniques is envisaged.[1]

In chapter eight, it was suggested that MFP (Minor Forest Produce) in forest reserves could be more intensively exploited, not least because this form of exploitation is a low impact, income generating use of reserved forest land.[2] In chapter nine, some current rural forestry initiatives were discussed. It was suggested that although the objectives of each project should be clear, there should be flexibility in the methods employed to achieve project objectives.[3] The greater participation of local people in the planning and decision-making stages of project development should help to make tree planting projects more relevant to their needs and adaptable to their constraints. It may be many years, however, before a large proportion of farmers are keen to adopt such innovative ideas as, for example, agroforestry implies so the emphasis must be on long term, adaptive programmes. If the funding requirements of these programmes can be kept at a modest level then their chances of long term survival are greatly enhanced. Assessments of success or failure should not be too ambitious.

The Draft Forest Policy tackles the evidence that the resource base is shrinking with proposals for reducing demand as well as increasing supplies. Institutions which use firewood should be encouraged to switch to other sources of

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[1] ibid p.6.

[2] Supra p.306.

[3] Supra pp.359-362.

energy.[1] More efficient wood fuel stoves and charcoal making methods are to be promoted as a temporary conservation measure.[2]

The implementation of these measures will require co-operation between the forest sector institutions, research institutions, the Environmental Protection Council (EPC) and the Ministry of Fuel and Power. At the moment these other institutions are taking the lead in these newer areas of concern. None of these institutions have their own representatives at the district level. The district forestry departments, district assemblies and NGOs should be encouraged to disseminate programmes initiated by the national institutions. District forestry officers have no superior skills in these new areas of concern and, where they are anyway over burdened by existing duties, the lead will probably have to be taken by the district assemblies, NGOS and local representatives of bodies such as the Department of Mobilisation.

Other new features in the Draft Forest Policy are a recognition of the need to preserve and enhance biodiversity and to meet amenity and recreational needs.[3] Sacred groves should be formally recognised by law.[4] It is also stated that sites for trees and forests should be incorporated into human

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[1] Draft Forest Policy op cit p.11.

[2] ibid p.14.

[3] ibid p.5.

[4] ibid p.13.

settlements sites[1] and that the forestry aspects of any development subject to environmental impact assessment should be considered and reference made to the appropriate forestry agencies.[2] Approval for the establishment of industries using wood energy should not be given until it is shown that they will not be solely dependent on the natural resource base.[3]

These recommendations are commendable for their comprehensive, integrated and cross sectoral reach. They are consistent with the philosophy of the Brundtland Report which called for the closer integration of ecological and economic decision-making and the reform of sectoral rigidities.[4] Some of the difficulties of achieving this more integrated management style were discussed in chapter six. If this approach is to be successful, the risks of bureaucratic proliferation, unnecessary and lengthy delays must be guarded against. The evidence from chapter six suggests that the necessary degree of institutional sophistication may as yet be lacking in Ghana.

On the legal side, the Draft Forest Policy suggests that district assemblies should be involved in the procedure for the grant of rights to trees or timber.[5] With the possible exception of forest resources outside forest reserves,[6] there

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[1] ibid p.4.

[2] ibid p.5.

[3] ibid p.11.

[4] WCED op cit pp.62-64.

[5] Draft Forest Policy op cit p.12.

[6] Supra p.115.

seems to be no special need for their involvement in concession procedures. It is not envisaged by the proposals of the FRMP. Although it is a laudable proposal consistent with the participatory philosophy of the Brundtland Report,[1] truly decentralised and democratic decision-making procedures do not seem to have characterised recent developments in the Western Region[2] or Bongo.[3]

The Draft Forest Policy contains a sweeping recommendation for the review of all current forestry legislation to ensure its conformity with the provisions of the Forest Policy.[4] The enactment of appropriate laws for the implementation of the Forest Policy is envisaged.[5]

The analysis in this thesis has shown that in many cases it is not the absence of appropriate laws which has prevented forest conservation but the ineffective enforcement of existing legislation. The need is therefore for a careful review of specific weaknesses in the existing law. Some of the specific weaknesses in the law discussed in previous chapters related to the co-ordination of sector institutions,[6] the allocation of concessions[7] and the review of silvicultural[8]

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[1] WCED op cit p.63.

[2] Supra Chp.7.

[3] Supra Chp.9.

[4] Draft Forest Policy op cit p.17.

[5] ibid

[6] Supra p.176.

[7] Supra pp.276-283.

[8] Supra p.302.

and fiscal regulations.[1]

Whatever legal reforms are adopted, policy makers would do well to consider the following issues which have become evident from the analysis made in preceding chapters:

(a) Environmental protection cannot be isolated from the politics of resource utilisation. More particularly, forest conservation cannot be isolated from issues of land ownership and control. The history of the Public Lands Bills and the experience of protecting forest reserves in the Western Region amply demonstrate this point. Although forestry is liable to neglect if it is seen only as one part of land policy, it is essential that a separate forestry policy takes cognisance of and is consistent with land policy and land-use practices generally. The evidence from the Western Region suggests that a land-use policy in forest areas outside forest reserves is just as necessary as a clear forest policy if conservation is to be successful. Equally important is an economic strategy which defines the legitimate use of forest resources and integrates the local economy and forest sector.

(b) Official commitment to environmental protection falls and rises at the mercy of the policy and law makers in power. The wavering commitment of colonial governors to environmental protection is one example of this. The PNDC appears to have been committed to forest conservation. This is essential if radical measures are to be implemented but nevertheless a well thought out and practical policy must complement the enthusiasm of the Government. In the Western Region the

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[1] Supra p.294.

wholesale burning of villages by the military failed to achieve any long term goal. It remains to be seen whether "Operation Halt" will achieve a more lasting success but the prospects do not look good if the strategy is limited to one of expulsion without any cognisance of the underlying factors which have led to massive encroachments into some forest reserves.

(c) Unless environmental policies carry the broad support or acquiesence of powerful interest groups already involved in the exploitation of natural resources they are unlikely to succeed whether or not they have the official support of Government. The ability of vested interests to frustrate the enactment or implementation of laws and policies supportive of sustainable development was demonstrated in the discussions of colonial forestry law, forest protection in the Western Region and the control of the timber industry.

(d) If forest conservation measures do not have, in addition to the above, an effective support base in the rural areas where their impact will be felt, their chances of success remain slim. This is why the strengthening of district forestry offices should be a more central objective of the FRMP. It is also the principal reason why efforts are needed to integrate local communities into the forest economy, so that the rationality of conservation and sustainable development will be fully appreciated by people who could otherwise prevent such policies taking effect. Measures to co-opt honest business interests into support for sustainable timber exploitation have also been discussed. Rural forestry

and agroforestry intiatives also need to strive for widespread community support if they are to be truly effective and popular in the long term.[1]

(d) Logistical support is only one aspect of institutional strengthening. Of equal if not more importance in the long term, are reforms which will improve the accountability, co-ordination and efficiency of sector institutions and official procedures. The analysis of sector institutions in chapter six highlighted the need for these sort of reforms. Without such reforms, vested interests will continue to distort the impact of laws, policies and projects designed to improve performance throughout the sector. The doubtful results of sector lending under the ERP are a case in point.[2] The history of the ERP also demonstrates the need for more responsible and more appropriate international aid if the requirements of sustainable development are to be met.

(e) A rationalisation of the timber industry to reduce excess capacity in the logging and milling sub-sectors and support for technological upgrading in respectable, competitive companies are the pillars on which the drive for reducing waste and increasing further processing should ultimately rest. If the industry can be rationalised and the output of secondary species and processed timber increased, then the prospects for sustainable development are enhanced because more income will be generated to pay for sustainable management. This assumption is valid only in so far as

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[1] Supra Chp.9.

[2] Supra p.249.

official procedures are reformed and interests supportive of sustainable development are nurtured.

(f) Economic growth and sustainable management must go hand in hand if exploitation is not to cause irreversible damage to the environment. In chapter eight, evidence was presented to show that timber exploitation in recent years has exceeded the AAC and that some primary species in Ghana are now facing extinction.[1] Exploitation was intense during the 1980s at a time when sector institutions were seriously under funded and neglected. It is quite likely that Ghana will have to pay for these mistakes with reduced foreign exchange earnings in the forest sector.

(g) The buoyancy of local demand for affordable wood suggests that attempts to contain the illegal exploitation of forest resources outside forest reserves may now be futile.[2] Consequently, it may now be more sensible for institutions such as the FPIB to concentrate all their attention on controlling the activities of lawful timber operators.

(h) Rural forestry initiatives should proceed hand in hand with broad based development and environment programmes which directly tackle the underlying constraints, such as land hunger and low agricultural productivity, to environmental improvement. The desirability of this more holistic approach to development planning was made clear in the discussion of rural forestry initiatives in Bongo. Integrated land-use and development planning was also considered desirable in the

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[1] Supra pp.234-235.

[2] Supra p.292.

Western Region where it may help to reduce the threat of agricultural expansion into forest reserves.[1]

There is a limit to what can be achieved by legal reform even when it is accompanied by institutional reform and projects and policies which are designed from the "top down". Measures such as these fail to identify the real determinants of change in the rural areas where the forests are situated. It is the argument of this thesis that until the underlying interests and constraints which conflict with the goal of sustainable management are adequately addressed, these conflicting forces will continue to frustrate the efficacy of legal and institutional reforms. Loose policy statements will not by themselves modify the actions of interest groups whose motives run counter to sustainable development. Measures to build up a support base which will counterbalance and help to dismantle these negative interests have been suggested throughout this thesis. They include - measures to integrate local communities into the lawful forest economy; actions to enlist the support of local people, district assemblies and traditional authorities for forest conservation and rural forestry; measures to facilitate the necessary rationalisation in the timber industry including incentives to encourage technological upgrading in law abiding businesses in preference to speculative and dishonest timber operators.

Nevertheless, realism suggests that, in many cases, counter interests are entrenched and the options available to

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[1] Supra p.227.

the Government are limited. This was found to be especially true of the international constraints to sustainable timber exploitation. This finding suggests a considerably more gloomy outlook for sustainable development than was accepted by the WCED Commissioners in the Brundtland Report.

PART THREE: CONCLUSION.

CHAPTER ELEVEN: CONCLUSION.

The objective of this thesis was to assess the concept of sustainable development, as propounded in the Brundtland Report, in the light of policies and laws in the forest sector of Ghana. This study has raised a number of issues which generally confirm the findings and recommendations of the WCED but which, in some cases, add to its analysis or raise doubts as to the feasibility of the proposals made in that Report. The principal findings of the study are summarised below.

Conservation and sustainable development of resources have for long been key policy objectives in Ghana's forest sector but the analysis in this thesis exposed a number of problems associated with the implementation of those policies.

From an historical perspective, there is ample evidence that forest conservation cannot be isolated from questions of land-use, ownership and control. The Colonial Government, inspired by fears of denudation, found that its hands were already tied by a commitment to native land tenure when it attempted to legislate for the protection and conservation of Ghana's forests.[1] The opposition of local leaders and British business interests to government intervention and the political commitment to non intervention in West African land affairs were factors which defeated attempts to legislate for

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[1] Supra Chp.4.

the protection of Gold Coast forests. It was not until 1927 that forest legislation became operative in the Gold Coast. The successful enactment of forest legislation in that year can be attributed partly to the diminished level of effective political opposition and partly to the compromising tone of the statute which embodied the principle of indirect rule by allowing for reserves to be constituted under bye-laws made by local chiefs. Faced with the threat of forest reservation under the national law, traditional authorities were more easily persuaded to create bye-law reserves. By 1940, the Forestry Department had reserved approximately 11,000 square miles of forest reserves. The policy of indirect rule continued to frustrate attempts to enforce the law in a meaningful way, however, because many of the reserves were constituted under bye-laws which provided only nominal measures for their protection.

In chapter five the post independence legislation relating to forest ownership and exploitation was discussed. The principal reforms enacted in 1962 were designed to strengthen the hand of government, particularly in relation to forest reserves, and to provide a comprehensive regulatory framework for the protection and controlled exploitation of forest resources. The legislation was criticised on some technical points. Particularly interesting is the interpretation of section 16 of the Concessions Act.[1] The Blay Report, however, is of more practical significance. It revealed the vulnerability of an economically important

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[1] Act 124/1962 s.16(1).

national resource to political malpractice.[1] Malpractice flourished sometimes within the framework of the law but more frequently in direct contravention of statutory provisions. This evidence raises important questions of how to ensure that the government's need to control key economic resources is not frustrated by political mismanagement at the highest levels. The strict accountability of institutions and administrators is required, both in law and in practice.

The Brundtland Report called for the review and reinforcement of existing laws relating to environmental protection.[2] It failed, however, to identify the political factors which can undermine the success of any legislative programme in the absence of a firm commitment to institutional accountability. The evidence of widespread malpractice in many developing countries casts doubt on the likely effectiveness of the WCED's recommendations on legal and institutional reform.

Recent measures to amend the institutional framework in the forest sector, particularly in the light of the World Bank's findings and recommendations, were the focus of the analysis in chapter six. Areas of institutional duplication or neglect were highlighted. Shortages of manpower and logistics were exposed. It was found that the current law often provides for institutional autonomy to the detriment of effective co-ordination and accountability.[3] A system of institutional

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[1] Supra p.130.

[2] WCED op cit p.330.

[3] Supra p.175.

checks and balances was provided for by the 1969 Constitution.[1] This is desirable in order to minimise the opportunities for malpractice but it requires a clear demarcation of legal duties to prevent duplication, institutional rivalry and problems of leadership. Unnecessary bureaucracy and an excessive concentration of resources at the centre are attendant risks which Ghana, like other developing countries, can ill afford to run.

The Brundtland Report called for the strengthening of institutional capacities so that environmental issues can be afforded the priority they deserve and so that integrated and comprehensive measures can be taken.[2] The analysis in this chapter, however, revealed some formidable obstacles to the kind of integrated decision-making called for in the Report. The complexity of development problems, staff shortages and national economic crises were among the factors identified.[3]

In the Brundtland Report it was argued that traditional institutions, such as the Forestry Department, are often poorly equipped to deal with multi-dimensional environmental problems.[4] The Forestry Department in Ghana, however, is not insensitive to the multi-dimensional role of forests in the national economy and it is well represented in the districts. With increased liaison between the Department, district assemblies and grass roots political organisations, the prospects for concrete action at the district level are better

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[1] Art.163 Constitution of the Republic of Ghana 1969.

[2] WCED op cit p.313.

[3] Supra p.176.

[4] WCED op cit p.310.

now than for many years. The Department may also be the most suitable agency to deal with the issue, review and termination of timber grants subject to the overall supervision of the Ministry. Of course it is necessary to engage all relevant agencies in pertinent aspects of forest administration and control but there is a strong case for prioritising measures to immediately strengthen the traditional sector institution in this case. It is this institution which offers the key to better management.

The FRMP includes measures to strengthen the Department and other sector institutions but a weakness in the project is its failure to adequately address the needs of the decentralised district forestry offices. The heavy centralisation of Government administration, leading to inertia and inefficiency, is a typical feature of many developing countries but the Brundtland Report failed to make any recommendations which directly address this problem.

The need to ensure greater accountability and efficiency in administrative procedures throughout the sector was highlighted in this chapter. It was suggested that without reforms in this direction, measures to increase integrated decision-making, as recommended in the Brundtland Report, may only result in more red tape, more delays and greater administrative inefficiencies. The Brundtland Report was criticised for its failure to make firm recommendations on the institutional issues of accountability and efficiency. The failure to give due weight to the administrative problems which characterise many developing country bureaucracies was

viewed as a serious flaw in the feasibility of the Brundtland recommendations on institutional strengthening.[1]

Where large areas of forest land already exist, the success of forest conservation depends first and foremost on the impact of protective measures. The law relating to forest protection in Ghana was examined in chapter seven. Although forest protection is primarily the responsibility of the Forestry Department, the need for the unambiguous support of other government departments became demonstrably clear upon an examination of the critical situation in the Western Region.[2]

Increased manpower and logistical support in forestry districts are recommendations which touch only the tip of the iceberg. Once again, it is a fundamental conflict of interests over land-use which lies at the root of the problem of forest protection. On the one hand, cocoa producers, small and large, are anxious to continually increase their acreage but on the other hand, the government has a vested interest in protecting the forest estate, not only on environmental grounds but because timber exports contribute to a more diversified economy. Cocoa producers simply cannot be allowed to pursue their personal interests to the detriment of the environment - upon which agricultural activity ultimately depends - and the nation. However, the scale and complexity of the problem suggest that attempts to stop the wave of illegal farming should include measures to compensate the needy, to galvanise public opinion in favour of forest protection and to over-ride

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[1] Supra p.180.

[2] Supra Chp.7.

the political power of some of the largest estate owners. The size of the task cannot be over estimated in view of the damage which has already been done over a long period.

Military action has failed in the past.[1] What is needed is pragmatic action based upon a realistic policy which balances competing land-use options and which takes into account the different requirements of farmers, timber enterprises, the Government and the environment. The enforcement capacities of local institutions must also figure in this equation.

The Brundtland Report made recommendations for land-use planning in all countries.[2] It recommended that land should be classified according to "best use" criteria but the conclusion of this thesis is that a more pragmatic approach is needed when complex land-use conflicts are at issue. Too readily, the WCED adopts technical solutions which afford too little attention to the reality of the political situation in many developing countries. Population growth, rural poverty and the increasing commercialisation of agriculture are characteristics of developing countries which do not always allow for the attainment of optimum environmental solutions. In these situations, it is not just a question of more law enforcement[3] and more long term planning[4] but of finding workable compromises in which those who will genuinely suffer

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[1] Supra p.206.

[2] WCED op cit p.133.

[3] ibid p.46.

[4] ibid p.45.

are compensated while powerful vested interests are appeased or confronted. Only when these divergent interests are adequately taken into account will lasting solutions be possible.

The view found so clearly in the Brundtland Report that poverty is a causal factor of environmental degradation,[1] was found to reflect only a small part of the problem of forest destruction. Reports from the Western Region of Ghana suggest that the largest illegal farms belong to relatively wealthy, capitalist farmers including, it is rumoured, political and military personnel.[2] Poverty, in this case, should not be blamed for the worst environmental degradation because the poorest people do not have sufficient capital or labour to pursue expansionary, large scale activities which pose a serious threat to the environment.

Operation Halt was planned over many months and appears to have broken through the web of vested interests, at least in the short term.[3] It is doubtful however, whether, in the absence of compensatory and/or resettlement measures for the homeless, local grievances can be so easily dealt with. It remains to be seen whether support for the hard line of the Government will be sustained in the long term or whether it will soon be broken down by vested interests. It was suggested that the implications for law enforcement and re-afforestation could prove to be beyond the capacity of local organisations,

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[1] ibid p.5.

[2] Supra p.207.

[3] Supra pp.216-221.

particularly the local district forestry offices, to implement.[1]

An alternative strategy endorsed in this thesis was to de-reserve the most seriously encroached upon reserves in return for an assurance from traditional and district authorities that they accept some responsibility for helping to prevent future encroachments into the remaining forest reserves. This would allow the district forestry offices to concentrate on the protection of the older, well preserved forest reserves.[2]

Attention should also be paid to opportunities for improving agricultural productivity on existing farmland so that continual expansion into forest land is no longer viewed as the only method of increasing agricultural output. This recommendation is consistent with the call for integrated, system-wide solutions to environment and development problems made in the Brundtland Report.[3]

There is a fundamental need to integrate the local economy much more closely with forest exploitation so that the logic and goals of sustainable development will coincide rather than clash with the immediate economic interests of local people. This suggests the need for a long term, comprehensive development programme including measures to increase employment opportunities in the forest sector. An holistic view of environment and development inter-

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[1] Supra p.224.

[2] Supra p.225.

[3] WCED op cit p.37.

relationships was called for in the Brundtland Report but the problem lies in implementing integrated reforms. To date, there has been no major reorientation of Government policy towards this longer term view of the problem.

Chapter eight examined aspects of timber exploitation in Ghana. There is evidence which suggests that the resource base has been mined in the past[1] but efforts are currently being made to put exploitation on a sustainable footing. Ghana needs to exploit more of its secondary species and to strictly conserve some endangered primary tree species.[2]

The timber industry makes an important contribution to the national economy both in foreign exchange earnings and in the satisfaction of domestic requirements. However, the industry exhibits structural inefficiencies including excess capacity in the logging and milling sub-sectors.[3] It is also wasteful in its use of the resource. The industry needs to move into processing higher value products using more efficient technologies and more secondary species. The ban on the export of fourteen primary species in their log form aimed to promote further processing but without special credit facilities business development is constrained. The Forest Resources Management Project and the Forest Inventory Project are helping Ghana to meet the challenge of sustainable development by providing financial, technical and institutional support. These projects were criticised,

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[1] Supra p.234.

[2] Supra p.236.

[3] Supra p.240.

however, for their failure to provide support for the necessary industrial restructuring.[1]

The timber industry exhibited an impressive level of growth in Ghana during the 1980s but the priority afforded to economic recovery had disastrous repercussions for the resource base. Valuable timber was pillaged without the requisite type of scientific and effective management which could have kept exploitation within a sustainable yield. Moreover, the Government lost valuable foreign currency in rushing to export unprocessed timber and in failing to enforce strict accountability in the industry.[2]

The Brundtland Report came down clearly in favour of reviving environmentally sustainable economic growth, particularly in developing countries.[3] Ghana's experience in the forest sector is ample evidence that not all kinds of economic growth are consistent with environmental sustainability. In future, international assistance should be more carefully planned with the environmental impact of all types of assistance being subject to review. International sponsors should be prepared to offer Ghana assistance in meeting nationally determined priorities. These recommendations are in line with those of the Brundtland Report.[4]

Illegal business practices were exposed by the

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[1] Supra p.243.

[2] Supra p.249.

[3] WCED op cit p.89.

[4] WCED op cit pp.77,78.

investigations of the NIC Sub-Committee on Timber.[1] Entrepreneurs have contravened the law, undermining its effectiveness. Their short term, economic interests conflict with the long term requirements of environmental sustainability. The NIC Sub-Committee has made an impressive attempt to stamp out illegal practices. In addition, components of the FRMP which are designed to place greater reliance on the use of market mechanisms, to determine concession allocations, for example, should also help to clean up the industry in so far as they may eliminate opportunities for administrative corruption. Measures to rationalise the industry should include favourable credit facilities for respectable, potentially more efficient operators who are willing to co-operate with ongoing efforts to put exploitation on a sustainable footing. This will further help to push dishonest and disreputable entrepreneurs out of the market.[2]

Low commodity prices, selective demand and tariff barriers which protect developed countries' timber processing industries, were identified as the principal factors in the international market which constrain the implementation of sustainable development policies in the forest sector of Ghana.[3] In a structurally under developed economy, vulnerable to the vagaries of the international commodity market and saddled with international debt, the commitment to maximising foreign exchange revenue has been made, almost inevitably, at

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[1] Supra pp.259-265.

[2] Supra p.264.

[3] Supra pp.265-270.

the expense of the forest environment. Heightened political sensitivity to environmental issues in national institutions is only part of the solution. Ghana's deep dependency on the international market and the policies of international financial institutions restrict the opportunities for national decision-makers to commit their country to sustainable development policies. If Ghana is to switch successfully to long term sustainable development strategies, it needs the support of the international community and its financial institutions. It needs more debt relief, more environmentally sensitive aid and long term assistance to develop beyond an economy based on primary commodity exports.

The Brundtland Report did go so far as to trace environmental linkages back to these macro economic factors[1] but it failed to make radical or convincing recommendations as to how to overcome them. Identifying the causes is only the first step in any programme of reform. At the present time, despite some propaganda and some remedial measures to the contrary, the political will to alter international economic and financial policies simply does not exist. This reality prejudices unfavourably the long term prospects for sustainable development in Ghana, as in many other developing countries.

A number of measures which could improve the legal and administrative control of exploitation in the forest sector were discussed. In particular, reforms in concession allocation procedures were applauded because these should help

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[1] WCED op cit pp.69-70.

to rid the industry of disreputable entrepreneurs.[1] Moves to increase the size of concessions[2] and to ensure regular reviews of rents and royalties[3] were welcomed for their potential to rationalise the over subscribed logging sub-sector. Fiscal measures can also be used to reduce the level of waste occurring during exploitation.[4]

Despite the progress being made in domestic reforms, there remains a fundamental need for direct measures to help the local industry make the improvements in efficiency which are necessary in order to put exploitation on a more sustainable basis in the long term. In addition, Ghana's efforts to improve forest management are not being matched by reforms in the international market for timber. These are necessary in order to make sustainable development policies feasible in developing countries. It was suggested that, without reforms at the international level as well as on the domestic front, the prospects for long term sustainability appear more bleak than the Brundtland Report appears to suggest.[5]

In chapter nine an analysis of tree planting projects in one district in north-east Ghana was attempted. The choice of a district level analysis allowed a number of practical issues arising out of current tree planting projects to be examined.

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[1] Supra p.281.

[2] Supra p.284.

[3] Supra p.296.

[4] Supra p.299.

[5] Supra p.317.

It also provided an opportunity to examine tree planting projects within their broad social, legal and environmental context. To that end, an introductory account of some relevant physical and social characteristics of this district was provided at the start of this chapter. An attempt was made to identify environmental problems and priorities on the basis of this information. Deforestation, declining soil fertility, water shortages and degradation of communal lands were among the most pressing environmental issues identified which may be addressed by tree planting projects.[1]

The views of local people made it clear, however, that farmers face different problems in varying degrees and with different abilities and resources to assist them. Tree planting programmes therefore need to be sensitive to individual circumstances and they should take into account the underlying resource constraints which farmers' face. In addition to tree planting programmes there is a need for integrated development programmes which may help to tackle widespread poverty more directly.

Some weaknesses in the design and management of current tree planting programmes were exposed in this chapter.[2] These confirmed the need to mix clear objectives with flexibility in the methods of project implementation. A failure to incorporate and respond to the views of local people became demonstrably clear in the account of tree planting for dam protection. This case exemplifies the need to address

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[1] Supra pp.328-333.

[2] Supra pp.359-362.

fundamental problems of land hunger, finding solutions which do not afford conservation priority over and above the most basic needs of local people. This can only be achieved by incorporating their views and requirements into the design, management and implementation of projects which so fundamentally affect their livelihoods. This recognition of the need for development and environmental protection to proceed hand in hand, is consistent with the fundamental premise of the Brundtland Report.[1]

The Brundtland Report argued in favour of a change in the quality of growth. This meant a change from short term to long term planning, taking into account the relative physical limits to growth, and a change to growth strategies based on meeting the basic needs of present and future generations.[2] A basic needs approach to sustainable development planning was found particularly lacking in the case of tree planting for dam protection. For example, the action taken by the District Assembly appears to be in direct contradiction to the basic need for farmland of families living around the dam. The decisions of international agencies are at least partly responsible for the neglect of this issue. Affected farmers should be compensated in some way but, just as importantly, their participation in the long term planning and implementation of environmental programmes should be sought.

The WCED called for increased public participation in

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[1] WCED op cit p.8.

[2] ibid p.43.

decision-making processes.[1] In Ghana, the decentralisation programme including the establishment of district assemblies, has had as its objective this goal. While the importance of local institutions in the management of natural resources and environmental campaigns cannot be over emphasised, it is questionable how far Ghana has in fact gone down the road to decentralised, participatory and democratic decision-making. It is most unlikely that the majority of Bongo residents approve of the section in the 1990 Bye-laws which relates to dam protection. There is every reason to believe that the draconian measures were imposed from the top without regard to some important local consequences.[2] It may be argued that the needs of the whole community outweigh the needs of individuals living around the dams or that, in a largely illiterate society, more participatory decision-making processes are not feasible, but the real challenge is to work out viable compromises within these constraints. The District Assembly is a competent and enthusiastic forum in Bongo and it is to be hoped that with time its record on matters such as these will improve.

Aspects of customary land law which may affect environmental programmes generally and tree planting programmes in particular were also the subject of analysis in this chapter.[3] Customary land law has sometimes been identified as one factor holding back development and

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[1] WCED op cit p.330.

[2] Supra p.357.

[3] Supra pp.363-400.

environmental improvement programmes but some of the shortcomings of this analysis were exposed. In particular, the need to examine specific laws within their overall social, economic and environmental context was highlighted. The adaptability of customary law and its fundamental concern to secure for every farmer at least a small share in the proceeds of the family farm were arguments in favour of retaining the main body of that system of law. However, reforms of some particular laws which, in their current form, may discourage or prevent the uptake of current tree planting initiatives, were considered likely or desirable.[1] These recommendations were consistent with the view that the appropriate time for law reform is when broad based development initiatives which address the underlying constraints to environmental improvement are under way. Once again, this confirms the desirability of an approach to development and environmental problems which is both holistic and integrated, as recommended in the Brundtland Report.[2] The failure of some current programmes to adequately incorporate a basic needs dimension and a participatory approach to development implies that the objective of sustainable development may not be so readily implemented as the Brundtland Report appeared to suggest.

The National Forest Policy, discussed in chapter ten, will require more than oral support if it is to be effective. Long term provision for financial and technical support must be guaranteed. Some highly political questions were not fully

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[1] Supra p.399.

[2] WCED op cit p.9.

addressed in the draft Forest Policy. There is no mention of Operation Halt, for example and no consideration of the fundamental question of how competing land-use options are to be reconciled in a country whose population is growing quickly while its economy is not.

The National Forest Policy contained a number of recommendations for law reform in the forest sector. It was argued that, in many cases, the problem lies more in the enforcement of the law than in its terms per se.[1] Nevertheless, a number of factors which policy and law makers may wish to bear in mind when considering law reform were suggested on the basis of the analysis made in preceding chapters. These included - the need to see environmental problems within the context of land-use policy and overall economic policy; the need for pragmatic measures to complement and make feasible environmental protection policies; the need to galvanise the support of interest groups involved in the exploitation of the resource; the need to ensure institutional accountability throughout the sector; the need to rationalise the industry and clean up industrial practices; the need for economic development and sustainable development policies to be implemented at the same time and within a broad based, integrated and holistic development programme.[2]

Fundamentally, there is a need for measures which tackle the underlying conflicts of interest which have been exposed in this thesis so that sustainable development policies and

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[1] Supra p.418.

[2] Supra pp.418-423.

laws will not be undermined by these conflicting interests as they have been in the past. Nevertheless, on a realistic assessment, it seems credible to suggest that the interests which conflict with the objectives of sustainable development pose powerful constraints to the feasibility of the sustainable development concept as propounded by the WCED.[1]

The major proposition of the Brundtland Report, that economic development and environmental protection must be made to complement each other,[2] has been endorsed by the analysis in this thesis. In the short term, it may be possible to pursue either objective without regard to the other but the analysis made in this thesis suggests that in the long term, problems arising from the neglect of one of these objectives may frustrate the progress of the other. Policies to protect the environment which ignore development objectives cannot satisfy all the requirements of sustainable development, particularly its basic needs component.

Research into the relevant law and practical workings of sectoral and local institutions has indicated that the WCED may have over estimated the potential impact which institutional and legal reform can have.[3] The reality of the domestic and international situation gives little grounds for optimism that enlightened reforms of the type recommended will in fact occur. The impartial, sometimes technical and always

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[1] Supra p.423.

[2] WCED op cit p.49.

[3] ibid p.46.

compromising tone of the Brundtland Report gives insufficient weight to the intense political conflicts which surround environmental questions in developing countries. Population growth, land hunger, environmental degradation and economic decline are problems rapidly increasing in magnitude, locking developing countries into a vicious circle from which they look set to have great difficulty of escaping.

The call made by the WCED for greater social equity within generations and between nations[1] is poorly reflected in current international developments. Environmental degradation is already of such importance in many developing countries that there is no need to argue principally in terms of the rights of future generations.[2]

On the domestic front, democracy, participatory decision-making and institutional accountability are goals which Ghana is making some effort to implement but, in many ways, the call for a basic needs approach to development has not yet been realised. In these circumstances, the Brundtland agenda for sustainable development has so far only partially been accepted.

Nevertheless, in general, the efforts made in recent years to implement sustainable development strategies in Ghana are commendable. Policy makers, administrators and the general public are increasingly aware of important environmental issues. Environmental programmes are being stepped up and

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[1] ibid p.43.

[2] This observation contrasts with the definition of sustainable development given by the WCED ibid at p.8.

environmental issues are being afforded greater consideration in economic, national and local decision-making. The logistical requirements of forest sector institutions and the need for better enforcement of forest laws are matters now receiving the attention they deserve. In some cases this has involved highly political decisions being taken.[1]

The analysis in this thesis, however, has shown that greater attention must be afforded in the relevant laws and policies to long term planning, effective and feasible enforcement strategies, participatory decision-making processes and basic needs requirements if the sustainable development model is to be wholly embraced. The international community, instead of sometimes frustrating these efforts, should support Ghana's attempts to implement policies and laws which are consistent with a long term sustainable development strategy.

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[1] In the decision to implement Operation Halt, for example.

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APPENDIX ONE: INTERVIEWS WITH CHIEFS AND TINDANAS.

During her stay in Bongo District from March-July, 1990, the author conducted interviews with traditional authorities in Adaboya, Bongo and Gowrie. The objective was to obtain a fuller understanding of customary law in this dsitrict paying particular attention to rights to trees and other aspects of the law which may influence environmental quality and associated projects and programmes. The basic questions which were used to develop a discussion on various points of law are set out below, followed by a summary of the information provided by each authority interviewd.

Basic Interview Format Used in Discussions With Chiefs and Tindanas.

1. What are all your duties as Chief/Tindana?

2. What is the division of roles between you and the Tindana /you and the Chief?

3. Who is the owner[1] of - (a) bush land (b) grazing land (c) compound land?

4. What rights do you exercise over - (a) bush land (b) grazing land (c) compound land?

5. Who is the owner of - (a) self seeded trees on bush land /grazing land /compound land (b) trees planted on bush land /grazing land /compound land (c) trees planted on begged or borrowed land

6. What free rights exist in - (a) bush land and the trees thereon (b) grazing land and trees growing there (c) compound land and trees thereon?

7. Are there any other special laws or customs about trees in your area?

8. What is the procedure for acquiring land (a) temporarily (b) permanently?

9. What is the appropriate procedure for (a) the sale of land (b) a pledge of land (c) a grant of land to settler tenants?

10. Is it ever possible for a family /section to make a permanent grant of land to an individual or family?

11. How do women get land in this area, and on what terms?

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[1] For comments on linguistic problems associated with the use of terms such as "owner of", see supra Chp.2.

12. What is the law on succession to land?

13. How would you resolve a dispute between a tenant and a grantor family?

1. Interview With the Tindana for Adaboya, June 1990.

Nobody has authority over the Tindana. Even the Paramount Chief of Bongo is under him in that the Paramount Chief will come to the Tindana to have sacrifices made for him when he is first appointed. The Tindana confirms the appointments of all the chiefs within his area of jurisdiction. He has sub-Tindanas representing him throughout the area.

The saying that "the Tindana is for the land" means that the Tindana is for the land itself but not the farms. He is in charge of houses, graves and sacrifices.

The Tindana settles land disputes including boundary disputes. The Chief is for the people but not for the land so the Chief only gets involved in land disputes if blood has been shed. If there is a dispute, the people go to the Chief and the Chief sends them to the Tindana. The Tindana can go and divide the land among them or even take back the land. The Chief could not take back the land.

The Tindana is for all grazing land. The Tindana is for all trees on grazing land and bush land. He is also for all dawa dawa and shea trees anywhere. Anyone can harvest their fruits on bush or grazing land but only the Tindana can harvest fruits from those trees on farmland. He has agreed to allow some families to harvest the dawa dawa and shea trees on their farmland themselves. The Tindana is for all other self-seeded trees on any land but this is more in name than anything else. Anyone can harvest the fruits of any self-seeded tree, except shea and dawa dawa, anywhere, but trees planted on farmland belong to their planter. If somebody plants trees in the bush those trees will belong to the Tindana unless he first informs the Tindana.

The Tindana allocates land. If a stranger comes to beg land he must first see the landlord and then the Tindana. Once land has been begged, farmed and built on, it cannot be taken back. A settler farmer could only really be removed if he was doing harm to the people, destroying the village, for example, but it has not happened yet.

Land is never sold and it is not even pledged in this area.

Rivers, streams and dams are for the Tindana. On bush land and grazing land anyone can collect dead wood but nobody can take live wood without first asking permission - from the Tindana, for example.

When the Tindana allocates land to a farmer all the trees, excluding shea and dawa dawa trees pass to the farmer. When a landlord gives land to a farmer who has begged for land, the trees remain with the landlord, unless the landlord is a stranger coming to settle on the land. In that case, the trees pass to the settler and he and the original landlord will share the fruits.

2. Interviews With the Chief of Adaboya, 18/5/1990 and 21/5/1990.

The duties of the Chief are to settle disputes. He also represents the Government. Although he helps to settle land disputes, the Tindana is for the land in every other respect "the Chief is for the people and the Tindana is for the land". Land is for the Chief and the Tindana in that the Chief could take back the land if there was a dispute.

Strangers who wish to make new farms in the bush should first consult the Chief after seeking the permission of the landlord so that there will be no disputes in the future.

The Chief is for the grazing land. Nobody is allowed to farm there. Some people have tried to encroach into the boundaries of grazing land so in some years the Chief and Tindana unite and go to mark all the boundaries with pegs.

In the bush and in grazing land, everything can be taken freely, even dawa dawa and shea nuts. Compound land is for the landlord but the shea and dawa dawa trees are for the Tindana, unless the landlord, for example, gives the Tindana a fowl in which case the Tindana will let the landlord's family harvest them. Sacred groves belong to the whole village. Nobody can cut anything from them.

Shea and dawa dawa trees belong everywhere to the Tindana. If a person plants shea or dawa dawa trees anywhere, he should first inform the Tindana so that when grown, those trees will belong to their planter. If he does not, those trees will belong to the Tindana.

Trees planted in the bush or on compound land belong to their planter but if a woman plants trees on her husbands land, although those trees belong to both, the husband becomes their owner. The situation is like children - if the couple split, the children belong to the man.

It is completely forbidden to cut live wood from any tree in Adaboya. The Fire Volunteers forbade it. Any dead trees can be cut by anyone but if those trees are standing on compound land, then people should first ask the landlord for permission to take the wood. A tenant should ask his landlord first. Branches from living trees can only be cut with the permission of the Fire Volunteers and then only for a very good reason.

The sale of land is prohibited in Adaboya. Not even the Chief or the Tindana could do that. Land cannot even be pledged although it can be begged for an unspecified number of years in which case the landlord can take back the land at any time. If strangers want land then all the elders, sub-chiefs, chiefs and tindanas meet to confirm the allocation so there will be no future problem. A landlord who gives land to a person who settles on it and builds a house can still claim it back if the settlers are bad to him or his family but, so long as they are good, they cannot claim back the land.

On the death of a landlord, all the land is divided among the sons. A father would not give his sons a farm while he is still alive. His sons can only go to beg land from someone else.

Rivers and streams belong to the Tindana but man-made

dams belong to the Chief.

3. Interview With the Regent of Bongo, 8/7/1990.

The duties of the Chief are to look after the village and to settle marriage and land disputes. The Chief is for all the land and human beings. The Chief and the Tindana are like brothers so the Tindana will always be kept informed. They should both be consulted. The Chief is for the grazing land. If there are any problems, the Paramount Chief will consult with the Tindana. Every Chief consults his own Tindana for that area. The Tindana is not consulted on land matters but only about sacrifices. It is the Chief who installs the Tindana in this part of the District.

All trees, planted and self seeded, are for the Chief, wherever they are cited. The Chief is for the people so why not also their trees? For example, if a landlord misuses his trees, the Chief can confiscate them and this action has been taken in the case of dawa dawa trees. The Tindana has no rights over trees. Anyone can pick shea nuts because the Paramount Chief is not able to pick them all. The ownership of all fruit trees is with the Chief but the right to their produce rests with the landlords. On compound land anyone can take baobab leaves but a person should ask permission of the landlord to take grass from compound land.

It is prohibited to fell live trees for any purpose but anybody can cut small branches for fodder and rafters. Nobody could cut large branches without a good reason. People can take dead wood but they should ask permission of the relevant landlord to take it. Out in the bush and on grazing land anyone can gather tree produce for free but for firewood they can only cut dead wood. If a person was caught cutting live wood, he would be charged by the Chief. It was the forefathers who first said that live trees should not be cut.

The one who is for the land is for the trees. If land is leased to a tenant the landlord can still collect the fruit of trees on that land but in practice much will depend on the relationship between the landlord and his tenant. A landlord owns the produce of trees planted by his wife(wives) on the compound land. A woman can never own trees because she can never own land.

Land can never be sold but pledges of land occur frequently. Land can also be granted away to permanent tenants but in theory the grantor could always claim it back at any time.

Many cases are brought to the Chief concerning rights to trees, especially dawa dawa and shea trees. In these cases, the Chief always awards the trees to the descendent of the original landlord. He traces the landlord through all the ancestors. Cases about rights to trees are brought about two or three times a year. If the people do not agree to the Chief's judgement, he has the power to confiscate the trees for himself. A tenant could be collecting tree produce through lapse of time or because of an original agreement with the landlord, so it is not an absolute indication of title to the

land.

If a permanent settler plants trees he will use those trees for so long as he remains on the land but if he leaves the land then the land and the trees revert to the original grantor's family.

About once a year, a case will arise in which a landlord wishes to evict a tenant. Usually, the Chief will plead with the landlord to let the tenant stay but if the landlord has a very good reason he will be allowed to evict the tenant. A landlord should always consult the Chief before taking any action.

Most disputes about land arise between landlords and tenants, or about whether land was pledged or leased or about the removal of annual tenants.

4. Interviews With the Chief of Gowrie, 4/4/1990 and 12/4/1990.

The Chief became the Tindana for Gowrie at the same time that he became the Chief because, in this village, the one who becomes the Chief automatically becomes the Tindana.

The principal duty of the Chief is to keep the peace by solving the peoples' problems. The principal duties of the Tindana are to look after the land and the gods. If there is any problem, he will go to the soothsayer's house and if there is a need to make sacrifices, the Chief provides it - for good health and a good harvest, for example.

When it is said that the "Tindana is for the land," it only really means that he is in charge of sacrifices to the Gods for the village lands. But it is also true that the Tindana has some kind of interest in the land and the trees because he sacrifices to the gods. Trees are like human beings. Whoever looks after the people also looks after the trees.

The landlord is for all types of self-seeded trees on compound land including dawa dawa and shea trees. After harvesting dawa dawa and shea trees, the landlord should bring a portion for the Tindana but the requirement is not strictly enforced. A farmer cannot really say that he "owns" self-seeded trees growing on his farm, he only "owns" their fruits and can share some of the produce with the Chief/Tindana. Also, a farmer can really only say that he "owns" his farm not the land.

The Chief is for the grazing land, the Tindana is for the gods. The Chief is for all self-seeded trees growing on bush or grazing land. If a person wants to plant trees on grazing land, they will belong to him but he should first ask the Chief for his permission. The status of the land will be unaffected. All the land belongs to someone.

Anyone can collect the fruit from trees growing on grazing land or bush land but nobody, not even the Chief, can collect the fruits on a commercial scale. In order to collect wild fruits from compound land people should first ask the permission of the landlord but if he is not around they will just eat and go. Dead wood on grazing land and bush land can

be taken by anyone but long ago the Chief passed a law prohibiting the cutting of live trees. There would be no trees left by now if he had not! Other common rights in grazing land include the right to graze animals, the right to collect grass for roofing and the right to collect manure.

In Gowrie, some people get wood and building poles from their own trees, others have to buy it in the market. If anybody wants to cut live wood on grazing land, they must first ask the opinion of the Chief who will show them the best places and warn them never to cut the whole thing down. Nobody can cut down a living tree anywhere but people can cut branches from their own trees on their land.

The Chief has power to settle disputes about land. They usually relate to whether the land was pledged or loaned or granted to permanent tenants. If the trees and the land have passed to a farmer then a permanent grant of the land has been made. A permanent grant is made when tenants settle, build a house, collect the tree produce and remain on the land for many years. The original landlord cannot remove these kind of tenants unless they decide to go. If the trees have not passed then the grant was a temporary one which can be called back at any time. Whenever land is pledged or leased temporarily the grantor family will go to harvest the trees in order to prove their title. The original grantor may tell a tenant to bring him the fruits or they may agree to share the fruits but the original landlord will not stop collecting his share because if he did it would indicate that a permanent grant had been made.

If two sons make their farm together and one son dies, then the remaining brother inherits the land. In a large compound, if all the brothers remain united, the land is inherited by the eldest surviving brother and then by the eldest son of all the brothers. In most families though, the land is divided among the sons on the death of the father. The division of land in this way has always been common. A brother of the deceased may exercise some nominal supervision to ensure a fair division and to settle disputes. Women do not inherit land or anything else from their husbands. If none of the sons are old enough to inherit the land when their father dies, the wife may farm the land on behalf of the children. Sons help on their father's farm, whatever their age, until the latter dies.

People do not sell land here. It can only be begged. A landlord can give land to a friend whenever he has more land than he can work but he can ask for the land back at any time.

APPENDIX TWO: FAMILY INTERVIEWS.

During 1990, interviews were held with a number of families known to reflect a variety of social arrangements, resident in Adaboya, Bongo and Gowrie. The objective was to elicit information on social, legal and other issues of relevance to the study. The following is a brief summary of the information gathered on family arrangements.

Adi'bono's House, Bongo.

Members: Adi'bono (widow, deodana), Akasali (second eldest son, caretaker), Uma (young sister).
Members living away: Abas (eldest son).
Section: Anafobisi.

After the death of her husband, Adi'bono remained on her husband's farm acting as the guardian of her children until they reached a mature age. The eldest son is now officially the landlord but he lives in the south where he is a caretaker on a cocoa farm. In his absence, all decisions are taken by Akasali, the second eldest son, in consultation with Adi'bono.

In addition to the compound land, Akasali has begged a small piece of land from a family friend in order to sow groundnuts. That farm is not planted every year. Each year they tell the landlord whether or not they intend to farm the land. He would not refuse to let them use it.

Three years ago, a small piece of the family's land at Vea was pledged by the deceased father. The land could be redeemed at any time.

Akasali has planted a lot of trees - mangoes, neem, avocado, paw paw, guava, baobab, tamahara. The right to the produce of these trees belongs to Akasali as it would with any trees planted by Adi'bono or his sister because, until his elder brother returns home, he is the landlord of the farm. Adi'bono sells the fruit in the market and buys whatever the family needs with the profits.

If, in the future he gets a surplus of building wood from his neem trees, Akasali will take some branches to sell in the market. Only a needy friend would be given branches for no charge. Self seeded trees on the farm include giya and sinsibi. All self seeded trees are owned by Akasali. Anyone can collect their fruits but during the rainy season he puts thorns around them to stop children gathering their fruit and in the process destroying his crops. Akasali trims his trees so they won't overshadow his crops and he plants peppers beneath the mango trees so the land is not wasted. He uproots seedlings if there is a risk of overcrowding.

Abugre's House, Bongo.

Members: Abugre.
Members living away: One brother and one son.
Section: Anafobisi.

Abugre lives alone in a small house in Bongo near the local administration buildings and a school. Her farm is very small because a part of her family's land was taken away by the Government for official buildings. Her family received no compensation for the acquisition. When her father died, Abugre stayed at home to look after her mother and to produce an heir for the farm because her brother had moved more or less permanently down south.

There a few self seeded trees on the farm including a kapok tree and a baobab. She would let anyone collect the leaves of her baobab but she takes sole possession of the fruit from her kapok tree.From October - November, Abugre sells the fruit of the kapok in the market.

Abugre's brother once planted a neem tree in front of the house but termites destroyed it.

Ayalkoom's House, Gowrie.

Members: Francis (yi-dana), Francis' mother (deodana), Nvom (Francis' wife), Akake (sister to Francis), Maclean (eldest son of Akake), six children.
Members living away: Three brothers, two children.
Section: Abileobisi.

Francis is a teacher and a brother to the Chief of Gowrie. He holds family land around the compound and a small plot of irrigated land behind the Vea dam. Two years ago, a small piece of family land was lent out by Francis to his friend, Thomas Agongo. Thomas holds the land without payment of rent for an indefinite duration but Francis could demand to have the land back at any time. Before giving the land, Francis informed the family head whose approval was necessary. In 1989, Francis lent his irrigated land to a friend for one season. His friend paid the rent and rates due to ICOUR on his behalf.

Akake is Francis' elder sister. Because of her obligations to stay at home and help her mother, she has never had the opportunity to marry and leave the compound. Francis is her guardian and he, not her sons, will inherit all her property when she dies. In addition to helping on the compound land, Akake and her son, Maclean, hold individual plots of family land where they grow rice, keeping the produce for themselves. Francis could call back that land at any time. Akake also cultivates groundnuts on a piece of land she begged from a friend and she participates in a group farm at Adaboya through the DWM.

Crops grown on family land, excluding the upland rice grown by Akake and Maclean and excluding all vegetables, which are always shared between Nvom (Francis'wife) and Akake, belong solely to Francis but he would not sell any of those crops without first consulting Nvom.

There are several useful trees on the compound land including some self seeded coconut trees which Francis carefully weeds around. Anybody is entitled to pick their fruit for personal consumption. Only Francis could authorise

wood cutting. Francis and Akake have planted some mangoes, teak and one guava tree on the compound land. On his rice farm he has planted some paw paw and leuceana trees to mark the boundaries of his farm. The mangoes and paw paws (the guava is not yet fruiting) belong exclusively to Francis and can be harvested only by the members of his household without his prior permission. Francis considers himself to be the owner of all trees planted on his land even those planted by others.

He purchased the mangoes from Bongo Agroforestry but the teak and guava seedlings were given to him free by ICOUR. All his newly planted seedlings are protected by mud walls. They are watered every three weeks and cow dung is applied about once a year. Bongo Agroforestry and ICOUR Agroforestry have been giving advice on tree planting.

In 1989, Akake helped the DWM to plant neem, mango and other trees around the dam. That involved building walls around each tree and daily watering. The local DWM have now started their own small nursery to plant more trees. Bongo Agroforestry has been advising them. Government has told them how good it is to plant trees. No plans have been made for the ownership of the trees and fruit around the dam. Mango trees planted by ICOUR can be harvested by anyone. Akake would like to plant some more mango, shea, dawa dawa and leuceana trees on the compound land. Nvom, however, is reluctant to plant any trees because she is not sure how to look after them and it is difficult to get water for them.

Maclean has contributed communal labour in a group tree planting exercise around the dam. It was organised by ICOUR about three years ago and the seedlings were provided by the Forestry Department. The trees belong to the whole village but only ICOUR or the Chief can authorise people to cut branches.

Azure's House, Bongo.

Members: Ayanga (yi-dana), Ayua (a brother), Anafo (a brother, son of Akarebo), Mba (eldest son of Ayanga), Akarebo (deo dana), Asinyaka (wife of Ayanga), Azanlerego and Akuntugebo (wives of Ayua), Asibi (Anafo's wife), Adango (Mba's wife), Ayewuni (Ayanga's daughter) and 16 children.
Members living away: Four adult males.
Section: Sa'abo. (Host section: Anafobisi.)

Azure's house lies on the main Bongo-Bolgatanga road about three kilometres from Bongo. The family's grandfathers migrated here and were given land to settle on as permanent tenants provided always they remain on good terms with the host section.

Ayanga is the family head and landlord. He is now too old to participate in farming except to supervise. His family possess a large compound farm as well as some land closer to Bongo. All the land has been divided between the brothers (living and deceased) of Ayanga. This means that Ayanga, Mba, and their wives and Ayewuni farm, store grain and eat together as do Anafo, his mother and his wife, and Ayua and his wives. In practice, all the members help each other with farming. None of the women make their own farms. Ayanga and Mba also

farm a small piece of neighbouring land on loan from a friend.

When Ayanga dies, Ayua will become the next landlord and family head but Ayanga's land will pass to his three sons. Mba will act as caretaker of the land for his two brothers. Akarebo is the only surviving wife of Ayanga's father. Her eldest son is Anafo. She is in charge of all the crops which Anafo and his wife produce. Ayanga's daughter, Ayewuni, was married but when her husband died she opted to return to her father's house where she now helps him.

Mba and Anafo, with the help of the women, started tree planting a few years ago, encouraged by BRDP and Bongo Agroforestry. They planted five mangoes, six teak trees and twelve neem trees but only one of the teak trees and four of the neem trees have survived despite regular watering in the dry season, protection by mud walls and the application of manure. Termite attack seems to be the reason for the death of so many of the trees. They were all planted on the compound land and, had they begun to fruit, their produce would have been shared among all the family members with any surplus being sold in the market, the revenue being the property of Mba and Anafo despite the acknowledged principle that the ownership of the trees which they have planted vests in the landlord of the house. Self planted seedlings are carefully weeded around but many were recently destroyed by an accidental fire which spread to their land.

Asibi once participated in a group tree planting exercise about two years ago. The group planted a large number of teak trees along a near by valley under the leadership of Bongo Agroforestry. Each tree was protected by a mud wall and she helped to water them. Some of the trees have survived. They belong to Bongo Agroforestry.

Akiriba's House, Adaboya.

Members: Namobire (yi-dana), Adikbase (brother), Abosi (deodana), Asampanbila, Akologo, Abadigrebuno (widows of Anamoo, a brother), Akobire and Atipogbilla (wives of Namobire), Adeyana (Adikbase's wife) and fifteen children.
Members living away: None.
Section: Anafobisi. (Host section: Akutabuna.)

When Anamoo recently died his brothers, of the same mother, decided to continue living and farming together. This is a united household in which everything is held in common and all the members eat together, the women taking it in turn to cook. The Akiriba family are settler tenants on land belonging to the Akutabuna section. Their forefathers migrated to Adaboya many years ago. Members of the Akutabuno section still harvest the shea trees on the land given to Akiriba's family.

The family possesses a large amount of land around the compound and it also makes extensive farms in the bush. The land in the bush is held from year to year by courtesy of the landowners but should the family be unable to cultivate any of the land in one particular year, which is often the case, its right to cultivate the land in following years is not lost.

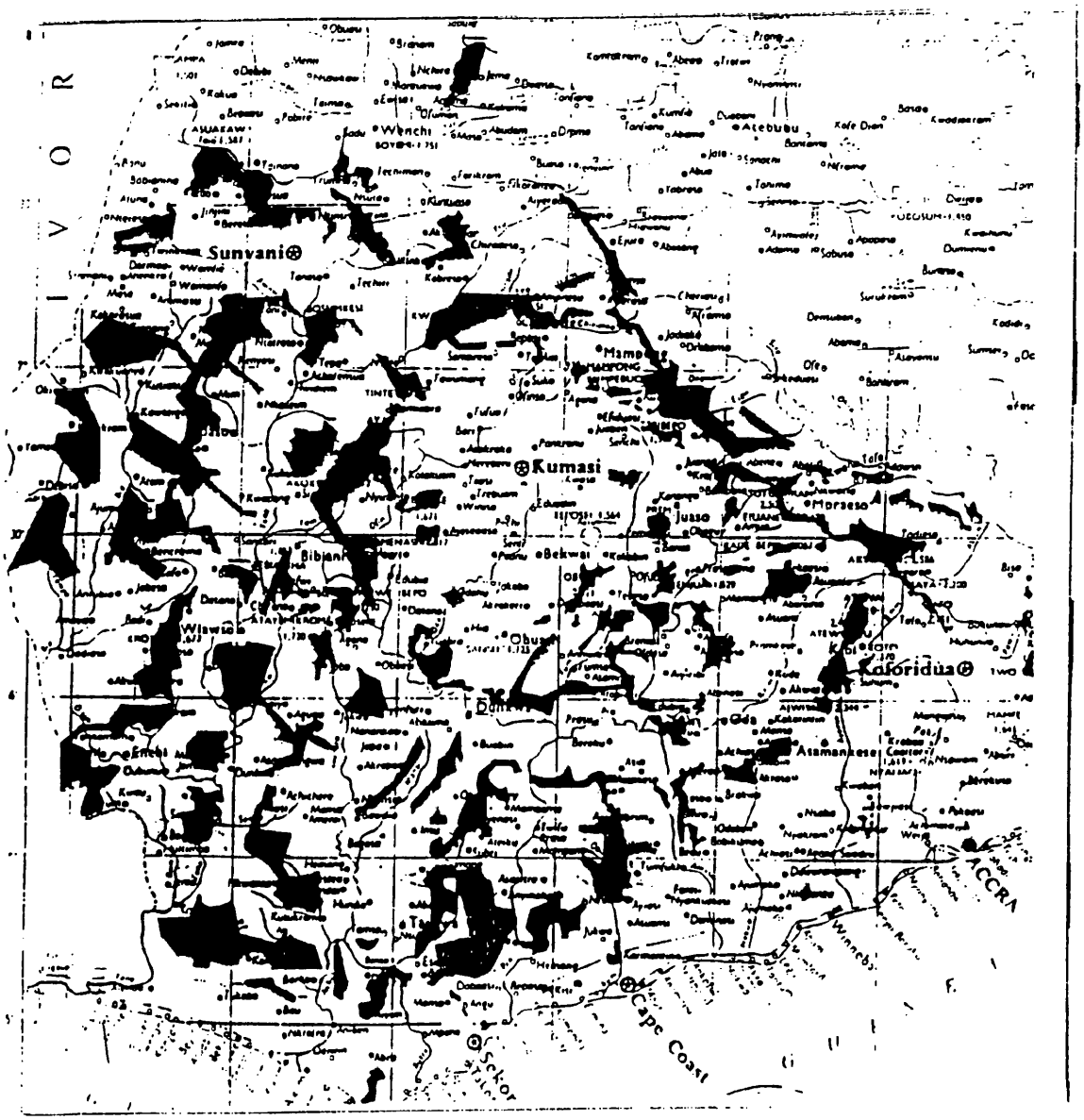
There is no charge for the use of the land and it is not necessary for them to seek the prior permission of the landlord every year. Some of the bush land is owned by the Anafobisi section. In 1989, all the women made farms on land they have begged from friends or relatives.

Namobire allows anyone to take dead wood or crop stalks from his farms including the compound farm. The women in this house only cook with wood.

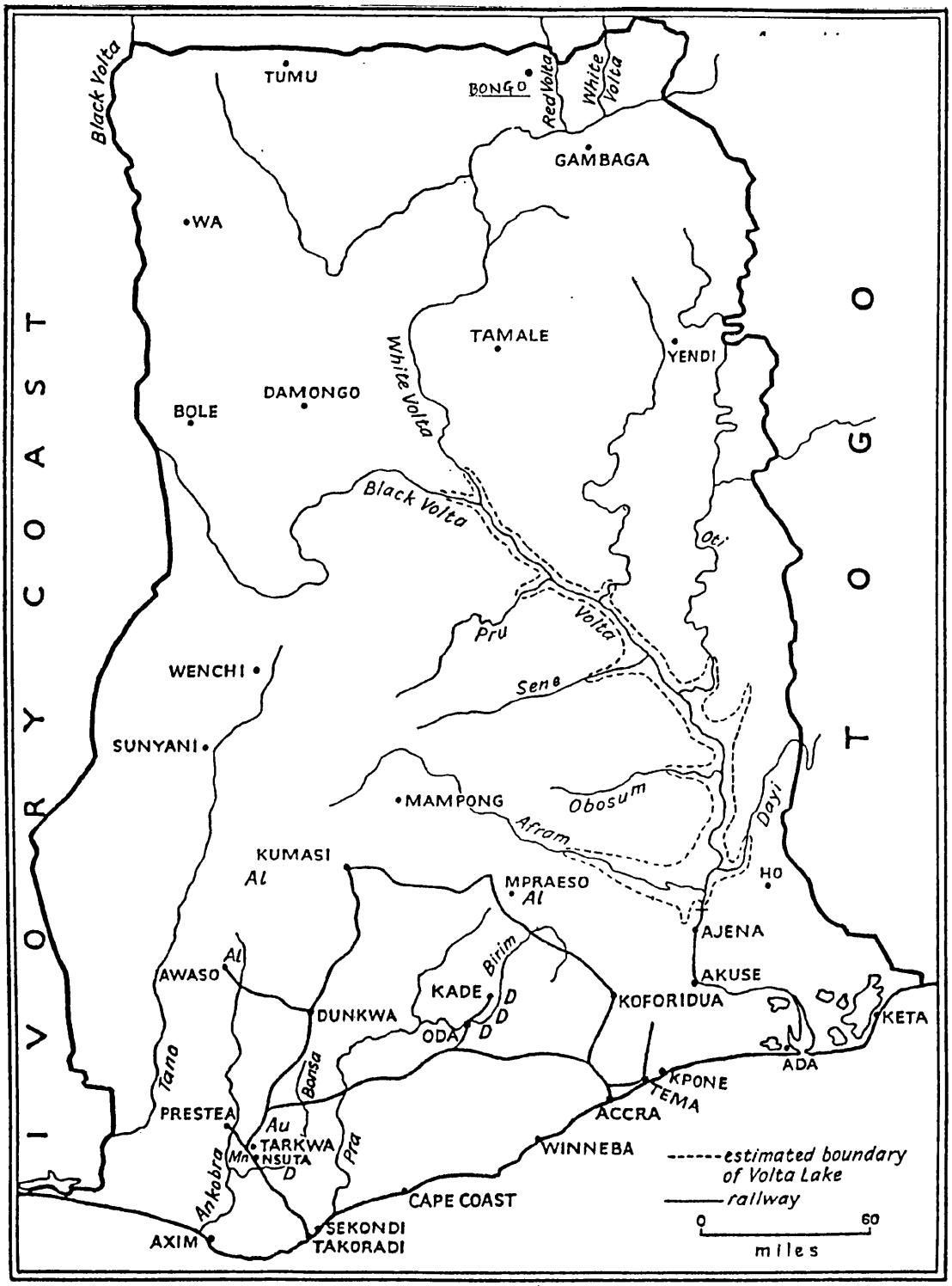
Namobire would like to have some shea and dawa dawa trees for himself but he would not plant any on the compound land because that might prompt the landlord to come and seize the land and/or the trees. Namobire has planted approximately 50 shea trees on some of his bush land. He's on good terms with the landowner who has not complained. The fruits of those trees belong to him and his wives but he's seen other people stealing them.

Last year, Namobire and Adikbase participated in group tree planting in the valley on one of their fields. They planted mangoes, teak, eucalyptus etc. but all the trees died, possibly due to termite attack. The group had been hoping to get fruit to share among its members.

APPENDIX THREE: MAP OF FOREST RESERVES IN THE WESTERN REGION (1969).



APPENDIX FOUR: MAP OF GHANA (1966) SHOWING THE APPROXIMATE LOCATION OF BONGO.



APPENDIX FIVE: MONTHLY RAINFALL TOTALS AT BOLGATANGA METEOROLOGICAL STATION, 1987-1989.

YEAR MONTH	1987	1988	1989	TOTAL	MEAN
JAN	00.0	00.0	00.0	00.0	00.0
FEB	00.0	00.0	00.0	00.0	00.0
MAR	38.4	00.2	52.7	91.3	30.4
APR	11.0	46.3	04.8	62.1	20.7
MAY	28.8	70.0	79.0	177.8	59.3
JUN	117.3	151.8	176.8	445.9	148.6
JUL	176.5	170.1	144.4	491.0	163.7
AUG	260.0	223.2	374.8	858.0	286.0
SEP	175.2	270.2	274.2	719.6	239.9
OCT	92.7	TRACE	79.6	172.3	57.4
NOV	00.0	47.2	00.0	47.2	15.7
DEC	00.0	00.0	44.4	44.4	14.8

APPENDIX SIX: LIST OF INTERVIEWEES.

On Forestry.

The following interviewees and respondents are thanked for their valuable assistance -

Departmental Head, IRNR, UST, Kumasi
General Manager, A.G. Timbers
General Manager, Naja David Veneer and Plywood Ltd.
Managing Director, African Timber and Plywood Co.
Managing Director, Mim Timber Co. Ltd.
Mr. Adjei, Lands Commission
Mr. Anan, District Forestry Officer, Sefwi Wiawso
Mr. Appiah, Public Relations Officer, Gliksten (West Africa)
Mr. Asante, District Forestry Officer, Juabeso-Bia
Mr. Attah, Timber Export Development Board
Mr. Bright, Secretariat of the Lands Commission, Sefwi Wiawso
Dr. Chatchu, Ministry of Lands and Natural Resources
Mr. Faakye, Forestry Department, Juabeso-Bia
Mr. Francois, Chief Conservator of Forests
Mr. Kumii, Forest Manager, Mim Timber Co. Ltd.
Mr. Mensah, Area Manager, Mim Timber Co. Ltd.
Mr. Mintah, Member of the Royal Family of Bonsan
Mr. Sarpong, Chief, Bonsu-Nkwanta
Personnel Manager, John Bitar and Co. Ltd.
Professor Twufour, Forestry Commission
Regional Manager, Forest Products Inspection Bureau, Kumasi
Union Director, Ghana Timber Marketing Organisation

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Bolgatanga Diocesan Development Officer
Bongo Agroforestry - Project Staff
CCFI - Project Leader
Department of Community Development - District Manager
Department of Fire Services - Messrs. Atasinge, Gaisie and Yitah
Department of Social Welfare - District Manager
DWM (Bongo Central) - Members
ICOUR Agroforestry - Project Manager and Nursery Manager
Lands Commission - Regional Officers

Mr. Abrahim, District Forestry Officer
Mr. Adango, Environmental Health Department
Mr. Adua, Department of Parks and Gardens
Mr. Alabadeck, Small Scale Agricultural Extension Support Unit
Mr. Anafu, Rural Water Supply Unit, GWSC
Mr. Apua Kolga, District Organising Assistant of CDRs
Ms. Asakenongo, Bongo resident
Mr. Atise, District Leader of the Democratic Youth League
Ms. Azure, Leader of BRDP Health Component
Mr. Bening, District Administrative Officer
Mr. Bosumtwe, Town and Country Planning Department
Mr. Galuma, Department of Mobilisation
Ms. Gibbs, District Organiser of the 31st DWM
Mr. Gyima, District Organiser, Ministry of Agriculture
Mr. Osaka, Regional Officer, EPC
Mr. Otoo, Regional Forestry Officer
Mr. Puganso, Regional Director, Oxfam
Ms. Stamp, Oxfam, U.K.
Mr. Zemp, Bongo Agroforestry

General Advice.

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Mr. Ankudey, Chief Game and Wildlife Officer
Mr. Amposan, Game and Wildlife Officer, Bia National Park
Mr. Derry, Technical Assistant, Game and Wildlife Officer, Bia National Park
Principal Game and Wildlife Officer, Mole National Park

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Mr. Abrokwa-Ampadu, Principal Programme Officer
Mr. Seth Osafo, Legal Secretary
Mr. Klufio, Programme Officer
Mr. Ampadu-Agyei, Programme Officer
Mr. Allotey, Programme Officer
Mr. Iddrisu, Programme Officer

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