



**Government of Ghana**

**Ministry of Lands & Natural Resources**

**DEVELOPMENT OF A FRAMEWORK ON TREE TENURE AND  
BENEFIT SHARING SCHEME  
(LEGAL REFORM PROPOSALS)**

**FINAL REPORT**

**Submitted By:**

**CLEMENT KOJO AKAPME**

**JUNE 2016**

## TABLE OF CONTENTS

### Contents

CHAPTER ONE .....	3
INTRODUCTION .....	3
1.1 Introduction.....	3
1.2 Objectives .....	3
1.3 Task/scope.....	3
1.4 Deliverables .....	4
CHAPTER TWO .....	5
TECHNICAL APPROACH AND METHODOLOGY .....	5
2.1 Consultant’s Understanding .....	5
2.2 Approach .....	6
CHAPTER THREE .....	7
ASSESSMENT OF THE EXISTING TREE TENURE AND BENEFIT ARRANGEMENT SCHEMES .....	7
3.1 The Existing legislative framework for Tree Tenure and Benefit Sharing .....	7
Naturally occurring forests .....	9
Planted timber .....	10
CHAPTER FOUR.....	13
POLICY AND LEGISLATIVE RECOMMENDATIONS FOR TREE TENURE AND BENEFIT SHARING .....	13
CONCLUSION .....	17

# CHAPTER ONE

## INTRODUCTION

### 1.1 Introduction

The *Timberizations* of the forestry sector, slash and burn agricultural practices, population expansion, mining, particularly surface mining and some unfavourable policy environment for off-reserve forest management have in contemporary times become the major drivers of deforestation. These issues have led to the loss of about 80% of Ghana's forest resources under state management with the greatest forest loss occurring since 1990. Farmers are destroying timber trees on their farms for a number of reasons such as the absence of direct financial benefits and to avoid the destruction of their cocoa trees when the timber right holders come to log for which they are not adequately compensated, if they are compensated at all.

Communities sometimes also collude with loggers particularly chainsaw operators to illegally harvest timber trees from their farms for financial gains because that is the only time they benefit financially from the timber trees they have maintained and nurtured on their farms. These incidences are most prevalent in the off-reserve areas.

Framing the options for tenure and benefit sharing schemes in which the ownership and management of resources off-reserve are clarified and farmers are assured of improved returns for managing and maintaining trees, will provide a greater likelihood and an incentive for the farmers and communities at large to nurture and grow more timber trees.

### 1.2 Objectives

The main objective of this assignment was to propose policy and legislative reforms that shall ensure the effective implementation of the proposed tree tenure and benefit sharing developed under the consultancy on the framing of Tree Tenure and Benefit arrangement schemes.

### 1.3 Task/scope

The consultant was expected to carry out the following tasks:

- i. Propose Policy and Legislative reforms to implement tree tenure and benefit sharing schemes;
- ii. Facilitate Stakeholder workshops, regional consultations, focused stakeholder groups and inter-sectoral consultations to discuss the legislative proposals;

- iii. Incorporate comments, recommendations and conclusions reached at the workshops in the Draft Report;
- iv. Finalize the Report on the policy and legislative implications for the Tree tenure and benefit sharing proposals

#### **1.4 Deliverables**

The expected deliverables of this assignment include the following:

- i. Inception Report (The inception report highlighted the scope of the assignment in relation to the Broad consultancy assignment on Tree Tenure and Benefits Sharing)
- ii. Draft Proposals for Legislative and Policy reforms for Tree Tenure and Benefit Sharing
- iii. Final Proposal for Policy Legislative reforms for Tree Tenure and Benefit Sharing

## CHAPTER TWO

### TECHNICAL APPROACH AND METHODOLOGY

#### 2.1 Consultant's Understanding

The consultant understood the assignment as requiring both a theoretical and empirical study of the based on the developed proposals on the tree tenure<sup>1</sup> and benefit sharing schemes. The assignment covered forest management systems in the country such as On-Reserve, Commercial Plantations, Trees on Farm (off-reserve) and Community based Natural Resource Management (Community Resource Management Area- CREMA, Dedicated Forests, Modified Taungya System).

The Concessions Act, 1962 (Act 124), vests timber resources and naturally occurring timber trees in the President of the Republic of Ghana on behalf of the People of Ghana. Through the vesting of timber resources and the management of forest resources on behalf of the resource owners in the State, forest resource owning communities eventually assumed they had lost their ownership rights to the state.

The first phase of the assignment involved an analysis of the developed and validated proposals on tree and benefit sharing based on the existing policy and legal framework and the implications for the legislative proposals on the existing framework. The analysis of the existing legal framework included the:

- i. Constitution, 1992
- ii. Forest Act, 1927, (CAP 157)
- iii. Concessions Act, 1939 (CAP 136)
- iv. Concessions Act, 1962 (Act 124)
- v. Trees and Timber 1974, (Act 273)
- vi. Forest Protection Act, 1974 (NCRD 243)
- vii. Timber Resources Management Act, 1998 ( )
- viii. Forestry Commission Act, 1999, (Act 571)
- ix. Forest Plantation Development Fund, 2000 (Act 583)
- x. Forest Protection Amendment Act, 2002 (Act 624),
- xi. Timber Resources Management (Amendment) Act 2002 (Act 617)
- xii. Timber Resources Management Regulation 1998 (LI 1649) and
- xiii. Resources Management (Legality Licensing) Regulation 2012 (LI 2184).

---

<sup>1</sup> Tree tenure refers to the different bundle of ownership of naturally occurring timber trees and trees either planted or nurtured.

*(It is worth noting that some the existing tenure and benefit-sharing arrangement are not creatures of legislation but creatures of negotiated contracts.)*

## **2.2 Approach**

The Consultant adopted a two-step approach in the discharge of this assignment.

- i. An analysis of the existing policy and legislative framework on tree tenure and benefit sharing. This analysis formed the backdrop on which the developed and validated tree tenure and benefit sharing schemes were mapped. The mapping of the developed tree tenure and benefit arrangement schemes on the existing policy and legislative framework enabled the consultant to make proposals for policy and legislative reforms.
- ii. Formulation of a consultative strategy to target stakeholders in the forest and wildlife sectors including but not limited to industry, policy makers and civil society organizations. The information gathered from the stakeholder consultations will be the basis for making final proposals for policy and legislative reforms. The stakeholder proposals will be measured with the standard of factual accuracy and legal integrity.

The consultant, based on his plethora of experience in delivering similar projects, believes these themes are a comprehensive and sustainable approach to fulfilling the requirements of the assignment.

## CHAPTER THREE

### ASSESSMENT OF THE EXISTING TREE TENURE AND BENEFIT ARRANGEMENT SCHEMES

#### **3.1 The Existing legislative framework for Tree Tenure and Benefit Sharing**

A common and useful approach to defining ownership is to envision it as a 'bundle of rights'. The bundle includes a collection of both usage and ownership rights. The following categories of rights can be distinguished within this bundle:

- i. Control rights: the right to manage and to alienate a property. The alienation rights included under control rights can in some cases be limited. For example in a trusteeship relation the alienation can only be allowed if it serves the best interests of the beneficiary within that trust-relationship.
- ii. Management rights: the right to manage the property. These rights include limited alienation rights. The property manager can for example give out leases or grant other use rights
- iii. Use rights: these rights encompass the right to use the property, in terms of accessing it and exploiting it. Use rights generally speaking cannot fundamentally change the property they lie on.

The ownership of land and natural resources in Ghana reflects these different strains of rights. Different persons and/or institutions are responsible for the different bundles of the ownership rights. For instance, land may be owned by stool-subjects, the control may be vested in the stools on behalf of and in trust for their subjects. Naturally occurring timber is vested in the president in trust for the stools concerned, managed by the Forestry Commission, while pre-existing customary rights are also recognised.

It must also be noted that, generally ownership rights are considered to be immune from third party termination excluding state expropriation and include the right to exclude others from accessing the property. An ownership right can be either individual or collective.

The Western-style Private Property Rights Model of most state legal systems is based around the idea of individual title. By contrast, customary land systems may see land ownership as collective. Statutory legal systems may choose to respond to this by allowing collective title, or by giving the community leader an individual title, which he then holds in trust for the rest of the community.

Under the legal framework of Ghana on these rights, Chapter 5 of the 1992 Constitution of Ghana guarantees right to own property<sup>2</sup> and Chapter 21 of the 1992 Constitution further prescribes the legal framework for the ownership of land and natural resources.

Furthermore, in Ghana, the ownership regime for lands and natural resources interrelate. For instance Public lands<sup>3</sup> are vested in the president on behalf of and in trust for the people of Ghana. The Constitution further establishes the Lands Commission to manage public lands and other lands vested in the President.<sup>4</sup>

In relation to minerals, the Constitution vests all minerals in their natural state in the President on behalf of and in trust for the people of Ghana<sup>5</sup>. Similarly, all stool lands are vested in the appropriate stools on behalf of and in trust for the subjects of the stool in accordance with customary law and usage<sup>6</sup>. Any disposition or development of any stool land has to be approved by the regional lands commission<sup>7</sup>.

The Constitution does not, however, mention who owns and manages other natural resources other than minerals in their natural state. Naturally occurring trees falls in this category.

The Constitution also fails to specifically mention rights of local communities to natural resources. However it does recognize customary law<sup>8</sup> to be part of Common law<sup>9</sup> and therefore part of the laws of Ghana. The Constitution continues by obliging the State to integrate appropriate customary values into the fabric of national life through education and conscious introduction in national planning<sup>10</sup>

There are no specific legal provisions separating the ownership, control and management of non-timber forest resources from the ownership, control and management of the land and timber resources that make up that forest. Generally, land/tree owners also own the non-timber forest products (NTFP) from the trees/land. It seems the granting of a Timber Utilization Contract (TUC) does not change the ownership of NTFP. TUCs concern only the right to the commercial timber parts of trees. The Forestry Commission has the

---

<sup>2</sup> The Constitution 1992, Article 18 (1)

<sup>3</sup> The Constitution 1992, Article 257 (1)

<sup>4</sup> The Constitution 1992, article 258 (1)

<sup>5</sup> The Constitution 1992, Article 257 (6)

<sup>6</sup> The Constitution 1992, Article 267 (1)

<sup>7</sup> The Constitution 1992 Article 267 (3)

<sup>8</sup> Customary law is defined by the Constitution as rules of law, which are by custom applicable to particular communities in Ghana. The Constitution, 1992 Article 11(3)

<sup>9</sup> The Constitution, 1992, Article 11 (1) (e) and Article 11 (2)

<sup>10</sup> The Constitution, 1992, Article 39 (1)



responsibility to ensure that non-timber forest products (NTFP) are harvested by TUC holders and that TUC operations are sympathetic to NFTP production.<sup>11</sup>

In relation to timber resources there is a distinction between timber resources from naturally occurring or from planted trees on the one hand, timber resources in forest reserves and timber resources in off reserve areas on the other.

## Naturally occurring forests

### On reserve

The Constitution or any of its implementing Acts and Regulations does not separate ownership of naturally occurring trees from the ownership of land. Thus, the ownership of natural trees overlaps with the ownership of the land on which the trees occur.

Forest reserves are created on different types of land. Therefore, government lands, stool lands and private lands at the request of their respective owners and generally any land, of which the President decides, on the advice of the FC, should be protected, can be, the subject to the establishment of a forest reserve thereon.<sup>12</sup> The creation of a forest reserve does not, however, change the ownership of the lands within it. It reserves the management under the direction of the FC or by the government for the benefit of the owner.<sup>13</sup> The continued ownership by the original owners is taken into account in the development of strategic plans for forest reserves.

Though stool lands, as provided for in the Constitution, are owned by the communities and vested in the appropriate stools in trust for and on behalf of them,<sup>14</sup> the Concessions Act, 1962 (Act 124) imposes state trusteeship on stool lands in addition to stool trusteeship for all lands within forest reserves.<sup>15</sup> Therefore, it is the State that has control, as a trustee, of forest reserve lands and the trees occurring thereon. Consequently, to judge whether the state is living up to its trustee-obligations one has to take into account the objective of on-reserve land use, which is forestry for protection, for local people and for production.<sup>16</sup>

Where the state has the control over forest reserves, it has assigned the responsibility for management to the Forestry Commission.<sup>17</sup> The Forestry Commission Act clarifies this by stating that management responsibilities include planning for the sustainable use,

---

<sup>11</sup> Manual of procedure Section A, Information Sheet A2.9 paragraph 3.5

<sup>12</sup> Forest Act, 1927 (CAP 157) Section 2

<sup>13</sup> Forest Act, 1927 (CAP 157) Section 18

<sup>14</sup> The Constitution 1992, article 267 (1)

<sup>15</sup> The Concessions Act, 1962 (Act 124), section 16 (1)

<sup>16</sup> Manuals of Procedure, Section A, Instruction sheets A2.6, A2.7 and A2.8

<sup>17</sup> Forestry Commission Act, 1999 (Act 571), Section 2 (2) (b)

monitoring and controlling the harvesting of forest resources. The FC in addition has to make recommendations to the MLNR on the grant of licenses and management practices to be included in the Forest and Wildlife policy.<sup>18</sup>

### Off reserve

As is the case for the ownership of forest resources within forest reserves, in off reserve areas, actual ownership of naturally occurring trees is not separated from the ownership of land by the neither the Constitution nor by any of its implementing acts and regulations. Therefore, the ownership of natural trees overlaps with the ownership of the land on which the trees occur.

This means that, communities are the owners of timber resources on stool lands, and the stools have control over these resources in trust for and on behalf of the communities.<sup>19</sup> It seems the same reasoning applies to timber occurring on Family lands. Managers of family land are fiduciaries charged with the obligation to discharge their functions for the benefit of the family concerned.<sup>20</sup> Where lands are privately owned, the owner will also own the forest resources included thereon.

The 1962 Concessions Act again seems to superimpose State trusteeship over stool trusteeship. Any land, apart from forest reserves, that was subject to tree or timber concessions before the commencement of the Concessions Act is vested in the President.<sup>21</sup>

Whereas, in on reserve areas, the forest is protected for production as the main land use<sup>22</sup>, in off-reserve areas agriculture is the primary activity and forestry has to fit into the farming system, not vice-versa.<sup>23</sup>

According to the Forestry Commission Act, the Commission has the mandate to regulate the utilization of forest and timber resources in off reserve areas as opposed to managing, vetting and registering contract to market timber, setting standard and guidelines and providing for checks and procedures along the timber supply chain in the reserves.<sup>24</sup>

### Planted timber

Planted timber is fundamentally different from naturally occurring timber because it is not a naturally occurring resource. Therefore the ownership of planted trees does not by default

---

<sup>18</sup> Id

<sup>19</sup> The Constitution, 1992, article 267 (1)

<sup>20</sup> The Constitution, 1992, Article 36 (8)

<sup>21</sup> Concessions Act, 1962 (Act 124), section 16 (3)

<sup>22</sup> Manuals of procedure, Section A, Instruction Sheets A2.6,k A 2.7 and A2.8

<sup>23</sup> Manuals of Procedure, Section F, Instruction Sheet F1.1, paragraph 1.5

<sup>24</sup> Forestry Commission Act, 1999 (Act 571), section 2 (2) (a)

coincide with the ownership of the land on which they are planted. In the same way as a farmer owns his crops even if not planted on his own land, a planter owns the trees he has planted even if it was not on his own land.

Timber can be planted under various schemes. Although these schemes are not included in the Timber Resources Management Acts and Regulations they are recognized under the Forest Plantation Development Plan.<sup>25</sup> Different schemes have different constellations of ownership, control, management and use rights.

In on reserve areas the government can replant trees and timber (model plantations) or with the help of hired labour and supervision (GPDP) or with the help of local farmers (MTS) and can also allocate degraded parts of forest reserves to private companies for plantation development (State allocated degraded lands).<sup>26</sup>

It is not entirely clear what ownership, control, management and use rights structures govern the timber resources that come from these plantations. Logically ownership would be shared between the State and the farmers who collaboratively have established the plantations. Therefore, control, management and use rights also lie with state and farmer together.

In the off-reserve, at first sight it seems the Concessions Act does not distinguish between naturally occurring and planted trees in off-reserve areas when vesting them in the President.<sup>27</sup> However, the Concessions Act has to be read with the modifications necessary to give effect to the Timber Resources Management Act.<sup>28</sup> In the TRMA, it is stated that no timber right shall be granted in respect of land with private forest plantations or land with any timber grown or owned by any individual or group of individuals. This means planted timber is not intended to be included in the vesting of trusteeship by the Concessions Act.

### Developed Proposals for Tree and Benefit Sharing

Following meetings with stakeholders, there were a number of preferred tree tenure and benefit sharing arrangements proposed by the various stakeholders in the different regions based on the underlying planting activities in the region. These activities are as follows:

---

<sup>25</sup> Forest Plantation Development Plan, launched the 20<sup>th</sup> of January 2010,

<sup>26</sup> Forestry Commission Act, 1999 (Act 571), section 2 (2)(c)(iii)

<sup>27</sup> Concessions Act, 1962 (Act 124), Section 16 (4)

<sup>28</sup> Timber Resources Management Act, 1998 (Act 547), Section 22 (2)

### Naturally occurring trees on reserve

With respect to tenure arrangement on reserve, the dominant view was that the status quo be maintained. However, mechanisms have to be put in place to facilitate the effective and efficient implantation of Social Responsibility Agreement and the disbursement of benefits.

A new preferred arrangement in relation to wildlife is the proposal for the institution of an SRA-like benefit flow for Wildlife areas to communities fringing the wildlife reserve.

### Naturally Occurring trees off-reserve

With regard to trees on farms, the general preference was for the State to keep off the benefits or revenue accruing from the sale of such trees. It is proposed that 100% of benefits from nurtured trees should go to the Landlord and Abunu/Abusa (depending on the arrangement between the landlord and the tenant farmer) if nurtured by a tenant farmer.

In relation to CREMAs, dedicated forests and sacred groves, there is a consensus that the state should allow the governing institutions around them to have responsibility. Thus the management plans of the dedicated forests, the constitution of the CREMA and the customary rules of the sacred groves be used as the basis for the tenurial arrangement.

For trees in Secondary Forests (Fallow) it was proposed as the preferred option, that ownership and management rights and full benefits should flow to traditional authority and landowners.

### Planted trees on-reserve

With regards to planted trees off reserve, there are number of permutation being proposed. The following shows the differences in the proposals.

Whereas the middle zone preferred 40% to FC, 40% to farmer, 15% to landowner and 5% to community for trees planted in on-reserves. , basically because of the preponderance of the MTS, the southern and northern zones preferred 90% to the investor/farmer, 2% to FC, 6% to landowner and 2% to community.

## CHAPTER FOUR

### POLICY AND LEGISLATIVE RECOMMENDATIONS FOR TREE TENURE AND BENEFIT SHARING

This part of the Report provides the analysis of the proposals by the lead Consultant on Tree Tenure and Benefits Sharing in the draft Consultants Report.

Trees have been for a long time viewed as a natural resource. They occur naturally and belong to the landowner or state who can exploit them to reap their benefits. Farmers do not fit into that picture; they do not directly share in the benefits, nor do they have any decision power on what happens with the trees on their farms.

This vision is however becoming ever more out-dated, especially in off-reserve areas, where numbers of naturally occurring trees dwindle and where tree plantations are bound to gain importance. In this new context trees may be considered more of a cash crop than a natural resource; they should be worth planting and nurturing, instead of just waiting to be exploited.

The recommendations made for improving benefit sharing for the different categories of tree management have been guided by stakeholder preferences as well as the general principles in benefit sharing schemes. These are principles are explained below:

- *Effectiveness*: Ensuring that benefits reach those who contribute to a particular resource and create the right incentives for them to continue doing so in the long term;
- *Efficiency*: Ensuring that the benefit sharing mechanism maximizes benefits on each unit of input and delivering benefits in a reasonable amount of time; and
- *Equity*: Ensuring that benefits are shared among all legitimate actors in a manner that is widely perceived as fair

The following are therefore recommended:

- I. Vesting of Trees off-reserve in the communities/stools, fringing the resource or based on the underlying land tenure systems and managed by the Forest Commission.***

The Concessions Act, 1962, (Act 124), provides that the right to ownership of naturally occurring timber trees is vested in the President in trust for the stools concerned. The provisions of Section 16 of Act 124 states as follows:

*The lands referred to in subsection (2) or subsection (4) of section 4 of the Forests Act, 19276 and which have been constituted or proposed to be constituted as forest reserves under that Act and the lands deemed to be constituted as forest reserves under subsection (7) of this section are hereby vested in the President in trust for the stools concerned; **but the rights, customary or otherwise, in those lands validly existing immediately before the commencement of this Act shall continue on and after the commencement subject to this Act and any other enactment for the time being in force.***

From the above, it is evident that the Act, 124 did not extinguish the existing customary right prior to the creation of the reserves. This means that generally, the stools on whose lands forest reserves are constituted have their rights of ownership. It must also be noted that the nature of the ownership rights does not come with the right to alienate.

The Concessions Act further in section 16 (4) states as follows:

*The rights with respect to **timber or trees on a land other than land specified in subsections (1), (2) and (3) of this section are vested in the President in trust for stools concerned subject to article 267 of the Constitution.***

By subjecting the timber or trees on all other lands to same type of vesting as exist in forest reserves; it connotes that on-reserve resources which are naturally occurring are vested in the President on behalf of the stools concerned. This is line with the constitutional injunction that all natural resources are vested in the President.

It is worth noting that the Constitutional vesting of natural resources in the President is on behalf of the people of Ghana. Whereas the vesting envisaged by the Concessions Act is on behalf of the stool concerned. This provides us with the opportunity to distinguish the vesting of other natural resources from the vesting of timber and trees.

Such an approach will then enable to propose an amendment to the Concessions Act, 1962 (Act 124) to obviate the need for a constitutional amendment.

The recommendation above is furthered enhanced by the provisions in the Trees and Timber Act, 1974, (N.R.C.D. 273).

N.R.C.D 273 states in Sections 12 and 13 are follows:

- (1) To prevent the waste of trees or timber in an area outside a forest reserve, **the Minister may, by executive instrument, declare an area which is not a forest reserve and which consists wholly or mainly of standing trees or timber to be a protected area** with effect from a date four weeks after the publication of the instrument or a later date specified in the instrument.
- (2) On the making of an instrument under section 12, **a person engaged in farming in the protected area shall give written notice of that fact to the Minister, who if satisfied that the notice is correct shall grant a licence authorising that person to continue farming within the area specified in the notice** subject to the conditions imposed by the Minister in the interest of the protected area.

These provisions gives credence to the fact, trees and timber resources cannot be treated as all other natural resources.

Thus legislative amendments:

- a. Should clearly vest trees and timber resources off reserve in the appropriate stools and communities as the case maybe.
- b. Should require the creation of the necessary institutional infrastructure to back the implementation of the recommended tenurial regime for the off-reserve. These tenurial arrangements will take care of the issues of the ownership regime for nurtured trees, trees on farms and planted trees on off-reserves.
- c. Should further create room within the tenurial arrangements for contractual arrangements for the determination of ownership rights and also set contractual baselines for the determination of the management roles and benefit schemes.

## **II. Right of farmers to adequately negotiate benefit sharing arrangements for planted or nurtured trees with the landowner.**

Flowing from the above, by creating and clarifying the ownership regime of the off-reserves, farmers, and community members can be well placed to negotiate benefit sharing arrangements devoid of the strictures of the Constitution.

To implement this with the necessary legislative backing, the Timber Resources Management 1998 as variously amended and its implementing legislative instruments will have to be amended to;

- a. Create room for communities and farmers negotiating to arrive at rates for stumpage and social responsibility components. The Timber Resources Management Act in this

present form has been used primarily to manage the utilization of timber resources on reserve even though the Act 547 can be adequately applied to management of resources both on and off reserve. Thus, a clear legislative intent is needed to achieve this desired end.

- b. Empower farmers with the right to negotiate directly as individuals and collectively for timber benefit sharing arrangements with legally recognized parties.

**III. *Decentralization of land title registration to enable farmers to demarcate and register lands and trees on their farms to secure their ownership of trees off reserve.***

From a review of the literature, it is recommended that the land title registration processes should be decentralized so as to affect and improve the ability of farmers to secure their lands. This will create a database and clarify the ownership arrangements to enable the right owners and duty bearers identify their responsibilities. Such a decentralized regime would minimize the controversy and conflict that characterizes benefit sharing.

It is thus recommended that the existing framework for Land title registration;

- a. Should be amended to mandate the Lands Commission to decentralize its operations.
- b. Should be amended to provide a simplified and targeted attempt to register and title all existing farm lands to clarify ownership of these lands.

**IV. *Standardization of benefit sharing options for on-reserve (naturally occurring), on-reserve (planted), off-reserve (naturally occurring) and off-reserve (planted)***

Ownership of land is not separated from the ownership of the naturally occurring trees. The establishment of a forest reserve does not operate to alter the ownership status of the land/forest prior to the creation of the reserve. The law on rights of planted trees has been amended to support afforestation, reforestation and private plantations.

The amendment prohibits the granting of timber rights on private forest plantations and land with trees grown or owned by private persons. Contrary to naturally occurring trees where a number of fees, royalties inter alia have to be granted permission to exploit naturally occurring resources, the revenue from planted trees should benefit the planter and/or owner. What is therefore outstanding is the lack of a standardized benefit sharing options for, off-reserve (naturally occurring) and off-reserve (planted).

It is therefore proposed that;



- a. a legal regime to standardize the types of benefits that should accrue from the off reserve,
- b. a legal regime to standardize the stakeholders among whom the benefits should be shared, and the minimum threshold of benefits and
- c. a legal regime to balance the contractual arrangements and negotiations between the parties within the framework of the legally enforceable benefit rights.

**V. *Land use plans for district assemblies should reserve areas for forest plantations.***

Despite the efforts of current Local Government structure in promoting afforestation to establish a natural resource conservation department in every MMDA, a review of the practice has shown that this strategy alone is not enough. There ought to be a conscious effort of involving the local government authorities in the allocation of land for plantations. This will increase the forest cover and reduce the dependence on natural forests.

**CONCLUSION**

It is apparent from the study that all ‘bundle of rights’ associated with trees on farmlands exist across the country. The right to plant trees is the most prominent right exercised across the country while in the northern zone the right to use trees or tree products is rather dominant. The right to dispose of trees is the right that is least exercised across the country.

The most dominant conclusion from the study is that the existing tree tenure should be reformed such that ownership of naturally occurring timber trees off reserve are vested in the communities or the stools concerned. The implication is that holders of allodial and freehold land titles under customary land ownership would exercise ownership right over naturally occurring trees on their lands. This would incentivize stakeholders, such as farmers and forest-adjacent communities, to invest in forest management and conservation for effective implementation of any tree growing mechanism and reduce to an extent illegal logging.

Going in this direction will require some reform in the policy and legal framework. The most favoured arrangement for land and tree tenure reform in the country is the right for the farmer and the land owner to negotiate their rights to own trees and benefit sharing with each other followed by decentralized land titling and registration that allows for framers to register not only their land but also trees on their farms. The least favoured option is the right of government and Traditional Authorities to give the right to dispose of trees on farmlands.

Changing the current tree tenure regime requires revisions at many levels. The proposed revisions will be virtually impossible to treat alone because they may include revisions to the Constitution and many other components of the forest legislative framework. It is recommended as part of the consolidation of forest laws in Ghana, a part in the legislation should be dedicated to the management of off reserve resources. The below is proposed:

**PART XX: MANAGEMENT OF OFF RESERVE TIMBER RESOURCES<sup>29</sup>**

- 1. Ownership and Benefit Sharing of Trees in Off Reserves**
- 2. Institutional Arrangement for the management and regulation of Off-Reserve**
- 3. Ownership and Benefit Sharing of nurtured Tree Off Reserve**
- 4. Ownership and Benefit Sharing of Planted Trees Off Reserve**
- 5. Other forms of ownership and benefit sharing created by contracts**
- 6. Consequential Amendments to Land Commission Act and Local Government Act**
- 7. Penalties and Offences**

This insertion in the reformed forest legislation will ensure that the tenurial arrangements of off reserve are given the needed legislative backing.

---

<sup>29</sup> The section is a new insertion in our forest legislation based on the consultancy report on benefit sharing and tree tenure.