

DRAFT

GUIDELINES ON SOCIAL RESPONSIBILITY AGREEMENT NEGOTIATIONS

RESOURCE MANAGEMENT SUPPORT CENTRE
FORESTRY COMMISSION

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1. Introduction and Background

At the heart of Ghana's Forest and Wildlife Policy is the need to ensure that all segments of society benefit from the sustainable management of the nation's forest and wildlife resources. In accordance with this and to ensure that direct benefits from timber exploitation get to the forest fringe communities, Social Responsibility Agreement (SRA) has been introduced as part of the Timber Utilization Contract (TUC) procedure.

1.1 Timber Utilization Contracts

The TUC is the new type of contractual arrangement between the government and the timber contractor, which grants a timber right to the contractor over a specified area for a specified time. The Minister of Lands and Forestry enters into this agreement on behalf of the Forest Services Division and the landowners on one side, the timber contractor on the other side.

Timber rights are spelt out in a Timber Utilization Contract, which replaces the old concession/lease system. The contract stipulates the conditions under which the contractor is expected to operate as well as obligations that would ensure that the contractor's operations do not have any adverse social or environmental impacts. The procedure for the grant of SRA is spelt out in the Timber Resources Management Regulations (LI 1649) of 1998 and the Timber Resources Management Act (547) of 1997 and its amendment Act 617 of 2002.

This is to ensure that the entire forest fringe communities within which a TUC holder operates benefit from the exploitation of timber resources both on and off forest reserve.

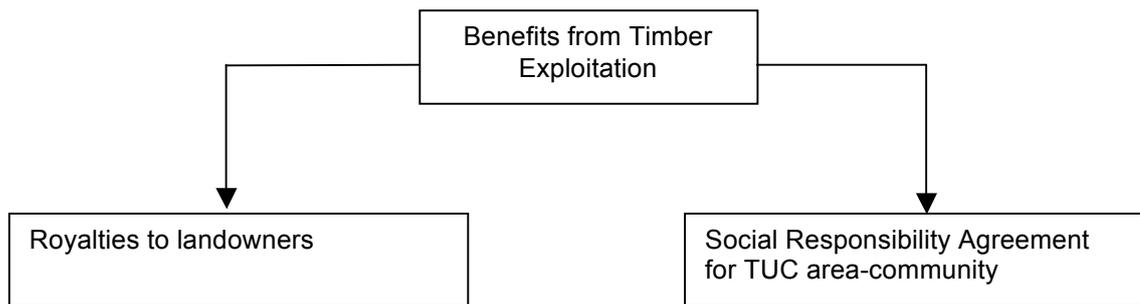
1.2 Benefits from timber exploitation for landowners and forest fringe communities

The issue of equity in the distribution of benefits from forest resources has, since 1994, been of priority to policy makers, social development experts and environmentalists who are all interested in sustainable resource development. While timber royalties have been stipulated in the Constitution of Ghana to be distributed to landowners and District Assemblies, there is no legal provision to ensure that timber revenue caters for community needs within the catchment areas of exploited timber.

Over the years, however, some concessionaires and logging companies have had informal arrangements with forest fringe communities and traditional authorities under which the former funded social services and amenities. With the 1994 Forest and Wildlife Policy laying particular emphasis on sustainable resource management and increased stakeholder participation, legal reforms were required to translate the directive principles of the policy into action, hence, the introduction of the SRA.

As part of the general reforms in timber allocation rights, the Timber Utilization Contract has been introduced to replace the concession system. Under the TUC concept the holders enter into written agreement with the forest fringe communities in the TUC area indicating their commitment to be socially responsible in their operations and to provide social infrastructure for the communities. Thus the SRA is a formalization of an on-going practice.

Fig. 1 Benefits from timber exploitation



1.3 Scope, Purpose and structure of the Guidelines.

These Guidelines are intended to direct Forestry Commission (FC) officials, the landowning communities and TUC holders in the development and implementation of the SRA in order to foster understanding amongst the parties.

The guidelines provide suggestions for the negotiation process, representation in signing the agreements, the content of the agreement, implementation modalities and roles and responsibilities of the different parties while providing for the means of monitoring and evaluation of the implementation process. As the name suggests, these are only guidelines and the various stakeholders can modify any of the processes based on their experience to suit the existing situations.

The guidelines are divided into eight sections, in a question and answer form, as listed below: Introduction, Policy, Legislations and Legal Aspects of SRA, Concept and Definition of SRA, the SRA Negotiation Process, the TUC Award Process in Relationship to SRA, Compliance and Sanctions of SRA, Review of Guidelines and a Sample TUC/SRA Form.

2.0 Policy & Legislation

2.1. Policy

The forest and wildlife policy of Ghana has as its guiding principle *“the conservation and sustainable developments of the Nation’s forests and wildlife resources for maintenance of environmental quality and the flow of benefits to all segments of society.* Some of the strategies provided by the policy to ensure the achievement of the principle include the following:

- “the rights of people to have access to natural resources for maintaining a basic standard of living and their concomitant responsibility to ensure the sustainable use of such resources”
- “provision of strong incentives to encourage responsible use: for example, long term concessions, equitable access, appropriate fees”
- “the need for economic and development incentives to stimulate private enterprise and encourage respect for regulations, thus offsetting real and perceived cost imposed by loss of access or restriction of use”

- “a share of financial benefits from resource utilization should be retained to fund the maintenance of resource production capacity and for the benefit of local communities”
- “initiation of continued contract and liaison with local authorities and communities to pursue integrated development activities related to sustainable research management”.

The forest and wildlife policy of Ghana emphasizes the need for forest fringe communities to benefit from timber exploitation.

2.2 What are the policies and legal basis of SRA?

The legal reform of the concession system was effected through the 1997 Timber Resource Management Act (TRMA) (Act 547) and the accompanying 1998 Timber Resource Management Regulations (LI 1649). These new legal instruments emphasize the need for legal contracts between the state, communities in timber operational areas and the timber-harvesting right holders – as embodied in the TUCs.

The following constitutes the legal stipulations associated with SRA

Box 1 Legal stipulations associated with SRA:

1. Section 1 of Act 547 states that “No person shall harvest timber from any land ... unless he holds timber rights in the form of a timber utilization contract entered into in respect of the area of land concerned”.
2. Section 3(e) of Act 547 requires the application for Timber Utilization Contract (TUC) to be accompanied with *Social Obligation Proposals* (SOP) to assist in addressing the *Social Needs* of the communities who have interest in the proposed area of operation.
3. Section 20, of Act 547 stipulates that there should be “a written agreement that specifies the terms of timber rights granted in respect of an area of land for a fixed period of time”.
4. In the LI 1649, Section 11(d) (I) states that applicants for a TUC are instructed to “provide specific social amenities for the benefit of local people that live in the proposed contract area”. Similarly, section 14 (1) (I) reiterates this provision as a term and condition for the operation of the contract.

Both Act 547 and LI 1649 require that the application for TUC is submitted with proposals to address the social needs of the communities who have interest in the applicants proposed area of operation.

Box 2 Breach of SRA—Grounds for suspension of TUC

The TRMA 1997, Act 547 section 15 (1) states that “The Minister (MLF), acting on the recommendation of the Commission may suspend or terminate, as is appropriate in the circumstances of the case, a timber utilization contract where”:

- (a) the holder has breached any of the terms or conditions of the contract including the SRA.

Similarly, the TRMR, 1998, L.I. 1649 section 14 (1)(I) provides that “A timber utilization contract entered into for the purposes of **section (what?)** of the Act shall be in such form as the Attorney-General shall determine and shall provide for terms and conditions including”:

- “Grounds for suspension and termination”.

The onus of suspension and termination of the contract is solely based on terms and conditions between the contractor and the community.

2.3 FC Obligation on SRA under its Service Charter

The Forestry Commission's Service Charter calls for "an atmosphere of working together to manage Ghana's forest and wildlife resources through collaboration with local government, landowners, forest fringe communities and non-governmental organizations so that everyone can monitor and evaluate its plans and activities"

Box 3: Services and Products for local communities in the Service Charter

Among the services and products that the FC would provide for landowners, farmers and forest fringe communities are:

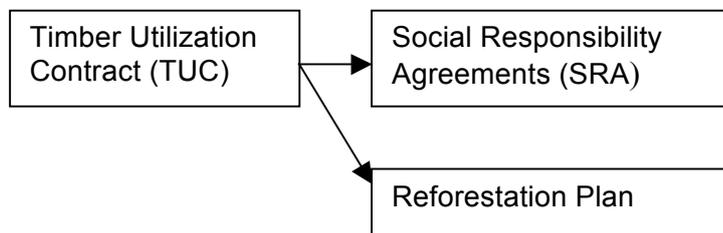
- the issuance of Timber Utilization Permits (TUP) for community projects within one month of receipt of application
- the drawing up, management and the implementation of all timber utilization contracts and provide advice on social responsibility agreements under these contracts
- to ensure that TUC's are prepared in consultation with landowners and communities and these are assisted in SRA negotiations

The FC and its staff are, therefore, in effect, under obligation to ensure that SRA are properly negotiated between the applicants and the communities in the TUC area and the terms adhered to. Failure to ensure this constitutes a breach of the FC Service Charter. The communities and the other parties may then raise a complaint for redress.

3.0 Concept and Definition of SRA

The (SRA) is an undertaking by the winner of the contract to assist the communities and inhabitants of the land area encompassing the forest from which the timber is to be harvested with amenities, services and benefits.

Fig. 2 Phases of TUC Acquisition Process



In simple terms, the SRA is an agreement between a TUC holder and the landowning communities (forest fringe communities), which spells out the social obligations of the contractors to the landowning communities during its operations. This agreement

forms part of the terms and conditions of the TUC and provides a mechanism for communities to monitor the activities of the TUC holder.

The monetary benefit from the SRA is not part of the royalties paid through the Office of the Administrator of Stool Lands (OASL) to landowners. It is funded directly by the TUC holder to the beneficiary communities' for social development purposes in return for the communities' role in forest resource protection and regeneration.

3.1 What is the purpose of a Social Responsibility Agreement?

Section C of the FC's Manuals of Procedures, explains that "*the SRA is a mechanism to ensure that all TUC operations are carried out in a socially responsible manner with due respect for all the rights of landowning communities.*" It is intended to ensure that the TUC holder(s) respect the existing rights as well as the social and cultural values of landowning communities. Furthermore, it gives opportunity to landowners to indicate the manner in which the TUC holder should operate on their land.

Currently, the disbursement of royalties does not ensure that direct benefits accrue to communities where forest resources are extracted. In principle, royalties that go to the District Assembly should be used to support community development initiatives, but in practice this does not happen. Such monies get 'lost' in the big pot of the District Assembly's development funds and hardly ever get back to the communities where timber exploitation occurs. Invariably, it is the District Assembly that decides on the community that must benefit from the royalty, which may not necessarily be the communities where timber has been extracted. Similarly, revenues from timber exploitation that go to the Traditional Council and Stool Chiefs rarely get down to the community level.

While the purpose of the SRA is to regulate timber-harvesting operations and to ensure direct benefits back to landowning communities, indirectly, it is recognized that the SRA will smoothen out the relationship between the landowning communities and the TUC holder, which, in many instances, in the past has been quite hostile.

Box 4: Summary of SRA Benefits

In summary SRA ensures the following

- TUC holder operates in a socially responsible manner;
- TUC holder respect existing rights of the communities for access to certain forest products;
- TUC holder respect the social and cultural values of the communities in which they operate;
- Communities benefit from timber exploitation;
- Communities are consulted in the management and exploitation of timber resources;
- Communities specify the conditions under which the TUC holder operates;
- Communities benefit directly from the exploitation of timber resources from their land for community development initiatives and programmes.

3.2 What constitutes an SRA?

The SRA is in two main parts:

A. The Code of Conduct

The code of conduct stipulates the manner in which the contractor is expected to operate to ensure that all timber operations are conducted with due respect for the rights of the communities inside or adjacent to the TUC area. It ensures respect for local customs, beliefs, infrastructure and livelihoods.

Box 5: *The Code of Conduct may include but not limited to the following:*

- Consultations with communities on respect of taboo days
- Respect for community rights to NTFPs
- Respect for sacred areas
- Respect for customary rights
- Protection of water sources
- Employment of local people

B) The Social Obligation

The social obligations are specific agreements drawn up between the community and the contractor based on the stumpage or the value of lumber being removed from the TUC area. The SRA should specify the particular commitments of the TUC holder to support development initiatives of the local communities either in cash equivalent or a commitment for other goods, services or infrastructure support. This is what ensures that the communities financially benefit directly from the exploitation of timber resources from their area.

Box 6: The social obligation may include:

- The provision of infrastructure, such as schools, boreholes, etc.;
- Provision of building materials for schools;
- Employ some inhabitants;
- Establishment of a community development fund;
- Provision of off-cuts.

These benefits, which are supposed to go to the forest fringe communities, are not necessarily to pass through the office of the stool chief but the channels through which the community agrees on.

4.0 The SRA Negotiation Process

4.1 How is SRA developed?

The process for developing an SRA is initiated by the FSD during the identification of the TUC area. The District Manager (DM) will consult with the landowning communities (the stool chief, odikro, the CFCs and the Unit Committee) to ensure that areas, which the community wishes to exclude from logging, are identified. The

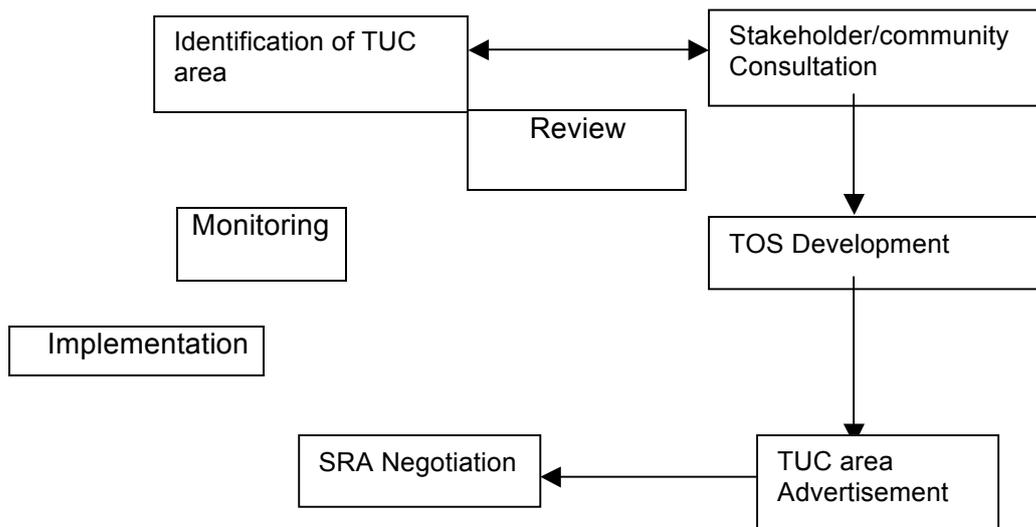
DM will ask the communities to specify reasonable social terms for the Timber Operational Specifications (TOS). Section B of the MoP reiterates that the “preparation of the TOS and SRA will need to be carried out in greater detail with more time allocated to consultation” in the off-reserve areas.

Once the TUC areas have been advertised, applicants may want to approach the communities to ensure that they understand all aspects of the TOS. Following the pre-qualification of the contractors, however, they would need to negotiate to draw up the proposals for the Timber Resource Evaluation Committee (TREC) to evaluate. **That is when the main negotiations starts. The procedure for developing SRA is described in the TUC identification procedure.**

The procedure includes the following:

- Identification of potential TUC area by the FSD and the community;
- Advertisement of TUC area;
- Identification of TUC area by timber contractor;
- Consultations among stakeholders – FSD, community;
- Development of Timber Operations Specification (TOS);
- Negotiation and development of SRA.

Fig. 3 Negotiation procedure of SRA.



4.2 Who takes part in SRA negotiation Process?

Social Responsibility Agreement is negotiated between the landowning forest fringe communities and the TUC holder. The representative of the land owning communities and the applicant are parties to the agreement. The deliberate reference of the landowning communities rather than landowner is intentional in order to differentiate between the two stakeholder types. SRA is signed between the TUC holder and the landowning communities and not necessarily the landowner, which is often taken to mean the stool chief. **Benefits from SRA are supposed to be distributed to the landowning communities in relation to the size of their land.**

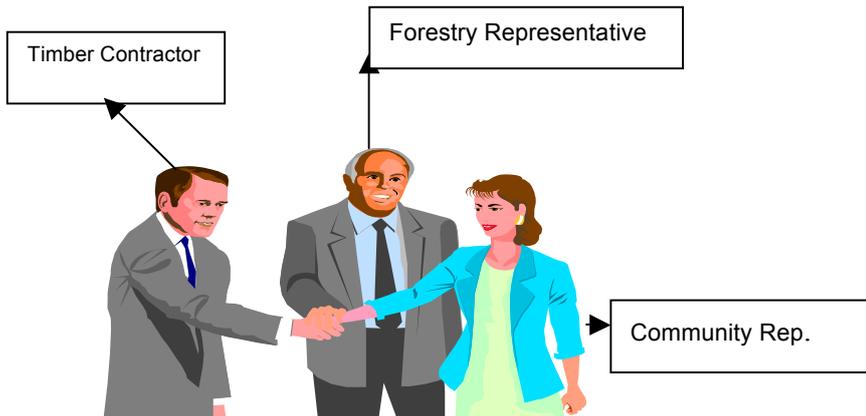


Plate 1: The Negotiating Team of SRA

The negotiating team includes representatives of the following institutions:

- a) The community - the stool land chief, odikro, elder, CFC members (if any), the unit committee and Assembly Member of the community.
- b) TUC applicant – should be represented by the Managing Director and/or the Bush Manager.**
- c) The FSD District Manager (witness)
- d) The District Chief Executive (witness)
- e) In addition, **three (why three?)** community representatives should serve as witnesses.

Negotiating team and / or Signatories?

Box 7: In summary the following are to take part in the negotiation process of SRA

Signatories of SRA

- Representatives of the landowning communities
- The TUC applicant
- The Odikros of the surrounding communities
- The CFC if they have been formed
- The FSD
- District Assemblies- (Assembly members, unit committee chairman)

4.3. The Role of FC in SRA Negotiation

The Forestry Commission is not a direct party to the SRA but only witnesses the negotiation process.

Box 8: Basically the role of FC includes:

- Inform community representatives about the new TUC allocation procedure;
- Advise communities about the SRA
- Educate communities on the procedure for developing SRA
- Assist communities to prioritize their development programs
- Be a witness but not a party to the negotiations

4.4 How will SRA be evaluated?

The TREC evaluates the SRA as part of the TUC allocation process.

- The committee will judge each SRA according to the specifications spelt out in the (TOS) and by the value of the support the applicant is prepared to provide towards the community development initiatives
- The committee will score and select the best five proposals; one of the key elements on which the proposals will be judged is the SRA

4.5 Who monitors SRA?

The entire community should monitor the SRA. To this end, the CFC's, the Unit Committees, the Assembly member and other existing relevant institutions are expected to play a major role in monitoring. This requires that:

- The communities allow the contractor to operate in a socially sound environment.
- The applicant honors his social obligations;
- The applicant works according to the code of conduct;
- The applicant does not exceed his annual harvestable yield;
- The community and the contractor must report to the District FSD should there be a breach of contract on the part of one party;
- The FC is responsible for ensuring that the TUC holder adheres to the terms of the contract;
- In cases where the contractor fails to comply with the terms the FSD may suspend his operations; or
- The Minister of Lands and Forestry may cancel the TUC in serious breaches.

4.6 What is the financial value of SRA?

According to the L.I. 1649 section 13 (1b), a social responsibility agreement should be entered into with the Landowner 'to assist inhabitants within the contract area with such amenities as shall be specified in the agreement at a cost of **not less than 5% of the annual** stumpage from the operations under the Timber Utilization Contract'.

5.0 The TUC award process in Relationship to SRA

5.1.1 The Timber Resources Management Act

The Timber Resource Management Act (Act 547) was passed in 1997. The Act explains the prohibition from harvesting timber without timber utilization contracts, application and qualification for timber utilization contract rights, land subject to timber utilization contract, establishment of Timber Rights Evaluation Committee and its functions, grant of timber rights, terms of contract, ratification by Parliament, Logging Manual, management of timber operation, payment of royalties, charges and other fees, payment in respect of stool lands, suspension and termination of Timber Utilization Contract, transfer of timber rights, offences, regulations, saving and transitional provision, interpretation, modification of Cap 136 and 157 and repeals

5.1.2 The Timber Resources Management Regulations

The Timber Resources Management Regulations is in six (6) parts. These are, Procedure for grant of timber rights, **advertisement of applicant and qualification?**

for grants of TUC, Terms and conditions for Timber Utilization Contract, Procedure relating to timber Operations, Timber Stumpage fee and contract area rent, Registration and Use of chainsaws

LI 1649 Section 13 (1) states that “on the basis of the evaluation, the TREC, shall invite the applicants that score above a level determined by the Evaluation Committee to submit proposals on”-

- (a) a reforestation or afforestation plan
- (b) a social responsibility agreement to assist inhabitants within the contract area with such amenities as shall be specified in the agreement at a cost of not less than 5% of the annual royalty accruing from the operations under the timber utilization contract.

Section (2) continues further to state “the Evaluation Committee shall assess the proposals and recommend the award of the contract to the highest scoring applicant.”

It is apparent that the award of a TUC is eventually based on a properly prepared reforestation plan and a good *Social Responsibility Agreement (SRA)*. The criteria for scoring the SRA acceptability is not very clear, however, given the important role it plays in the TUC allocation, it is recommended that the following criteria should be included in the scoring:

- Transparency in the negotiation process,
- the level of participation in the development of the SRA,
- the content of the SRA (and the extent that it is representative of community needs)
- the implementation plan of the SRA
- the past relationship of the contractor with the community
- and the monitoring and evaluation plan of the SRA implementation

5.2. TUC/SRA Areas and Rights of Local People and Farmers

The TUC/SRA areas could be in the on or off-reserve areas. The situation in the forest reserve is straightforward. The reason being that there are no farms and other interests. In the off-reserve areas where there are farms the communities may indicate to the District Manager whether the area should be offered for TUC or not. The boundaries between communities should also be carefully considered to avoid conflict. Once the TUC has been granted, the farmers should be involved in pre-felling inspections in order to avoid conflict during felling, skidding and compensation payments for damage to crops.

In off reserve areas where there are farms, farmers must consent before timber tree could be felled. One reason is that, in cocoa farms farmers have reasons for tending the trees to provide shade and other benefits such as increased cocoa yields. Therefore the consent of the farmer is prerequisite for the award of TUC. Forest fringe communities may also have the right to the collection of NTFPs in the TUC area.

5.3. Community consultation in the TUC allocation procedure

- The applicant should consult the communities for identification and consent of proposed TUC areas. This is to avoid conflict of interest between them.
- Once the applicant informs the community elders of his intention to operate in the area, the community elders must, in turn, and inform everyone
- Furthermore the community must identify their social need, which they would like to include in the agreement and prioritize these needs.
- The leaders of the community must ensure that consensus is reached on the prioritized social needs before the negotiation process.
- The consultation should include detailed discussions on cultural areas/sacred groves, environmentally sensitive and restricted areas because of farming and taboo days.
- The community must also inform the FC about the intention of the TUC applicant and consult them on the value of the 5%.
- They should agree on the date for negotiating the agreement and invite all the stakeholders and the witnesses.

The negotiations on SRA start when the applicant has accepted the code of conduct and social obligation proposal and promised to provide the demands of the community within the context of timber exploitation in the area.

5.4 Custody of the SRA

The two parties in the agreement (community and TUC holder) should each have a copy of the agreement. The FC, FSD headquarters, Regional and District Offices, District Assembly should each keep a copy.

5.5 SRA implementation

Once the agreement has been reached between the community and prospective TUC holder, the SRA becomes a public document. It is, therefore, apparent that the 'holder' starts to implement the contents of the agreement the moment he/she wins the contract and starts operations in the area.

6.0. Compliance and Sanctions of SRA

6.1 Specific Demands and Projects

The demand of the communities should be specific in that its provisions would not pose problems in the future. For instance, 60 bags of cement and 50 packets of roofing sheets are specific. But the renovations of a school building or clinic are not specific which may pose problem. In addition, the demands in the agreement should be time bond.

During negotiations the District Forest Manager or representative serving as witness should be present to act as moderator and a guide to the value of the 5%.

6.2 Conditional compliance not acceptable

There should be no conditional demands in the future as part of the TUC/SRA. For instance, "should the government extend electricity to the community, the company

shall provide electricity poles accordingly”. Or to provide “scholarship to 4 students within the community from JSS to University level of education, provided the students are ready to pursue higher education”; “renovation of school building should there occur any damages to their school building by rainstorm”. These are not agreements in that if the government does not extend the electricity, **infrastructure** the company would not provide any thing to that effect.

6.3. Compliance of the terms

Once the timber contractor accepts the demands of the community, it binds them to fulfill their part of the agreement. The TRMA, 1997, section 8 (The TRMR, 1998, L.I. 1649 section 14 (1)(l) provides that “A timber utilization contract entered into for the purposes of **section (what?** of the Act shall be in such form as the Attorney-General shall determine and shall provide for terms and conditions.

6.4. Time/duration of delivery of demands and operations schedule

The agreed demands of the community should be provided within the scheduled operations of the timber contractor. The District Forest Services Division and community should make sure that the agreed request is provided within the specified time.

6.5 Sanctions

The TRMA 1997, Act 547 section 15 (1) states that “The Minister (MLF), acting on the recommendation of the Commission may suspend or terminate, as is appropriate in the circumstances of the case, a timber utilization contract where”:

- ❖ the holder has breached any of the terms or conditions of the contract including the SRA.

The contract could be suspended or terminated on the following grounds:

- Failing to pay compensation for damaged crops;
- Failing to observe taboo days;
- Destruction of social infrastructure without taking steps to replace or repair it immediately.

The parties make the agreement in terms and conditions, which bind them. Stricter sanctions should be imposed where the timber contractor fails to comply with any of the terms of the agreement.

6.6. Renegotiations

There should be renegotiations of the agreement based on the following reasons:

- That the timber contractor failed to be given the exact timber trees to be extracted which is more than what was negotiated for under the SRA
- That the community demand was far more than the negotiated SRA amount on timber to be exploited.

7.0. Review of Guidelines

These guidelines are subject to review as and when provisions and contemporary circumstances change so as to justify the review. As stated, they are mere guidelines to guide stakeholders who must be involved in SRA processes as such most of the recommendations may to be modified in the light of local conditions. The authors would be pleased to receive comments towards the improvement and review of the guidelines.

ANNEX

SAMPLE TUC-SRA FORM

This TUC/SRA agreement is made and entered into this date.....
between Nana.....ofcommunity
 in thedistrict in theRegion **and** (company-TUC
 Holder).....ofcompany with
 property mark.....situated atin theRegion.

FOREST RESERVE TUC AREA(S)			
Forest Reserve	Region and District	Compartment No(s)	Area km ² /ha.

Attach progress map(s)

OFF RESERVE TUC AREA(S)			
Name of community	Region and District	Area km ² /ha.	Description of the area e.g. cocoa farms, secondary forest, etc.

covering an area of

For the harvesting and extraction of the following tree species

Tree Species	Quantity	Estimated Annual Stumpage
Total		

Code of Conduct

1. -----

2. -----

3. -----

4. -----

Social Obligations

Item(s)	Estimated value in cedis (¢)
1	
2	
3	
4	
Total (¢)	

That, it is agreed that upon the grant of the above land as TUC to the company the aforementioned responsibilities (items and other aspects) shall be undertaken completely and accurately within the contract period by the company without distrust.

That, if the company fails to comply with the above responsibilities as agreed **within the period**..... of contract, the community shall be compelled to inform the Forestry Commission to take immediate action or institute sanctions specified in the Timber Resources Management Act.

That, the community shall not do any thing to obstruct the activities of the company while executing its operations according to the terms and conditions specified in the SRA.

Signatories: In accordance to the agreement entered into they bind themselves in full faith to the provisions contained and have the following signatories:

I. Community representatives

NameRank.....sign.....

NameRank.....sign.....

NameRank.....sign.....

ii. TUC holder

NameRank.....sign.....

iii. Witnesses

District Forest Manager/Forestry Commission Representative

NameRank.....sign.....

District Chief Executive (District Assembly) Representative

NameRank.....sign.....

TUC holder/company Representative

Name:.....Rank.....sign.....