Fighting over forest: interactive governance of conflicts over forest and tree resources in Ghana’s high forest zone
Derkyi, M.A.A.

Citation for published version (APA):
Derkyi, M. A. A. (2012). Fighting over forest: interactive governance of conflicts over forest and tree resources in Ghana’s high forest zone Leiden: African Studies Centre
Forest offences and law enforcement in Nkawie Forest District

Introduction

Ghana’s forest sector has an extensive range of laws to govern the management of forest resources (see Chapter 5). In practice, however, it appears that the enforcement of such laws is compounded by political and institutional challenges which result in the prevalence of illicit forest activities that eventually lead to environmental damage, revenue loss and the destruction of livelihood sources of forest fringe communities (Larbi et al. 2011, Nutakor et al. 2011, Oduro et al. 2011). Oduro et al. (2011) mention three weaknesses that undermine the regulatory and legislative instruments of Ghana, namely (i) non-compliance with the regulations by the sector itself, (ii) too many regulations governing the forestry sector, and (iii) low penalties for default. Christy et al. (1997) attribute weak forest law enforcement to (i) the remoteness of forested areas, (ii) the absence of a road network, or a deficient road network which impedes movement, and (iii) a closed canopy that hinders direct observations. In 2008, when Ghana committed itself to the Non-Legally Binding Instrument on All Types of Forests (NLBI)\(^1\), one of the four key policy objectives stakeholders recommended for urgent policy consideration in order to start realising sustainable forest management was strengthening law enforcement. This was in line with the United Nations Forestry Forum (UNFF) NLBI policy measure resolution 6(n), which states, ‘Review, and as needed, improve forest-related legislation, strengthen forest law enforcement and promote good governance at all levels in order to support sustainable forest management, to create an enabling environment for forest investment and to combat and eradicate illegal practices according to national legislation, in the forest and other related sectors’ (UNFF 2008). In an effort to achieve

\(^1\) The NLBI, also known as ‘the Forest Instrument’ is a voluntary agreement under the auspices of the United Nations Forum on Forests by which UN members commit themselves to develop policies and take measures to stimulate sustainable forest management. Ghana was the first developing country that is taking concrete steps to implement the NLBI with support of the FAO and the National Forest Programme Facility (http://www.csir-forig.org.gh/nlbi/docs/implementation_nlbi.pdf, accessed on 15 December 2011).
this policy objective, one of the strategies used is to document forest offences in the
NLBI monitoring and evaluation framework as a baseline for monitoring illegal forest
activities and as a means of checking whether existing measures have led to a minimisa-
tion of these offences (FORIG 2010).

This chapter aims to contribute insights that may support the national objective to
strengthen law enforcement by analysing forest offences and their judgments in law
courts in Nkawie forest district and the views of representatives of law enforcement
agencies and the judiciary regarding institutional challenges and means of overcoming
them.

The specific questions addressed in this chapter are:

1. What are the characteristics of the Nkawie Forest District reserves as a system-to-be-
governed?
2. What governing system (i.e. institutions and legislative framework) with regard to
law enforcement is available in the forest district?
3. What governance interactions arise from the system-to-be-governed and the govern-
ing system and what are their outcomes?
4. How do officials of the Forestry Commission, the Ghana Police Services and the
judiciary perceive their institutional roles in dealing with forest offences?

Law students\(^2\) at the Kwame Nkrumah University of Science and Technology
(KNUST) conducted research under my supervision into research questions 3 and 4 and
it was partly on the basis of this research that they graduated with a Bachelor of Law
(LLB) degree in 2011. Although the key findings from their research study are used in
this chapter, they are presented here from a different analytical perspective.

The chapter is based on document analysis of forest laws, offence records at the
Nkawie Forest District from 2005-2010 and court judgements on 12 accessible forest
cases in the Nkawie, Nyinahin, Mankranso districts courts and Kumasi circuit court.
These are so-called unreported judgements, which are cases heard in district courts or
tribunals but not published in a series of law reports (see Box 11.1 for a difference be-
tween reported and unreported cases). Furthermore, semi-structured questionnaires were
sent to 19 officials from the Forestry Commission, Ghana Police Services and the judi-
ciciary mostly in the Nkawie Forest District (see Chapter 3 for details on the methodo-
ylogy).

Both primary and secondary data were analysed from an interactive governance per-
spective (Kooiman et al. 2005) to obtain an in-depth understanding of the factors that
facilitate or hinder forest law enforcement and sanctions in the law courts. The percep-
tions of officials belonging to the FC, police and judiciary with regard to these factors
are analysed in terms of images, instruments and actions (see Chapter 2).

The next section, which is devoted to the system-to-be-governed, presents the natural
sub-system (i.e. the forest reserves in Nkawie Forest District). Next, the governing sys-
tem is presented with a focus on the actors in the governing structures, the mandates of
the Nkawie Forest District, and the legislation and sanctions that govern forest offences.

The subsequent section describes the governance interactions based on an analysis of

---

\(^2\) They are Larbi Esther, Yankson Joseph; Annang Edwin Sarfo; Koomson Faustina Abeka; Boakye
Kwabena Akyeampong. The LLB thesis is titled ‘Judicial attitude towards forest related offences in
the Nkawie forest district of Ghana’ (unpublished April 2011). The research was funded from my re-
search budget.
The system-to-be-governed: Forest reserves in Nkawie Forest District

The natural and human sub-systems of the system-to-be-governed were analysed in Chapter 4. This section is limited to the natural sub-system, i.e. the forest reserves in Nkawie forest district and its environs to which the forest offences analysed in this chapter refer.

**Table 11.1** The forest reserves, total area, perimeter and stool land owners in Nkawie Forest District

<table>
<thead>
<tr>
<th>Forest Reserve</th>
<th>Total area (km²)</th>
<th>Total perimeter (km)</th>
<th>Stool land owners (caretakers)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asenanyo</td>
<td>227.92</td>
<td>100.26</td>
<td>Nkawie Panin, Nkawie Kuma, Nyinahin, Domi-Keniago, Manso Nkwanta and Akwamu</td>
</tr>
<tr>
<td>Desiri</td>
<td>150.95</td>
<td>63.46</td>
<td>Hia and Akwaboa</td>
</tr>
<tr>
<td>Jimira</td>
<td>62.85</td>
<td>49.78</td>
<td>Toase and Nkawie under Bantama</td>
</tr>
<tr>
<td>Offin Shelterbelt</td>
<td>60.23</td>
<td>40.26</td>
<td>Toase and Atwima Agogo</td>
</tr>
<tr>
<td>Tano-Offin</td>
<td>402.23</td>
<td>117.90</td>
<td>Kontri, Hia, Nkawie Panin and Nyinahin</td>
</tr>
<tr>
<td>Tinte Bepo</td>
<td>115.54</td>
<td>64.62</td>
<td>Afari, Akyempin and others*</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1019.72</strong></td>
<td><strong>436.28</strong></td>
<td></td>
</tr>
</tbody>
</table>

* Others were not specified in the data source.

**Source:** Nkawie Forest information leaflet (2010).

The Nkawie Forest District is one of the seven forest districts in the Ashanti region under the jurisdiction of the FC/FSD (see Chapter 4). The Forest District headquarters are at Nkawie, about a forty-five minute drive from Kumasi, the capital of the Ashanti Region. The forest district covers six political districts, namely Atwima Nwabiagya, Atwima Mponua, Atwima Kwapoma, Bosomtwi, Ahafo-Ano South and Ahafo-Ano North. The Nkawie Forest District shares common boundaries with eight other forest districts, namely Bechem and Offinso Forest Districts in the north, Juaso Forest Districts in the...
in the east, Kumawu Forest District in the northeast, Goaso, Bibiani and Sefwi Wioso Forest Districts in the west, and Bekwai Forest District in the southwest.

Six forest reserves are managed by the Nkawie Forest District covering a total area of 1,019.72 km$^2$. These are Asenayo, Desiri, Jimira, Offin Shelter, Tano-Offin and Tinte Bepo forest reserves (see Figure 11.1). All the reserves are vested in the Golden Stool (i.e. the Asantehene) under the care of some stools who act as caretakers, as shown in Table 11.1.

Figure 11.1  Forest reserves in Nkawie Forest District

The governing system

This section presents the institutional framework established to ensure law enforcement by looking at institutions as a structure and as legislations and rules that govern forest resources. First, the actors in the statutory governing structure and their roles in forest law enforcement are reviewed. This is followed by a detailed description of sections of two forest laws (i.e. Act 547 and L.I. 1649) and the associated sanctions, in order to clarify what are considered criminal offences in Ghanaian law. Most of the legislative issues regarding forest offences and their sanctions have been discussed in Chapters 5 and 7.
The statutory governing structure in forest law enforcement

In the statutory governing structure three key governing actors play a role in forest law enforcement. These are the Forestry Commission (FC), the Ghana Police Service and the judiciary (Figure 11.2).

– The Forestry Commission
As discussed Chapter 5, the FC’s responsibilities include ensuring effective implementation of the policies, laws and goals related to sustainable forest and wildlife management and the development of the timber industry. The FC is made up of three divisions and two centres that are responsible for the implementation of the functions of protection, management and regulation of forest and wildlife resources. The three divisions are the Forest Services Division (FSD), the Wildlife Division (WD) and the Timber Industry Development Division (TIDD). The two centres are the Wood Industries Training Centre (WITC) and a technical and research wing known as the Resource Management Support Centre (RMSC). The FC is the administrative body responsible for the management and enforcement of forestry legislation. Within the FC headquarters in Accra, a Legal Division is responsible for defending the FC on legal matters, for mediating between the FC and its stakeholders and for signing international contracts, agreements and memorandums of understanding. Internally, the Legal Division also advises the FC on issues relating to arbitration (Joseph Appiah, FC pers. comm. 2011). The Forest Services Division (FSD) is a public institution with responsibility for pro-
tecting, managing and developing the nation’s forests resources for the benefit of all segments of society (FWP 1994).

– Nkawie Forest District officials and mandates
The District FSD of Nkawie Forest District, which is headed by a manager and two assistants, is responsible for the management of forest reserves at micro level. The range supervisors and forest guards are the frontline officials in direct and frequent contact with the local communities and the timber operators. Their core functions include:
1. Managing and protecting forest resources within the District in the national interest.
2. Maintenance of forest reserve boundaries.
3. Regulating the harvesting of on and off-forest reserve resources within the Forest District.
4. Collection and disbursement of stumpage revenues to stool land owners and other beneficiaries.
5. Facilitating the development of forest plantations.
6. Promoting awareness, understanding and support for forest resources conservation and protection.

As far as forest management is concerned, the District FSD monitors and regulates the harvesting of forest resources, especially timber, in reserve and off-reserve areas. With regard to protection, the District FSD protects the reserves by maintaining forest reserve boundaries, preventing wildfire and taking steps to keep out illegal loggers, chainsaw millers, farmers, etc. especially in hill sanctuaries, convalescence areas, globally significant biodiversity areas (GSBAs) and along river banks. It is the mandate of the forest guards to keep reserve boundaries clear and patrol the reserve in order to prevent illegal activities. In some of these activities, the District FSD collaborates with forest-fringe communities.

The range supervisors are in charge of regulating timber exploitation in a designated forest area. Using the tree information form (TIF), they conduct stock surveys and measure felled trees to estimate tree volume. Additional responsibilities are issuing log conveyance certificates to contractors and conducting post-harvesting timber inspections.

An important core activity of the District FSD is forest plantation development. This activity is carried out in collaboration with District Assemblies when plantations are established in the administrative districts, with local communities under the modified taungya system (Chapter 9) and with plantation developers under the commercial plantations scheme (NFSD 2010).

The last activity is forestry education, which encompasses public awareness creation. This is done in collaboration with other entities such as radio stations, district assemblies, the Ghana National Fire Service and some NGOs. Topics addressed in educational and sensitisation programmes include, but are not restricted to, wildfire prevention, afforestation and reforestation. The District FSD also provides technical advice to individuals or institutions who wish to engage in forestry activities such as tree nursery and plantation establishment.

The District FSD is currently involved in two projects, namely the Voluntary Partnership Agreement (VPA) with the EU to combat illegal logging (see Chapters 5, 7 and 9) and the Wildfire Management project. The Nkawie Forest District is one of the districts where the VPA is piloted, with a project being carried out in the Asenanyo forest
reserve that aims to ensure that timber trees taken from Asenanyo are legal. The rationale behind this project is to get ready for the EU market and to generate maximum revenue for the stakeholders involved. The Asenayo reserve has a productive area of 15,991.97 ha comprising 139 compartments. Since only one timber company has harvesting rights in this reserve, monitoring the extraction of logs from the reserve is relatively easy (NFSD 2010). The second project is the Wildfire Management project which is being undertaken in the Jimira forest reserve. The purpose of the project is to reduce and prevent wildfire incidences with the involvement of local communities. The project is supported by the wildfire component of the Natural Resources Environment and Governance Programme (NREG) that was discussed in Chapter 5. Under the project, the forest-fringe communities are contracted to clear the green fire belt established around the reserve in return for a wage payment (NFSD 2010).

Legislation is enforced through collaboration with the military and the police, with whom a timber monitoring taskforce has been formed. The taskforce arrests illegal timber operators and people engaged in other illicit activities such as illegal farming and mining.

- The Ghana Police Service

British Colonial Authorities introduced professional policing in the former Gold Coast (now the Republic of Ghana) in 1821. Before that, maintaining law and order was the responsibility of traditional authorities that employed unpaid messengers to perform the executive and judicial tasks in their communities. In 1894, a civil police force was formed when the police ordinance was passed to formalise the institution of a Police Service. The functions of the Ghana Police Service, which are based on the Police Service Act, 1970 [Act 350] of Ghana are:
1. Crime detection and prevention;
2. Apprehension (arrest) and prosecution of offenders;
3. Maintenance of law and order; and
4. Due enforcement of the law.

- The judiciary

As stated on its website (www.judicial.gov.gh), ‘The judiciary is the third arm of government empowered by the Constitution and the laws of the Republic of Ghana, autonomous and vested with the Judicial Power of the nation’. According to the 1992 Constitution of Ghana, the Judicial Service is a public service institution responsible for the day-to-day administration of the country’s Courts and Tribunals. It is responsible for interpreting the Constitution and laws, administering justice and providing other related services. Figure 11.3 illustrates the hierarchy of structures, with the Supreme Court being the highest in rank and the so-called Inferior Courts (e.g. the juvenile court) at the lowest end of the hierarchy.

---

5 The other two arms of government are the executive and the legislative.
Box 11.2 The Timber Resources Management Act, 1997(Act 547), Section 17 stipulates that:

'(1) Any person charged with the management or protection of a forest resource by virtue of his employment in any institution of government who (a) by any act or omission in the performance of his duties facilitates the breach of any provision of this Act; or (b) condones or connives with any other person in breach of a provision of this Act, commits an offence and is liable on summary conviction to a term of imprisonment of not less than 6 months and not exceeding two years without the option of a fine.

(2) Any person who (a) harvests timber to which this Act applies without a valid Timber Utilization Contract; or (b) operates a vehicle to carry, haul, evacuate or transport timber harvested in contravention of this Act*, or (c) offers for sale, sells or buys timber harvested in contravention of this Act; or (d) stocks timber harvested in contravention of this Act; or (e) carries, hauls or evacuates by non-mechanical means any timber harvested in contravention of this Act, or (f) is the owner of a vehicle or not being the owner causes to be operated a vehicle to carry, haul, evacuate or transport timber harvested in contravention of this Act**, commits an offence and is liable on summary conviction to imprisonment for a term of not less than 6 months and not exceeding 2 years.

(3) Where a person is convicted under subsection (2) the court shall order the confiscation to the State of any tool, equipment and machinery involved in the commission of the offence; and the court shall order to be confiscated and sold any timber harvested in the commission of the offence.

(4) Notwithstanding the right of the court to sentence a person convicted under subsection (2) of this section to imprisonment, the court may in lieu of sentence of imprisonment impose in respect of the offences specified in- (a) subsection (2) (a) or (b), a penalty in the sum of 1000% of the market value of the timber involved in the commission of the offence; or (b) subsection (2) (c) or (d), a penalty in the sum of 500% of the market value of the timber involved in the commission of the offence; or (c) subsection (2) (e), a penalty in the sum of 100% of the market value of the timber involved in the commission of the offence.:

* As amended by the Timber Resources Management (Amendment) Act, 2002 (Act 671), s. 4(a).
** As inserted by the Timber Resources Management (Amendment) Act, 2002 (Act 617), s. 4(b).

According to its mission statement, the judiciary aims to fulfil its mandate by:

- upholding the independence of the judiciary;
- showing commitment to the true and proper interpretation of the Constitution and laws of Ghana;
- ensuring that speedy and unfettered administration of justice is brought to people’s doorsteps;
- providing other services for all manner of persons, groups and institutions without fear or favour; and
- maintaining a high standard of efficiency in the delivery of justice.

---

6  
\[\text{http://www.judicial.gov.gh/index.php?option=com_content&task=view&id=5&Itemid=6} \text{ (accessed on 5 November 2011).}\]
Box 11.4  *Criminal Offences (sections) as stipulated in Article 19 of the 1992 Constitution of Ghana*

**Article 19.**

(1) A person charged with a criminal offence shall be given a hearing within a reasonable time by a court.

(2) A person charged with a criminal offence shall –
   (c) be presumed to be innocent until he is proven, or has pleaded, guilty;
   (d) be informed immediately in a language he understands, and in detail, of the nature of the offence charged;
   (e) be given adequate time and facilities for the preparation of his defence;
   (f) be permitted to defend himself before the court in person or by a lawyer of his choice; and
   (i) be permitted to have, without payment by him, the assistance of an interpreter if he cannot understand the language used at the trial.

(10) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(11) No person shall be convicted of a criminal offence unless the offence is defined and the penalty for it is prescribed in a written law.

(12) Clause (11) of this article shall not prevent a superior court from punishing a person for contempt of itself notwithstanding that the act or omission constituting the contempt is not defined in a written law and the penalty is not prescribed.

(21) For the purposes of this article; ‘criminal offence’ means a criminal offence under the laws of Ghana.

*Laws governing forest offences and their sanctions*

Three sets of legislation which are relevant to forest offences are: (i) the Timber Resources Management Act, 1997 (Act 547) and its amended Act 617; (ii) the Timber Resources Management Regulation, 1998, (L.I. 1649), and (iii) the Forest Protection Decree 1974 NRCD 243 as amended by the Protection Amendment Act 2002, Act 624. All these laws fall under the 1960 Ghana Criminal Offence Act. This section presents only two pieces of forest legislation and criminal offences as stipulated in Ghana Constitution of 1992 (see Boxes 11.2, 11.3 and 11.4). The Forest Act NRCD 243 (amended as Act 624) was presented in Chapter 7.

**Governance interactions**

This section presents the outcomes of the interactions between the system-to-be-governed and the governing system which result in forest offences committed when people access the resources illegally. First, these outcomes are analysed on the basis of the FSD forest offence records in the period 2005-2010. Second, twelve unreported
judgements in the law courts under the jurisdiction of the Nkawie Forest District and the Ashanti Region are presented, with a view to assessing how the legislation is applied in such judgements.

Forest offence types and trends: An analysis of FSD offence records from 2005-2010

A review of the forest offences records in Nkawie Forest District indicated a total of 121 offence cases in the six forest reserves and the off-reserve areas from 2005-2010. Of these cases, twenty (17%) occurred in the off-reserve area, whereas 101 (83%) occurred in the six forest reserves. Figure 11.4 shows the different types of forest offence cases recorded. The most frequently recorded offence type was chainsaw milling (44%) followed by illegal logging (41%) and illegal farming (7%). The other cases (8%) were charcoal burning, canoe carving, illegal mining, human induced wildfire and intentional destruction of established timber plantations.

Table 11.2 shows the various offences in the specific years. In 2005 Nkawie Forest District recorded 24 chainsaw milling cases. In subsequent years fewer offences were

---

7 The twelve unreported judgements in the law courts that were accessible to the law students during data collection occurred in the period of 2001-2004 with only one which occurred in 2011. They therefore do not form part of the 121 offence cases accessed in the Nkawie FSD District office that occurred between 2005 and 2010.

8 Illegal logging refers to the removal of trees from the forest without a Timber Utilization Contract or Timber Utilization Permit; chainsaw milling refers to the on-site conversion of logs into sawnwood for commercial purposes using chainsaws (Marfo 2010).
recorded, a trend that is also evident for the other offence types. In 2005, four cases of illegal farming were recorded, with no such incidences in 2006 and incidental incidences in subsequent years. The trend in recorded offences is presented in Figure 11.5. More specific details are provided below about the major forest offences and the means of dealing with them.

![Trend in the number of recorded forest offences in Nkawie Forest District](image)

Table 11.2  Occurrence of forest of offence types in the district from 2005-2010

<table>
<thead>
<tr>
<th>Offence type</th>
<th>Number of offence cases from 2005-2010</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2005</td>
</tr>
<tr>
<td>Sawn lumber (chainsaw milling)</td>
<td>24</td>
</tr>
<tr>
<td>Illegal logging</td>
<td>12</td>
</tr>
<tr>
<td>Illegal farming</td>
<td>4</td>
</tr>
<tr>
<td>Others*</td>
<td>2</td>
</tr>
</tbody>
</table>

* Including charcoal burning, canoe carving, illegal mining (galamsey), human-induced wildfire and deliberate destruction of plantations.

– Chainsaw milling (n=53)

Of the 53 recorded chainsaw milling offences, 79% occurred in the six forest reserves, with the Tano-Offin forest reserve recording the highest number of cases (n=17), and 21% were reported from the off-reserve area (Figure 11.6). Generally, those who were arrested were fined by the FSD, while the lumber, chainsaws and vehicles carrying the illegal lumber were confiscated. Confiscated lumber is generally auctioned. In some cases, offenders absconded while others were arrested by the police or the FSD military team.

The majority of cases (n=35) were dealt with through police investigation and administrative means available to the FSD. In sixteen of the recorded cases, the culprits absconded, although the FSD managed to confiscate the lumber and some of the chainsaws. Only two cases were sent to the district court for judgement, where the offenders were sentenced to a fine of GH¢ 250 and GH¢ 400 respectively in 2005. The records showed that cases related to chainsaw milling are charged under Act 547 sec 17 (2) (a) and (b) and its amended Act 624 Sec 1(a) (h) (Box 11.2).
The three most common trees felled by these offenders were *Triplochiton scleroxylon* (Wawa), *Piptadeniastrum africanum* (Dahoma) and *Khaya* spp. (African mahogany), which fall under the scarlet and red star rating respectively (Table 11.3). A total of 102 tree species were reported to be sawn during these periods. In thirteen cases, both on and off-reserve, records did not indicate the tree species types felled by the culprits.
Table 11.4: Tree species exploited under illegal logging (2005-2010)

<table>
<thead>
<tr>
<th>Scientific name</th>
<th>Trade name/local name</th>
<th>No. of trees/logs felled</th>
<th>Star rating</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Triplochiton scleroxylon</em></td>
<td>Wawa</td>
<td>168</td>
<td>Scarlet</td>
</tr>
<tr>
<td><em>Milicia excels</em></td>
<td>Odum</td>
<td>37</td>
<td>Scarlet</td>
</tr>
<tr>
<td><em>Ceiba pentandra</em></td>
<td>Onyina</td>
<td>28</td>
<td>Red</td>
</tr>
<tr>
<td><em>Piptadeniastrum africanaum</em></td>
<td>Dahoma</td>
<td>22</td>
<td>Red</td>
</tr>
<tr>
<td><em>Antiaris toxicaria</em></td>
<td>Kyenkyen</td>
<td>21</td>
<td>Red</td>
</tr>
<tr>
<td><em>Pterygopt a macrocarpa</em></td>
<td>Koto</td>
<td>19</td>
<td>Scarlet</td>
</tr>
<tr>
<td><em>Nesogordonia papaverifera</em></td>
<td>Danta</td>
<td>15</td>
<td>Pink</td>
</tr>
<tr>
<td><em>Terminalia superba</em></td>
<td>Ofram</td>
<td>13</td>
<td>Red</td>
</tr>
<tr>
<td>Khaya spp.</td>
<td>African mahogany</td>
<td>13</td>
<td>Scarlet</td>
</tr>
<tr>
<td><em>Entandrophragma utile</em></td>
<td>Utile</td>
<td>11</td>
<td>Scarlet</td>
</tr>
<tr>
<td>Tiegemella heckelii</td>
<td>Bako</td>
<td>10</td>
<td>Scarlet</td>
</tr>
<tr>
<td><em>Celtis mildbreadi</em></td>
<td>Es a</td>
<td>9</td>
<td>Pink</td>
</tr>
<tr>
<td>Aningeria spp.</td>
<td>Asenfena</td>
<td>8</td>
<td>Scarlet</td>
</tr>
<tr>
<td><em>Entandrophragma cylindricum</em></td>
<td>Sapele/ Penkwa</td>
<td>9</td>
<td>Scarlet</td>
</tr>
<tr>
<td><em>Mansonia altissima</em></td>
<td>Oprono</td>
<td>5</td>
<td>Red</td>
</tr>
<tr>
<td><em>Chrysophyllum albidum</em></td>
<td>Akasaa</td>
<td>5</td>
<td>Red</td>
</tr>
<tr>
<td><em>Albizia ferruginea</em></td>
<td>Awiemfosa na</td>
<td>4</td>
<td>Scarlet</td>
</tr>
<tr>
<td>Daniella ogea</td>
<td>Hyedua</td>
<td>4</td>
<td>Scarlet</td>
</tr>
<tr>
<td><em>Petersianthus macrocarpus</em></td>
<td>Esia</td>
<td>3</td>
<td>Pink</td>
</tr>
<tr>
<td><em>Cyclodiscus gabunensis</em></td>
<td>Denya</td>
<td>2</td>
<td>Pink</td>
</tr>
<tr>
<td>Lovoa trichiloides</td>
<td>Dubinibiri</td>
<td>2</td>
<td>Red</td>
</tr>
<tr>
<td>Afzelia Africana</td>
<td>Papao</td>
<td>2</td>
<td>Red</td>
</tr>
<tr>
<td>Klainedoxa gabonensis</td>
<td>Kroma</td>
<td>1</td>
<td>Green</td>
</tr>
<tr>
<td>Distemonanthus bentamianus</td>
<td>Bonsamdua</td>
<td>1</td>
<td>Pink</td>
</tr>
<tr>
<td><em>Albizia zygia</em></td>
<td>Okoro</td>
<td>1</td>
<td>Green</td>
</tr>
</tbody>
</table>
– Illegal logging (n=50)
From 2005-2010, fifty cases of illegal logging were reported. The majority of the cases (82%) were recorded in the on-reserve areas (Figure 11.7), with Tinte Bepo reserve recording most cases and Desiri forest reserve having no reported cases in this offence type.

Similarly to illegal chainsaw milling, Act 547 sec 17 (2) (a) and (b) is the main law which applies to the arresting, prosecuting and fining of perpetrators of this illicit activity (Box 11.2). In three of the cases, the offenders were arrested and prosecuted in the law courts. The records indicate that the two culprits attracted fines of between GH¢ 200 and GH¢ 300 (US$ 133 and US$ 200). The number of logs confiscated was three logs of kyenkyen (*Antiaris toxicaria*) in the Tano-Offin reserve and five logs (i.e. bako (*Tieghemella heckelii*), papao (*Afzelia Africana*) and African mahogany (*Khaya* spp.)) in the Offin Shelterbelt in 2005. The third case occurred in the Tano-Offin reserve which involved the exploitation of four logs of wawa (*Triplochiton scleroxylon*) (Table 11.4). The case was sent to court. The offence record mentions a second hearing in 2005, but no outcome of that hearing was stated in the report.

According to the records, thirty-one cases were under police investigation, of which 15 referred to culprits who had absconded. The FSD used administrative means to deal with the other 16 cases. In other words the offenders were arrested, fined and some logs auctioned. Some of the cases involved legal timber operators who were fined by the FSD mainly because their vehicles carried illicit logs. In these cases the FSD often deflated the tyres of the vehicles in order to prevent movement.

As in the case of chainsaw milling, wawa was the most felled tree species. In this offence type wawa was followed by odum (*Milicia excels*) and onyina (*Ceiba pentandra*) (see Table 11.4). Over these years, the total number of trees recorded in the district in relation to illegal logging was 413, comprising twenty-seven timber species. The star ratings of these species were scarlet (eleven species), red (eight species), pink (five species) and green (two species) (Table 11.4).

– Illegal farming (n=9)
Nine cases of illegal farming were recorded in four of the reserves namely Tano-Offin, Desiri, Asenanyo and Tinte Bepo. The total recorded area cleared for farming was 166 ha over the period of 2005-2010. There was one case in the Tano-Offin forest reserve in which the area of the cleared forest was not stated but covered large tracts in six compartments. From these nine cases, one offender was sent to the Nyinahin community tribunal and was fined GH¢ 300 (US$ 200). Four culprits were arrested and handed over to the police with confiscated chainsaws. In some cases, the culprits were arrested and handed over to the regional FSD office for investigation, while their farms were destroyed. The legislation for the prosecution of offenders were the NRCD 243 (amended Act 642) sec 1 (1b) (see Chapter 7) and Act 547 sect 17. Sub. Sec. 2 (a) (Box 11.2). There were also four cases in which the offenders could not be apprehended but

---

9 The court structure under the Provisional National Defence Council government 1981-1992 constituted the tribunal system, which operated parallel to the judicial court system. The core objective was trial of criminal offences except the community tribunal which deals with both civil and criminal cases. In terms of hierarchy, there used to be (i) the National public tribunal, (ii) the regional public tribunals, (iii) the district public tribunals, and (iv) the community tribunal. Currently, structures (i), (iii) and (iv) have been repealed and the new structure is as presented in Figure 11.3 (Brobbey 2000).
the farms were destroyed. In such instances, surveillance was put in place to arrest any culprit. In some reserves where national plantations are being established, the cleared areas are being replanted to replace lost stocks.

The outcomes of the nine offences are presented in Table 11.5.

Table 11.5  Illegal farming offence outcomes from 2005-2010

<table>
<thead>
<tr>
<th>Offence outcome</th>
<th>Number of cases*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Culprit sent to court with fine</td>
<td>1</td>
</tr>
<tr>
<td>Cases under police investigation</td>
<td>2</td>
</tr>
<tr>
<td>Cases resolved by administrative means (destruction of farms, converting it into a national forest plantation)</td>
<td>6</td>
</tr>
</tbody>
</table>

* The reporting system does not indicate names of the culprits.

– Other offence types (n=9)

The other offence types are made up of four categories that occurred sporadically. These were offences related to canoe carving (n=2), charcoal burning (n=2), human-induced wildfire incidence (n=2), deliberate destruction of plantations (n=1) and illegal mining (n=2). With regard to canoe carving cases occurred in both the Tano-Offin GSBA and Asenayo forest reserve in 2010 with the carving of 10 canoes whose owners absconded. The Tano-Offin GSBA offence case was charged under the NDPC 243 sec (1) (a) (amended Act 642) (see Chapter 7), whereas that of Asenayo was under Act 547 Sec. 17 sub-sec 2(a) (see Box 11.2). Since the culprits absconded, the matter was reported and preparations made for the auctioning of the canoes.

Two cases of charcoal production in the reserve were reported in the offence records of 2005 in the Asenayo and Desiri forest reserves. The culprit in one of the cases was handed over to the police for prosecution. The outcome of the investigation since 2005 is not reflected in the offence records.

The last offence type in the rest category is human-induced wildfire. The legislation applicable to this offence is the PNDC law 229 (see Chapter 5, Table 5.1). The two cases reported were all human-induced, but the culprits were never arrested. The wildfires were brought under control with the help of people from the forest-fringe communities. Another offence type was related to the intentional destruction of national forest plantations based on a personal grudge by a farmer. This led to the arrest of the offender and prosecution under Act 624 Sec 1 Sub-sec. (1) (a) in the district court (Table 5.1). As in most cases, the outcome of the court case was not indicated in the reporting system. The last offence type in this category was illegal mining which took place in the Offin-Shelterbelt and destroyed about 4 ha of forestland. In one of the cases, the offenders had to appear in court and were fined GH¢ 300 whereas in the other case, which resulted in the clearing of about 0.8 ha of forest land, the offenders were sent to court. There was, however, no mention of the court outcomes.

Judicial records of some forest resource offences

In the law courts, 12 unreported judgement cases (see Box 11.1) were assessed from the community tribunal and district courts in Nkawie, Nyinahin, Mankranso and Kumasi circuit court from 2002, 2003 and 2011. The laws applicable to these cases were the Forest Protection (Amendment) Law, 1986 (PNDCL 142) (repealed by Forest Protection (Amendment) Act 2002 (Act 624) (Table 5.1), and the Timber Resources Manage-
ment Act, 1997 (Act 547) (Box 11.2). All the cases were between the state represented by ‘The Republic’ versus ‘The Accused’ as presented below.\footnote{In order to protect the privacy of the accused names have been replaced with numbers.}

– Case 1: The Republic vs. ‘The Accused’ 1\footnote{In the District Community Tribunal held at Mankranso on Wednesday 14 March 2001, before his Worship J.B.A. Benene (SGD).}
In this case, the offence was farming in a protected forest reserve. The accused was therefore convicted based on Section 13 of PNDCL 142 (now repealed by Act 624). He was asked to sign a bond not to enter into the forest reserve without a permit from a forestry official for two years or in default pay GH¢ 20\footnote{All conversion of old to new Ghana cedi and the US dollar equivalents was done by the author, based on an exchange rate of US$ 1= GH¢ 1.5.} or serve 18 months imprisonment in hard labour.

– Case 2: The Republic vs. ‘The Accused’ 2\footnote{In the District Community Tribunal held at Nkawie on Wednesday, 16 January 2002, before his Worship Kwaku Dampare (ESQ).}
The offence was conveying timber logs felled without a felling permit. The accused was the driver whose vehicle was carrying the illegal logs. The key culprit of the stolen logs absconded, leaving behind the driver. The driver pleaded guilty but was sentenced to a fine of GH¢ 150 or nine months in prison with hard labour. The court ordered the police to intensify their search for the real culprit. The vehicle used by the driver was ordered to be released upon payment of the money or after the prison sentence had been served.

– Case 3: The Republic vs. V ‘The Accused’ 3a and b (absconded)\footnote{In the District Community Tribunal held at Nkawie on Monday, 21 January 2002, before his Worship Kwaku Dampare (ESQ).}
The offence was conveying timber logs felled without a felling permit. The accused was the driver whose vehicle was carrying the illegal logs. The key culprit of the stolen logs absconded, leaving behind the driver. The accused driver pleaded guilty but was sentenced to a fine of GH¢ 200 (US$ 133) or six months imprisonment with hard labour. The logs were to be sold by the FSD and the money paid to government consolidated fund. The vehicle used by the driver was ordered to be released upon payment of the money or after the prison sentence had been served.

– Case 4: The Republic vs. ‘The Accused’ 4\footnote{In the District Community Tribunal held at Nkawie on Friday, 16 August 2002, before his Worship Kwaku Dampare (ESQ).}
In this case the offence committed by the accused was conveying timber logs without a permit. She pleaded guilty but provided an explanation. Nevertheless, the court did not accept her explanation and she was sentenced to a fine of GH¢ 400 (US$ 267) or nine months imprisonment with hard labour. From this amount, GH¢ 200 (US$ 133) was to be paid to the timber monitoring task force and GH¢ 150 (US$ 100) to the Forestry Development Fund. In addition, the eight logs were to be sold by FSD and the money paid to government consolidated fund and the vehicle released to the owner.
– Case 5: The Republic vs. ‘The Accused’ 5a, b and c
The offence was conveying of chainsaw lumber. The two accused people pleaded guilty. The first accused was sentenced to a fine of GH¢100 or, in default, twelve months imprisonment with hard labour. In addition, the first accused was ordered to pay compensation of GH¢ 200 (US$ 133) to the Forestry Development Fund. The chainsaw lumbers which comprised beams (112 pieces of red wood) were to be sold by the FSD and the revenue to be paid to government consolidated fund. Upon payment or completion of the prison terms the vehicle was to be released to the owner. The second accused was given a bail in the sum of GH¢ 500 (US$ 333).

– Case 6: The Republic vs. ‘The Accused’ 6a and b
The offence was illegally engaging in chainsaw milling. In this case both accused persons pleaded guilty and were convicted and sentenced to a fine of GH¢ 200 (US$ 133) each or, in default, twelve months imprisonment with hard labour. Of this money, GH¢ 100 (US$ 67) was given to the timber monitoring ask force. The lumber was confiscated by the State.

– Case 7: The Republic vs. ‘The Accused’ 7a (absconded) and b
The offence was conveying chainsaw lumber. In this case the first accused escaped. The second accused pleaded guilty to the offence but provided an explanation that he was illiterate and could not read the paper presented to him by the first accused. Despite this the court convicted and sentenced him to a fine of GH¢ 50 (US$ 33) or, in default, nine months imprisonment with hard labour. In addition, he had to pay compensation of GH¢ 250 (US$ 167) to the Forestry Development Fund. Upon payment of the fine and the compensation, or completion of the prison term, the tractor used to carry the lumber was to be released to him. The police were ordered to search for the first accused.

– Case 8: The Republic vs. ‘The Accused’ 8
In this case, the accused pleaded guilty and was convicted accordingly. The court realised that the accused had been convicted on a similar offence not long before. The court therefore sentenced him to a fine of GH¢ 400 (US$ 267) or, in default, eighteen months imprisonment with hard labour. Two hundred Ghana cedis of the money was to be paid to the arresting team as compensation and his truck released to him.

– Case 9: The Republic vs. ‘The Accused’ 9
The offence was carving canoes without a permit. In sentencing the convicted accused the magistrate placed reliance on s. 17(2) of Act 547 but decided to use alternative provision of the recommended sentence in s.17(4)(c) rather than the imprisonment prescribed by s.17(2). The reasons are twofold. First, records indicated that the accused

---

16 In the District Community Tribunal held at Nkawie on Wednesday, 24 of September, 2003, before his Worship Kwaku Dampare (ESQ).
17 In the Circuit Court of Ghana held in Kumasi on Monday, 24 November, 2003, before his Worship E.Y. Obimpe (ESQ).
18 In the District community tribunal held in Nkawie on Friday, 19 December, 2003, before his Worship Kwaku Dampare (ESQ).
19 In the Circuit Court of Ghana held in Kumasi on Friday, 25 April, 2003, before his Worship E.Y. Obimpe (ESQ).
20 In the District Magistrate Court held at Nyinahin on Tuesday, 10 August 2004, before his Worship Beresford Acquah (ESQ).
was a first offender. Second, the prosecutor failed to attach any value to the timber involved. The magistrate had to base his decision on s.17 (4)(c) and used his discretion to assess a value of GH¢ 30 and charged the accused based on the 1000% penalty as stipulated in the law for such value. The accused was therefore fined 150 penalty units (GH¢ 300) or, in default, six months imprisonment with hard labour. The canoe that was made out of the timber was to be confiscated and sold to the National Canoe Carvers Association or any interested party.

– Case 10: The Republic vs. ‘The Accused’ 10
The offence was conveying timber logs without a conveyance certificate. The accused pleaded guilty and provided an explanation that the court did not accept. The accused was sentenced to a fine of GH¢ 100 (US$ 67) or, in default, nine months imprisonment with hard labour. He was also made to pay compensation of GH¢ 200 (US$ 133) to the Timber Monitoring Development Fund and the timber monitoring task force. Upon this payment or completion of the prison term his vehicle was to be released to him. The confiscated logs were to be auctioned off by the FSD.

– Case 11: The Republic vs. ‘The Accused’ 11a, b, c and d
All the four accused pleaded guilty to charges of engaging in illegal chainsaw milling. They were therefore convicted on their plea and sentenced to a fine of GH¢ 200 (US$ 133) each or, in default, twelve months imprisonment with hard labour each. Two hundred Ghana cedis of the amount to be paid was to be given to the timber monitoring task force. The lumber was confiscated by the state.

– Case 12: The Republic vs. ‘The Accused’ 12 a and b (absconded)
The offence was conveying illegal logs. The first accused pleaded guilty and was convicted accordingly. He was sentenced to a fine of GH¢ 500 or, in default, twelve months imprisonment with hard labour. The logs were to be handed over to the Forestry Commission. Upon payment of the amount or after the prison term had been served the vehicle was to be released to the accused. A bench warrant was issued for the arrest of accused number two.

Based on the individual cases, the five law students using focus group discussions subjected the judgements of the individual cases to ‘a student’s expert view’ and scored the judgement pronounced by the court based on five criteria:
1 = Sanctions applied without due consideration;
2 = Sanctions lightly applied;
3 = Sanctions fairly applied;
4 = Sanctions satisfactorily applied and
5 = Sanctions strictly applied

They then presented the outcomes of these scoring in Table 11.6 for a common convergence indicative of level of enforcement.

---

21 In the District Community Tribunal held at Nkawie on Monday 10 March 2003, before his Worship Kwaku Dampare (ESQ).
22 In the Circuit Court of Ghana held in Kumasi on Monday, 15 December 2003, before his Worship E.Y. Obimpe (ESQ).
23 In the Circuit Court held at Nkawie on Tuesday 5 April 2011, before his Worship Jerome Noble Nkrumah (ESQ).
Table 11.6 Evaluation of judiciary enforcement of forest and tree-related offences on some selected unreported judgement in the courts under the jurisdiction of the Nkawie Forest District

<table>
<thead>
<tr>
<th>Name of case</th>
<th>Individual case scoring indicative of judiciary enforcement</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Case 1: The Republic vs. ‘The Accused No. 1’</td>
<td>✔</td>
</tr>
<tr>
<td>Case 2: The Republic vs. ‘The Accused No. 2’</td>
<td>✔</td>
</tr>
<tr>
<td>Case 3: The Republic vs. ‘The Accused No. 3’</td>
<td>✔</td>
</tr>
<tr>
<td>Case 4: The Republic vs. ‘The Accused No. 4’</td>
<td>✔</td>
</tr>
<tr>
<td>Case 5: The Republic vs. ‘The Accused No. 5a and b’</td>
<td>✔</td>
</tr>
<tr>
<td>Case 6: The Republic vs. ‘The Accused No. 6’</td>
<td>✔</td>
</tr>
<tr>
<td>Case 7: The Republic vs. ‘The Accused No. 7a and b’</td>
<td>✔</td>
</tr>
<tr>
<td>Case 8: The Republic vs. ‘The Accused No. 8’</td>
<td>✔</td>
</tr>
<tr>
<td>Case 9: The Republic vs. ‘The Accused No. 9’</td>
<td>✔</td>
</tr>
<tr>
<td>Case 10: The Republic vs. ‘The Accused No. 10’</td>
<td></td>
</tr>
<tr>
<td>Case 11: The Republic vs. ‘The Accused No. 11 a, b, c, d’</td>
<td></td>
</tr>
<tr>
<td>Case 12: The Republic vs. ‘The Accused No. 12 a b’</td>
<td></td>
</tr>
</tbody>
</table>

The ranking or weight (i.e. without due consideration, lightly, fairly, satisfactorily and strictly applied) on the sanctions was based on the groups’ collective assignment of a common and desirable weight after each group member had assigned his/her individual weight and justified why it should be the final or indicative value. Hence this was subject to deliberations and common agreement in relation to how the judgement of the court ranked vis-à-vis the prescribed sanctions of the forest enactments. According to one of the students, cases scored as ‘lightly’ were applied with less recognition for the prescribed legal sanctions than those scored as ‘fairly’, ‘satisfactorily’ or ‘strictly’ (Boakye Kwabena Akyeampong, pers.comm. 2012).

From images to actions: Perceptions of the judiciary, police and FSD officials in forest law enforcement

This section presents the views of the judiciary, the police and the FSD officials on the outcomes of forest offence cases in the law courts. The section presents the governors’ perceptions on forest law enforcement and ways to strengthen it in terms of images (‘guiding lights’ in the form of visions, judgements, presuppositions, etc.), instruments (that link images to actions and may be soft or hard) and actions (which put the instruments into effect) (see Chapter 2 and Kooiman et al. 2005).

Images

Among the nineteen respondents from the three institutions, 84% (n=16) were of the view that state agencies generally lack the institutional capacity and willingness to prosecute forest offences. They attributed this situation to the law court’s qualification of forest offences as being trivial, the judiciary’s poor knowledge of forestry laws and the lack of capacity on the part of the Forest Services Division (FSD) and the police Service to put in place a coherent set of legal procedures for prosecuting forest cases. These respondents also highlight the lack of human capacity in the courts to prosecute on behalf of forestry, a lack of facilities to investigate and prosecute (i.e. inadequate logistics to visit the forest for evidence) and the fact that the FSD is not very well...
equipped to detect and arrest offenders. Whereas the majority of respondents stressed the limitations, three respondents (16%), who were all police personnel, made firm statements about law enforcement. These respondents argued that it is the state agencies’ mandate to detect, investigate and prosecute forest offenses because (i) the state has the resources as well as the judicial personnel to do so, (ii) the laws are there for any institution to enforce them, and (iii) illegal actions are criminal and should be prosecuted in court, supported by the police through arrest, investigation and prosecution. Being part of the Police Service, they indicated that they did not perceive a lack of institutional capacity on their part because their only responsibility is to enforce the application of the laws when they bring offenders to court. They also stated that there are many laws to back the prosecution processes.

A second aspect expressed in the interviews was that the extent to which the three institutions cooperate plays a vital role in the effective application of the prescribed sanctions. Of the interviewees, 58% reported that no cooperation takes place between the court and the FC to ensure appropriate levels of penalties. On the other hand police officials (representing 26% of the respondents) said that cooperation did take place between the FC and the court. Two respondents (16%) perceived cooperation as being dependent on the relationship between particular official and therefore stated that this would depend on the circumstances and the people involved.

With regard to effective cooperation between the law courts and Police Service as regards handing out appropriate levels of penalties on forest cases, 50% of the respondents indicated that there is little or no effective collaboration between the two parties since none of them are aware of the damage these offenses cause to the environment. However, 40% of the respondents believed there is effective teamwork between the above state agencies, whereas 10% had no opinion regarding the collaboration between the courts and the Police Services.

Third, the respondents were asked whether the judges and prosecutors take sufficient consideration of the negative impacts of forest loss during prosecution and judgement. Sixty-five per cent of the respondents were of the opinion that judges and prosecutors do not take into consideration the significance of the negative impact of forest loss on the environment before imposing penalties. Thirty per cent indicated that all issues are taken into consideration before judgement is passed, as stipulated in the Forest Acts and Decrees. The other 5% had no opinion on how judges carry out their duties.

**Instruments**

Sixty per cent of the respondents consider the penalties meted out to forest offenders as not being severe enough to deter the culprits from engaging in illegal activities in the forest. They attribute the failure of court officials to apply severe penalties for forest offenses to political (43%), social (27%), economic (21%) and environmental (9%) motives. According to FSD officials, their fines appear to be relatively higher and more deterrent than those imposed by the courts. In contrast to this assertion, 60% of the respondents are of the opinion that the practice of releasing objects to offenders (e.g. trucks that were used for the transportation of illegal logs) after payment of fines to the Forestry Commission significantly reduces the deterrent value of the law enforcement process. These respondents believe that the fines are too small and invariably lead to rent-seeking behaviour of elites in the forest sector. Moreover, the culprits immediately return to the forest estate to recover their losses, which leads to a cyclical wave of forest offence, arrest, subsequent release upon payment of fines and a new offence. Moreover,
the resale of lumber and objects of forest offences is usually beneficial to the culprits and does not deter them from repeating the same offences. As these offenders are not prosecuted and sent to jail and the deterrent value of the law enforcement process is derailed, practice is in contravention of the expectation of the legislative arm of government.

Another instrumental factor that emerged from the interviews as being a hindrance to effective juridical processes is deficient documentation of offences and limited administrative means for the FSD to deal with offenders. Fifty-five per cent of the respondents were of the opinion that poor documentation of forest offences during a trial poses difficulties as regards law enforcement. Another 35% indicated that documentation of forest offences does not play any major role in securing positive law enforcement outcomes, since the judges and prosecutors are professional and are very much aware of their deliverables. Ten per cent of the respondents had no opinion on the situation.

The lack of manpower is related to the previous point. It transpired that 70% of the respondents strongly believed that the effective administration of justice is affected by the inadequacy of manpower and equipment in relation to the cases submitted. Twenty per cent of the respondents also believe otherwise as they think that, irrespective of the inadequacies of manpower and logistics, results can still be achieved with regard to the effective administration of justice.

Finally, it is noticeable from the interviews that prosecutors are not very conversant with forestry laws. Sixty per cent of the respondents supported the assertion that prosecutors have little or limited knowledge of forestry laws. Nonetheless, 35% of the respondents opposed this majority view, whereas 5% had no knowledge of whether judges and prosecutors were conversant with the forestry laws. Sixty per cent of the respondents indicated that the courts lack the willingness to investigate and adjudicate crimes such as illegal logging, which they seemingly consider as unimportant crimes.

This could be attributed to a lack of capacity on the part of the court regarding their knowledge on forestry or environmental issues.

The combination of inappropriate descriptions of offences with the general lack of reference to relevant laws seriously weakens the legal validity of the charges for successful prosecution. About 75% of the respondents agreed with this scenario, whereas 25% believed that this does not adversely affect the legal validity of charges for suc-

Box 11.5  Perceived factors that result in downgrading forest offences

- A lack of effective cooperation between enforcement agencies and the courts.
- Inadequate communication between the FC and the courts.
- A lack of shared perceptions of the significance of illegal forest offences.
- A lack of motivation on the part of the forestry officials to support cases pending trials.
- A lack of knowledge of relevant laws on the part of the prosecutors and the judges.
- Inadequate access to copies of the relevant laws and new laws (amendments) by the court.
- Inadequacy of the documentation provided by the FSD and/or prosecutors.
- Impression that offenders are forced into illegal actions through poverty.
cessful prosecution. A summary of the factors that result in the downgrading of forest offences by the FSD, the prosecutor and the judiciary is presented in Box 11.5.

**Actions: Recommended institutional strengthening to ensure effective law enforcement**

Respondents had different opinions on the actions necessary to raise awareness of the judiciary of the seriousness of forest and wildlife crimes. However, the dominant proposition was to organise workshops and in-service training for relevant staff of the judiciary, the police and the FSD field staff on the importance of forest, on the negative impact of forest loss on the environment and on forest laws. In addition, field trips to the forest estate for staff of the judiciary, Forestry Commission, police and other key stakeholders was considered important to reveal the extent of encroachment into protected forests and the damage caused to the forest. Ninety per cent of the respondents consider the FC, with support from the Ministry of Lands and Natural Resources (MLNR), as the most appropriate actor to undertake such initiatives, whereas 10% were of the view that NGOs and the private sector should take action to help raise the awareness of the judiciary and the Police Services on the seriousness of forest and wildlife crimes.

With regard to the question of how the judiciary and the police can become knowledgeable about vital forestry-related issues, such as the extent of environmental damage, 67% of the respondents recommended that organising consultative and educative workshops and seminars would be the best platform. Twenty-two per cent of the respondents suggested that the management of the FSD should, first of all, interact with the judiciary on a regular basis, interspersed with field visits. Eleven per cent of the respondents advocated the integration of forest and wildlife policies and legislations in the curricula of the law schools in the country.

**Discussion**

The discussion is divided into three sections. First, the nature of forest offences is discussed in terms of interactions between the system-to-be-governed and the governing system. Then, the discussion centres on the judicial decisions regarding forest offences. The last section addresses how law enforcement officials and the judiciary perceive the challenges and opportunities in enforcing forest laws.

**Interaction between the system-to-be-governed and the governing systems**

Nkawie Forest District is endowed with six forest reserves categorised into different management regimes. The accessing, processing and conveying of forest resources without a permit constitutes a criminal offence as stipulated in the Act 547 (amended 617), LI.1649 and NRCD (amended 642). Thus every illicit activity in forest reserves and off-reserve areas especially related to timber resources is treated as a criminal offence. Such a situation makes it difficult to assess what is criminal and not criminal when it comes to people’s livelihood needs. According to Christy et al. (1997) this makes compliance with law enforcement difficult especially when offences are entangled with issues of tenure. Is it a crime to access forest resources to meet one’s livelihood needs? Amanor (2005) argues that such questions make it difficult for local people to acknowledge that what the law says is a crime and they perceive that as injustice. According to the same author, they respond to the perceived injustice by ‘a culture of conspiracy’ and by violating forest laws, ‘as either an act of defiance or a desperate attempt at achieving subsistence’ (Ibid.:16). As indicated by Vasan (2002), policy implementation is always challenged because it is not just a mechanical translation of stated
goals into activities, but rather influenced and mediated by multi-stakeholder perceptions and attitudes.

In the context of Ghana, both the police and the FC are law enforcement agencies. The duty of the FC is to enforce the regulations that govern the country’s forest and tree resources; the role of the police is to ensure due enforcement of laws. These two agencies exist to ensure that the government machinery fulfils its policies, objectives and programmes while protecting life and natural resources. Whereas the FC and the police are the executive branches of government and thus answerable to it, the judiciary is the wing of the judicature and is autonomous. While the law enforcement agencies aim to secure a way of preventing crime and of punishing offenders, the judiciary aims to administer the law impartially while observing human rights and fair judgement. The respondents perceive the collaboration between them as weak, and this affects the law enforcement process.

The governance interactions and their outcomes
The study of documented forest offences with the FSD indicated eight forest offence types with prevalent cases being chainsaw milling, illegal logging and illegal farming. This confirms the conflict types reported by the local communities in this study as shown in Chapters 7 and 9. Between 2005 and 2010, the district recorded 121 offences with more offences occurring in the on-reserve areas than in off-reserve areas. These contrasts with the findings of Abugre & Kazaare (2010) in a similar study in three forest districts in Brong Ahafo region where most offences tend to occur in off-reserve areas than on-reserve areas. The difference between the two studies could be due to the different location of the study areas with peculiar needs of inhabitants and ease of access to on-reserve and off-reserve forest. Nonetheless, both studies have highlighted the fact that the timber species which is most exploited illegally is *Triplochiton scleroxylon* (wawa), a scarlet star-rated species which is under imminent economic threat. Under the chainsaw milling and logging offence types, eight and eleven scarlet species respectively had been exploited between 2005 and 2010. This contributes to a loss of timber revenues to the state since these trees were taken illegally and not all of the culprits were arrested and fined for the state to generate revenue. Equally exploited species are those of red and pink star rating which face potential economic extinction. Only two species (i.e. *Klainedoxa gabonensis* and *Albizia zygia*) of the trees felled under illegal logging are less valuable species with a green star rating. These rating classifications are prescribed by Hawthorne & Abu-Juam (1995) (see Chapters 4 and 10). Illegal logging and chainsaw milling thus create a potential of losing high economic value timber species if access to these resources is not regulated by the FSD.

There is empirical evidence that large numbers of cases are resolved by the FSD through the imposition of fines and the subsequent release of vehicles associated with the particular forest offence. For example, the FSD uses several approaches to resolve illegal farming offences within forest reserves. The forest farms are often destroyed and the subsequent measure involves three strategies: the culprit is sent to the police station and the matter ends there, or the offence is dealt with by the FSD officials at the regional or district level, or the offender is arrested and prosecuted in court and fined. The use of administrative sanctions in civil law to deal with natural resource offences without judicial involvement is acceptable in countries like the United States (Christy et al. 1997), but is harder to implement in developing countries. An alternative procedure is what Christy et al. call ‘compounding’, in which case an executive body (like the FC) is
empowered to levy fines without involvement of the court (Ibid.: 149). In order for the FC to legally exercise its administrative powers, the FC needs to be empowered by an administrative Act to guide its actions and enable it to have a standard prosecuting or fining mechanism across its jurisdiction in the country. As this study made clear, most of the cases reported in court had either no evidence or inadequate evidence since the offenders absconded, making it difficult to present such cases in the law court under criminal penalty. Evidence of the violation of law is an essential ingredient before one can be sentenced to a fine or imprisonment. Article 19 (2) (c) of the Constitution of Ghana (presented in Box 11.4) clearly states that ‘A person charged with a criminal offence shall be presumed to be innocent until he is proven or has pleaded guilty’. Assigning prosecuting powers to the FC could help solve the impunity of forest offences, provided measures are taken to prevent non-transparent charges and corruption.

Analyses of the official records revealed lapses in record keeping since the outcomes of offences, especially regarding cases under police and regional FSD investigations are not indicated. This makes it difficult to assess whether actions taken against these offenders actually have a positive impact on the level of offences in the district. Even though there has been a decline in recorded forest offences between 2005 to 2010, this decline may be due to the (in) efficiency of the FSD monitoring system or to the FC’s incapacity to detect the offenders and record the offences. A call for capacity development of FC officials, both staff trained at university level and field officers, may be essential as has also been recommended by forest governors and experts in Chapter 6. In South Carolina in the United States, for instance, the Forestry Commission officers are trained and certified in criminal justice in addition to training in forest law, forest investigation and incident management.24 Law enforcement therefore becomes part of the training of the forest manager and somehow this is missing in the current training of forest managers in Ghana’s forest sector. The legal department of the FC could extend its mandates from representing the FC in legal matters to advocacy for the FC to establish a prosecuting system as well as building capacities of FC officials in legal issues and conflict management. There is also a need for officials of the legal department to have knowledge of natural resource management in addition to knowledge of law, so that they have a better and more in-depth understanding of the negative environmental effects of forest offences and how best to quantify them during presentation of cases in the law courts.

Among the twelve forest-related unreported judgments analysed, only two of the cases made reference to the legislation that governed the forest offences and their sanctions. These cases were between ‘The Republic vs. The Accused No. 1’ and ‘The Republic vs. The Accused No. 9’ and charged under Act 547 and PNDCL 142 respectively. In the latter case, the court relied on Section 17(2) of the Timber Resources Management Act, 1997(Act 547) which deals with offences, with an alternative provision made to Section 17(4), which speaks about fines rather than ‘imprisonment’ prescribed by Section 17(2). This was considered more appropriate given the fact that the accused was regarded as a first offender. The rest of the court rulings on the other cases were silent on relevant legislations. The sanctions were not applied strictly in any of the twelve cases because it was unclear what the maximum prescribed penalty was, as stipulated in legislation. Even though the legislation clearly states that vehicles carrying illegal products must be confiscated by the state, none of the rulings were strictly applied. Rather,

when an offender had been fined or served his/her prison term, the vehicles were released to the owner. In the majority of cases sanctions were applied lightly and in three cases sanctions were moderately applied. One could easily conclude that the judges or magistrates were lenient when it came to pronouncing judgement on forest cases or that they were less knowledgeable in forest laws. However, that does not need to be the case because the Constitution in Article 19(12), which is a clause to 19(11), stipulates that the judge or magistrate has the mandate to punish a person ‘for contempt of itself’, even if the act or omission constituting the contempt is not defined in a written law and the penalty is not prescribed.

**Perceptions of FC, police and judiciary officials: images, instruments and actions**

Although forestry laws are designed to be applied, most of them seem to exist on paper only. This study revealed a common belief in inadequate institutional capacity among the FC, police and the judiciary to apply existing sanctions and enforce the law in practice. This is clearly demonstrated by the high volumes of illegally produced chainsaw lumber and timber logs, widespread illegal farming and illegal mining among others. It can therefore logically be inferred that the status quo aligns perfectly with the perception of forestry officials that the judicial trials of forest offences imposes very low fines which is a hindrance to effective law enforcement. However, this was also disputed by some of the respondents. Equally, the administrative means that the FSD uses to deal with forest offences (such as fines and FC/ military taskforce) contribute to an increase in illegibilities because the fines are considered to be low. The respondents called for forest and wildlife policies and laws to be included in the curriculum of the Ghana law schools. This corresponds to the proposals recommended by the forest governors and experts in Chapter 6.

It is noteworthy that the failure of Court officials to apply severe penalties for forest offences implies the downgrading of these kinds of offences. By organising consultative workshops and seminars to educate the judiciary and the police on the effect of environmental damage to the nation, they will become knowledgeable about vital forestry-related information that includes the extent of environmental damage. These proposals for capacity building correspond to the recommendation for training of police, prosecutors and judges by Christy *et al.* (1997: 153).

**Conclusion**

This study revealed that there is a broad range of legislation which governs the forest sector Ghana and work to develop these is geared towards effective forest governance. Nevertheless, the implementation of these laws is challenged because of the prevalence of forest offences and low fines attached to these offences. It was clearly noted that the mechanism designed for law enforcement requires effective cooperation and collaboration of the relevant state agencies, which are the Forestry Commission, the Police Service and the Judicial Service. However, it was also observed that there was an apparent lack of cooperation regarding the procedures for reporting forest offences, the coordination of court processes for effective law enforcement and the eventual determination of the offences by the court as well as a sometimes arbitrary disposition of offence reports by the FC. A wide range of reasons has been assigned for those pertinent traits of the forest sector. The general character of the enforcement mechanism is that it appears satisfactory bearing in mind the institutional limitations and the limited capacity of the
forest sector organisation.

To conclude, it is fair to say that forest law could be enforced more effectively if attention were paid to capacity development (both human and logistic) of forest officers, the police and the judges, in addition to decriminalising some forest offences and making them subject to civil law or granting legal administrative power to the FC so that it can deal with some of the offences beyond the scope of the judiciary.