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The legal framework governing forest conversion in Liberia



Introduction

Forest conversion involves many different sectors (forestry, mining, agriculture) and a full understanding of the legal framework demands analysis of legal texts from all of those sectors, which must be read together to understand all requirements. Therefore, this briefing provides an overview of the legal framework for forest conversion in Liberia (section 1). It also places forest conversion and conversion timber (the timber resulting from the forest clearance) in the context of the Voluntary Partnership Agreement (VPA) (section 2).

Forest conversion is the process of clearing natural forests with a view to allocating the cleared land for another purpose, often agriculture, mining, infrastructure or urban expansion. There is general consensus that it is the largest cause of global deforestation today. Liberia follows this global trend: both agri-business and mining concessions are expected to contribute increasingly to deforestation. Already, from 2000-2010, Liberia saw net losses in forest area and a net gain in agricultural area (for palm oil and rubber plantations).¹

To date, large-scale agricultural and mining concessions in Liberia have been characterised by ineffective consultations with local communities leading to clashes, land tenure conflicts due to overlapping land rights and land use permits, clearance of natural forests and unmet community expectations of benefit sharing and employment. These negative social and environmental impacts stem, in large part, from the weak regulation of forest conversion and inapt government oversight. For more information on these risks, see ClientEarth's briefing on '[Addressing the risks of a weak legal framework governing forest conversion in Liberia](#)'.

1. Legal framework regulating forest conversion in Liberia

Based on ClientEarth's research into national legal frameworks governing the conversion of forested land to another land use, we would expect to see the following elements in any comprehensive legal framework:

1. Land use planning – National identification of how different land areas should be used, including which forested land can be converted (or not)
2. Allocation and approval of forested land for conversion – The process for forested land to be allocated to an agricultural or mining concession
 - Forest classification
 - Agricultural or mining concession permit
 - Community engagement and consent
3. Forest clearance permitting procedures – The process to receive authorisation to deforest and for the use of the timber coming from the clearance

The following sections analyse the extent to which the laws and regulations in Liberia include the abovementioned elements, with an additional focus on the recognition and protection of local communities and indigenous peoples' rights.

¹ Food and Agriculture Organization of the United Nations (2016) 'State of the World's Forests', <http://www.fao.org/3/a-i5588e.pdf>, Table 2.1.

1.1 Land use planning

There is no national land use plan in Liberia. This makes it difficult to know the purpose for which land is intended to be used, including how land should be distributed for forestry, agricultural or mining activities. Concessions are issued without reference to a comprehensive planning document and with little or no Ministerial collaboration or coordination.² This results in considerable overlapping land usage in Liberia, in particular with regards to mining and forestry activities.³ In an attempt to overcome this deficit, in 2016 the government released a National Concession Portal, which demarcates active commercial concessions and forested areas, including community forests, on a map, based on information provided by land use Ministries.⁴ This should improve both transparency and land use planning of future concessions.

Action on national land use planning is supported by law. An integrated land use policy, based on scientific soil classification, is envisaged by the Environment Protection and Management Law (EPML) 2002.⁵ However, to date, this provision has not been acted upon. The new Liberia Land Authority, established in 2016, also has a mandate to promote the development and execution of land use plans and zoning schemes.⁶ It is too early to understand how this new law is being implemented.

1.2 Allocation and approval of forested land for conversion

The following sections will review forest land allocation and approval in Liberia, which includes three separate stages. First, to identify which forested land can be converted, forested land must be classified into different uses: e.g. protected forests, community forests or forests available for commercial use. Second, agricultural or mining permitting procedures also apply, and should include conditions or restrictions for undertaking activities on forested lands. Environmental laws will often supplement these sectoral laws. Third, in Liberia, communities own and manage certain forests and community consent must be granted for any conversion projects taking place on community forest lands.

1.2.1 Forest classification

The National Forestry Reform Law (NFRL) 2006 requires that the Forest Development Authority (FDA) prepare a National Forest Management Strategy, in which all forested lands are classified according to their legal status and potential suitable use. These uses have been defined as (i) conservation/ protection, (ii) commercial, (iii) community⁷ or a combination of uses.⁸ However, national classification of forests in Liberia has not yet been completed.

² The National Forestry Reform Law (NFRL) and the Environmental Protection and Management Law (EPML) speak of collaboration and coordination between the Environmental Protection Agency (EPA), FDA and other relevant agencies,² but the terms “collaboration” and “coordination” are not defined, and there is no guidance on the minimum level of interaction to satisfy the collaboration or coordination requirements of the statutes.

³ For example, the Arcelor Mittal concession overlaps with two community forests and with the Nimba Nature Reserve. Many mining exploration licenses granted from 18 January 2016 overlap with forest concessions in Grand Gedeh, Sinoe and Rivercess counties. For more examples, see: <http://portals.flexicadastre.com/liberia/>

⁴ Liberia National Concession Portal, <http://portals.flexicadastre.com/liberia/>. Participating Ministries include the Ministry of Agriculture, the Ministry of Lands, Mines and Energy and the Forestry Development Authority (FDA).

⁵ EPML, section 87. The EPML also provides for the development and implementation of policies that encourage compatible, mutually-reinforcing land use and management of land resources, taking demographic issues into account.

⁶ Liberia Land Authority Act 2016, section 8.1(b).

⁷ Community Rights Law with respect to Forest Lands 2009 (CRL), section 1.3: community forest land is defined as “forested or partially-forested land traditionally owned or used by communities for socio-cultural, economic and developmental purposes”. The FDA receives, reviews and approves applications for Community Forest status: Community Rights Law 2009, section 2.4 and Regulations to the Community Rights Law of 2009 with Respect to Forest Lands (2011) Ch 2.

The first step of this process has been achieved, with the FDA defining and measuring forested land by use in Liberia.⁹ Forests are defined as 30% minimum forest cover, 5 metre minimum height and 1ha minimum area.¹⁰ To conclude the classification process, the FDA must develop a suitability map that demarcates which is the most suitable use for each different area of forested land.¹¹ Once the FDA has completed this suitability map, conversion should only be permitted on areas identified for commercial use.

Conversion for commercial gain may also be possible in community forests, if the community so decides.¹² However, the Community Rights Law with respect to Forest Lands 2009 (CRL) is unclear as to whether commercial activities on community forests include conversion, or whether they are restricted to timber logging.¹³ A recent harmonisation of the Regulations to the Community Rights Law of 2009 (yet to be approved and published by the FDA) makes it clearer that community forests may not be used for conversion to agriculture or mining.¹⁴

The FDA must also establish a Protected Forest Areas Network to cover at least 30 percent of the existing forested area of Liberia (as of 2003), representing about 1.5 million hectares.¹⁵ These Protected Forest Areas¹⁶ would generally be ineligible for conversion.¹⁷ However, certain mining activities¹⁸ could still be undertaken in a National Forest (one type of Protected Forest Area) once the FDA approves the grant of a mineral right and provides written guidelines for maximum protection of the environment and sustainable forest management during the mining.¹⁹ The Government has already gazetted and endorsed three Protected Forest Areas and identified eleven additional areas as proposed Protected Forest Areas.²⁰ These proposed areas require endorsement through legislative enactment to complete the classification.

1.2.2 Agricultural and mining concession permits

Land acquisition and community engagement

None of the Agricultural Law of 1973, the Minerals and Mining Law of 2000 and the PPC Act of 2009 include provisions or conditions specifically on forest conversion. They do not restrict access to any land for agricultural and mining concessions. There is also no recognition of communities' land rights in the legislation. Communities are not currently included in concession decisions and the negotiation of concession agreements is performed solely between the government and the company.²¹

⁸ NFRL, section 4.4.

⁹ FDA Division of Scientific Research, 'National Forests Classification, acreages, Location and Utilization Index' (2015) <http://bit.ly/2f8oHrj>.

¹⁰ FDA and Forest Carbon Partnership Facility, 'Country: Liberia REDD + Program Annual Country Progress Report' <http://bit.ly/2nCdV31>.

¹¹ FDA Regulation 102-107 (Regulation on Forest Land Use Planning), section 42.

¹² CRL, section 3.1 and Chapter 6. See also ClientEarth (2016) "The legality of different types of logging licenses and contracts" Legal Briefing.

¹³ CRL refers alternately to "harvest of timber", "commercial logging" and "forest activities" when describing the commercial activities community managed forests might engage in, which tends towards an interpretation of commercial activities being limited to traditional timber harvesting. CRL, section 6.7 states "Other emerging or novel commercial activities, related to community forest resources, shall be regulated by the Authority in consultation with communities and other relevant agencies of government."

¹⁴ Proposed Amended Community Rights Law Regulation 2016 <http://www.fda.gov.lr/information/laws/#110-in-progress>

¹⁵ The Protected Forest Area Network Law (2003) and NFRL, Chapter 9.

¹⁶ Protect Forest Areas include: National Park, Nature Reserve, Strict Nature Reserve, Game Reserve, communal forest, and cultural sites.

¹⁷ Protected Forest Area Network Law, section 9.10.

¹⁸ Class A Mineral Rights are a mining license for a proposed production area, valid for no more than 25 years: New Minerals and Mining Law, 2000, section 6.5.

¹⁹ NFRL, section 8.2.

²⁰ It should also be noted that the Lake Piso Basin Multiple Sustainable Use Reserve, Sapo National Park and East Nimba Nature Reserve have been granted protected forest area status through legislation: An Act for the Establishment of The East Nimba Nature Reserve, An Act for the Extension of the Sapo National Park and An Act to Establish Lake Piso Basin Multiple Sustainable Use Reserve.

²¹ PPC Act, section 90 and 91 require public stakeholder engagement only for the general option to grant a concession, which occurs before any company has tendered or been selected.

In an attempt to encourage inter-ministerial cooperation, the Public Procurement and Concessions Act (PPC Act) 2009 has established an Inter-Ministerial Concession Committee (IMCC) to govern the award of every concession,²² which is dissolved once the concession contract is entered into. The FDA generally participates in the IMCCs established for agricultural concessions, but it is unclear what processes or authority the FDA holds to regulate the award of a concession on forested land, since no Forest Resource License is sought before clearing forests (see section 1.3).²³

Environmental requirements

The Minerals and Mining Law contains specific environmental conditions for undertaking mining activities on forested lands, including the requirement to restore the mining site on completion of mining activities and to reforest the surface area of the mine, if the mining activities have caused the large-scale felling of trees.²⁴

Similarly, the EPML requires an environment impact assessment (EIA) license or permit to have been approved before the commencement of any large-scale mono-culture agricultural concession, mining concession or logging and “selective removal of single commercial tree species”.²⁵ The EIA must include the location of the project and the projected areas of land, air and water that may be affected, among other information.²⁶ This EIA process provides an opportunity for the Environmental Protection Agency (EPA) to determine whether a concession should be approved in its proposed location or whether it will have too significant an impact, including on forests. If the impact on the environment is deemed significant or irreversible, the EPA can reject the EIA license, thereby effectively halting the conversion project.²⁷

1.2.3 Community forest lands

Local communities' right to free, prior and informed consent (FPIC) is internationally-recognised as important to protecting and promoting their rights. The NFRL confirms forest-dependent communities' rights to approve use of their forested lands before any commercial timber logging is approved.²⁸ It is not clear whether this same community approval applies to conversion projects. Moreover, for Community Forest Land “any decision, agreement or activity affecting the status of use of community forest resources shall not proceed without the prior, free, informed consent of the community”, represented by a Community Forestry Management Body.²⁹

As mentioned above, communities within the boundary of proposed concessions are not included in concession agreement negotiations. The Government has also granted concession agreements that state the area of land is “free of encumbrances”;³⁰ in reality, these concession areas include communities' villages and farming land. Thus, companies and communities have clashed over ownership of concession areas. Where companies have undertaken FPIC

²² Public Procurement and Concessions Commission Act 2009 (PPC Act), section 73: Concession is defined as “the grant of an interest in a public asset by Government or its agency to a private sector entity for a specified period during which the asset may be operated, managed, utilized or improved by the private sector entity who pays fees or royalties under the condition that the Government retains its overall interest in the asset and that the asset will revert to the Government or agency”

²³ In GVL and Sime Derby concession agreements, the signatories are the Minister of Agriculture and Minister of Finance, with no mention of FDA.

²⁴ Minerals and Mining Law 2000, section 8.3

²⁵ EMPL, Annex 1. This requirement is also codified in the Minerals and Mining Law 2000, section 8.4, for Class A or B licenses.

²⁶ EMPL, section 8.

²⁷ EMPL, section 21.

²⁸ FDA Regulation 102-07, section 61. Community Forestry Development Committees must sign a Social Agreement with a logging company whose logging concession affects their community (Forestry Development Authority Regulation No. 105-07).

²⁹ CRL, section 2.2

³⁰ See e.g. concession agreement for GVL: http://goldenveroleumlberia.com/images/pdf/2014-09-30.2_GVL_Concession_Agreement.pdf

consultations with communities, this has often been only after concession agreements are signed and after pressure from the international community.³¹

To summarise the forest land allocation and approval process, without a national classification of forested lands, it is difficult for concessionaires or government agencies responsible for negotiating with concessionaires to plan on which lands concessions should be located. Once classified, it is important that any restriction to the use of forested lands established by forestry laws also be included in the agricultural and mining legislation and the PPC Act, to ensure coherence across sectoral legislation and thus coherence across Ministries' actions. Where forested lands are in danger of being harmed, environmental stipulations should apply, such as the existing reforestation and restoration requirements for land affected by mining operations. Where community forest lands are affected, companies and/or government should undertake community consultation and gain community FPIC before any concession agreement is signed.

1.3 Forest clearance permits

In Liberia's current legal framework, the FDA is not required and nor has it sought to provide concession holders with permission to clear the forest for their agricultural or mining operations. This is because other laws grant this authorisation. The Minerals and Mining Law allows miners to cut timber when necessary to clear land for mining activities³² and gives authority to the Minister responsible for Mines to authorize the clearing of trees and shrubs "necessary for the mineral rights holder's activities outside the boundaries of his license or licenses".³³ Agricultural and mining companies may also have the right to clear timber for their own operational use (not for commercialisation), based on the terms of their concession agreement.³⁴ For example, the concession agreement between the Liberian Government and GVL allows GVL to cut trees on its concession area as necessary for constructing infrastructure and performing its operations.³⁵

However, these powers seem incoherent with the NRFL, which designates the FDA as the "representative of Government in any matter concerning the use of forest"³⁶ and has the authority to regulate "any activity involving forest land" (such as mining operations).³⁷ Subsequently, no one should clear trees and shrubs, nor cut wood, without the permission of the FDA. As currently worded, the Minerals and Mining Law and concession agreements allow deforestation and forest conversion to occur without any coordination with the FDA.

Despite this broad responsibility, it is unclear which of the Forest Resource Licenses the FDA could use to authorize the clearing of forests for other land uses.³⁸ There are four Forest Resource Licenses that the FDA may grant to undertake any commercial or other use of

³¹ See e.g., the RSPO complaint against Equatorial Palm Oil by the Jogbahn Clan <http://bit.ly/15cBLEZ>

³² Minerals and Mining Law 2000, section 6.7(d)(4).

³³ Minerals and Mining Law 2000, section 11.6. In addition, the Minister responsible for mining may also provide authorisation to a mineral rights holder to "develop roads, canals, pipelines and channels, etc. for the purpose of transporting products...", which may be on forested land.

³⁴ A concession is considered a special legislation under Liberian law because its approval by the legislature and subsequent approval by the President puts it on par with other general legislation and it cannot be amended unless by consent of the law makers and the President.

³⁵ Concession Agreement between Golden Veroleum Liberia and the Government of the Republic of Liberia, September 2010, section 4.4(f).

³⁶ NFRL, section 2.2(a). See also section 11.5 that prohibits the clearing of any forest, shrubs, etc. without authorization from the FDA.

³⁷ NFRL, section 5.1(d) and section 11.2.

³⁸ Nonetheless, in 2015 GVL did request permission from the FDA to log in their concession area, in order to allow communities to extract and sell timber cleared. The request was denied in 2016, with the FDA citing that no legal instrument currently allows industrial logging in agricultural concessions. See: <http://bit.ly/2ndJaAsf> and <http://bit.ly/2nSrfxR>

forested land – a Forest Management Contract (FMC), a Private Use Permit (PUP), a Forest Use Permit (FUP) or a Timber Sale Contract (TSC).³⁹

Of the four, the TSC is most relevant to forest conversion, but it does not match the context well. A TSC allows “forest land to be cleared for agriculture or for the establishment of plantations.”⁴⁰ Therefore, the TSC does not seem to be appropriate for other land uses, such as mining and infrastructure. Nonetheless, in other ways, the TSC does suit conversion. It is valid for three years and for tracts of land of less than 5,000 hectares. Although this is smaller than most commercial concessions, in practice, the area of forested land cleared in a concession may well be under 5,000ha for each three-year period. Importantly, the holder of a TSC may not fell any trees unless they also possess a valid Annual Harvesting Certificate,⁴¹ which may provide the FDA with oversight and approval of the number and method of trees to be felled.

However, as will be explained more in Section 2, the Government of Liberia has prohibited any commercialisation of conversion timber. As long as this ban stays in place, it may be deemed too onerous for conversion projects to be required to get a TSC license.

2. Forest conversion and conversion timber in the VPA

The Voluntary Partnership Agreement (VPA) is a bilateral trade agreement between the European Union and the Government of Liberia, which aims to ensure that all timber sourced in Liberia has been legally produced in line with an established legality framework.⁴² Currently, the VPA covers timber sourced under a FMC, TSC, PUP, FUP and Chainsaw permits.⁴³ However, it is clear that the VPA could accommodate other timber sources. Specifically, timber cleared for concessions ('conversion timber') is envisaged in the VPA: “timber products harvested under agriculture concession agreements will also be covered by the LAS.”⁴⁴ The incorporation of conversion timber in the VPA is, therefore, anticipated and provided for by the VPA.

Conversion timber has not been included in the VPA to date, as there is too much uncertainty in the law regarding the procedures to be followed. There is no clear way to determine the legality of timber harvested from forest conversion and the legal framework is silent on procedures necessary to track and assure traceability of conversion timber.

A new regulation on conversion timber may be able to fill some of the gaps of the current legal framework, including specifying the Forest Resource License to be used to clear trees for forest conversion purposes (i.e. the TSC). It could also include requirements for conversion timber to be included as a timber source in the VPA, such as procedures for the harvest and marketing of conversion timber and traceability rules. However, in September 2016, the FDA stated that it would not develop any further regulation on forest conversion, as it had determined not to allow,

³⁹ NFRL, Chapter 5 and see also ClientEarth (2016) “The legality of different types of logging licenses and contracts” Legal Briefing. It should be noted that FDA Regulation 102-107, section 31, prohibits any further Forest Resource Licenses to be awarded until the National Forest Management Strategy and the classification of all forest land is completed.

⁴⁰ NFRL, section 5.4.

⁴¹ Ibid. The Annual Harvesting Certificate will only be granted once the Holder has an approved annual operations plan and an approved forest management plan that covers the specific area to be harvested (NFRL, section 5.3(e)).

⁴² This is a framework of national legislations and governmental control systems that evolved through multi-stakeholder consultations involving communities, civil societies and governmental agencies.

⁴³ Section 2.1 of Annex II to the VPA.

⁴⁴ Section 2.1 of the Legality Definition of the VPA.

and thus not regulate, the commercialisation of conversion timber.⁴⁵ For the time being, therefore, conversion timber is not a legal form of timber for trade in Liberia or internationally.

3. Conclusion

This briefing demonstrates that large-scale agricultural and mining concessions are currently contributing to several social and environmental problems in Liberia, due in part to the clearance of forests for their activities. With weak and mal-coordinated legal frameworks on forest conversion, this trend is set to continue. If Liberia is to comprehensively regulate forest conversion, strengthened legislative, regulatory and policy instruments will need to be coupled with effective coordination between the various agencies of Government. Also crucial will be land law reforms, proper land use planning and sustainable forest management through a balanced focus on conservation, commercial and community forestry. Finally, community participation and consultation is vital to prevent conflicts and ensure that benefits from conversion projects are equitably shared to benefit all Liberians, particularly those directly affected.

⁴⁵ Aide Memoire to the Fourth Meeting of the Joint Implementation Committee (Monrovia, 21-23 September 2016) available at: <http://bit.ly/2fcQegs>, para 26. The Joint Implementation Committee is the primary decision-making body for the Voluntary Partnership Agreement between Liberia and the European Union.

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