

Timber from forest conversion – the need for rules

Legal toolkit on forest conversion - Factsheet 3



This Factsheet is intended to inform law-makers about key legal issues that may arise when insufficient or no rules apply to the timber coming from forest conversion, and the risks that may stem from those issues. It also provides questions to guide law-makers through processes of law reform to improve the laws regulating timber from forest conversion.

This factsheet is part of a larger toolkit on law reform to address forest conversion:

<https://www.clientearth.org/forest-conversion/>

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When a forest-conversion project is planned, the focus is usually on the loss of forest and the potential negative impacts of the project on livelihoods of affected communities. Until recently, less importance has been placed on the timber coming from the clearance of forests ('conversion timber'). However, conversion timber is a key component of some forest-conversion projects.

The commercial value of conversion timber can be significant and may be crucial in the financial viability of a forest-conversion project. When producing agricultural crops, the return on investment may take time (i.e. there will be a period prior to the first harvest) and the commercialisation of the timber coming from the land cleared can help fund the necessary project investments.

Furthermore, some companies use the fact that clearing forests is sometimes subject to less regulation than selective logging, to undertake conversion processes for the sole purpose of accessing the timber.

For those reasons, it is essential that clear rules govern the harvesting and traceability of conversion timber. Traceability is the ability to verify the location and journey of the timber, from harvest to consumer (Figure 1).

To help develop a legal framework that comprehensively regulates conversion timber, this Factsheet identifies three essential requirements for law-makers to consider.

1. Rules governing the harvest, processing, transport, commercialisation and export of conversion timber should be clear and detailed.
2. The definition of legality of conversion timber includes rules from all relevant laws.
3. All information regarding conversion timber should be publically available.

For each of these topics, we look at common legal problems and the risks that may stem from those problems. A set of key questions at the end of this Factsheet is offered as a checklist to reference during the process of law review and reform.

Figure 1: Timber traceability steps¹



Background: conversion timber

For decades, selective logging has been the main source of timber in global trade. However, recent studies predict that conversion timber is becoming increasingly dominant.² The growing presence of conversion timber on the market is due to the clearing of forests for agriculture, mining or infrastructure projects. The rules for clearance are often less strict than those governing selective logging; therefore, some companies seek to follow this easier path to access valuable timber.

Selective logging previously tended to be the main (and sometimes only) source of harvested timber, and was the only timber harvesting regulated by forest legislation. Because forest conversion is a relatively new source of timber, some tropical countries do not yet have specific laws and rules governing its production. Without a strong legal framework governing conversion timber, there are high risks of illegality associated with this timber.

Attention to the legality of conversion timber has increased during the past decade, particularly because of several new laws and regulations to tackle illegal logging. Examples include the US Lacey Act, the EU Timber Regulation and the Australian Illegal Logging Prohibition Act, in addition to Voluntary Partnership trade agreements between a number of tropical countries and the EU. Because conversion timber is becoming such a significant source of timber, the current absence of rules regulating conversion timber leaves a significant gap in the ability of producer countries' national laws to address illegal logging comprehensively.

1. Clear and detailed rules governing conversion timber

Key legal problem: absent or incomplete rules governing conversion timber

Key risks: illegal timber, land-grabbing solely to gain access to timber

As mentioned in Factsheet 2, some countries' forest laws do not include clearance permits. In this situation, there is generally a lack of clarity regarding the legality of forest clearance and use of conversion timber. Without clear rules, there is a risk that any trees that are clear-cut may be at risk of being felled illegally.

Even when national laws do require a clearance permit, the rules about how conversion timber can be used and what conditions must be met, are not always clear. This can mean that there is no clear definition of what constitutes legal conversion timber and no process to trace this timber (Case Study 1). If conversion timber cannot be traced from the point of harvest to the domestic market or port of export, the timber could be at risk of being considered illegal.

Case Study 1: Lack of rules to trace conversion timber in Congo

In the Republic of Congo, the legal requirements for the traceability of timber are outlined for selective timber logging permits but not for clearance permits. Even though some provisions – like those on transport – are considered to apply to all forest products, there are in fact no express standards that apply to the marking, storing, processing, transporting and exporting of conversion timber.³ The lack of clear rules applicable to trace conversion timber creates a legal loophole.

Developing a process to trace conversion timber from harvest to consumer is not an easy task. The ability to verify the origin of the timber is particularly complicated by the fact that the stumps of trees cut down on land allocated to a conversion project are usually removed in the process of clear-cutting that land and preparing it for the new land use. During selective logging, by comparison, the stumps remain as a permanent marker of origin and the number identifying the timber can be traced directly back to the number of the stump. When the stump is removed, tropical countries will have to consider other means to confirm the origin of conversion timber.

The lack of precise rules regarding conversion timber may also be used as a loophole that companies exploit to clear forests for the sole purpose of easier access to the timber, without developing any new land use (see Factsheet 2, Case Study 2).

To avoid the risks associated with conversion timber, some countries have decided not to allow commercialisation of conversion timber. In Liberia, the forest administration confirmed in September 2016 that conversion timber cannot be commercialised, restricting any trees cleared to be “used locally” only.⁴

2. Definition of legality of conversion timber

Key legal problem: non-compliance with legal requirements regarding clearance permits and land title

Key risk: illegal timber

The legality of conversion timber depends on respecting rules regarding the harvest, processing, transport, commercialisation and export of the timber. It also requires compliance with other areas of the law, such as:

- land allocation (Factsheet 1)
- rights to clear the forest (Factsheet 2)
- adherence to environmental protections (Factsheet 4)
- communities' legal rights on land use and tenure (Factsheet 5).



When assessing the legality of conversion timber, some of these legal requirements are more obvious than others. For example, it is an obvious requirement to make sure that a permit to clear the forest has been obtained, and that this was done legally.

But, making sure that pre-existing third parties' rights (such as the customary land tenure rights of communities) have been respected before felling the trees is just as important. Thus, harvesting forested land without the guarantee that the land is free of either use or occupation rights could lead to illegal use of the land and be a source of conflict.

To compensate local communities and indigenous peoples for a loss of access to forest resources, a mechanism for sharing benefits from the revenue of harvested timber has emerged in several legal frameworks governing selective logging. Where clearance occurs, the same mechanism could be put in place, otherwise, local communities and indigenous people may miss out on their share of any profits from sale of conversion timber from their land. Ghana has decided to address this issue (Case Study 2).

If the right to use the land has been obtained without complying with all legal requirements, or if a dispute arises from several parties claiming rights over the same area of forested land, it is essential that these issues are resolved before the timber can be sold. If the forested land from which the conversion timber is harvested could be considered to be illegally acquired, there is a risk that the timber coming from this land is illegal. Therefore, particular attention needs to be paid to the land title and the clearance permit, in order to assess the risk of illegality of conversion timber.

Case Study 2: Consider communities' rights when clearing land in Ghana

In 2017, the Government of Ghana passed a new regulation to stop illegal deforestation.⁵ Among other things, this new regulation clarifies the requirements for the holder of a clearance permit, called a 'salvage permit' in Ghana, concerning community land rights. Under the new regulation, the holder of a salvage permit must negotiate an agreement with affected local communities to make sure they also share in the profits of trees harvested from their forests.⁶ This requirement is important to improve respect of communities' rights over their forests, as well as to ensure the legality of conversion timber. This second point is particularly important for Ghana, as the Voluntary Partnership trade agreement it has concluded with the EU identifies salvage permits as a legal source of timber. The new regulation should help assure that all conversion timber adheres to all relevant laws and can be legally traded with the EU.

3. Access to information about conversion timber

Key legal problem: lack of access to information on clearance permits and conversion timber

Key risk: inability to trace timber

At the global level, there are few official statistics on the sale of conversion timber. International bodies, such as the International Tropical Timber Organization (ITTO), do not yet make the distinction in their trade data between timber coming from selective logging and from conversion timber.

At the national level, data on conversion timber may also be lacking. Without official records, civil society and even government officials have reduced opportunity and ability to monitor for illegal practices.

More publicly accessible data on conversion timber should help to assess if the timber is at risk of being illegal.

Such information should, at a minimum, include :

- procedures for allocating forestland
- a list of granted land titles
- a list of granted clearance permits
- forest inventories, with details of the trees to be cleared
- annual authorised logging volumes, by species, title and company
- total production of timber (both conversion timber and selective harvesting)
- annual volumes processed, by type of product, species and company
- export licences
- the annual volumes of logs exported, by species.



Key questions for law-makers on conversion timber

A review or reform of national laws may be needed to ensure a strong legal framework governs conversion timber. Defining the legality of conversion timber is difficult because it involves considering the full legal process involved in a forest-conversion project. The following questions are for law-makers to consider before starting legal reform concerning timber from forest conversion.

Clear and detailed rules governing conversion timber

1. Does the law provide that any forest clearance activity is conditional upon obtaining a forest-clearance permit?
2. Does the definition of legality include that the forest-clearance permit has been issued in accordance with the law?
3. Does the clearance permit state the use that can be made of the timber, notably either commercialisation or only local use?
4. If commercialisation of conversion timber is permitted, does the law specify:
 - Who will undertake the forest inventory to identify the marketable timber?
 - Who will be permitted to harvest the forest for the marketable timber (e.g. through a call for tenders to find logging companies)?
 - Which rules will apply to trace the timber, including marking, storing, processing and exporting the timber?
 - Who owns the timber (e.g. the holder of the forest-clearance permit, the company in charge of harvesting the conversion timber, or the state)?

Definition of legality of conversion timber

5. Is it clear what processes need to be followed for conversion timber to be legal?
6. Does the definition of legality include requirements that:
 - the land allocation has been issued in accordance with the law
 - local communities and indigenous peoples' rights on the forested area concerned have been respected
 - environmental obligations have been met?

Access to information about conversion timber

7. Is there a legal requirement to publish data on the volume of conversion timber (separately from the volume of timber from selective logging)?
8. Is there a legal requirement to publish:
 - the list of land titles issued
 - the list of clearance permits issued
 - the annual authorised logging volumes, by species, title and company
 - the annual volumes processed, by type of product, species and company
 - the annual volumes of logs exported, by species?
9. Is independent monitoring allowed of forest-clearance activities and export activities, and may complaints be made where infractions are identified?

1. This is a simple traceability diagram. Often, the traceability steps are more complex; for example, if there are multiple processing steps or if processing takes place in a third country.
2. Lawson (2014), 'Consumer goods and deforestation: an analysis of the extent and nature of illegality in forest conversion for agriculture and timber plantations', Forest Trends (http://www.forest-trends.org/documents/files/doc_4718.pdf); Forest Trends (2015), 'Conversion timber, forest monitoring, and land-use governance in Cambodia' (<http://forest-trends.org/releases/p/conversion-timber-forest-monitoring-and-land-use-governance-in-cambodia>).
3. ClientEarth (2015) 'Republic of Congo timber: risks of illegality'. The draft forest code that should be adopted soon in the Republic of Congo has some provisions to address those legal issues.
4. Aide Memoire of the Fourth Meeting of the Joint Implementation Committee, Monrovia (21–23 September 2016) (<http://bit.ly/2fcQeqs>), para 26.
5. ClientEarth (2017) 'New regulation to stop illegal deforestation and promote legal timber trade passes in Ghana' <https://www.clientearth.org/new-regulation-illegal-deforestation-promote-legal-timber-trade-ghana/>.
6. Republic of Ghana, Timber Resource Management and Legality Licensing Regulations 2017, Section 29(5).



Our vision is of a planet where all life is diverse, abundant and thriving. We want a home where people and nature flourish together.

We use law as a tool to mend the relationship between human societies and the earth.

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