

Addressing the risks of a weak legal framework governing forest conversion in Liberia

Forests converted for agricultural, mining, infrastructure and urban expansion purposes represent more than half of worldwide deforestation. In recent years, forest conversion has increased in West and Central Africa; however, few forestry and land tenure laws have been updated to govern it. ClientEarth is reviewing legal frameworks governing forest conversion across the region and internationally, to understand the major risks stemming from inconsistent and incomplete laws on forest conversion, and to suggest potential legal means to address them.

Almost half of Liberia's land area is forest;¹ however, 30,000ha (0.7%) of Liberia's forest is cut down every year.² Over the past decade, large tracts of forested land have been granted to both agricultural (palm oil and rubber) and mining (iron ore and gold) concessions. While there are many drivers of deforestation, this type of large-scale forest conversion is expected to contribute increasingly to the loss of Liberia's forests. From 2000-2010, Liberia saw net losses in forest area and a net gain in agricultural area (for plantations).³

Table 1: Importance of land-use sectors in Liberia⁴

Land area	9,632,000 hectares
Forested area	4,329,462 hectares (45% of total land area)
Forest sector key facts	- 9.3% of GDP (2011) - Employs less than 1% of the Liberian workforce
Agriculture sector key facts	- 36% of GDP (2012) - Employs almost 50% of the Liberian workforce
Mining sector key facts	- 4.6% of GDP (2011) (increased to 16.7% in 2013) - Employs less than 1% of the Liberian workforce

Land use investments, such as mining or agricultural plantations, have the potential to stimulate macro-economic development and boost the economy. Indeed, the success of Liberia's national development strategy depends on harnessing its natural assets for the country's prosperity.⁵ Despite this, the granting of large-scale agricultural and mining concessions in Liberia has been characterised by ineffective consultations with local communities. This has led to clashes, unmet community expectations of benefit sharing and employment, and physical and economic

¹ Food and Agriculture Organization of the United Nations (2014) 'Country Report. Liberia' in *Global Forest Resources Assessment (2015)* <http://www.fao.org/3/a-az259e.pdf>, page 5.

² Ibid, page 9.

³ 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.

⁴ Data is collected from: <http://bit.ly/2e9cb8H>; <http://www.fao.org/3/a-i4248e.pdf>; <http://bit.ly/2fzZ2L5>; <http://www.fao.org/docrep/013/i1757e/i1757e.pdf>.

⁵ Liberia Rising 2030 is the economic development framework that was launched by the Government of Liberia in 2012: <http://bit.ly/2fA0xZK>.

displacement. These conflicts have emerged due to a failure to adequately recognise and give effect to existing community rights, resulting in community lands being granted for concessions without due consultation. Companies are also affected by overlapping land rights, leading to operational uncertainty.

These negative social, environmental and economic impacts stem, in large part, from weak regulation of forest conversion. Targeted policies and laws that govern land use allocation processes and effectively regulate forest conversion are required.

The risks of an inconsistent and incomplete legal framework

From a regulatory perspective, forest conversion is a process of land use change that should be governed by national land use plans, land allocation procedures, third parties' land and use rights, permitting processes, forest clearance regulations and commodity production rules. In Liberia, however, the legal framework governing forest conversion is incomplete and not all of these elements are covered. Leaving forest conversion ineffectively regulated risks the widespread clearance of forests at the expense of Liberia's biodiversity and communities' rights, and creates the business risk of an uncertain operating framework for companies. Nonetheless, in September 2016, Liberia's national Forest Development Authority (FDA) stated that it would not develop any further regulation on forest conversion, as it had determined not to allow, and thus not regulate, the commercialisation of timber cleared for concessions ('conversion timber').⁶ This is a flawed logic, as conversion timber is only one part of the forest conversion process.

Having reviewed Liberia's laws and policies on forest conversion, ClientEarth has identified six key risks stemming from inconsistencies and gaps in the legal framework.

1. Land use conflict: The risk of conflicting land uses is heightened due to the lack of a national land use plan in Liberia. Although the law states that there should be a national land use plan,⁸ the government has yet to develop this comprehensive planning document. This makes it difficult to know the purpose for which land is intended, including how land should be distributed for forestry, agricultural or mining activities. Concessions for different uses are issued on the same piece of land, resulting in considerable

Case Study 1: The East Nimba Nature Reserve, one of three protected forest areas in the country, lies in Nimba County in the north of Liberia. In 2007, the Government of Liberia granted ArcelorMittal a 51,000ha mining concession area that includes part of the Nature Reserve, and two community forests. Without appropriate planning, these three land uses stand to conflict. Recognising this problem, ArcelorMittal, together with international and national NGOs, local communities and the government, developed the Nimba Biodiversity Conservation Programme. The Programme aims to, among other things, clearly define distinct areas of land in northern Nimba County for mining, forest conservation and community land uses.⁷

⁶ Aide Memoire to the Fourth Meeting of the Joint Implementation Committee (Monrovia, 21-23 September 2016) available at: <http://bit.ly/2fcQeegs>, para 26. The Joint Implementation Committee is the primary decision-making body for the Voluntary Partnership Agreement between Liberia and the European Union.

⁷ ArcelorMittal and Conservation International, 'The Nimba Biodiversity Conservation Programme, Liberia: Response to Action Statement 2' <http://bit.ly/2euSZ6B>.

⁸ Environment Protection and Management Law 2002, section 87.

land use overlaps.⁹ Concessions are also issued on community forest lands and protected forests (see Case Study 1).¹⁰

2. Community land dispossession: In Liberia, customary land tenure is only recognised in customary law (based on the customs of communities), not in statutory law. Communities' rights are, therefore, not adequately protected in processes that are governed by statutory law, such as the concession process. Agricultural and mining concessions have been granted on land, including forest land, occupied and used by communities (see Case Study 1). Not only does insecure customary land tenure risk communities being dispossessed of their land, but it also prevents the continued contribution of forest activities to local livelihoods.

3. Unmanaged deforestation: Because forest conversion involves all land use sectors and the government agencies responsible for them, the risk of inconsistency between sectors' laws and agencies is considerable. Inconsistency between sectoral laws in Liberia heightens the risk that, for example, forests identified for protection by the FDA are nonetheless converted to other uses. For instance, Liberia's agriculture and mining laws do not restrict access to any land for agricultural and mining concessions. Forestry laws, on the other hand, include robust protections for Liberia's forests, including protected forest areas that cannot be converted.¹¹ In addition, different sectoral laws establish contradictory conditions and responsibilities (see Case Study 2), contributing further to the risk of unmanaged deforestation.

Case Study 2: The Minerals and Mining Law allows miners to clear forested land for mining activities¹² and gives authority to the Minister responsible for Mines to authorise the clearing of trees and shrubs "necessary for the mineral rights holder's activities outside the boundaries of his license or licenses".¹³ This is incoherent with the National Forestry Reform Law, which designates the FDA as the "representative of Government in any matter concerning the use of forest",¹⁴ meaning that no one should clear trees and shrubs, nor cut wood, without the permission of the FDA.

4. Community rights' violations: Without clear laws, there is a risk that communities' forest use rights will be infringed by forest conversion. While customary land tenure is not recognised in statutory law, community use rights over forested lands are well established.¹⁵ Liberia's forestry laws include use rights over community forest resources,¹⁶ and rights to approve commercial use of their forested lands.¹⁷ However, due to ambiguities in the wording of the law,¹⁸ it remains

⁹ "The Government of Liberia favors signing non-exclusive concession agreements with major investors, which permits the signature of overlapping concession agreements for different resources." United States' Department of State, Bureau of Economic and Business Affairs (2016) 'Liberia: 2016 Investment Climate Statements' <http://www.state.gov/e/eb/rls/othr/ics/2016/af/254213.htm>.

¹⁰ See for example, the Liberia National Concessions Portal, <http://portals.flexicadastre.com/liberia/>.

¹¹ Protected Forest Area Network Law 2003, section 9.10 and National Forestry Reform Law 2009 (NFRL), Chapter 9: The FDA is required to 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. These Protected Forest Areas would generally be ineligible for conversion.

¹² Minerals and Mining Law 2000, section 6.7(d)(4).

¹³ Minerals and Mining Law 2000, section 11.6.

¹⁴ NFRL, section 2.2(a). See also section 11.5 that prohibits the clearing of any forest, shrubs, etc. without authorization from the FDA.

¹⁵ Land tenure is generally considered to include all rights to land (the right to possess, to control, to exclude and to enjoy and use the land). Use rights only give communities the right to enjoy and use the forested lands, such as for food or shelter.

¹⁶ Community Rights Law with respect to Forest Lands 2009 (CRL), section 2.2.

¹⁷ Forest Development Authority (FDA) Regulation 102-07, section 61.

¹⁸ In the NFRL, "commercial use" is referenced alternately with "forest activities", "harvest of timber" and "commercial logging". This tends to suggest a narrow reading of commercial use to refer only to timber logging. In addition, section 6.7 of the NFRL states that "other emerging or novel commercial activities related to community forest resources, shall be regulated by the [FDA] in consultation with communities and other relevant agencies of government", implying that the current provisions apply only to timber logging.

unclear whether these rights apply to forest conversion, or if they are restricted to commercial logging. Investors in Liberian land and natural resources must negotiate a Concession Agreement to establish the terms of their investment, which usually include community benefit payments, resettlement and compensation.¹⁹ However, the Agreements are negotiated only between the Government of Liberia and concessionaires, leaving the affected communities out. This runs counter to forest communities' free, prior and informed consent (FPIC), as enshrined in Liberia's forestry laws and which should, by their very name, be upheld before the land is awarded.²⁰ The fact that the concessionaire has already been awarded land by the government creates conflict, pitting the Concession Agreement against communities' rights to the land.

Following community complaints, communities and companies have started to negotiate over land and use rights. While there is considerable official guidance on negotiation of social benefit agreements between forest communities and logging companies, the law is silent on similar agreements with agricultural or mining concessionaires. Communities and companies have been negotiating without guidance, and rely, in certain cases, on companies' international commitments, such as the Roundtable on Sustainable Palm Oil (RSPO)(see Case Study 3).

Case Study 3: Sime Darby is a palm oil investor in Liberia. In their Concession Agreement, the Government guarantees that the entire 220,000ha Concession Area will be "free from Encumbrances", meaning that there are no other claimed rights or structures on the land.²¹ However, there are many communities living in and using this land. There is no requirement in the Agreement to inform residents that their land has been selected for the concession. This situation resulted in significant disputes between Sime Darby and affected communities between 2011 and 2012. Communities brought a complaint to the RSPO (a private certification body of which Sime Darby is a member), claiming that their FPIC had not been sought.²² Following this complaint, Sime Darby has started negotiating with communities before converting community land to palm oil plantations, in exchange for access rights, jobs, education and infrastructure.

5. Harmful forest clearance: The permitting process for clearing trees for conversion in Liberia is unclear, which risks harmful practices being used. While timber harvesting permits include comprehensive requirements and procedures for cutting trees, none of these permits are currently used to regulate how timber should be cleared on land designated for agricultural or mining uses.

6. Timber laundering: There is a risk that conversion timber enters the domestic or international commercial market. This is despite concession holders right only to clear timber for their own operational use (not for commercialisation), based on the terms of their Concession Agreement.²³ In addition, in September 2016, the FDA confirmed that conversion timber may not

¹⁹ See e.g. Concession Agreement between Golden Veroleum Liberia and the Government of the Republic of Liberia, September 2010: <http://bit.ly/2e97Zpo>; Concession Agreement between Sime Derby and the Government of the Republic of Liberia, July 2009: <http://bit.ly/2fA0Zax>; Concession Agreement between Mittal Steel Holdings and the Government of the Republic of Liberia, September 2005: <http://bit.ly/2eWZLCo>.

²⁰ FDA Regulation 102-07, section 61(c)(3): "If the area to be committed to Commercial Use includes customarily held Forest Land, a Community Forestry Development Committee has granted prior, informed consent to the Commercial Use, in writing, on behalf of Affected Communities"; FDA Regulation 105-07: Community Forestry Development Committees must sign a Social Agreement with a logging company whose logging concession affects their community; and CRL, section 2.2(c): "Any decision, agreement, or activity affecting the status or use of community forest resources shall not proceed without the prior, free, informed consent of the said community."

²¹ Concession Agreement between Sime Derby and the Government of the Republic of Liberia, July 2009: <http://bit.ly/2fA0Zax>, section 4.1(c).

²² RSPO Case Tracker, 'Sime Darby (Liberia) Plantation Inc' <http://www.rspo.org/members/complaints/status-of-complaints/view/46>.

²³ 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.

be commercialised, restricting any trees cleared to “local use” only.²⁴ However, trees are still felled and so forest conversion requires greater oversight to clarify the destination of the timber.

In summary, an inconsistent and incomplete legal framework in Liberia means that forest conversion is not effectively regulated. This leads to uncertainty and risk for all actors involved, particularly affected communities. It is important to note that even where laws exist, implementation and enforcement remains an ongoing challenge.

Opportunities to strengthen legal frameworks

This section offers some thoughts on initial opportunities to strengthen the legal framework, corresponding to the risks identified above.

1. Implement multi-stakeholder land use planning: Multi-stakeholder and whole-of-government land use planning is important to (i) consolidate existing commitments over Liberia's land, and (ii) establish the areas most suitable for different land uses. To achieve the first objective, the government has released a National Concession Portal, which demarcates active commercial concessions and forested areas on a map, including community forests, based on information provided by land use Ministries.²⁵ This should improve transparency and planning of future concessions. However, it is only a first step. Detailed land use planning must be undertaken, driven by the natural resource agencies (FDA; Ministry of Lands, Mines and Energy; Ministry of Agriculture; the Land Authority and the Environmental Protection Agency, among others) and with the participation of communities and civil society, to balance conservation, commercial and community land use.

2. Pass the Land Rights Bill: Liberia has yet to pass the Land Rights Bill,²⁶ which provides for full legal recognition of customary land ownership. Coupled with a legal right for community representatives to control the use of their community's land, the Land Rights Bill is expected to be an important step in reducing land conflicts.

3. Improve coordination among Ministries and consistency between laws: Effective regulation of forest conversion requires inter-ministerial cooperation and coherence between different sectors' regulation of land use. In an attempt to address the need for cooperation in identifying, granting and negotiating terms of forest conversion concessions, an Inter-Ministerial Concession Committee (IMCC) has been established to govern the award of each concession. The IMCC includes representatives from seven government Ministries, which should include the FDA for any concessions involving forested land.²⁷

Cross-referencing environmental and social safeguards enshrined in Liberia's progressive forestry laws in the country's other natural resource and investment legislation presents an important opportunity to grant greater protection to forested land. Spreading the responsibility to protect Liberia's forests to other land-use Ministries may also help to build a shared purpose.

²⁴ Aide Memoire of the Fourth Meeting of the Joint Implementation Committee (Monrovia, 21-23 September 2016) <http://bit.ly/2fcQeegs>, para 26.

²⁵ 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 FDA.

²⁶ The Land Rights Bill has been stalled in the legislature since 2014.

²⁷ Public Procurement and Concessions Commission Act 2009 section 81.

4. Clarify community participation requirements and benefit sharing rights: It should be clarified that communities' rights over forested lands enshrined in Liberia's forestry laws apply equally to forest conversion as timber harvesting. Current Concession Agreement negotiations should also adhere to the requirement for forest communities' FPIC to be granted before forest land is granted to a company. More opportunities for interested stakeholders, and specifically affected communities, to participate in the concession process should be included in the law. In addition, the detailed guidelines and templates on benefit sharing arrangements with logging companies that exist in the current forest laws and regulations should be adapted to the forest conversion context, to guide community-concession negotiations.²⁸

5. Strengthen the regulation of forest clearance: In order to manage timber clearing on concessions, the Government should place a condition that all concession holders have a forest resources license, with comprehensive requirements for clearance. The clearance rules could take inspiration from private certification schemes, to minimise environmental side-effects. The rules could include, among other things, restricting the most harmful clearance practices, such as burning. They could also include a requirement for the concessionaire to detail the destination of the timber and how it will be used.

The clearance permit would complement the existing requirement for an environmental impact assessment (EIA) license, which must be granted before the commencement of any large-scale land use project.²⁹ The EIA process grants an opportunity to determine whether a concession should be approved in its proposed form, or whether mitigating measures to reduce environmental harm are needed.

6. Restrict which forests can be converted: Restrictions could also be placed on which forests can be cleared for conversion. The FDA has already defined and measured all forested land in Liberia.³⁰ The next step is to identify and recommend which categories of forests may be converted. For example, a broad prohibition on conversion in "Closed Dense Forest"³¹ (2.4 million ha of land in Liberia) as well as "Open Dense Forest"³² (1.02 million ha) too, would reduce the conversion of Liberia's primary forest.³³

Conclusion

The success of efforts to address forest conversion ultimately requires a shared understanding of the risks of unregulated forest conversion. If Liberia is to comprehensively regulate forest conversion, strengthened legislative, regulatory and policy instruments - including land tenure reforms, proper land use planning and equitable and inclusive public participation - will need to be coupled with effective inter-Ministerial coordination.

²⁸ See e.g. NFRL, section 5.1 (f) which restricts commercial logging companies to undertake logging until a Social Agreement has been signed with communities.

²⁹ Environmental Protection and Management Law 2002, Annex 1.

³⁰ FDA Division of Scientific Research, 'National Forests Classification, acreages, Location and Utilization Index' (2015) <http://bit.ly/2f8oHrj>.

³¹ Ibid: Closed Dense Forest is a closed canopy forest, due to minimum human interventions.

³² Ibid: Open canopy forests, partly as a result of human interventions.

³³ Ibid: Forest conversion would be restricted to the 0.95 million ha of Agriculture Degraded Forest and 1.28 million ha of Mixed Agriculture Forest.

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