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the wildlife trade monitoring network



FRAMEWORK FOR ASSESSING LEGALITY OF FORESTRY OPERATIONS, TIMBER PROCESSING AND TRADE.

October 2009



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CONTENTS



| | |
|---|----------|
| BACKGROUND | 4 |
| INTRODUCTION TO THE LEGALITY FRAMEWORK | 5 |
| STRUCTURE OF THE LEGALITY FRAMEWORK | 5 |
| PRINCIPLES AND CRITERIA | 6 |
| DEVELOPING NATIONAL INDICATORS, VERIFIERS AND GUIDANCE | 8 |

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FRAMEWORK FOR ASSESSING LEGALITY FOR FORESTRY OPERATIONS, TIMBER PROCESSING AND TRADE

BACKGROUND

The unsustainable and often illegal logging of timber poses a major threat to tropical forest ecosystems and associated biodiversity. Illegal logging also threatens the livelihoods of local communities and undermines the efforts of both private and public sector organisations to develop sustainable approaches to forest management. At the same time, there is increasing demand among buyers of timber and other forest products that are verified as having been procured legally and certified as sustainably produced.

The Global Forest & Trade Network (GFTN) is WWF's initiative to eliminate illegal logging and drive improvements in forest management. By facilitating trade links between companies committed to achieving and supporting responsible forestry, the GFTN creates market conditions that help conserve the world's valuable and threatened forests while providing economic and social benefits for the businesses and people that depend on them.

An important element of this work is helping governments and businesses to be clear on legality and associated sustainability requirements in line with meeting these objectives. Among the activities undertaken by TRAFFIC and GFTN, is the elaboration of a legality framework for key trading countries, particularly developing countries with high biodiversity forests where illegal logging and trade are known to be a significant concern. The legality framework for GFTN is comprised of several broad principles of legality, each supported by several criteria and indicators linking the principle to existing legislation.

Development of the legality framework commenced in June 2006. The preceding Indonesian legality standard, developed by The Nature Conservancy (TNC) in 2004 with funding from DFID UK, the result of two years of extensive and wide-ranging stakeholder consultation, was considered a solid starting point from which to tailor appropriate frameworks in other countries.

This paper outlines the process used in the development of the legality framework and the development of national indicators, verifiers and guidance in a number of Asian and African countries. The framework is expected to have a wide audience, including companies performing their own checks of suppliers, businesses briefing a third-party verifier, forest managers or timber processors preparing to meet customer requirements and stakeholders involved in national legality definition processes.

Funding for the elaboration of a legality framework for a number of timber trading countries in Asia and Africa was provided to WWF by the European Commission Programme on Environment in Developing Countries and Programme on Tropical Forests and other Forests in Developing Countries, as part of a wider programme of work on certification and verification of forest products. TRAFFIC, the joint wildlife trade programme of WWF and IUCN, led development of the framework, working in collaboration with local stakeholders in each country.

INTRODUCTION TO THE LEGALITY FRAMEWORK

The overall aim for this framework is to support countries in their efforts to improve governance of their forest resources and prevent illegal logging and timber trade through encouraging compliance with laws related to the forest sector at both national and international levels. By providing information on a forest-focussed subset of applicable laws and regulations in a clear and accessible manner, this legality framework can help both regulators and companies, in countries of export and import, to verify that timber and other forest products contribute to sustainable forest management.

A further aim is to support the development of a more consistent and common approach to considering legality of forest operations, timber processing and trade that would be broadly applicable across countries. This approach is considered important in order to reduce the potential confusion among industry and governments that could result from the proliferation of different legality frameworks.

In Africa, the legality framework supports the work of the Commission des Forêts D’Afrique Centrale (COMIFAC), in the Congo basin, in particular COMIFAC’s, Plan de Convergence, including sustainable use and management of forest resources, certification, traceability systems, and national plans against illegal use of forest resources.

The legality framework will also directly support implementation of the EC Action Plan for Forest Law Enforcement, Governance and Trade (FLEGT), the Lacey Act, promoting equitable and just solutions to the illegal logging problem that do not have an adverse effect on poor people; helping partner countries to build systems to verify timber has been harvested legally; promoting transparency of information; promoting policy reform; and building the capacity of civil society and partner country governments.

STRUCTURE OF THE LEGALITY FRAMEWORK

The legality framework encompasses the legal requirements covering the entire supply chain, including forestry operations and corresponding processing and timber trade relating to timber origin, production, transportation, processing and trade and legislation safeguarding agreed upon environmental, conservation and social standards. This includes national laws, rules, regulations and administrative circulars, including contractual obligations that cover these areas. Legislation and regulations outside these areas are not included in the framework.

The framework is composed of a set of principles, each supported by one or more criteria. When developed for use within a national context the criteria are further supported by nationally appropriate indicators and guidance notes/verifiers—specific to that country—based on the existing legislative base, which are practical, easily implemented on the ground and readily audited. The format of principles, criteria and (national) indicators is a format widely used within forest certification and already accepted by civil society, industry and government.

The legality framework comprises nine broad legal principles. These principles are the fundamental aspects to be addressed in all cases. Each criterion represents an important aspect which allows the assessment of a legal principle. Local indicators, verifiers and guidance have to be developed to allow use of the framework within a national context and these will vary between countries relative to the legislation in place.

THE LEGALITY FRAMEWORK'S PRINCIPLES AND CRITERIA

Principle 1

Access, use rights and tenure

- Criterion 1.1 The company is legally registered with the relevant administrative authorities.
- Criterion 1.2 Use, access and tenure rights applications are subject to stated pre-conditions within the laws and regulations.
- Criterion 1.3 Clear evidence of forest and/or land use, access and tenure rights shall be demonstrated in accordance with laws and regulations.
- Criterion 1.4 Use, access and tenure rights are subject to stated conditions within the laws and regulations.

Principle 2

Harvesting regulations

- Criterion 2.1 Forest Management Plan in accordance with the government policies, guidelines and regulatory requirements, approved by relevant authority.
- Criterion 2.2 Harvesting/timber licence with stated conditions in accordance with the government policies, guidelines and regulatory requirements, approved by relevant authority.
- Criterion 2.3 The company implements harvest operations in accordance with the legally prescribed silvicultural system and relevant regulations.

Principle 3

Transportation of logs and wood products

- Criterion 3.1 Clear evidence of documents and licences for companies and carriers involved in timber products transportation shall be demonstrated in accordance with the laws and regulations.
- Criterion 3.2 Clear evidence of documents and corresponding markings of timber products for transport shall be demonstrated by companies and carriers in accordance with the laws and regulations.

Principle 4

Processing regulations

- Criterion 4.1 Clear evidence of documents and licences for companies involved in timber processing shall be demonstrated in accordance with the laws and regulations.
- Criterion 4.2 Timber processing companies are subject to stated conditions within the laws and regulations.

Principle 5

Import and export regulations

- Criterion 5.1 Clear evidence of licence/permit of company involved in import and export shall be demonstrated in accordance with the laws and regulations.
- Criterion 5.2 Clear evidence of official documents of timber products for import and export shall be demonstrated by companies and carriers in accordance with the laws and regulations.
- Criterion 5.3 Timber products import and export companies are subject to stated conditions within the laws and regulations.

Principle 6**Environmental regulations**

Criterion 6.1

State/company conducts environmental impact assessments or other required assessments within the laws and regulations.

Criterion 6.2

State/company takes mitigation measures on negative environmental parameters in accordance with the laws and regulations.

Principle 7**Conservation regulations**

Criterion 7.1

State/company conducts conservation assessment/evaluation within the laws and regulations.

Criterion 7.2

State/company takes mitigation measures on negative conservation values in accordance with the laws and regulations.

Principle 8**Social regulations**

Criterion 8.1

Company maintains or strengthens socio-economic welfare of local communities/indigenous people in accordance with the laws and regulations.

Criterion 8.2

Company recognizes legal or customary rights of indigenous/local people in accordance with the laws and regulations.

Criterion 8.3

Company complies with the laws and regulations on its employees' and workers' rights.

Criterion 8.4

Company complies with the laws and regulations of its employees' and workers' welfare.

Principle 9**Taxes, fees and royalties**

Criterion 9.1

The company fills in its tax returns in accordance with its effective professional activity.

Criterion 9.2

Clear evidence of current paid taxes, fees and royalties in a timely manner shall be demonstrated by the company in accordance with the laws and regulations.

Principle 10**Subcontractors and partners**

Criterion 10.1

The company respects the contracts made with subcontractors and partners.

Criterion 10.2

The company ensures that all subcontractors and partners are operating within the law.

Principle 10 is specific to Africa where stakeholders considered the issues related to subcontractors and partners to be important and upgraded this to a separate Principle. In Asia it was retained at the criteria level as an integral part of other principles.

DEVELOPING NATIONAL INDICATORS, VERIFIERS AND GUIDANCE

In order to test the applicability of the framework in different legal settings, TRAFFIC led the development of national indicators, verifiers and guidance for a sample of countries including China, Vietnam, Central African Republic, Democratic Republic of Congo, Republic of Congo and Gabon.

This work was undertaken through a partnership with national government agencies in two countries. In China, TRAFFIC's partner in conducting this work was the China National Forestry Economics and Development Research Centre (CNFEDRC) of the State Forestry Administration. In Vietnam, TRAFFIC's partner was the national Forest Protection Department of the Ministry of Agriculture and Rural Development (MARD). In the other countries, the work was carried out by TRAFFIC staff and consultants.

The national frameworks were developed through a five-step process:

- 1. Compiling the legal base**
- 2. Initial stakeholder consultation**
- 3. Drafting the national framework**
- 4. Subsequent stakeholder consultation and national framework revision**
- 5. Legal and audit expert review**

The initial activity was the compilation of all available documents constituting the legal framework for the forestry sector in each of the countries. This was followed by individual consultations at the national level with relevant individuals in the forestry sector including representatives of the forestry administration and State, research institutes and the private sector, including current GFTN members as appropriate, NGOs and donors. The consultation was aimed at conducting a needs assessment for a legality framework, and after agreeing on the need for one, identifying the most important issues requiring attention while developing the legality framework.

The preliminary draft of the legality framework for each country was developed taking into account the results of the consultative process. Drafts were presented at a series of national consultative meetings and workshops organised with support from within each of the countries. Participants were tasked with examining the preliminary draft of the legality framework and proposing amendments. National workshops were held in:

- Central African Republic, September 2006
- Democratic Republic of Congo, October 2006
- Republic of Congo, October 2006
- Gabon, February 2007
- Vietnam, February 2007
- Beijing, China, April 2007

Each of the workshops was attended by approximately 30 participants from various government agencies (forestry, customs, environment and finance, in some countries this also includes ministries of trade, social affairs, labour, foreign affairs, public security); national and international NGOs (e.g. IUCN, CIFOR, etc.), the private sector (timber concessionaires, processors, etc.) and assessors (independent auditors of forest and chain of custody certification). Stakeholder consultations gave guidance on the adequacy of the indicators and of the level of detail that should be included in the legality framework. In addition to the national consultation workshops in Central African Republic, Democratic Republic of Congo and Republic of Congo, TRAFFIC and WWF-CARPO also reached out to key stakeholders in order to gather additional views on the comprehensiveness and accuracy of the framework for legality.



Petit Loango Faunal Reserve, Gabon. © Olivier Langrand / WWF.

In Gabon, the workshop was organised in close collaboration with the Gabonese Ministry of Forestry, the French Cooperation and the Delegation of the European Commission in Gabon. A main constraint of the activity in Africa was the lack of satisfactory stakeholder consultation despite efforts made to consult with all relevant stakeholders in each country. In particular, the industry sector in the Central African Republic, NGOs and industry in Gabon, NGOs in the Democratic Republic of Congo and all stakeholders in the Republic of Congo. Therefore, TRAFFIC and WWF-CARPO decided to reinforce consultations with these groups in each country during the period of June to mid-July 2007. This last consultation phase was through either small meeting, bilateral consultations and with submission of written comments.



Giant panda, Wolong Research Centre, Sichuan Province, China. © Fritz Pölking / WWF.

In China, several consultation workshops were held. In May 2006, fourteen representatives from NGO communities, local government, forestry institute, forest industries and GFTN-China participants attended a workshop to discuss the needs assessment activities and the elements of a legal standard in China including possible difficulties of the task. Detailed discussions were subsequently held with the relevant organisations and agencies during field visits in Shanghai in August 2006. Another meeting was specifically held to discuss the framework at the GFTN-China annual meeting held on 9 November 2006. This second consultation included some of the existing GFTN-China members and potential members, forest industry, relevant government departments, academic institutions and national forestry commerce associations. In collaboration with the State Forestry Administration, TRAFFIC organized a national workshop in April 2007 in Beijing. The workshop was designed to conclude the first round of peer review for the legality standard in China. Twenty-three participants joined this workshop, including participants from the State Forestry Administration, the China CITES Management Authority, the Beijing Forestry University, the Forestry Academy of China, the China Forestry Commerce Association, and WWF China. After this workshop, TRAFFIC conducted a “peer review field trip” to several provinces in China to discuss the definition with the provincial forestry bureaus and other provincial-level stakeholders.



Sunset, Ha Long Bay islands, Vietnam. © Edward Parker / WWF-Canon.

In Vietnam, the national workshop in February 2007 was hosted by TRAFFIC and the Forest Protection Department. Further meetings were held with government institutes and organisations from the Vietnam's forestry sector including Forest Inventory and Planning Institute (FIPI); Forest Science Institute of Vietnam (FSIV); Vietnam Timber and Forest Product Association (VIFORES), Vietnam Forestry Science Technology Association (VIFA); Vietnam Forest Corporation (VINAFOR); and Hanoi Department of Agriculture and Rural Development (DARD). Based on feedback from this round of consultative meetings, another draft was formulated. Further consultations on the draft were held with NGO stakeholders and industry (Vietnam FTN members and applicants), with a new revision developed. Due to the difference in each individual's and organization's agenda, stakeholder consultation process in Vietnam was undertaken in one-on-one basis.

Based on the results of the national workshops and various consultations, second and third drafts of the PC&I were prepared. These subsequent drafts were reviewed by key representatives from each country and also by TRAFFIC to ensure the harmonisation of the framework at the international level, at least to the level of Principles and Criteria.

The next step in the process was to get legal experts in each country to review the national PC&I to ensure that regulations referred to were current and relevant. In many of the countries there were few legal experts with the requisite expertise that were sufficiently knowledgeable and multidisciplinary in forestry, trade, conservation, environment and social issues and it therefore took some time to find suitable lawyers and to complete the legal review.



Tropical Rainforest Moist forest western Congo Basin Gabon. © Martin Harvey / WWF-Canon.

A final process of harmonisation and review of the legality framework was for possible applicability in terms of auditing and practicality of use of the verifiers in general. This was carried out by a consultant expert in conducting certification and chain-of-custody audits.

The process of developing and finalising the legality framework spanned two years, reflecting the time needed to consult widely; to take note of and accommodate the various political and administrative differences in each country; and then to harmonise the various national Criteria. It was completed in early 2009.

Due to differences in laws, procedures and implementation of the regulations, the generic Criteria may not all be applicable in every country. Each country's Criteria and Indicators, where appropriate, may omit one or more of the Criteria, in which case the numbering sequence is also reordered for that country. For example, in some countries, there is limited legislation covering conservation or environmental issues. Another point of note is that the Criteria and Indicators are dependent on the regulations and these cover a wide range of conditions, in particular exemptions or stricter measures, usually established through contracts or agreements. The guidance notes attempt to clarify this with some details, but since the range of conditions in some Principles and Criteria is so varied between countries it may be necessary to check with the relevant agencies for greater guidance.

Some of the national verifiers identified through the above process do not refer in this document to specific regulations, but were raised during stakeholder consultations and approved for inclusion to address particular aspects of the trade or social, environmental and conservation issues, for example, contractual obligations. However, these are seldom used as the basis for the setting of indicators of the relevant country.

As legality is based on the laws and regulations of a country, including relevant departmental administrative circulars and contractual obligations, indicators and verifiers should be linked to specific regulations. This should help to make it easier to update and keep the framework current. Guidance notes and verifiers to assist auditors and companies in assessing compliance should be provided together with relevant regulations where possible. It is important to note that once developed for national use the framework is a living document and will need to be updated on a regular basis (and reviewed least annually), to account for changes to the regulatory framework.

The full PC&I for each country are available in the Framework for Assessing Legality of Forestry Operations, Timber Processing and Trade Annex at the GFTN website: www.gftn.panda.org and the TRAFFIC website: www.traffic.org.