

LIBERIA

RSPO, RSPO NEXT, TFA 2020 APOI

Guidance for Producers

proforest

Building on legality to deliver responsible and deforestation-free commodity supply chains

Summary of findings and guidance for private sector companies in Liberia



About Proforest

Proforest is a unique non-profit group that supports companies, governments, civil society and other organisations to develop practical approaches to responsible sourcing and production that can help transform commodity sectors.

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Disclaimer: This series of documents constitutes an interpretation of legal benchmarking reviews conducted by third party organisations to assess where national legislation supports voluntary sustainability initiatives and standards and where there are gaps. They are not compliance documents. The user is responsible for ensuring compliance with all applicable national and international law.

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1. Introduction

1.1 Background

Conversion of forests for commodity agriculture is a major cause of global deforestation. The link between agriculture and deforestation has been well established with recent studies estimating that, agriculture is responsible for between 53 per cent and 80 per cent of total deforestation worldwide. The three commodities that have contributed significantly in this regard are palm oil, soy and beef, which between them accounted for an estimated 76 per cent of the deforestation associated with agriculture in 1990–2008 (Brack *et al.*, 2016).

Commodity agriculture, forms an integral part of national development strategies for countries in West and Central Africa and has the potential to contribute to both local livelihoods and national economic development. However, it can also create significant issues, including deforestation, production of illegal timber (both directly and through displacement) and other negative social and environmental impacts. In their efforts to mitigate the likely negative outcomes, countries have instituted legal requirements to safeguard the environment and society, while pursuing economic development.

Some governments have also committed to reducing deforestation in agricultural commodity supply chains. For example, the Tropical Forest Alliance 2020 (TFA 2020) Africa Palm Oil Initiative (APOI) is working with national governments, private sector and local stakeholder platforms to create national and regional principles to define sustainable, low-deforestation oil palm production for the region. Other government-led initiatives, such as programmes for Reducing Emissions from Deforestation and Forest Degradation (REDD+) are also ongoing, with similar objectives.

To demonstrate their commitment to deforestation-free, sustainable commodity production, companies have used certification such as the Roundtable on Sustainable Palm Oil (RSPO) and RSPO Next as well as their own guidelines as tools to implement and demonstrate their commitments.

This work sought to investigate and provide some understanding on the extent to which legal compliance as a tool delivers on the various sustainability commitments of both government and private sector companies. The goal therefore is to promote legal compliance as a first step for businesses to demonstrate compliance with national and international commitments.

This document forms part of a series of guidance documents explaining how legislation in selected countries in West Africa can be used by producer companies to support compliance with specific sustainability standards and buyers' sustainability commitments.

1.2 Who is the target audience of this guidance?

This document is a summary of the outcomes of RSPO, RSPO Next and TFA2020 APOI legal benchmarking in Liberia. The findings are presented thematically and are designed to help private sector companies in the agriculture commodity sector understand the extent to which the laws in Liberia deliver on these voluntary standards / commitments.. It includes recommendations on how the two approaches may be strengthened to collectively work towards a sustainable of deforestation free supply chain.

For detailed analysis and list of legal provisions, kindly refer to the comprehensive report and benchmarking spreadsheet available online here:
www.proforest.net/liberia-legal-review

1.3 Legal benchmarking for RSPO, RSPO Next and TFA 2020 APOI

The RSPO and RSPO Next requirements and TFA 2020 APOI national principles for Liberia were benchmarked against the legal requirements in Liberia, with the view of assessing which of the sustainability standard indicators or APOI principles are already addressed by the existing legal/regulatory environment in the country.

2. Methodology

Desk Review

The work began with a compilation, research and review of domestic laws, regulations and guidelines as well as the RSPO, RSPO Next standards and TFA 2020 concepts and requirements.

Development of a Benchmark Framework

Following a review of domestic laws, regulations and guidelines and RSPO and TFA concepts and requirements a framework was developed to facilitate benchmarking the indicated sustainability standards against the requirements of Liberian laws. Once the framework was complete, the outcome of the legal benchmark was presented to key stakeholders drawn from government, private sector and non-governmental organizations in Liberia's oil palm sector to be scrutinized, discussed and validated.

Colour Code System

The benchmark framework used a colour code to indicate the degree to which the requirements of the sustainability standards were addressed by national law. Green indicates "Fully Addressed"; meaning the indicator is fully and specifically covered/addressed by national law. Yellow "Partially Addressed", which means that the particular indicator is not fully or specifically addressed by national laws; and Red represents the phrase "Not Addressed", meaning that the particular indicator is not addressed or covered by any legislation/national law.

3. Thematic summary of key findings

The benchmarking was conducted at indicator level to ensure a more detailed assessment of laws. This guidance however, presents a summary of key thematic findings.

3.1 Legal regime for the regulation of the oil palm sector in Liberia

Currently, there is no legal regime for the specific regulation of the oil palm sector in Liberia; hence, evidence of compliance with legal requirements is not expressly available. However, the law, both domestically and internationally, makes provisions which regulates the potential effects of the activities of growers and millers on the environment. Hence, while the law does not require the level of evidence of compliance required by the standards, it does provide appropriate sanctions upon refusal to comply with legal provisions. At the barest minimum, entities operating in the oil palm sector are obligated to register with the Registrar General Department. Oil palm companies, like all companies doing business in Liberia, are required to be incorporated or apply for authority to transact business in Liberia and be registered with the Liberia Business Registry (LBR) to have legal status. This requirement inadvertently places a duty on them to comply with the law, providing, on some regular basis, information on the state of their compliance.

The need to provide information on a regular basis is also backed by legislation as companies are required to renew their registration annually and have the duty to comply with all existing laws, regulations and guidelines governing their operations. To prove compliance and retain its legal status, companies often need to have systems in place to monitor their activities and ensure that all relevant information is available. The Environmental Protection and Management Law (EPML) for example requires a developer or project proponent (investor or companies) to submit to the EPA and line ministries a project brief in a concise manner prior to commencing, executing or conducting a project or specified activity.

With regards to the right of the community to access information, the **Community Rights Law** requires the free, prior and informed consent (FPIC) of the community before any decision, agreement or activity affecting the status of community forestry resources is proceeded with. Although the forest sector is specifically mentioned, it was observed that this law is also applicable to situations that involve the oil palm industry in Liberia. The Environmental Protection Agency requires that public consultations are held to ensure that the undertaking is clearly explained to stakeholders, a key requirement is that all public consultations shall be conducted in English and any local vernacular necessary to ensure that the affected communities understand all the issues clearly. These requirements aim to ensure consultation with community dwellers and individuals, so that the community is fully informed about the activities and operations of the company

and sufficiently well informed to give their consent or reject the company's operation should they deem it not helpful or less beneficial to their interest.



Growers and millers should note that although the legal provisions do not explicitly require that, as per *Indicator 1.1.2, records of requests and responses shall be maintained in the oil palm sector*, there is an obligation to register one's operations and also the **Environmental Protection and Management Law** places an obligation to maintain a record of all requests and responses.

The **Community Rights Law** also makes it mandatory that the Free, Prior and Informed Consent (FPIC) of the affected communities is sought before any decision, agreement or activity affecting the status of community resources is proceeded with.

FPIC is a process where indigenous peoples or local communities have the right to give or to withhold consent to activities planned on their lands and territories of which will affect their cultures and traditional knowledge and other rights.

Decisions made, or consent given should be:

- Free = voluntary, without coercion or duress
- Prior = before the start of activities
- Informed = after complete and open sharing of all relevant information

3.2 Long term economic and financial viability

The benchmark did not find any specific provision in Liberian law that places a mandate on private sector companies to show evidence of commitments to economic and financial viability. In Liberia, however, concession agreements signed between the government and concessionaires (oil palm companies) are important and form the basis for the allocation of concessions. These concession agreements oblige the concessionaires to submit to the government rolling five (5) year development plans, which are subject to annual review and comments. The development of the concession including planting are all stipulated in these plans, if the agreements in the plans are not adhered to and the concessionaire does not provide notice to the Government that there has been a deviation from the plan with reasons, the Government has the option to repossess the parcel of land concerned. This agreement therefore requires that private sector companies have an implemented management plan that aims to achieve long-term economic and financial viability.



Concession Agreements

Concession Agreements (CAs) are written contracts between the Government of Liberia and investors in the natural resources sector. The National Bureau of Concessions (NBC) is responsible for the planning, bidding, negotiation, monitoring, documentation and provision of technical support for CAs on behalf of the government. Their enactment by the legislature (Senate and House of Representative) accords them full legal status. Concession lease agreements are executed on both public and community forest land for forestry and agriculture.

- CAs are subject to several legal limitations, including: Restriction of agricultural CAs to 50 years by the **Public Lands Law**
- Limitation of certain tax-related stability clauses to 15 years (the Liberian Revenue Law)
- Environmental and social assessments and management plans (EPML)
- Employment restrictions and quotas for Liberian nationals
- Community development support
- Annual review of a rolling 5-year development plan
- Disclosure of relevant information to relevant stakeholders, including the public



3.3 Promotion of inclusion and equal opportunities for relevant / affected groups

The research did not find any legal requirements that obligates the concessionaires to have or document an equal opportunities policy; however, both the **Constitution of Liberia** and the **Decent Work Act (DWA)** have provisions on equal opportunities and anti-discrimination, which protect and guarantee the right of all persons irrespective of their race, sex, religion and political affiliation. The Liberian Constitution spells out that all persons are equal before the law and clearly makes provisions that all persons irrespective of their ethnic background, race, sex, creed, place of origin or political opinion, are entitled to the fundamental rights and freedom of the individual. It further says that all citizens shall have equal opportunity for work and employment regardless of race, sex, creed, place of origin or political affiliation, and all shall be entitled to equal pay for equal work; all persons are equal.

In addition, the DWA provides that all women and men are entitled, without distinction, exclusion or preference to enjoy and to exercise the rights and protections provided in the law. It specifically provides that all persons who work or who seek to work in Liberia are entitled to enjoy and to exercise the rights and protections conferred by the law irrespective of:

- i)** race, tribe, indigenous group, language, color, descent, national, social or ethnic extraction origin, economic status, community or occupation;
- ii)** immigrant or temporary resident status;
- iii)** sex, gender identity or sexual orientation; iv) marital status or family responsibilities;
- iv)** previous, current or future pregnancy or breastfeeding,
- v)** age,
- vi)** creed, religion or religious belief,
- vii)** political affiliation or opinion or ideological
- viii)** conviction
- ix)** physical or mental disability
- x)** health status, including HIV or AIDS
- xi)** status, whether actual or perceived;
- xii)** irrelevant criminal record, acquittal of a crime or dismissal of a criminal prosecution against them or personal association with someone possessing or perceived to possess one or more of these attributes.

The research, however, found that although statutory law is the supreme law of the land and must be adhered to, customary norms and practices can and do affect its implementation particularly with respect to gender inclusion.

The Constitution of Liberia recognizes customs as a valid source of law in Liberia. As a conceptual matter, customary law is therefore applicable to all Liberians within defined limits. In practice; however, customary law remains very prevalent and widely used by indigenous Liberians and traditional institutions and leaders. **Liberian Customary Law** like most others, is unwritten law reserved in the mind

of especially indigenous people or their elders. While customary law is widely used to determine and enforce property, marital and other civil rights among indigenous and traditional people in Liberia, as well as settle majority of disputes among the same people, **significant criticisms abound about the discriminatory and non-egalitarian nature of Liberian customary laws.**

Customary law is therefore, not just the mere stipulation of rights and obligations in a particular community. It offers alternatives for resolving disputes without the assistance of the institutionalized justice system. They are an informal body of laws that are based on established patterns of behavior within a particular social setting. It consists of customs, practices and beliefs that are so intrinsic to a group of people that they are treated as laws. Like most rules, they are binding and enforceable amongst members of the community to which that practice or belief is unique.

Land ownership, access and or right of use has been a central factor of Liberian customary administration and demands deep consideration to understand the features influencing differences in who can access, use or own land. It therefore goes without saying that **Customary Land Administration** has been perceived as a **“bundle of rights” and that these rights differ by gender**¹. Our research found that men and women have different claims to land rights in Liberia based on statutory, customary, and religious laws as these laws prescribe procedures, values and practices that determine what rights accrue to men and women in respect of land ownership². Despite evidence of women’s reliance on natural resources, women have less access to and control over forest resources than their male counterparts. Usually, it is men who put land, water, plants and animals to commercial use, which is often more valued than women's domestic uses. This means that the inclusion of women in the oil palm supply chain particularly as smallholders or in terms of decision making is significantly limited as they do not have access to, or exercise power over, the key resource – land. This is further compounded where land becomes scarce owing to massive land grabs. Currently, the unsustainable exploitation of those lands poses a serious threat to rural livelihoods and food security, because women, who constitute nearly 70% of sustenance farmers, have had their entire farms destroyed or taken over with no or inadequate compensation.

Women and men are more likely to make environmentally and economically sound land management decisions when **they have secure ownership and know they can benefit**. To protect their natural resources and livelihoods, women and men must be equally empowered to participate in decisions that affect their needs and vulnerabilities³. The benchmarking on land tenure and managements under customary and statutory laws in Liberia, revealed that, in general, gender-based

¹ Di Gregorio et al. 2008**** check and confirm reference

² Evelyn L. Namubiru-Mwaura, Women and Customary Land Tenure in Liberia, Annual World Bank Conference on Land Policy and Administration, Washington, April 2012

³ Marvey, Mark M. M., Empowering Rural Communities to Foster Open, Accountable & Sustainable Natural Resource Governance in Liberia (Loyola University, Chicago), 2016

discrimination permeates land access and management cultures, and is manifested in the laws, policies, and practices of institutions governing land. For example, the Constitution of Liberia affords women the same inheritance rights and property rights as men. However, customary laws and practices are saturated with differences that limit women's rights. So even where constitutional guarantees provide for equality and protection of women's rights, discriminatory practices by religious and traditional leaders, law enforcement and security services, courts, lawyers and social services can become major obstacles to women's security and access to land in a vast portion of the country. Meaning that customary and traditional norms and practices, can perpetuate gross violations of the rights of women. Read more about the customary law review here.

4. High Conservation Value (HCV) and the law

High Conservation Values (HCV) are biological, ecological, social or cultural values that are outstandingly significant or critically important at the national, regional or global level. The Roundtable on Sustainable Palm Oil (RSPO) requirements make it clear that HCVs must be identified, managed and monitored. RSPO Principle 5, Criterion 5.2 states that the status of rare, threatened or endangered species and other HCV habitats, if any, that exist in the plantation or that could be affected by plantation or mill management, shall be identified and operations managed to best ensure that they are maintained and/or enhanced. The importance of protecting biological, ecological, social and cultural issues is reiterated under Principle 7, criteria 7.3. The study was therefore keen to find out the position of the laws in Liberia relative to HCVs.

The RSPO standard requirement to make available a documented HCV report is not directly provided for in Liberian law. However, various Liberian laws address *aspects* of plantation and mill management that have environmental and social impacts. Section 8 of the **Environmental Protection and Management Law** (EPML) requires that prior to commencing, executing or conducting a project or specified activity, a developer (or project proponent), shall submit to the Environmental Protection Agency (EPA) and the line ministry, a project brief in a concise manner. It further provides that the project proponent provides an environmental review, impact study or impact statement.

The EPML places an obligation on the project proponent to provide an "identification and description of measures proposed for avoiding, minimizing, mitigating and monitoring the anticipated adverse effects of the project activity on the environment".

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Summary of findings for producers in Liberia

The developer or project proponent, in this case oil palm companies, are further required to develop an environmental mitigation plan, which shall include the following:

- Objectives
- A description of activities to be carried out by the project proponent to mitigate any adverse effects on the environment
- Period within which the mitigation measures shall be implemented
- An estimate of the costs of carrying out the mitigation measures
- The proven efficacy of the mitigation measures or indicating their experimental nature

The law also obliges the EPA to issue guidelines and prescribe measures necessary for the conservation of biological diversity including specifying national strategies, plans and programmes for the conservation and sustainable use of biological diversity as part of the National Environmental Action Plan Process. This includes identifying, preparing and maintaining an inventory of the biological diversity of Liberia; determining which components of biological resources are endangered, rare or threatened with extinction and integrating conservation and a sustainable utilization ethic to existing state activities and activities of private persons. One important aspect of managing biological diversity in Liberia is that the country's law (EPML) mandates that to a practical extent, effective indigenous knowledge and practices of district communities in respect of biological diversity conservation are integrated into the management process. Another key point is the requirement to collect disaggregated data on the roles of women and youth in the conservation of biological resources and the impact of natural resource policies on women and youth. This is important as it recognizes that persons experience and utilize natural resources differently and these differences provides experiences key to sustainable natural resources management.

For more details on how HCV is addressed in legislation in Liberia see the separate HCV and HCS producer guidance here: <http://www.proforest.net/hcv-hcs-liberia>

For more general guidance on biodiversity and HCV management in Liberia see the following useful resources <http://www.liberianfaunaflora.org>, <http://www.leiti.org.lr/contracts-and-concessions>, <http://www.clientearth.org/laws-govern-forest-conversion-liberia> and www.fda.gov.lr/information/laws

5. TFA 2020 African Palm Oil Initiative and Liberian law

The Tropical Forest Alliance 2020 (TFA 2020) is a global public-private alliance with the mission of mobilizing all actors to collaborate in reducing commodity-driven tropical deforestation. It was founded in 2012 at Rio+20 (the UN Conference on Sustainable Development) after the Consumer Goods Forum (CGF) committed to zero net deforestation by 2020 for palm oil, soy, beef, and paper and pulp supply chains in 2010. TFA 2020 partners take voluntary actions, individually and in combination, to reduce the tropical deforestation associated with the sourcing of commodities such as palm oil. It presents a unique opportunity to bring together and galvanize the support of businesses, governments, and civil society organizations, including international non-government organizations; to foster and enhance cross-sector collaboration with the view to reduce global greenhouse gas emissions; thereby, improving the livelihoods of smallholder farmers, conserving natural habitats, and protecting tropical landscapes for future generations.

Liberia was the first country in Africa to show commitment and become a partner of the TFA 2020 Africa Palm Oil Initiative (APOI) in 2014. Hosting its first national workshop in May 2015 that led to the development of nine principles to guide the sustainable development of oil palm in Liberia, these were confirmed, and an action plan developed to implement the principles in 2016.

The benchmark sought to find out how the laws in Liberia reflect and facilitate the nine TFA 2020 APOI national principles in Liberia. The benchmark found that for seven out of the nine principles there exists no provision in Liberian law that places an obligation on private sector companies to implement the national principles. The remaining two principles were similarly not explicitly stated in the laws of Liberia but it was found that there are provisions in the law that mandate agencies and ministries of government to take specific actions, promote guidelines, and implement specific policy agenda that, by extrapolation, would lead to the attainment of the objective of these principles). For example, there is no known law that requires concessionaires to support local livelihoods through an FPIC-compliant social agreement as spelt out in Principle 2, however, the EPML makes FPIC a mandatory requirement for obtaining and using community (forest) land or resources for commercial purposes. The TFA 2020 APOI Benchmark for Liberia can be viewed at: <http://www.proforest.net/liberia-legal-reviews>.

6. Conclusion

The legal benchmark exercise showed that, while legal compliance may not be sufficient to deliver on the full requirements of RSPO and TFA 2020 APOI standards and commitments, the laws in Liberia do deliver some of the requirements of the standards. Key sustainability principles, such as a community's right to Free, Prior and Informed Consent and the responsibility to protect biodiversity are enshrined in Liberian law. Therefore, an approach to delivering commitments which builds on legal compliance is a practical strategy to promote sustainable commodity landscapes.

The strength that legality presents is that, unlike sustainability standards, compliance with the law is compulsory. If the legal framework or provisions are strengthened a more sustainable landscape will emerge as all the players within the landscape will have to comply with legal provisions.

This guidance explains to private sector actors which laws help them move towards RSPO and TFA 2020 APOI compliance and also provides value for law-makers by identifying current gaps between legislation and these standard that could potentially be aligned in the future.

To find out more about the legal benchmarks and access the full report, please visit: www.proforest.net/liberia-legal-reviews.

