

**PROTECTING FORESTS AGAINST ILLEGAL LOGGING IN TANZANIA:
EXAMINING THE LAW AND PRACTICE**

**PROTECTING FORESTS AGAINST ILLEGAL LOGGING IN TANZANIA:
EXAMINING THE LAW AND PRACTICE**

By

Claudi Christopher Kilonzo

**A Dissertation Submitted in Partial Fulfillment of the Requirements for Award of
the Master Degree in International Law (LLM-IL) of Mzumbe University**

2023

CERTIFICATION

We, the undersigned, certify that we have read and hereby recommend for acceptance by the Mzumbe University, a dissertation entitled “*Protecting Forests against Illegal Logging in Tanzania: Examining the Law and Practice*”, in partial fulfillment of the requirements for award of Master Degree in International Law (LLM-IL) of Mzumbe University

Major Supervisor

Internal Examiner

Accepted for the Board of the Faculty of Law

DEAN, FACULTY OF LAW

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Further, I express my appreciations and thanks to my lovely parents for their countless and immeasurable support especially in terms of their day and night prayers to me, their first born.

DEDICATION

This work is dedicated to my lovely parents Penueli Kiandiko (my mother) and Christopher Kilonzo (my father); my beautiful young sisters Elizabeth and Dayness; and, my young brothers Stephen and Johnson.

LIST OF LEGAL INSTRUMENTS

International Instruments

Africa Convention on Conservation of Nature and Natural Resources, OAU Doc CAB/LEG/24.1 (1968), entered into force 16 June 1969.

Convention on Biological Diversity 1760 UNTS 79, 31 ILM 818 (1992), entered into force on 29 December 1993.

Convention on International Trade in Endangered Species of Wild Fauna and Flora, 14537 UNTS 993 (1973), entered into force on 1 July 1975.

East Africa Community Protocol on Environmental and Natural Resources Management, (2006).

International Convention on Protection of Birds Useful in Agriculture, IUCN.ID: TRE-000067 (1902), entered into force 6 December 1905.

Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests (Forest Principles), UNCED. A/CONF.151/6. (1992).

Rio Declaration on Environment and Development, UN Doc. A/CONF.151/26 (Vol.1) 31 ILM 874 (1992).

Stockholm Declaration of the United Nations Conference on the Human Environment, UN Doc. A/CONF.Rev.1 11 ILM 1416 (1972).

The Convention Relative in Conservation of Flora and Fauna in their Natural State, (1933), entered into force on 14 January 1936.

The International Tropical Timber Agreement, No.23317 UNTS 68. Vol.1393, I-23317 (1983), entered into force in 1985.

United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, Reg. No. 33480 UNTS Vol. 1954 (1994), entered into force 26 December 1996.

United Nations Framework Convention on Climate Change, A/RES/48/189 (1992) entered into force on 21 March 1994.

Domestic Instruments

The Constitution of the United Republic of Tanzania, [Cap. 2 R.E. 2002].

The Economic and Organized Crime Control Act, [Cap. 200 R.E. 2022].

The Environmental Management Act, No.20 of 2004.

The Forest (Sustainable Utilization of Logs, Timber, Withies, Poles or Charcoal) Regulations, Government Notice No.417 of 2019.

The Forest Act, [Cap. 323 R.E. 2002].

The Forest Ordinance, 1921. (Repealed).

The Forest Ordinance, 1933. (Repealed).

The Forest Ordinance, 1957, [Cap. 386 of 1957]. (Repealed).

The Forest Regulations, Government Notice No.153 of 2004.

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Director of Public Prosecutions v. Salum Mohamed Salum & Six Others, Criminal Appeal No.237 of 2018, Court of Appeal of Tanzania at Dar es Salaam (Unreported).

Juliana Seki Mwakatagwe v. The Republic & Two Others, Criminal Application No.52 of 2022, High Court of Tanzania, District Registry of Mbeya at Mbeya, (unreported).

Novatus Anselimi Moshly v. The Republic, (DC) Criminal Appeal No.31 of 2021, High Court of Tanzania, District Registry of Kigoma at Kigoma (Unreported).

Robert Yohan v. The Republic, Criminal Appeal No.20 of 2021, High Court of Tanzania, District Registry of Kigoma at Kigoma (Unreported).

ABBREVIATIONS AND ACRONYMS

ACCNNR	-African Convention on Conservation of Nature and Natural Resources
CBD	-Convention on Biological Diversity
CITES	-Convention on International Trade in Endangered Species of Wild Fauna and Flora
CRCFF	-Convention Relative in Conservation of Flora and Fauna
EOCCA	-Economic and Organized Crime Control Act
FAO	-Food and Agriculture Organization
FBD	-Forest and Beekeeping Division
FLEGT	-Forest Law Enforcement, Governance and Trade
IPF	-International Panel on Forests
ITF	-Inter-Agency Task on Forests
ITTA	-International Timber Trade Agreement
ITTO	-International Timber Trade Organization
LGAs	-Local Government Authorities
MNRT	-Ministry of Natural Resources and Tourism
NFAC	-National Forest Advisory Committee
TaFF	-Tanzania Forest Fund
TAFORI	-Tanzania Forest Research Institute
TFS	-Tanzania Forest Service
UNCCD	-United Nations Convention to Combat Desertification
UNCED	-United Nations Conference on Environmental and Development
UNEP	-United Nations Environmental Programme
UNFCCC	-United Nations Framework Convention on Climate Change
UNFF	-United Nations Forum on Forest
VEO	-Village Executive Officer
WEO	-Ward Executive Officer

ABSTRACT

This study examined the law and practice on forests protection against illegal logging in mainland Tanzania. It proceeded from the view that despite the country's seemingly strong legal framework deterring, criminalizing and sanctioning illegal logging practices, studies show that, its forest cover declines at an alarming rate. Studies show that, 70 percent of the country's forest loss is due to illegal logging. This necessitated a study to examine the law and practices in protection of forests with a view to exploring legal and practical challenges in curbing illegal logging of forests in Tanzania. This study was limited to Mainland Tanzania, with a specific focus on Morogoro Region. It adopted exploratory research design to collect data through documentary review and in-depth interviews. A sample of thirty-five (35) respondents was involved. The data obtained was qualitatively analyzed and interpreted through content and thematic analyses.

The study found some legal and practical challenges with regard to protecting forests from illegal logging. In relation to legal challenges, it was found that, the existing legal regime on forests protection is inadequate. Some of the provisions enacted in the Forest Act are vague while sanctions are relatively lenient. On the practical aspect, it was found that, the absence of qualified officials and limited resources for forest patrols at the Tanzania Forest Service Agency (TFS), interference with efforts to deal with illegal loggers, corruption among some forest protection authorities, excessive forest dependence by citizens living adjacent to forests and mid-night illegal forest operations are among the factors that hinder protection of forests from illegal logging.

Consequently, the study recommends amendment of the Forest Act to address its unclear construction and, impose severe sanctions to illegal loggers. Again, the study recommends transformation of the TFS to a military agency to strengthen its performance. In addition, the government should encourage the use and facilitate availability of alternative sources of energy to reduce excessive dependence on forests. Further, the study recommends a deliberate fight against corruption in the forest sector and, along the chain of detection, investigation and prosecution of illegal logging.

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CHAPTER ONE

GENERAL INTRODUCTION

1.1 Introduction

Forests protection against illegal logging is an important agenda across the globe and in countries endowed with forests. This is apparently due to the increase in illegal forest activities. Tanzania is one of the countries richly endowed with forest ecosystems.¹ The country has a forest cover making up an area of roughly 45.7 million hectares equal to 51.64 per cent of the country's land area.² This forest cover offers essential livelihoods and environmental services. It harbours a disproportionate amount of the biodiversity, regulate key aspects of the global carbon cycle, weather patterns, and contribute directly to the national incomes and civilian livelihoods.³ Nonetheless, subsistence and business activities present threats on the future of forestlands. The highly cited threat is illegal loggings,⁴ mainly because it distresses forests ecosystem, states' economic well-being and individual livelihoods.

The threat of illegal logging on nature and the economy has warranted appropriate forests protection.⁵ Thus forests protection has become an international and governmental concern.⁶ In the wake of the 20th century, with the advent of international environmental law, the pressure for forests protection grew considerably. As a result,

¹ Ntiyakunze, M. S. & Stage, J. (2022). Forest Dependence in Tanzania: Analysis of the Determinants of Perceived Forest Dependence. *Trees, Forests and People*, Vol.8. pp.1-9. p.1.

² Kamer, L. (2022). Extension of Tanzania's Forested Area 2015-2020. Retrieved September 30, 2022 from the World Wide Web: <https://www.statista.com/statistics/1286752/forest-area-in-tanzania/>. See also Trading Economics. (2022). Tanzania-Forest Area (% of Land Area). Retrieved September 20, 2022 from the World Wide Web: <https://tradingeconomics.com/tanzania/forest-area-percent-of-land-area-wb-data.html>.

³ Oldekop, J. A. *et al.* (2020). Forest-linked Livelihoods in a Globalized World. *Nature Plants Perspective*, Vol. 6. pp. 1400-1407. p.1400; see also Swamy, M. N. (2007). *Textbook on Environmental Law*. 2nd ed. Hyderabad: S.P. Gogia Publishers. p.291.

⁴ Hermosilla, A. C. (2002). Law Compliance in the Forestry Sector: An Overview. World Bank Institute. p.1.

⁵ Centre For International Forestry Research. (2003). National and International Policies to Control Illegal Forest Activities. A Report Prepared for the Ministry of Foreign Affairs of the Government of Japan. p.1. Retrieved August 24, 2022 from the World Wide Web: https://www.cifor.org/publications/pdf_files/events/Illegal-logging.pdf.

⁶ Holder, J. & Lee, M. (2007). *Environmental Law: Law and Policy*. 2nd ed. London: Sweet & Maxwell. p.57; see also Kapoor, S., (2009). *International Environmental Law*. 17th ed. Allabad: Central Law Agency. p.411.

several international instruments were adopted including the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES),⁷ the United Nations Framework Convention on Climate Change (UNFCCC),⁸ and the Convention on Biological Diversity (CBD)⁹ among others. These instruments require states to assume appropriate measures to protect forests. Being party to the CITES,¹⁰ UNFCCC¹¹ and CBD,¹² Tanzania is imposed with obligations¹³ to ensure that the spirit embodied under these instruments is fully realised.

As part of her actions toward protecting forests, Tanzania enacted the Forest Act in 2002.¹⁴ Among other things, the Act makes provisions on forest protection against illegal loggings.¹⁵ Nonetheless, Tanzania is reportedly losing its forestland at an alarming rate through, among other factors, illegal logging of forests. In this respect, it is reported that the country is approximately losing between 300,000 and 500,000 hectares annually amidst the existing legal framework.¹⁶ More than 70 percent of tree cover loss is due to illegal logging.¹⁷ Therefore, drawing from the existing legal framework in place, with escalation of illegal logging, this study was conducted to examine the law and practice in protecting forests with a view to exploring legal and practical challenges in curbing illegal logging of forests in Tanzania.

⁷ Convention on International Trade in Endangered Species of Wild Fauna and Flora, 14537 UNTS 993 (1973), entered into force on 1 July 1975.

⁸ United Nations Framework Convention on Climate Change, A/RES/48/189 (1992) entered into force on 21 March 1994.

⁹ Convention on Biological Diversity 1760 UNTS 79, 31 ILM 818 (1992), entered into force on 29 December 1993.

¹⁰ The CITES was ratified on 29 November 1979.

¹¹ The UNFCCC was ratified on 17 April 1996.

¹² The CBD was ratified on 8 March 1996.

¹³ The CITES article VIII (1); the UNFCCC articles 3 & 4 and the CBD article 6.

¹⁴ The Forest Act, [Cap. 323 R.E. 2002].

¹⁵ *ibid*, sections 84 (5), 89 and 93(1) (c).

¹⁶ Kairu, P. (2022). Africa's Forest Cover Drops Despite Greater Efforts to Save Trees. Retrieved October 1, 2022 from the World Wide Web: <https://www.theeastafrikan.co.ke/tea/science-health/-3781926>.

¹⁷ Ligami, C. (2019). In Tanzania, Ownership of the Forest Offers New Prospects for Old Loggers. Retrieved February 19, from the World Wide Web: <https://www.climatechangenews.com/2019/10/15/tanzania-ownership-forest-offers-new-prospects-old-loggers/>.

1.2 Background to the Problem

Exploitation of forest resources has led to many environmental and economic concerns, hence, attracted serious protective measures. Forests protection, in this regard, against illegal loggings, has a long history, globally, regionally and country-wide. Globally, the international community adopted various declarations, resolutions and conventions to address forests protection. Notably, the Stockholm Declaration¹⁸ marks the early legal initiative. It upheld the principle of sustainable use of forest for the benefit of the present and future generations.¹⁹ To ensure that the use of and trade on wild species is sustainable, in 1973 the CITES was adopted with a view to regulating international trade on endangered wild species including forest produces. Thus, in 1990s international protection of natural resources, inclusive of forests started to be dealt with internationally as an international agenda.²⁰

Nevertheless, forests protection in particular was intensively addressed at the United Nations Conference on Environment and Development (UNCED).²¹ The aftermath of the UNCED brought in the Rio Declaration,²² Forest Principles²³ and Agenda 21.²⁴ The Rio Declaration makes a general call for protection of natural resources.²⁵ On the other hand, the Forest Principles provides for a comprehensive forest protection, conservation and management principles. Agenda 21 calls for international research in conservation of forests with a view to ascertaining related forest protection problems.²⁶

¹⁸ Stockholm Declaration of the United Nations Conference on the Human Environment 1972 UN Doc. A/CONF.Rev.1 11 ILM 1416.

¹⁹ *ibid*, principle 2. See also Sohn, L. B. (1973). The Stockholm Declaration on the Human Environment. *The Harvard International Law Journal*. Vol. 14 (3). p. 423.

²⁰ Kiss, A. & Shellor, D. (2003). *International Environmental Law*. 3rd Ed. Audsel: Transnational Publishers. p.1.

²¹ United Nations Conference on Environment and Development, held at Rio de Janeiro-Brazil from 3rd to 14th June 1992.

²² Rio Declaration on Environment and Development, UN Doc. A/CONF.151/26 (Vol.1) 31 ILM 874 (1992).

²³ Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests (Forest Principles), UNCED. A/CONF.151/6. (1992).

²⁴ United Nations Conference on Environment and Development. Agenda 21.

²⁵ The Rio Declaration, principle 23.

²⁶ Agenda 21, principle 11.

It urges governments and non-governmental groups to increase forestlands and to reduce as much as possible illegal harvest of forests.²⁷ However, amidst these initiatives, the international community still witnessed deterioration of forestlands. The National Academies of Science Engineering Medicine²⁸ reports that that up to 1992, although Agenda 21 had acceptance of 178 countries, the progress towards achieving its objectives was slower than anticipated. This report submits that population increase and demand for food and energy was a driver for the increase in illegal harvest of forests contrary to the spirit embodied under Agenda 21.

Another significant initiative at the UNCED was the adoption of the UNFCCC and CBD. These instruments do not specifically prohibit illegal loggings, but employ provisions urging state parties to assume appropriate measures to protect forests.²⁹ The UNFCCC and CBD calls for consideration of climate change and ecological balance respectively, in utilization of forest produces. In 1994, the United Nations Convention to Combat Desertification (UNCCD) was adopted.³⁰ The UNCCD provide that in implementing the convention, national action programs should include measures to conserve natural resources including forests.³¹ It requires assuming national action programs relating to forestry among others.³² The sprit embodied under the UNCCD points to increasing efforts in creating guiding rules on forest protection.

However, with these 1990s legal measures, the world forest cover has continued to be under intense pressure. The Food and Agriculture Organisation (FAO) asserts that by 1990, the world had about 4,128 million hectares of forests but by 2015, the world

²⁷ Agenda 21, principle 11.

²⁸ National Academies of Science Engineering Medicine. (2002). Agenda 21 Implementation: Progress, Challenges and Rule of Graphical Data. Retrieved August 25, 2022 from the World Wide Web: <https://www.nap.edu/read/10455/chapter/4>.

²⁹ The UNFCCC, art 8(c), the CBD art 6.

³⁰ United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, Reg. No. 33480 UNTS Vol. 1954 (1994), entered into force 26 December 1996.

³¹ *ibid*, article 8(3)(c).

³² *ibid*, article art 6(b).

forestland decreased to 3,999 million hectares.³³ With the international instruments in place, the world lost equals to a change from 32.6 percentage of global forestland area in 1990 to 30.6 percentage by 2015.³⁴ Between 2010 and 2015 there was an annual loss of 7.6 million hectares and an annual gain of 4.3 million hectares, resulting to a net annual decrease of forestland areas of 3.3 million hectares.³⁵ The dramatic increase of illegal logging at the time is connected to the increase in human activities and weak enforcement of laws due to corruption practices among others.³⁶

At the regional level, Africa has taken the matter of forests protection a serious concern. The early initiative towards protection of forests in Africa was the 1993 adoption of the Convention Relative in Conservation of Flora and Fauna (CRCFF).³⁷ The CRCFF addressed forests protection in a wider view of ecological protection. The CRCFF did not cover specific aspects of forests protections. As a result, the Africa Convention on Conservation of Nature and Natural Resources (ACCNNR) replaced the CRCFF.³⁸ The ACCNNR protect forests destruction against bush fire, exploitation, land clearing for cultivation and overgrazing.³⁹ To enhancing its effective implementation, the ACCNNR require States to establish a single agency empowered to deal with all matters covered in it.⁴⁰

However, despite these efforts, illegal harvest of forests in Africa has ever since been in increase. A report by the Ministerial Conference on the Protection of Forest in Europe reveals that 50-80 percent of the timbers put on the market from States in Africa are of

³³ Food and Agriculture Organization. (2015). Global Forest Resources Assessment: How the World's Forest Changing? 2nd Ed. Presented in Rome in 2016. p.3. Retrieved August 23, 2022 from the World Wide Web: <https://www.fao.org/3/i4793e/i4793e.pdf>.

³⁴ *ibid.*

³⁵ *ibid.*

³⁶ Tacconi, L. *et al.* (2019). Law Enforcement and Deforestation: Lessons for Indonesia from Brazil. *Forest Policy and Economics*. Vol.108. pp.1-10.

³⁷ Convention Relative in Conservation of Flora and Fauna 1933 (replaced).

³⁸ Africa Convention on Conservation of Nature and Natural Resources, OAU Doc CAB/LEG/24.1 (1968), entered into force 16 June 1969.

³⁹ *ibid.*, article 6(1) (a-c).

⁴⁰ *ibid.*, article 4.

illegal origin.⁴¹ FAO observes further that illegal logging has resulted in conversion of 20,000 hectares of productive woodlands in southern parts of Africa.⁴² FAO asserts that the situation is devastating since large areas have been stripped of tree cover through illegal harvest. FAO considers that in most populated areas the rate of illegal logging is seemingly high than in less densities.⁴³ FAO connects increasing illegal logging and population increase that the latter is the exacerbating factor for the former.⁴⁴

In Tanzania, forests protection against illegal harvest has also a long history. State control over forests was initially established in Tanganyika back in 1891 with the advent of Germany.⁴⁵ The aim was to protect forests from clearance both by settlers and local inhabitants.⁴⁶ Following the transfer of Tanganyika from Germany to British control, the 1921 Forest Ordinance was passed by British government as the principal forest legal rule. Lovett asserts that the 1921 Forest Ordinance placed restrictions in access to, and use of forest resources.⁴⁷ These restrictions went contrary to the spirit of the 1922 League of Nations Mandates to Tanganyika Territory which emphasized on affording the natives of Tanganyika with the right to use and enjoy the land of the territory.⁴⁸ As a result the strict nature of the 1921 Forest Ordinance was later modified to permit access to ‘natural fruits’ by amendments in 1926 and 1930.⁴⁹ However, the restrictions were again restored following the enactment of the 1933 Forest Ordinance

⁴¹ Ministerial Conference on the Protection of Forest in Europe. (2007). Combating Illegal Harvesting and Related Trade of Forest Products in Europe. A Report for the MCPFE Workshop held in Madrid-Spain 2007. Retrieved September 20, 2022 from the World Wide Web:

https://unece.org/fileadmin/DAM/timber/publications/State_of_europes_forests_2007.pdf.

⁴² *ibid.*

⁴³ Food and Agriculture Organization. (2015). Southern Africa’s Forests and People: Investing in a Sustainable Future: Successes, Challenges and Way Forward, a Report Released in the XIV World Forest Congress in Durban-South Africa. Retrieved September 20, 2022 from the World Wide Web:

<https://www.fao.org/africa/news/detail-news/en/c/289264/>.

⁴⁴ *ibid.*

⁴⁵ Lovett, J. C. (2003). The Forest Act, 2002 (Tanzania). *Journal of African Law*. Vol.47(1). pp.133-135. p.133.

⁴⁶ *ibid.*

⁴⁷ *ibid.*

⁴⁸ *ibid.*

⁴⁹ *ibid*, p.134.

meant to protect forests for water catchments and preventing forests loss from fire and grazing.

The 1933 Forest Ordinance did not sufficiently capture forests protection patterns; as a result, it was later replaced by the 1957 Forest Ordinance.⁵⁰ The Ordinance strictly prohibited dealing with forests without valid licences.⁵¹ It prohibited illegal entrance to forests for cutting, removing or taking into possession or damage forests produces.⁵² To enhance compliance with this requirement, these dealings were condemned offences. It extended liability to whoever enters possession of forest produces without licence. This was also an offence under the Ordinance.⁵³ Lovett asserts that although the Ordinance was a protective legal instrument against illegal loggings, yet it did not successfully secure forests related problems as it was expected.⁵⁴

After independence, the Forest Ordinance continued to operate until 2002. Nonetheless, within this time of its operation, policies were made addressing the growing need to protect forests. In 1997, the National Environmental Policy was made.⁵⁵ It acknowledged the escalation of the country's forest loss.⁵⁶ Consequently, it outlined potential practices to put in place for effective forests protection.⁵⁷ This policy was replaced by the National Environmental Policy of 2021 which addresses forest protection in a relatively similar way.⁵⁸ The specific National Forest Policy was made in 1998.⁵⁹ Among other things, it acknowledged a need to protect forests, urging

⁵⁰ Forest Ordinance, 1957, Cap. 386 of 1957.

⁵¹ *ibid*, section 15.

⁵² *ibid*.

⁵³ *ibid*, section 22.

⁵⁴ Lovett, J. C. (2003). Tanzania Forest Law' in Grey, C. K. R. (eds), *International Environmental Law and Policy in Africa*. The Hague: Kluwer Law International Publishers.

⁵⁵ The United Republic of Tanzania. (1997). National Environmental Policy. Vice President's Office. (Repealed).

⁵⁶ *ibid*, policy statement 12(vi).

⁵⁷ *ibid*, policy statement 59.

⁵⁸ The United Republic of Tanzania. (2021). National Environmental Policy. Vice President's Office.

⁵⁹ The United Republic of Tanzania. (1998). National Forest Policy. Government Printers, Dar es Salaam Tanzania.

designing a comprehensive legal framework in this regard.⁶⁰ As a result, in 2002 the Forest Act⁶¹ was made.

The Forest Act constitutes well-framed forests protection provisions. It criminalises unlawful taking possession or receiving forests produce. It makes it an offence for any person, without permit or lawful authority to enter into forest reserves, destroy or remove trees.⁶² This provision, literally, protects forests against illegal harvest. On conviction, a person may be fined or sent to prison or both.⁶³ Similarly, the Forest Act makes it an offence to trade in forest produces.⁶⁴ This offence attracts a relatively stiff punishment. It imposes a fine of three times of market value of the illegally harvested forest produce or imprisonment of a term up to seven years.⁶⁵

However, despite the forest legal framework in place, the result is reverse. Makero and Malimbwi⁶⁶ argue that, illegal harvest has been in increase in Tanzania regardless of the law in place. The new cut in each calendar year is almost two times higher than the old cut in a preceding year.⁶⁷ This signifies increase in the magnitude of illegal harvests in Tanzania. FAO asserts that through illegal harvest of forest produces, among other, Tanzania loses forests at a rate of 300,000 and 500,000 hectares per annum.⁶⁸ However, more than 70 percent of tree cover loss is due to illegal logging.⁶⁹ Therefore, drawing from the existing legal framework in place, with escalation of illegal logging, this study was conducted to examine the law and practice in protecting forests with a view to explore legal and practical challenges in curbing illegal logging of forests in Tanzania.

⁶⁰ The United Republic of Tanzania. (1998). National Forest Policy. Government Printers, Dar es Salaam Tanzania, policy statement 4.1.

⁶¹ The Forest Act, [Cap. 323 R.E. 2002].

⁶² The Forest Act, [Cap. 323 R.E. 2002], section 84 (1).

⁶³ *ibid*, section 84 (5).

⁶⁴ *ibid*, section 89.

⁶⁵ *ibid*, section 89, as amended by the Written Laws (Miscellaneous Amendment) (No.2) Act, 2016, Act No.4 of 2016, section 29.

⁶⁶ Makero, J. S. & Malimbwi, R.E. (2012). Extent of Illegal Harvest on Availability of Timber Species in Forest Reserves Tanzania. *International Forest Review*. Vol.14(2). pp.176-183.

⁶⁷ *ibid*.

⁶⁸ Food and Agriculture Organization. (2015). *Loc. cit*. See also Kairu, P. (2022). Africa's Forest Cover Drops despite Greater Efforts to Save Trees. Retrieved December 20, from the World Wide Web: <https://www.theeastafrican.co.ke/tea/science-health/-3781926>.

⁶⁹ Ligami, C. (2019). *Loc. cit*.

1.3 Statement of the Problem

Illegal logging is a global issue affecting both developing and developed countries.⁷⁰ It deprives governments of important revenues, it is responsible for climate change, and threatens forest ecosystem services, biodiversity and welfare of forest resources' dependents.⁷¹ The issue has been gaining prominence in international and national spheres. The international community and individual states⁷² have taken legal measures to address the matter.⁷³ Tanzania in particular has assumed international obligations from, among others, the CITES, UNCCD, UNFCCC and CBD by enacting the Forest Act.⁷⁴ The Act prohibits and incriminates illegal logging of forest practices including illegal harvesting, transporting, receiving, possessing and trading in forests produce,⁷⁵ prescribing severe punishments thereof.⁷⁶

Despite the efforts to combat illegal logging, studies indicate that the problem remains widespread.⁷⁷ Tanzania loses between 300,000 to 500,000 hectares of forests annually 78 out of the 45.7 million hectares of the country's forest land area.⁷⁹ Between 2001 and 2021, Tanzania lost about 2.86 million hectares of its forest land.⁸⁰ Reports show

⁷⁰ Bosch, M. (2021). Institutional Quality, Economic Development and Illegal Logging: A Quantitative Cross-National Analysis. *European Journal of Forest Research*. Vol. 140. pp. 1049-1064. See also Congressional Research Service. (2019). International Illegal Logging: Background and Issues. Retrieved December 4, 2022 from the World Wide Web: <https://sgp.fas.org/crs/misc/IF11114.pdf>.

⁷¹ *ibid*.

⁷² For instance, Indonesia, Brazil, South Africa, Kenya and Tanzania to mention a few.

⁷³ These include adopting several international instruments such as CITES, UNCCD, UNFCC and CBD; and, establishing illegal logging deterring programmes such as Forest Stewardship Council (FSC), and the work under United Nations Office on Drugs and Crimes.

⁷⁴ [Cap. 323 R.E. 2002].

⁷⁵ *ibid*, sections 49, 58, 84, 88 and 89.

⁷⁶ Including fine of three times of market value of the forest produces, imprisonment terms of up to seven years and, seizure of boats, airplane, vehicles, machineries or other equipment used in illegal loggings chain. See the Forest Act, [Cap.323 R.E. 2002], sections 93(1)(c) and 89 as amended by the Written Laws (Miscellaneous Amendment) (No.2) Act, No.4 of 2016, section 29.

⁷⁷ United Republic of Tanzania. (2021). Ministry of Natural Resources and Tourism Strategic Plan 2021/22-2025/2026. p.28. See also United Republic of Tanzania. (2021). National Forest Policy Implementation Strategy 2021-2031. (MNRT 2021). p.4.

⁷⁸ Kairu, P. (2022) *Loc. cit.* see also Makunga, J.E. & Misana, S.B. (2017). The Existent and Drivers of Forest Degradation in Tanzania. *Open Journal of Forestry*. Vol.7. pp.285-305.

⁷⁹ Kamer, L. (2022). *Loc. cit.*

⁸⁰ Global Forest Watch. (2023). 'Components of Net Change in Tree Cover in Tanzania.' Retrieved February 19, 2023 from the World Wide Web: <https://www.globalforestwatch.org/dashboards/country/TZA/14/4/>.

that such loss is due to climate change, farming, settlement and illegal logging.⁸¹ However, the most of all is illegal logging. It is reported that illegal logging account for 70 percent of the forest loss and therefore making it the highest causative of the forest loss.⁸² This has resulted into biodiversity loss, climate change, disruption of livelihoods and loss of government revenues.⁸³ Therefore, drawing from the existing legal framework in place, with escalation of illegal logging, this study was conducted to examine the law and practice in protecting forests with a view to exploring legal and practical challenges in curbing illegal logging of forests in Tanzania.

1.4 Research Objectives

This study had one general objective and three specific objectives as follows: -

1.4.1 General Objective

The general objective of this study was to examine the law and practice in protecting forests against illegal logging in Tanzania.

1.4.2 Specific Objectives

The specific objectives of this study were:

- a) To examine the existing legal framework relating to forests protection in relation to curbing illegal logging.
- b) To identify legal and practical challenges in protecting forests against illegal logging in Tanzania.

⁸¹ United Republic of Tanzania. (2021). *Loc. cit.* See also Talvela, K. (2019) Evaluation of the Agriculture, Rural Development and Forest Sector Programmes in Africa: Country Report, Tanzania. p.15. Retrieved June 17, 2023 from World Wide Web: <https://um.fi/documents/384998/0/ARDF+Evaluation+Country+Report+TANZANIA.pdf/460fcdf8-54ed-7241-e712-a877103e5e96?t=1569774660922>.

⁸² Food and Agriculture Organization. (2020). The State of the World's Forests: Forests, Diversity and the People. Retrieved June 17, 2023 from World Wide Web: <https://www.fao.org/3/ca8642en/ca8642en.pdf>. See Ligami, C. (2019) *Loc. cit.* See also The United Republic of Tanzania. (2015). A Forest Inventory by the Tanzania Forest Service Agency. Report by Tanzania Forest Service Agency. Retrieved September 28, 2022 from the World Wide Web: <http://news.mongabay.com/2016/10>.

⁸³ Kimeu, C. (2022). 'Means of Survival': Tanzania Booming Charcoal Trade Drivers Unchecked Deforestation. Retrieved February 19, 2023 from the World Wide Web: <https://www.theguardian.com/global-development/2022/>.

- c) To explore measures to strengthen the protection of forests from illegal logging.

1.5 Research Questions

The following research questions guided this study:

- a) What does the existing legal framework relating to forests protection provide in relation to curbing illegal logging?
- b) What are the legal and practical challenges in protecting forests against illegal logging in Tanzania?
- c) What measures should be put in place to strengthen the protection of forests from illegal logging?

1.6 Significance of the Study

This study is significant in a number of ways: in the first place, it examines the law and practice in respect of forests protection against illegal logging in Tanzania. Drawing from available statistics which depicts escalation of illegal logging of forests, the study explores responsible legal and practical challenges. Consequently, it adds to the stock of literature on efficacy of the forest legal framework and challenges impeding protection of forests against illegal loggings in Tanzania Mainland.

Furthermore, this study is significant since it explores measures to strengthen forests protection and, consequently to address illegal logging. On the one hand, the study contributes to the law reform, as it recommends legislative revisiting with a view to addressing legal challenges in curbing illegal logging. On the other hand, the study informs law implementers of the best can be done to effectively implement the existing forest legal regime. Hence, addressing practical challenges in curbing illegal logging.

1.7 Scope of the Study

This study focused on examination of the law and practice in protecting forests against illegal logging in Tanzania. Specifically, the study examined the law relevant to protection of forests in Tanzania with a view to establishing their efficacy in combating

illegal logging of forests. On this basis, it explored the factors hindering forest protection, the result of which illegal logging has been in increase dramatically.

Geographical delimitation of the study was Tanzania mainland. The specific locality was Morogoro Region. The reasons were that, Morogoro is one of the leading forested land regions in Tanzania.⁸⁴ In addition, Morogoro is one among the regions with high change of tree cover due to illegal logging of forests among other drivers.⁸⁵ Similarly, the region is located near the major and growing city of Dodoma as well as Tanzania's commercial hub Dar es Salaam which are not richly endowed with forests; hence, illegal harvest for feeding the neighbouring cities for energy and building materials is high.

1.8 Literature Review

Various authors have written on forest protection against illegal logging in developing and developed countries. The major focus of such authors has been on the state of illegal logging while the question of law viz a viz impact has attracted a little attention of environmental and natural resources scholars. The main departure of this study is its focus to examine the reasons why the laws are not adequately translated into actions. Scholars have reflected the problem of implementation of law and hardships the countries are facing especially in implementing existing laws in protecting natural resources, forests in particular. However, the reasons why laws are not adequately translated into actions do not feature sufficiently. Therefore, this study analyses literature covering the areas of forest protection with documented texts on efficacy of laws in protecting forests against illegal loggings.

Authors on forest protection agree that the international community as well as individual states have taken some measures in varying degrees to provide legal framework to protect forests. However, the legal frameworks have not been translated

⁸⁴ The Morogoro Region has a total land area of 4,190.663 ha of which 330, 277 ha which is equivalent to 9.7 percent are covered by forest. See United Republic of Tanzania. (2020). 'Morogoro Region Social-Economic Profile 2020. (National Bureau of Statistics & Ministry of Finance and Planning 2020). p. 69.

⁸⁵ Global Forest Watch. (2023). *Loc. cit.*

into tangible results in relation to protection of forests. Translating such legal framework in curbing forest related problems has remained unattended.⁸⁶ Lesniewska is of the view that there is no doubt with existence of good laws but the doubt is on the question of results countries are facing.⁸⁷

An increase in illegal logging is generally appreciated in Tanzania. Lovett, who wrote on the situation in 2003 a year after the passing of the Forest Act, argues that illegal logging has been in increase while deterrence is insufficient.⁸⁸ Seemingly, the challenges have not been addressed. A decade later, Makero and Malimbwi are writing arguing that illegal harvest has been on increase in Tanzania regardless of the law in place.⁸⁹ The authors argue that the new cut in each calendar year is almost two times higher than the old cut in a preceding year. Despite legislative measures in place to combat illegal logging, reports indicate that the problem remains widespread.⁹⁰ Although the escalation of illegal logging is generally acknowledged, challenges for combating illegal loggings in Tanzania are not sufficiently documented.

⁸⁶ For instance, Lesniewska F. (2005). An Introductory Guide to International Forest and Forest Related Legal Materials that Shape Forest Ethics and Practice. A Discussion Paper to International Institute for Environment and the Development; Lovett, J. C. (2003). 'Tanzania Forest Law' in Grey, C. K. R. (eds), *International Environmental Law and Policy in Africa*. The Hague: Kluwer Law International Publishers; Makero, J. S. & Malimbwi, R.E. (2012). Extent of Illegal Harvest on Availability of Timber Species in Forest Reserves Tanzania. *International Forest Review*. Vol.14 (2). Pp.176-183; Hirakuri, S. R. (2003). Can Law Save the Forest? Lessons from Finland and Brazil. The Centre for International Forest Research; The International Union for Conservation of Nature. (2011). Forest: A Legal Challenge. Report by the IUCN Forest Conservation Program Newsletter. Issue 44; Akella, A. S. & Cannon, J. B. (2004). Strengthening the Weakest Links: Strategies for Improving the Enforcement of Environmental Laws Globally; Philippe, S. (2008). *Principles of International Fundamental Law*. 2nd Ed. London: Cambridge University Press.

⁸⁷ Lesniewska F. (2005). An Introductory Guide to International Forest and Forest Related Legal Materials that Shape Forest Ethics and Practice. A Discussion Paper to International Institute for Environment and the Development. p.11. Retrieved October 10, 2022 from the World Wide Web: <http://file:///C:/Users/Upendo/0forests2.pdf>.

⁸⁸ Lovett, J. C. (2003). 'Tanzania Forest Law' in Grey, C. K. R. (eds), *International Environmental Law and Policy in Africa*. The Hague: Kluwer Law International Publishers.

⁸⁹ Makero, J. S. & Malimbwi, R.E. (2012). Extent of Illegal Harvest on Availability of Timber Species in Forest Reserves Tanzania. *International Forest Review*. Vol.14 (2). Pp.176-183.

⁹⁰ United Republic of Tanzania. (2021). Ministry of Natural Resources and Tourism Strategic Plan 2021/22-2025/2026, p.28; see also United Republic of Tanzania. (2021). National Forest Policy Implementation Strategy 2021-2031. (MNRT 2021). p.4.

Illegal logging is also encountered in other countries. Writing on the situation in Finland and Brazil, with the specific focus on Amazon forests, Hirakuri⁹¹ argues that forests are still threatened by unsustainable logging practices. The author submits that in presence of laws embodying forest protection principles, increasing illegal loggings is associated with the extent to which forest laws are implemented. In the authors' view, low compliances with the existing laws rather than lacking of laws, is becoming the often-leading cause for unsustainable forests practices. Although Hirakuri wrote in Finland and Brazil, the literature is useful as it informs on how the problem which this study addresses is persisting. Similarly, the author unveils that increasing illegal loggings is associated with implementation situation, which could also be relevant in Tanzania. As the International Union for Conservation of Nature⁹² depicts, many countries still follow a narrow compliance-based approach, hence having endless struggle against forests crime.

In the same spirit, Akella and Cannon⁹³ have addressed translating laws into actions. They are of the view that, increasing illegal logging amidst protective laws in place points to the fact that there is a problem with implementation of the existing law. Commenting on the consequences of this phenomenon, they submit that, poor implementation in the environmental realm, affects adversely the world as mechanisms of ensuring implementation of the law are still in question. The authors however argue that, although weak implementation is generally acknowledged, the wide underlying cause of this weakness is often not understood. This adds credit to the aim of this study, as it intends to explore factors hindering translating the existing laws to curbing illegal logging of forests.

⁹¹ Hirakuri, S. R. (2003). Can Law Save the Forest? Lessons from Finland and Brazil. The Centre for International Forest Research. Retrieved October 10, 2022 from the World Wide Web: <http://www.cifor.cgiar.org>.

⁹² The International Union for Conservation of Nature. (2011). Forest: A Legal Challenge. Report by the IUCN Forest Conservation Program Newsletter. Issue 44. Retrieved October 10, 2022 from the World Wide Web: <http://www.iucn.org/forest/law>.

⁹³ Akella, A. S. & Cannon, J. B. (2004). Strengthening the Weakest Links: Strategies for Improving the Enforcement of Environmental Laws Globally. A report submitted in a Centre for Conservation and Government at Conservation International (CI).

Similarly, Philippe⁹⁴ observes that implementation of environmental and forest laws have not been done satisfactorily. The author argues that states have not done its segment well. He asserts that generally states have primary and essential rule in implementing rules of international environmental law including *inter alia* forest law. Philippe informs this study in a number of ways. He submits the concern on inadequacy in implementing forest laws the result of which forest lands are set in pressure of illegal harvests. Again, the author presents somewhat essential in addressing set-backs in enforcing existing law. The author engages the state to this struggle. Philippe validates this study in a way that; since impediment in enforcing forest law is acknowledge, a study needs to be conducted to ascertain the reasons behind.

Arguments by Philippe are supported by Tarimo who addresses the same question significantly in the context of Tanzania.⁹⁵ Tarimo argues that given the fact that reducing illegal exploitation of forests resources is a primary concern especially in most protected areas, the government of Tanzania should assume the responsibility to enhance effective enforcement of forest laws. He adds that, the government should share this responsibility with local communities and law enforcement as a means of increasing equity, sustainability and to reduce illegal harvest of forests resource. Tarimo's work informs this study in a number of ways. He submits that, despite the laws in place yet forests are illegally harvested. Tarimo observes that, the chain of law enforcement in respect of detecting, arresting, prosecuting, convicting and punishing has not been effective so that to reduce illegal activities in forests. Tarimo's work is very important in this study simply because it points to the problem under investigation and suggest the reasons for the existing problem. However, the general findings of the author were submitted several years ago, therefore this study remains valid today.

⁹⁴ Philippe, S. (2008). *Principles of International Fundamental Law*. 2nd Ed. London: Cambridge University Press. pp.171-182.

⁹⁵ Tarimo, C. (2016). Effectiveness of Law Enforcement in Wild Life and Forest Resources Management: A case study of JUHIBU and JUHIBEKO, Tanzania. A Dissertation Submitted for partial Fulfilment of Master's Degree of Science in Environmental and Resource Economics. Sokoine University of Agriculture. Morogoro-Tanzania.

Another line of arguments points to the better practices to ensure that legal frameworks in place are realized in protecting forests against illegal logging. FAO⁹⁶ reports that along with identifying ways to build strong institutional capacity as to foster better law implementation and compliance, it is better to think of having good practice to develop sound legal and institutional framework and clear provisions so as to reduce illegal and corrupt operations in the forests sector. It submits that there should be clarity, transparency and consistency of forests and forest related legislation so as to ensure that laws bring impacts. FAO urges that ensuring law making participatory approach will promote transparency and reduce corruption and enhance the capacity of the judiciary to act effectively on forest law matters. This report is very useful in this study since it hints on the best practices to enhance efficiency of the law in protecting forests. It argues on good legislation, a reasonably functioning judiciary, protecting legal rights of stakeholder and to ensure that laws do not contradict each other.

Sola⁹⁷ adds to what FAO asserts in this regard. The author asserts that presence of the clear policy framework, consistence and transparent legislation is prerequisite to serve a guide towards realizing the impacts of the laws. If the legal framework is weak, inconsistent, contradictory, overlapping jurisdiction and complicated to understand, it will ultimately result to non-compliance. The author submits that to have effective implementation; there should be a good system which holds lawbreakers accountable, credible penalties and a just legal system. There should be participatory forest legislation reforms, improving system and capacity of administrative process, reducing aspect of bureaucracy and making simple procedures as well as developing implementation strategies basing on the rigorous assessment.

This literature is important in this study since it argues in line with the focus of this research. The author points out some best practices to enhance efficacy of forest laws in protecting forests against illegal loggings. The author suggests that implementation

⁹⁶ Food and Agriculture Organisation. (2004). Best Practices for Improving Law Compliance in Forest Sector. Retrieved October 10, 2022 from the World Wide Web: <http://www.fao.org>.

⁹⁷ Sola, P. (2011). Forest Law Enforcement and Governance and Trade in the Southern Africa Development Community (SADC): African Forest Forum (AFF). Working Paper Service. Vol.1(9).

of forest laws, calls for administrative organizations of forests control. There should be frequently forest field inspection to weigh the laws in forest and the results in practice. The author submits that lack of personal and training in forest protection, lack of sustainable governmental institution, lack of institutional coordination and lack of adequate financial resources posed difficulties in implementation of laws to cure the forest resources against illegal harvesting. What has been written by the author is the intention of this research as it gives factors for unsatisfactory results of forests legal frameworks. The author calls for further attention to be given on factors leading to failure of implementation of forest laws, that there should be frequent forest field inspection to weigh the laws in forests and the results in practice. Nonetheless, this literature addressed the situation in the whole of the Southern Africa Development Community. Therefore, this study remains valid to explore the current state in Tanzania.

The above reviewed literature adds to the knowledge relevant to this study. The current review reflects the legal and practical issues in protecting forests against illegal logging. Although some literature focused on foreign jurisdictions, the knowledge they have disseminated informs this study and therefore forms a yardstick through which the situation in the country was viewed. Based on the literature reviewed, there is a gap of knowledge, especially on the reasons for impediment of laws in curbing forests against illegal harvest.

1.9 Research Methodology

1.9.1 Type of Study

This study is both doctrinal and non-doctrinal. The doctrinal aspect involved review of legal texts and other public and scholarly documents. Non-doctrinal aspect involved collection of data from field respondents through in-depth interviews.

1.9.2 Research Design and Approach

This study employed exploratory research design and qualitative approach. Exploratory research design was employed since this study aimed to explore the unknown reasons

for increasing illegal loggings amidst the legal framework in place. Authors arguing for explorative research design opine that this design is suitable in studies seeking to answer a question or to address a phenomenon.⁹⁸ Since this study questions the legal and practical challenges in protecting forests against illegal logging in Tanzania, exploratory research design was suitable to answer the question.

1.9.3 Study Population

The study population involved government officials from forest departments, forest law enforcement and implementation agencies, legal practitioners, non-governmental organisations dealing with natural resources managements, forest produce traders, local leaders and ordinary citizens across the study area. This population was selected basing on the reason that the named population constitutes members who are directly involved in the chain of illegal logging either as protectors, law enforcers, or dealers.

1.9.4 Sample Size and Sampling Methods

A sample size of thirty-five (35) respondents was selected through purposive sampling and simple random sampling methods. Purposive sampling was employed to government officials, law enforcement machineries, non-governmental and community-based organizations, forest dealers and local leaders. This is because every sample was expected to possess certain information likely not to be obtained from the others. Simple random sampling was employed to citizens living adjacent to forests since whoever selected could provide the same information. The selected sample included five (5) government officials from Forest and Beekeeping Division (FBD) of the Ministry of Natural Resources and Tourism (MNRT); three (3) officials from Tanzania Forest Service (TFS) Agency, one (1) official from Tanzania Forest Fund (TaFF) and one (1) legal officer from Tanzania Forest Research Institute (TAFORI).⁹⁹ In addition, six (6) officials from forest law enforcement, implementation and

⁹⁸ Singh, A. (2021). An Introduction to Experimental and Exploratory Research. *SSRN Electronic Journal*. Vol.10. p.2.

⁹⁹ TFS officers are selected on the basis that this agency is mandated to managing the Natural Forests Reserves, Forest in unprotected areas and Plantations. Therefore, they are custodian of reports on tree cover change due to illegal loggings among others. TaFF and TAFORI are corresponding funding and research institutions of the FBD respectively, hence knowledgeable on the subject.

interpretation in the following distribution; two (2) forest patrol officers, two (2) public prosecutors with experience in prosecuting illegal forest dealing crimes and two (2) magistrates were interviewed. Further, two (2) advocates with experience in representing clients charged with forest illegal dealings were also interviewed with a view to obtaining data on often defences by illegal loggers. Furthermore, one (1) non-governmental organisation and one (1) community-based organisation dealing with natural resources management; five (5) forest produce traders; five (5) local leaders including two Village Chairpersons; two Village Executive Officers (VEOs) and one Ward Executive Officer (WEO)¹⁰⁰ and ten (10) citizens living adjacent to forest areas.¹⁰¹

1.9.5 Sources of Data

This study involved both primary and secondary sources of data. The primary source of data was field respondents and data collected from legal instruments. Since this study is both doctrinal and non-doctrinal, both legal texts and field respondents served as primary sources of data in this study. The secondary sources of data involved various relevant documented materials accessed from Mzumbe University Library, Forest Research Institutes and, electronic resources.

1.9.6 Methods of Data Collection

The methods of data collection used in this study included documentary review and in-depth interviews. Documentary review was selected so as to inform the study while interviews were used to verify and supplement data from documentary review. Detailed information on the selection and use of these methods of data collection is explained herein below:

¹⁰⁰ The selection of local leaders around forested areas is based on the view that they are mandated with forest protection roles including checking on forest dealers' licences in forests under their management.

¹⁰¹ The selection of community members around forested areas is based on the view that they are mandated with protective roles. Again, they can give information which could not be obtained from their local leaders, especially information implicating the leaders.

1.9.6.1 Documentary Review

This method included review of the domestic and international legal instruments and case law. It also included review of international binding and non-binding instruments on forests protection and other international and national available official records through content analysis. Similarly, scholarly works including journal articles and reports were reviewed.

1.9.6.2 Interview

This study employed in-depth semi-structured interviews conducted face-to-face and through telephone. Employing this method was necessary so as to collect detailed information from field respondents. This is because, the method allows a great flexibility on the party of interviewer. It is commonly used in collection of qualitative data since the researcher only needs to outline headings or topics or sub-topics to test themes or sub-themes of the study. Hence, it enables a wide range of discussion. In such a way, original and realistic data was collected on practical challenges in curbing illegal logging of forests in Mailand Tanzania.

The interviewees were officials from the TFS, TaFF, a legal officer from TAFORI, State Attorneys, Advocates, members from non-governmental organizations and community-based organizations, local leaders and citizens living adjacent to forest areas. Interviews were conducted through mixed ways including face-to-face and phone interviews. Interviews guides were prepared and used in that process. Interviews were recorded through note taking and recording after seeking the respondents' consent.

1.9.7 Instruments of Data Collection

The instruments of data collection for this study were interview guides, interviews recording tools and checklists for documentary review. Interview guides were prepared in respect of respondents' categories with specific targeted specific information from respective category of respondents. Then, they were used to collect field data. Interview recording tools and computer for gathering, storing and processing collected

data were prepared and used for such purposes. The checklists for documentary review guided reviewing relevant legal texts and scholarly works.

1.10 Data Analysis and Data Interpretation

Both primary and secondary data were qualitatively analysed. Analysis of documentary data employed content analysis. Data from field respondents were converted into comprehensive notes against every theme and analysed through thematic analysis. The analysed primary and secondary data were evaluated and interpreted according to the research questions to meet research objectives.

1.11 Limitation of the Study

The major limitation of this study was busy schedules of most of targeted respondents, especially governmental officials. As a result, the researcher could not obtain data timely. The researcher overcame this limitation by employing phone interviews whenever it became inconvenient to conduct face-to-face interviews.

1.12 Ethical Considerations

The researcher observed research ethical values in dealing with field respondents and presentation of data collected through documentary review. During data collection from field respondents the researcher introduced himself and submitted introduction letter to responsible authorities. The researcher ensured that respondents freely consent to participate. The researcher addressed the respondents that their decision to give information is free and, that they are not under obligation to do so, especially in areas where leaders assisted the researcher to obtain respondents. Before collecting data, the purpose for collecting data was clearly articulated to the respondents that it is only for academic use and not else. In dealing with data obtained through documentary review, the researcher avoided plagiarism through keen paraphrasing and acknowledgement of all sources referred to in writing this report. Similarly, during analysis and reporting findings, confidentiality, anonymity, impartiality, honesty and objectivity were observed.

1.13 Conclusion

The chapter covered several aspects including background to the problem, statement of the problem, research objectives and research questions guided this study. It has depicted that conducting this study was all significant since it explored the unknown to known in respect of escalation of illegal logging of forests amidst the legal regime in place. This is justified by review of literature, which depicts the gaps, especially on reasons for impediment of laws in curbing forests against illegal logging. Thus, conducting an exploratory study became necessary. This chapter has similarly depicted the methodologies used in conducting this study. The next chapter covers the conceptual framework of the study.

CHAPTER TWO

CONCEPTUAL FRAMEWORK OF THE STUDY

2.1 Introduction

The present study is headed by a title bearing two major themes; protection of forests against illegal logging on the one hand and an examination of the law and practice on the other hand. The study examines the efficiency of the forest legal regime in curbing illegal logging, having informed by the practical situation which suggests increasing illegal logging of forests in Tanzania. Whereas the efficacy of law is determined by strengths attached to the legal regime, its impact is expectedly sound forests protection against illegal and unsustainable logging. This study, therefore, is impact prompted. It analyses the strengths of the forest legal regime in Tanzania and questions the increasing trend of illegal logging amidst the legal regime in place. This study involves several concepts which are relevant in examining the implication of the said legal regime in curbing illegal logging in Tanzania. For such reason, this chapter focuses on conceptualization and operationalization of key concepts relevant in such examination and their relationships for the purpose of this study. The key concepts include; forest, forest protection, illegal logging, the relationship between forest legal regime and the actual forest protection situation and the concept of legal and practical challenges as used in this study. The concepts and their relationships are herein under discussed.

2.2 Forest

Epistemologically, the term forest comes from a Latin word *foris* that means ‘out of doors.’¹⁰² However, conceptual understanding of this term differs from region to region, country to country since it is determined by among other things, management objectives, land use, vegetational type, composition and altitude.¹⁰³ Nonetheless, the term forest is habitually understood as a dense growth of trees and shrubs covering a

¹⁰² Lund, G. (2015). Forest Classification: A Definitional Quagmire. Retrieved December 5, 2022 from the World Wide Web: <https://www.researchgate.net/publication/280947351>.

¹⁰³ Lund, G. (2014). What is a Forest? Definitions Do Make a Difference: An Example from Turkey. *Avrasya Terim Dergisi*. Vol. 2(1). pp. 1-8.

large area.¹⁰⁴ Descriptively, forest is viewed as an ecosystem composed of trees, with myriad forms of biological diversity, a home for indigenous people, a repository for carbon storage, a source of multiple ecosystem services and social-ecological systems.¹⁰⁵ As of its constitutive significances, the global understanding of the concept consider forests at the centre of major environmental and developmental issues to include conservation of biological diversity, climate change, food security, sustainable livelihoods, recreation for enhanced quality of life and offering a wide range of goods including timber, energy and non-wood forest products.¹⁰⁶

In Tanzania, the concept of forest is statutorily crafted as an area of land with at least ten percentage of tree crown cover naturally grown or planted and or fifty percent or more shrub and tree genetic cover.¹⁰⁷ This statutory construction considers forests from a land use perspective as well as nature and density of tree cover. Under the National Forest Policy,¹⁰⁸ forest means all lands bearing vegetation association dominated by trees of size exploitable or not and capable of producing wood or other products of exerting influence on the climate or water regime or providing shelter to livestock and wildlife. A detailed understanding of the concept forest in Tanzania can be understood considering forest categorization in the country.

Forests are broadly categorized into two forms: Natural Forests and Plantation or Manmade Forests.¹⁰⁹ Natural forests comprises of all forests that are naturally growing.¹¹⁰ These forests are making the enormous portion of the country's forest

¹⁰⁴ Venkateswarlu, D. Definition of Forests – A Review. Retrieved December 5, 2022 from the World Wide Web: <https://data.net>.

¹⁰⁵ Chazdon, R. L. *et al.* (2016). When is a Forest a Forest? Forest Concepts and Definitions in the Error of Forest and Landscape Restoration. *Open Access*. Vol. 45. pp.538-550. p.538.

¹⁰⁶ Persson, R. and Holmgren, P. (2018). Evolution and Prospects of Global Forest Assessment: Global Forest Assessments Move Towards the Goal of Addressing a Full Range of Benefits from Forests and Tree Resources. *Forest Assessment and Monitoring*. Vol. 12(20). pp.10-25.

¹⁰⁷ The Forest Act, [Cap. 323 R.E. 2002], section 2.

¹⁰⁸ The United Republic of Tanzania. (1998). National Forest Policy. Government Printers, Dar es Salaam Tanzania.

¹⁰⁹ The United Republic of Tanzania. (2009). Fourth National Report on Implementation of Convention on Biological Diversity (CBD). Vice President's Office: Division of Environment. p.15. Retrieved December 5, 2022 from the World Wide Web: <http://www.win2pdf.com>.

¹¹⁰ *ibid.*

land.¹¹¹ Plantation forests are comprised of manmade forests which are making a lesser portion of the country's forest land.¹¹²

Natural forests found in the country are also grouped into three categories. The first category is Miombo Woodland Forests which are arguably the most extensive and covers a large part of the forest area in Tanzania.¹¹³ Miombo woodland makes about 20 million hectares of the country's natural forest land.¹¹⁴ They highly cover Kigoma Region, areas around Lake Rukwa and the great part of Morogoro Region.¹¹⁵ The second category is Mountainous Forests. These make about 2 million hectares of the country's forest land. They highly cover the Eastern Arc Mountains Forest, Uluguru Mountain in Morogoro Region and the slopes of Kilimanjaro and Meru Mountains in Kilimanjaro and Arusha Regions respectively.¹¹⁶ The last category is Mangrove Forests. They highly cover coastal areas in Tanzania. The highest and leading Mangrove growing regions are Rufiji, Tanga and Mtwara.¹¹⁷

This study covers natural forests. In context, as used in this study, the term forest connotes naturally growing forests. Although illegal logging can be effected in both natural and manmade forests, in this study, attention is drawn into naturally growing forests. The spirit behind this adoption is that, serve for environmental interests, most governmental interests toward forest protection are directed into naturally growing forests. In most cases, they are owned by the state as forest reserves. In the same vein, legal interventions are highly, though not absolutely, directed towards natural forests. In fact, manmade forests are in most cases privately owned. Individuals, groups and companies owning manmade forests they often abide with laws and regulations, especially during harvesting. In most cases, natural forests are subjected to illegal

¹¹¹ The United Republic of Tanzania. (2009). *Op. cit.* p.16.

¹¹² *ibid*, p.22.

¹¹³ *ibid*, p.17.

¹¹⁴ *ibid*.

¹¹⁵ *ibid*, p.20.

¹¹⁶ *ibid*.

¹¹⁷ *ibid*, p.21.

logging pressure, hence, they need protection. On this basis, therefore, the subsequent concept is on forests protection.

2.3 Forest Protection

The concept of forest protection connotes measures for preservation or improvement of forests and, preventing or controlling forests from human and natural threats. The threats include pests, fire and illegal forest exploitation, invasion and trade.¹¹⁸ There are various conventional measures for forest protection to include controlling deforestation, sustainable land management, forest fire prevention, reforestation, local community engagement and indigenous forest protection and conservation methods.¹¹⁹ These measures are generally social, economic and scientific. To make them effective, the concept of legal regulation comes in. There should be a law which clearly articulate these measures, their enforcement mechanisms, prohibition and penal criminalization on breach as well as sanctions thereon. Therefore, legal studies on forest protection tend to consider law as a means to achieving social, economic and scientific measures for forests protection.

Being legal, this study considers forest protection from a perspective of law as a means to an end. That is to say, law as a means to achieving social, economic and scientific measures for forests protection. The term is used to connote the way legal; policy and institutional set-ups achieve conventional measures for forests protection. The idea behind forests protection as studies herein is that despite environmental and human benefits that forest offers, forests are under severe threat.¹²⁰ Although there are growing initiatives towards forest protection, yet forests are not, globally, in a happy state.¹²¹

¹¹⁸ Duc, N. T., *et al.* (2017). Assessing Conditions for Effective Community Forest Management in Thua Thien Hue Province: Redefining Diversity & Dynamic of Natural Resources Management in Asia. Retrieved March 31, 2023 from the World Wide Web: <https://www.sciencedirect.com/topics/earth-and-planetary-sciences/forest-protection>. See also Law Insider. Forest protection: Definition. Retrieved May 31, 2023 from the World Wide Web: <https://www.lawinsider.com/dictionary/forest-protection>.

¹¹⁹ Putsep, A. (2022). Complete guide to Forest Conservation from Importance to Methods. Retrieved April 1, 2023 from the World Wide Web: <https://www.single.earth/blog/forest-conservation-guide>.

¹²⁰ Bhavan, A. (2016). Forest Protection (Government of West Bengal). p.12. Retrieved April 1, 2023 from the World Wide Web: <http://westbengalforest.gov.in/upload/development/cm10.pdf>.

¹²¹ *ibid.*

Therefore, the term forest protection in this study covers both forest protection initiatives in Tanzania and globally from a functional approach of law. The conceptual setting of forest protection considering both domestic and international perspective is similarly necessitated by the fact that the topic herein studied largely appeals to the international law jurisprudence.

In Tanzania, forests protection is an essential task executed socially, economically and scientifically. Similarly, this is one of the aspects highly regulated and promoted legally. Forest protection in Tanzania largely engages the government and its working agencies. The governmental role in protecting forests is executed through the FBD of the MNRT, Regional and District organizations.¹²² The MNRT has established sub-divisions in it to intervene with human and natural threats to forests and undertaking or funding scientific and social researches on forests protection.¹²³

Forests protection in the country is similarly a community-based phenomenon. On the one hand, communities perform a significant role as forest protectors organizing themselves into protective groups.¹²⁴ On the other hand, efforts are made to promote development opportunities specifically to communities living in and/or around forest reserves who depends traditionally on forests.¹²⁵ The purpose is to afford them with alternative earning opportunities in order to reduce pressure on forests.¹²⁶ This is a globally recognized mechanism on forests protection.¹²⁷ It is effective since communities living in and/or around forest reserves are likely to be the first deteriorators, therefore, making them protectors is an effective forests protective tactic.

¹²² Vincent, B.M.S. (1998). Forest Policy Changes in Tanzania: Towards Community Participation in Forest Management. Sokoine University of Agriculture. p.4.

¹²³ A detailed discussion on these sub-divisions is covered under Chapter Three on institutional framework for forest protection in Tanzania.

¹²⁴ This is statutorily recognized under the Forest Act, [Cap. 323 R.E. 2002].

¹²⁵ United Nations Development Programme. (2018). Protecting Forests and Natural Resources in Tanzania. Retrieved April 1, 2023 from the World Wide Web: <https://www.undp.org/tanzania/stories/protecting-forests-and-natural-resources-tanzania>.

¹²⁶ *ibid.*

¹²⁷ Putsep, A. (2022) *Loc. cit.*

Tanzania takes cognisance of the fact that forests protection requires cooperation especially with neighbouring states. To so act, Tanzania is working very closely with her neighbouring states to protecting forests especially against illegal dealings in forest produces. In September 2015, Tanzania joined forces with Kenya, Mozambique, Madagascar and Uganda to Sign the Zanzibar Declaration on Illegal Trade in Timber and Forest Products.¹²⁸ This declaration calls on the East African Countries to work together in protecting forests.¹²⁹ Joining efforts in forests protection is essential since illegal loggers often operate cross-borders especially through trading in forest produces. Thus, agreements prohibiting illegal trade in forest produces play a significant role in protecting forest reserves against illegal human invasions.

Forest protection mechanisms in Tanzania are generally complemented by forest laws. To enhance effectiveness of protective measures, Tanzania has enacted forest protection laws¹³⁰ and ratified international instruments in this regard.¹³¹ These laws recognize and articulate social, economic and scientific approaches towards protection of forests. Again, they strictly prohibit human activities threatening forests sustainability and criminalization of certain conducts and sanctions on breach. As stated herein above, being a legal study, this work considers forest protection from a legal perspective. Therefore, in this study forest protection in Tanzania is used to denote forest laws as means to achieving social, economic and scientific measures for forests protection. An examination of the law is made with a view to establish efficiency of the existing forest legal regime in protecting forests especially against

¹²⁸ Trembly, S. & Lowry, W. (2016). Despite the Conservations Effort, Tanzania's Forest Still under Pressure. Retrieved November 16, 2022 from the World Wide Web: <https://www.news.mongabay.com/2016/10/despite-conservation-effortstanzanias-forests-still-under-pressure>.

¹²⁹ *ibid.*

¹³⁰ These include; the Environmental Management Act, No.20 of 2004; the Forest Act, [Cap 323 R.E. 2002]; the Forest Regulations, Government Notice No.153 of 2004; and the Forest (Sustainable Utilization of Logs, Timber, Withies, Poles or Charcoal) Regulations, Government Notice No.427 of 2019.

¹³¹ These include; CITES ratified on 29 November 1979; UNFCCC Ratified on 17 April 1996; and CBD Ratified on 8 March 1996.

illegal logging. An attempt is made to analyse how the existing laws embodies forest protection mechanisms.

The structure of forest protection under international law is composed of three inter-related protective frameworks. Although it dates back in 19th century,¹³² a move towards global forests protection was generally rated slow.¹³³ Chaytor asserts that as far as international forests protection is concerned, progress has been slow until when resort was made to protect forests under the auspice of the United Nations.¹³⁴ This is because, forests were seen exclusively under the auspice of states' jurisdiction, in a way that any attempt to protect forests under international level was regarded as interference with fundamental national economic and development policies.¹³⁵ It was until 1990s when change in perspectives on forests protection at the national and international level hit the news.

At this time protection of forests became a more serious global concern. It is during this period that the United Nations Conference on Environment and Development (UNCED) was held in Rio de Janeiro (Brazil) from 3rd to 14th June, 1992. This conference adopted binding and non-binding instruments to include the Rio Declaration, UNFCCC and CBD. Protection of forest at the aftermath of the Rio Conference was achieved through urging state parties to assume appropriate measures to protect forests. States were urged to ratify these instruments to lay basis through which forests were to be protected at states' jurisdiction. From this conference, forests protected adopted different approaches. Extensive approaches were assumed from regulating sustainable use of forest to adding other values like conservation of

¹³² Wensum, K. F. (1999). *Forestry: Changing Perspective in Forestry Science*. PhD Thesis. Wageningen Agricultural University. p.40. See also Hulme, D. & Murphy, M. (2001). *Africa Wildlife and Livelihoods: The Promise and Performance of Community Conservation*. Portsmouth: Heinemann Publishers Limited. p.44.

¹³³ Chaytor, B. (2001). *The Development of Global Forest Policy: Overview of Legal and Institutional Frameworks*. Mining, Minerals and Sustainable Development. p.3. Retrieved December 3, 2022 from the World Wide Web: <https://www.iied.org/sites/default/files/pdfs/migrate/G00926.pdf>.

¹³⁴ *ibid.*

¹³⁵ *ibid.*

nature.¹³⁶ Protection of forests was urged to be ecologically sound, economically viable, socially acceptable and technically feasible.

Today, protection of forest under international law is a serious concern. It is composed of inter-related and self-reinforcing framework including legal, policy and institutional frameworks.¹³⁷ Forests are protected globally through myriad international instruments and institutional machineries.¹³⁸ The idea is to protect forests against human and non-human threats. Generally, there are many threats to forests sustainability, globally and within individual states. In Tanzania, illegal logging of forests is highly cited.¹³⁹ In this study, therefore, forests protection is studied against illegal logging threat. Being the specific threat to forests sustainability studied in this study and, having conceptualized forest protection above, the subsequent concept is on illegal logging of forests.

2.4 Illegal Logging of Forests

There are diverse understandings on the concept ‘illegal logging.’ This concept, however, is widely used to denote timber-harvesting-related activities that are inconsistent with national or sub-national laws.¹⁴⁰ It takes place when harvesting, transporting, buying or selling is in violation of national laws.¹⁴¹ This understanding is what Simon recapitulates as ‘contravention of national or international law at any point

¹³⁶ Rose, T. & Dietic, J. (2005). *African Forests between Nature and Livelihood Resources: Interdisciplinary Studies in Conservation and Forest Management*. Lewiston: The Edwin Millen Press. p.7.

¹³⁷ McDermott, C. L. *et al.* (2007). International Forest Policy, the Instruments, Agreements and Processes that Shape It. Department of Economic and Social Affairs-United Nations Forum on Forest Secretariat. p.107. Retrieved December 3, 2022 from the World Wide Web: https://www.un.org/esa/forests/wp-content/uploads/2015/06/Intl_Forest_Policy_instruments_agreements.pdf.

¹³⁸ International instruments and their roles in forest protection, as well as institutional machineries working on protection of the global forests are detailed discussed under Chapter Three.

¹³⁹ Makero, J. S. & Malimbwi, R.E. (2012) *Loc. cit.*; Makunga, J.E. & Misana, S.B. (2017) *Loc. cit.*; see also Ligami, C. (2019) *Loc. cit.*

¹⁴⁰ Guertin, C. E. (2003). Illegal Logging and Illegal Activities in the Forestry Sector: Overview and Possible Issues for the UNECE Timber Committee and FAO European Forestry Commission. A Paper Presented as Basis of an Expert Presentation at the UNECE Timber Committee Market Discussion. Geneva-Switzerland. p.3. Retrieved December 2, 2022 from the World Wide Web: <https://unece.org/fileadmin/DAM/timber/docs/tc-sessions/tc-61/presentations/guertin-paper.pdf>.

¹⁴¹ *ibid.*

along the trade chain from the source to consumer.’¹⁴² Tacconi gives an insight on the nature of laws contravened in edifice of illegal logging. He considers that illegal logging in forests involve contravening laws or regulations which are designed to protecting forests from unsustainable exploitation of biological resources.¹⁴³

Similarly, illegal logging signposts unhealthy and unlawful activities in forests and forest produce dealings. In this way, illegal logging is similarly described as ‘destructive logging’¹⁴⁴ or ‘unauthorized logging.’¹⁴⁵ Wide-ranging constitutive practices of illegal logging are documented in relation to harvesting and transportation. Brack asserts that the harvesting process may be illegal if it involves corruption means to get access for cutting down trees, extracting forest produces without a valid license or exploiting in strict protected areas, cutting protected species or exceeding allocated timber cutting quotas.¹⁴⁶ During transportation, illegalities may relate to illegal processing and exporting, mis-declaration to customs and avoidance of taxes and other charges.¹⁴⁷

Guertin is even more descriptive on the general constitutive acts of illegal logging. He points out that illegal logging may even involve duplication of felling licenses, girdling or ring-barking to kill trees so that they can be legally logged, contracting local entrepreneurs to buy logs from protected areas, logging outside concession boundaries, logging in prohibited areas such as steep slopes, riverbanks and water catchments, removing under-/over-sized trees from public forests, reporting high volume of

¹⁴² Milledge, S. A. H. *et al.* (2007). *Forestry, Governance and National Development: Lessons Learned from a Logging Boom in Southern Tanzania*. p.22. Retrieved December 4, 2022 from the World Wide Web: <https://www.traffic.org/site/assets/files/3612/logging-boom-southern-tanzania.pdf>.

¹⁴³ Tacconi, L. *et al.* (2016). ‘Defining Illegal Forest Activities and Illegal Logging’ in Kleinschmit, D, *et al* (eds), *Illegal Logging and Related Timber Trade – Dimensions, Drivers, Impacts and Responses: A Global Scientific Rapid Response Assessment Report*. IUFRO World Series. Volume 35. p.24. Retrieved December 4, 2022 from the World Wide Web: https://www.cifor.org/publications/pdf_files/events/Illegal-logging.pdf.

¹⁴⁴ UNODC. (2011). *Illegal Logging Corruption in Forest Sector: UNODC Anti-Corruption Talk Series with Special Focus on Forests*. (Friends of the Earth-Indonesia). Retrieved December 4, 2022 from the World Wide Web: <https://www.unodc.org/documents/southeastasiaandpacific/pdf>.

¹⁴⁵ Guertin, C. E. (2003) *Loc. cit.*

¹⁴⁶ Brack, D. (2003). *Illegal Logging and the Illegal Trade in Forest and Timber Products*. *International Forestry Review*. Vol.5(3). pp.195-198. p.195.

¹⁴⁷ *ibid.*

extracted in forests concessions to mask the fact that part of the volume declared is extracted from non-authorized boundaries and obtaining logging concessions by bribes.¹⁴⁸ Committing any or cumulative of either of these acts constitutes an act of illegal logging.¹⁴⁹ For the purpose of this study, illegal logging is used to suggest the construction recapitulated herein. To be so specific, this study follows herein cited authors' conceptualization of illegal logging.

Illegal logging is widely understood as a pervasive problem throughout the world.¹⁵⁰ This is because illegal logging of forests is associated with unnumbered economic, social, legal and environmental consequences. There is anecdotal evidence that illegal logging leads to degraded forests ecosystem and loss of biodiversity, it impedes economic development, challenges local governance, and contribute to crimes and corrupt practices.¹⁵¹ The scale of illegal logging similarly represents loss of revenue¹⁵² and it can lead to widespread environmental damage.¹⁵³ The consequences associated with illegal logging of forests attract attention. This is because those consequences leave no sector unaffected. This study is prompted with the factors for the escalating trend of illegal logging, as it highly affects the economy, nature and ecology. It considers increasing illegal loggings unjustifiably alarming amidst the seemingly upright forest legal framework in place.

Literature tends to define certainly the root-causes of illegal logging. Mugadza points to inadequate rules and penalty systems, weak forest governance, poverty, poor monitoring and enforcement capacity, economic and political instability, lack of transparency, corruptions' influence on government, favouritism and poor concessional

¹⁴⁸ Guertin, C. E. (2003) *Op. cit.* p.4.

¹⁴⁹ *ibid.*

¹⁵⁰ Congressional Research Service. (2019). International Illegal Logging: Background and Issues. Retrieved December 4, 2022 from the World Wide Web: <https://sgp.fas.org/crs/misc/IF111114.pdf>.

¹⁵¹ *ibid.*

¹⁵² Palmer, C. E. (2000). The Extent and Caused of Illegal Logging: An Analysis of a Major Cause of Tropical Deforestation in Indonesia. CSERGE Working Paper. p.10. Retrieved December 4, 2022 from the World Wide Web: https://www.ucl.ac.uk/cserge/Illegal_Logging.pdf.

¹⁵³ Brack, D. (2003) *Loc. cit.*

agreements.¹⁵⁴ Existing texts link persisting illegal logging with ineffective forest governance, poor law enforcement and weak institutions.¹⁵⁵ Government officials are allegedly accepting illegal loggers exceeding their logging limits, gaining forests access using corrupt means, contravening forests protection laws and capitalizing massively on gaps in existing laws.¹⁵⁶ In this study the root-causes for increasing illegal logging of forests are the subject. The logic is to unveiling the up-to-date drivers for the impediment of forest legal regime to curbing illegal logging.

Increasing illegal logging in Tanzania is undoubtedly appreciated.¹⁵⁷ In a paper fancying Tanzania as a country where illegal logging is almost legal, the author submits that Tanzania's forest land is subjected to a risk, mostly as a result of illegal logging, which is destroying five-hundred thousand hectares of the country's pristine forests every year.¹⁵⁸ This work images the government as unable to address the problem, as its officials (own forest staff) are accused of being directly involved in illegal logging.¹⁵⁹ The increasing illegal logging in Tanzania, amidst the forest legal framework in place raised the need for this study. The baseline for this study, therefore, is a questionable relationship between the forest legal framework in place viz a viz the actual situation in the field. The forest legal framework in place does not reflect the actual situation of illegal logging of forests. The assumption is that the relationship between forest legal regime and the practice is not promising. Therefore, the subsequent concept operationalizes the relationship between the forest legal regime viz a viz the actual situation of illegal logging in Tanzania.

¹⁵⁴ Mogadza, A. A. (2020). *The Legal Protection of Forests in International Environmental Law: Shortcomings and Comparative Analysis*. PhD Thesis. University of Girona. p.75. See also Pokornyin, B. (2016) 'Drivers of Illegal and Destructive Forest Use' in Kleinschmit, D. *et al.* (eds), *Illegal Logging and Related Timber Trade – Dimensions, Drivers, Impacts and Responses: A Global Scientific Rapid Response Assessment Report*. IUFRO World Series. Volume 35. p.61.

¹⁵⁵ Mogadza, A. A. (2020) *Loc. cit.*

¹⁵⁶ *ibid.*

¹⁵⁷ Kilahama, F. Forest Governance Monitoring System in Tanzania (Forest and Beekeeping Division-Ministry of Natural Resources and Tourism). Retrieved December 4, 2022 from the World Wide Web: <https://www.un-redd.org/sites/default/files/2021-10/Dr.%20Kilahama%20-%20Forest%20Governance%20Monitoring%20System%20in%20Tanzania%20-%202018.11.10.pdf>.

¹⁵⁸ Odhiambo, N. Tanzania: Where Illegal Logging is almost Legal (Rain Forest Relief). Retrieved December 4, 2022 from the World Wide Web: <https://www.wrm.org.uy/print/pdf/node/>.

¹⁵⁹ *ibid.*

2.5 The Relationship between Legal Regime and Practical Situation

This study examines the law and practice on forests protection against illegal logging. Therefore, it considers the relationship between the forest legal regime in the books viz a viz the forest legal regime in motion, that is to say the relationship between legal regime and the actual practical situation. Understating this relationship hastens to borrow a leaf from the sociological or functional school of jurisprudence. This school of jurisprudential thought focuses on study of law and its relation with and impact on society.¹⁶⁰ That is to say, it focuses on the social function of the law as a means to an end.¹⁶¹ It maintains that a proper comprehension of law requires a sociological analysis that is rooted in the social contexts in which the law is applied.¹⁶² Therefore, their concern is to analyse and interpret the part played by the law and its legal institutions in effecting certain observable forms of conduct or behaviour.¹⁶³

The theoretical understanding underlying this school of thought is that it is significant to place law in its social context.¹⁶⁴ The pervasive theme behind this is the gap between legal rules and actually lived practical social situations.¹⁶⁵ This gap is what scholars often refer to as ‘law in the books’ and ‘law in action.’¹⁶⁶ This means that laws as coined, they may not necessarily attain their end objectives. In a way, what the law says may not be what happens in the field. Therefore, to understand whether the law is functioning in the society, this school seeks to understand the social reality in all its dimensions.¹⁶⁷ To them, law should be studied in a way to explore means to improve the capacity of law to serve the ends of society.¹⁶⁸

¹⁶⁰ Ghormade, V. & Lakshminath, A. (2008). *Textbook on Jurisprudence and Legal Theory*. Budhwar Peth: Hind Law Publications. p.169.

¹⁶¹ *ibid*, pp.170-171.

¹⁶² Wacks, R. (2021). *Understanding Jurisprudence: An Introduction to Legal Theory*. New York: Oxford University Press. p.193.

¹⁶³ *ibid*, p.195.

¹⁶⁴ Freeman, M. D. A. (2008). *Lloyd's Introduction to Jurisprudence*. London: Sweet & Maxwell Publishers. p.858.

¹⁶⁵ *ibid*.

¹⁶⁶ *ibid*.

¹⁶⁷ Ratnapala, S. (2020). *Jurisprudence*. Cambridge: Cambridge University Press. p.234.

¹⁶⁸ *ibid*, p.235.

Remarkably, as part of its basic tenets, sociological school of jurisprudence regards the functional aspect or working of the law rather than the abstract content of the authoritative precepts.¹⁶⁹ They consider the goodness of the law as the extent to which it meets its making objectives. This school, therefore, encourages the use of socio-scientific research methods to study the impact of law in the society recognizing that its jurisprudential questions are empirical in nature and not just conceptual.¹⁷⁰ This jurisprudential setting supports studies on socio-legal researches, studies on the actual impact of law in its context.

The present study falls fit in this jurisprudential setting. It inquires the impact of forest legal regime in protecting forests against illegal logging. Reading the forest legal texts (law in the books) one may be convinced that the legal regime is upright to deter forests from illegal logging. One is not allowed to enter forest reserves unless he is availed with entry permit. He cannot similarly fell down trees unless he is having a licence for that purpose. Removing and/or transporting lawfully harvested produces is similarly regulated. One cannot transport forest produces unless it is during day time and through the prescribed routes in the transit pass. Similarly, one cannot unlawfully possess, neither sell nor purchase forest produces unless legal requirements are met.

Surprisingly, the practical situation (law in the action/motion) depicts escalating illegal logging activities in the country. At least 70% of the forest land loss in the country is by illegal logging.¹⁷¹ Therefore, the present study questions the unhealthy relationship between the forest legal regime and the actual situation of forest protection. It explores why the law in the books is not the law in motion when it comes to forest protection against illegal logging in the country. This is the centre of the relationship in question. Studying this relationship is imperative because the law is properly so-called if its impacts in the practical situations are seen. The underlying question is why there are laws which, strictly with penal sanctions, prohibits and incriminates illegal logging of

¹⁶⁹ Ghormade, V. & Lakshminath, A. (2008). *Op. cit.* p.171.

¹⁷⁰ Freeman, M. D. A., (2008) *Loc. cit.*

¹⁷¹ Ligami, C. (2019). *Loc. cit.*

forests but the result is reverse? The assumption is that there are impeding challenges which hinder forest protection against illegal logging. Such relationship is seemingly impeded by legal and practical challenges. Therefore, the subsequent concept is on legal and practical challenges.

2.6 The Concept of ‘Legal and Practical Challenges’

One of the objectives of this study is to examine legal and practical challenges in forests protection against illegal logging in Tanzania. Thus, an understanding of the way the term legal and practical challenges is used in this study is important. On the one hand, the term ‘legal challenges’ is used in this study to connote gaps, ambiguities, vagueness and inadequacies in the existing forest legal regime with the effect to impeding forests protection against illegal logging in Tanzania. Therefore, this term is used to imply weaknesses in the existing forest legal regime and their impacts in curbing illegal logging of forests.

On the other hand, the term ‘practical challenges’ is used in this study to connote hindrances or barriers in enforcing the existing forest legal regime in addressing illegal logging of forests. This term is used to connote filed-based barriers posing difficulties to forest law implementers to give effect to the existing laws. Similarly, the term connotes individual weaknesses, behaviours and characters of the forest officials and forest law enforcer with the likely effect to impede enforcement of the existing forest legal regime in curbing illegal logging of forests in the country.

2.7 Conclusion

This chapter has presented a conceptual analysis of key themes and sub-themes underlying this study. It has been noted that, although forests in Tanzania are both natural and manmade, natural forests are the subject studied. This is imperative because in most cases illegal logging is recorded along natural forest reserves. This chapter has noted that protection of these forests, in a legal perspective, rests at the centre of law. It appreciates an understanding that forest protection covers social, economic and scientific measures. Nonetheless, being legal, this study analyses the place of law in

recognition and enforcement of existing measures for the purpose of protecting forests. This implies how the law prohibits, criminalizes and sanctions threats to forest sustainability, especially as a result of illegal logging. It has also been noted that illegal logging, as a forest sustainability threat studied, is used to denote any contravention of law in harvesting, transporting, possessing and trading in forest produces. Therefore, illegal logging covers acts prohibited by the law or breach of any legal requirement along the chain of forest resources dealing. It has also been noted that a relationship between law and practice is to be significantly drawn. It has been noted that the study explores the unhealthy relationship between law and the practical situation. Borrowing a leaf from sociological or function school of jurisprudence it is noted that the law is not the law until it impacts the actual situation. The law in the books should be effectively translated into motion with a view to bringing into action the intention of the legislators. The subsequent chapter is on legal and institutional framework on forests protection against illegal logging in Tanzania.

CHAPTER THREE
LEGAL AND INSTITUTIONAL FRAMEWORK ON FORESTS PROTECTION
AGAINST ILLEGAL LOGGING

3.1 Introduction

This chapter examines the legal and institutional framework on forests protection against illegal logging. Given that the area under study largely appeals to the international law jurisprudence, an attempt is made to examine both international and domestic legal and institutional frameworks. Analysis of the international legal framework covers binding and non-binding bilateral and multilateral agreements addressing forests protection in general and, deterrence of illegal logging in particular. The international institutional framework addressed in this study cover institutions within and outside the auspices of the United Nations. This is prompted with a view to establish complementarity structure of the global forests' protection organs. The domestic legal framework covers the forests protection legal structure in Mainland Tanzania. An attempt is made to analysing aspects covering forests protection and management in general and, legislative endeavours in tackling illegal logging of forests in particular. This analysis covers deterrence of illegal logging practices, criminalization and corresponding punishments and sentences. The analysis of institutional framework covers responsible institutions for forests protection. An attempt is made to cover administrative, advisory, managerial, law enforcement-based and compliance institutions.

3.2 The Legal Framework

3.2.1 International Legal Framework

Forest protection under international law is essentially regulated under the corpus of Multilateral Environmental Agreements. Notably, the international legal regime on forests protection, to date, remains fragmented as it lacks a specific binding instrument. There is no an overarching binding instrument for an organized forests protection legal

regime.¹⁷² Therefore, analysis of the international legal framework in this study covers fragmented binding and non-binding international forest-related instruments. It covers, on the one hand, aspects relating to forest protection and management, and on the other hand, specific aspects relating to prohibition of illegal logging of forests.

3.2.1.1 The Convention on Biological Diversity

As noted above, the international legal regime on forests protection is similarly endowed with binding, however non-specific, international instruments. They address forest protection in their specific contexts. The emphasis of these instruments is on appropriate measures by states to protect forests. Addressing ecological balance, the Convention on biological Diversity (CBD) was adopted and opened for signature on 5th of June 1992 and it came into force on 29th of December 1993.¹⁷³ Tanzania ratified the CBD in March, 1996.¹⁷⁴ The CBD provide standards and measures for conservation and sustainable use of biological resources.¹⁷⁵ It urges each contracting state to develop national strategies, plans or programs for the conservation and sustainable use of biological resources including forests resources.¹⁷⁶ The CBD urge states to integrate as far as possible and as appropriate, the conservation and sustainable use of biological resource into relevant programs and policies.¹⁷⁷ It calls all state parties to enact legislation for protecting threatened species. Under the CBD, states are obliged to use

¹⁷² Mogadza, A. A. (2020). *Op. cit.* p.75; see also Mackenzie, C. P. (2012). Future Prospects for International Forest Law. *The International Forestry Review*. Vol.14(2). pp.249-257; see also Asselt, H. V. (2012). Managing the Fragmentation of International Environmental Law: Forests at the Intersection of the Climate and Biodiversity Regime. *International Law and Politics*. Vol.44. pp.1205-1278; see also Brunnee, J. & Nollkaemper, A. (1996). Between the Forest and Trees: An Emerging Forest Law. *Cambridge University Press*. Vol.23(4). pp.307-314.

¹⁷³ United Nations Treaty Collection. Convention on Biological Diversity. Retrieved May 24, 2023 from the World Wide Web: <https://treaties.un.org/>.

¹⁷⁴ Pallangyo, D.M. (2007). Environmental Laws in Tanzania: How Far have we gone? *Law Environment and Development*. p.135.

¹⁷⁵ The Convention on Biological Diversity, 1760 UNTS 79, 31 ILM 818 (1992), entered into force on 29 December 1993, article 6.

¹⁷⁶ *ibid.*

¹⁷⁷ *ibid.*, article 6(a) and (b).

biological resources sustainably.¹⁷⁸ Therefore, being part to the CBD, Tanzania is duty bound by the obligations provided thereunder.

3.2.1.2 The United Nations Framework Convention on Climate Change

The United Nations Framework Convention on Climate Change (UNFCCC) was adopted in 1992 and came into force on 21 March 1994.¹⁷⁹ The UNFCCC was adopted to respond to global climate change issues. It urges states to take appropriate measures in protecting forest resources with a view to avoiding negative impacts of improper use of forests to climate change.¹⁸⁰ The UNFCCC cover a significant aspect of proper management of forest resources with a view to achieving climate stability. It has to be noted that forests play a vital role in climate stabilization. Therefore, in order to combat climate change, forest protection should be prioritized. In such a way, the UNFCCC integrates aspects of forest protection as a way to archiving global climate stability.

3.2.1.3 The United Nations Convention to Combat Desertification

The United Nations Convention to Combat Desertification (UNCCD) was adopted 1994 and came into force on 26 December 1996.¹⁸¹ Tanzania ratified the UNCCD in 1997.¹⁸² The UNCCD came to address specific aspects of desertification in countries experiencing serious drought and/or desertification, particularly in Africa.¹⁸³ It recognizes ecological distortion as one of the causes of desertification.¹⁸⁴ As such, the UNCCD urges its member states that in implementing the convention, national action programs should include measures to conserve natural resources, ensuring integrated

¹⁷⁸ The Convention on Biological Diversity, 1760 UNTS 79, 31 ILM 818 (1992), entered into force on 29 December 1993, articles 8, 11 and 14.

¹⁷⁹ United Nations Treaty Collection. *Loc. cit.*

¹⁸⁰ United Nations Framework Convention on Climate Change, A/RES/48/189 (1992) entered into force on 21 March 1994, article 8(c).

¹⁸¹ United Nations Treaty Collection. *Loc. cit.*

¹⁸² The United Republic of Tanzania. (2015). Report by National Biodiversity Strategy and Action Plan (NBSAP-2015-2020).

¹⁸³ The United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, Reg. No. 33480 UNTS Vol. 1954 (1994), entered into force 26 December 1996, article 1.

¹⁸⁴ *ibid*, preamble.

and sustainable management of natural resources including forests.¹⁸⁵ Specifically, the UNCCD urges member states, especially those affected with desertification and serious droughts, that they should take national action programs relating to forestry among others.¹⁸⁶

3.2.1.4 Convention on International Trade in Endangered Species

The Convention on International Trade in Endangered Species (CITES) was adopted on 3 March 1973¹⁸⁷ and came into force on 1 July 1975. It was ratified in Tanzania on 29 November 1979. The CITES is one of a few binding agreements addressing forests protection against illegal logging.¹⁸⁸ As such, it is one of the instruments which signatory governments to seize illegally harvested forest produces and impose financial penalties to illegal forest dealers.¹⁸⁹ In the first place, the CITES prohibits exploitation of the protected endangered species.¹⁹⁰ Similarly, it prohibits trade in protected species unless it is in accordance with the Convention. The CITES requires obtaining permits and certificates for exploiting or trading in protected forest species.¹⁹¹ In absence of permits and certificates, dealing in endangered forest species is illegal under the CITES.¹⁹²

The spirit embodied under the CITES is indubitably to control unsustainable harvest and trade in, among others, endangered forest species. Tacconi rightly opine that permits and certificates requirement under the CITES aims to control unsustainable over-exploitation of species.¹⁹³ To ensure compliance, the CITES oblige member states

¹⁸⁵ The United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, Reg. No. 33480 UNTS Vol. 1954 (1994), entered into force 26 December 1996, article 8(3) (c).

¹⁸⁶ *ibid*, article 6(b).

¹⁸⁷ United Nations Treaty Collection. *Loc. cit*.

¹⁸⁸ Congressional Research Service, (2019) *Loc. cit*.

¹⁸⁹ *ibid*.

¹⁹⁰ The Convention on International Trade in Endangered Species of Wild Fauna and Flora, 14537 UNTS 993 (1973), entered into force on 1 July 1975, article 2(3).

¹⁹¹ *ibid*, article 6.

¹⁹² *ibid*.

¹⁹³ Tacconi, L. (2003). National and International Policies to Control Illegal Forest Activities. A Report for the Ministry of Foreign Affairs (Government of Japan). Retrieved March 28, 2023 from the World Wide Web: https://www.cifor.org/publications/pdf_files/events/Illegal-logging.pdf.

to take appropriate measures to enforce its provisions.¹⁹⁴ Tanzania, is member to the CITES therefore bound by it.¹⁹⁵ The CITES require its members to adopt strict domestic legislation to protect endangered species¹⁹⁶ and to penalize illegal trade or possession of endangered forest species including confiscation or return of the species to the state of export.¹⁹⁷

3.2.1.5 Stockholm and Rio Declarations

Protection of forests under international law is covered in myriad non-binding international instruments. These include the early Stockholm Declaration¹⁹⁸ and Rio Declaration.¹⁹⁹ The Stockholm Declaration calls for sustainable use of forests for the benefit of the present and future generations.²⁰⁰ This is the major forest protection aspect under the declaration. It urges the present generation to exploit forests sustainably without compromising needs of the future generation. The Rio Declaration on the other hand, employs a more specific language in relation to forests protection. It calls for protection of natural resources.²⁰¹ It urges states to assume measures intending to protect natural resources to include forests. It should be remembered that the Rio Declaration was a result of the UNCED. At the UNCED, two important documents were adopted which practically complements the Rio Declaration. These include Agenda 21²⁰² and the Forest Principles.²⁰³ Agenda 21 insists international research in conservation of forests with a view to ascertaining related forests protection

¹⁹⁴ The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), 14537 UNTS 993 (1973), entered into force on 1 July 1975, article 8(1).

¹⁹⁵ Tanzania ratified the the CITES on 29 November 1979.

¹⁹⁶ The CITES article 14.

¹⁹⁷ *ibid*, article 8(1)(b).

¹⁹⁸ Stockholm Declaration of the United Nations Conference on the Human Environment, UN Doc. A/CONF.Rev.1 11 ILM 1416 (1972).

¹⁹⁹ Rio Declaration on Environment and Development, UN Doc. A/CONF.151/26 (Vol.1) 31 ILM 874 (1992).

²⁰⁰ Stockholm Declaration, principle 2.

²⁰¹ Rio Declaration, principle 23.

²⁰² United Nations Conference on Environment and Development. Agenda 21.

²⁰³ Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests (Forest Principles), (Adopted 21 April 1992) UNCED. A/CONF.151/6.

problems.²⁰⁴ It urges governments to reduce as much as possible illegal harvest of forests.²⁰⁵ The basis for these actions on protection of forests was lack of integrated approaches to balance ecological, economic and social significances of the world's forest cover.²⁰⁶ Thus, it brings a notion of integrated approach in forest protection. That is to say, it urges balancing myriad interests in forest utilization and protection. Aspects of forest utilization and protection should balance ecological, economic and social interests.

Specific aspects of forests protection and management are covered under the Forest Principles.²⁰⁷ Although this is a non-binding instrument yet it serves as a comprehensive guideline for global forests protection.²⁰⁸ It requires forest resources to be sustainably managed and protected.²⁰⁹ It urges active engagement of stakeholders including forest dwellers in protecting forests.²¹⁰ Under the Forest Principles, national policies should recognize the relationship between protection and utilization of forests.²¹¹ This is significant in balancing effective protection and sustainable utilization of forest produces. Appreciably, forest resources also constitute a source of goods and services for economic gains. Therefore, balancing sustainable utilization and management is vital.²¹²

3.2.1.6 The African Convention for Conservation of Nature and Natural resources

The African Convention for Conservation of Nature and Natural resources (ACCNNR) is a regional instrument adopted on 15 September 1968 and entered into force on 16 June 1969. It is a convention addressing specific aspects of conservation of nature and

²⁰⁴ Agenda 21, article 11.

²⁰⁵ *ibid.*

²⁰⁶ *ibid.*

²⁰⁷ Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests (Forest Principles), (Adopted 21 April 1992) UNCED. A/CONF.151/6.

²⁰⁸ Lanly, J. P. Forestry Issues at the United Nations Conference on Environment and Development. Retrieved March 28, 2023 from the World Wide Web: <https://www.fao.org/3/u7760e/u7760e0b.htm>.

²⁰⁹ The Forest Principles, principle 2(b).

²¹⁰ *ibid.*

²¹¹ *ibid.*, principle 6(b).

²¹² *ibid.*, principle 6(e).

natural resources in Africa. The ACCNNR draws from the major drivers of nature and natural resources deterioration. Consequently, the ACCNNR urge its contracting states to pay specific attention to control bush fires, forests exploitation, land clearing for cultivation, and overgrazing by domestic and wild animals; set aside areas for forests reserves and carry out afforestation programs where necessary; limit forest grazing to season and intensities that will not prevent forests regeneration.²¹³ The ACCNNR provides among other things that each contracting state shall establish, if it has not already done so, a single agency empowered to deal with all matters covered by the convention, or establish a machinery to coordinate these matters.²¹⁴ Literally, the ACCNNR call for structuring the nature and natural resources conservation agencies within its member states with a view to strengthening conservation capacity.

3.2.1.7 The East Africa Community Protocol on Environmental and Natural Resources Management

The East Africa Community Protocol on Environmental and Natural Resources Management²¹⁵ is the East Africa specific instrument addressing, among other things, protection of forest resources. It covers general aspects of management of natural resources and, forest resources in specific, among its member states including Tanzania. Aspects of forests protection especially against illegal logging are indirectly condemned thereunder. This Protocol recognizes the spirit that effects of forests deterioration know no boundaries. It urges the partner states to cooperate in all aspects of forests management and sustainable utilization of forests and trade in forest products.²¹⁶ To ensure collective forest protection, the Protocol calls its partner states to common criteria, indicators and guidelines for sustainable forest management.²¹⁷ It similarly urge its partner states to harmonize their national policies, laws and

²¹³ The Africa Convention on Conservation of Nature and Natural Resources, OAU Doc CAB/LEG/24.1 (1968), entered into force 16 June 1969, article 6(1) (a) (b) and (c).

²¹⁴ The Africa Convention on Conservation of Nature and Natural Resources, OAU Doc CAB/LEG/24.1 (1968), entered into force 16 June 1969, article 15.

²¹⁵ EAC Protocol on Environmental and Natural Resources Management, (adopted on 3rd April 2006).

²¹⁶ *ibid*, article 11(a).

²¹⁷ *ibid*, article 11(b)(2) and (6).

enforcement programmes to have uniform forest protection legal mechanisms.²¹⁸ This Protocol is cited as one among the sub-regional agreements with an outstanding impact in deterring illegal forest activities and associated trades.²¹⁹

3.2.2 Domestic Legal Framework

The legal framework on forests protection against illegal logging in Tanzania is highly statutory. The fundamental feature of the current forests protection legal regime is that although there are many specific-sector legislation addressing environmental aspects, forest protection aspects, especially in respect of illegal logging, are highly codified under the Forest Act²²⁰ and its Regulations.²²¹ Nonetheless, this analysis covers general aspects of forest protection under the country's Constitution and the principal environmental legislation.

3.2.2.1 The Constitution of the United Republic of Tanzania

Notably, protection and management of forests is the foundation of every endeavour to guard forest resources. In Tanzania, this is a constitutional duty to both individuals and state. It is a requirement of the Constitution of the United Republic of Tanzania²²² that every person is under duty to protect the natural resources of the United Republic, property of the state authority and all property collectively owned by the people.²²³ It calls the government to ensure that natural resources of the country are harnessed, preserved and applied toward the common good.²²⁴ This is a duty to the government

²¹⁸ EAC Protocol on Environmental and Natural Resources Management, (adopted on 3rd April 2006), article 11(c).

²¹⁹ Background Document on the Non-Legally Binding Instrument on All Types of Forests, the Global Objectives of Forests, and the Millennium Development Goals: Actions Reported by Countries to the United Nations Forum on Forests. Retrieved March 28, 2023 from the World Wide Web: https://www.un.org/esa/forests/wp-content/uploads/2015/07/nlbi_background-document.pdf.

²²⁰ The Forest Act, [Cap. 323 R.E. 2002].

²²¹ Especially the Forest Regulations, Government Notice No. 153 of 2004 and the Forest (Sustainable Utilization of Logs, Timber, Withies, Poles or Charcoal) Regulations, Government Notice No.417 of 2019.

²²² Constitution of the United Republic of Tanzania [Cap.2 R.E. 2002].

²²³ *ibid*, article 27(1).

²²⁴ *ibid*, article 9(c).

and its agencies as Pallangyo rightly note that this provision is couched to ensure government's commitment to warrant sustainable development of natural resources.²²⁵

3.2.2.2 The Environmental Management Act

The Environmental Management Act²²⁶ is the overall principal environmental legislation in the country. The Act is a result of the 1997 National Environmental Policy.²²⁷ This policy raised serious environmental concerns in the country and a need to have a comprehensive legal regime. Correspondingly, it acknowledged escalation of the forest deterioration in the country.²²⁸ Consequently, it outlined potential practices to put in place for effective forests protection.²²⁹ This policy was replaced by the National Environmental Policy of 2021.²³⁰ This policy brought emerging environmental challenges that were not expressly addressed in the repealed policy such as climate change, invasive species, waste electrical and electronic equipment or e-wastes, genetically modified organisms, management of oil and gas pollution and sound management of chemicals.²³¹ Since policies are normally precursors to relevant pieces of legislation, this warrants a need to amend the Environmental Management Act. This may bring aspects of forest protection within it, especially in addressing climate change. As it stands, protection and management of forests is not addressed thereunder. Rather, the Act delegates the whole corpus to the Forest Act. It provides that all forests shall be managed in accordance with the provisions of the Forest Act.²³² Only that in

²²⁵ Pallangyo, D.M. (2007). *Op. cit.* p.30.

²²⁶ The Environmental Management Act, No.20 of 2004.

²²⁷ The United Republic of Tanzania. (1997). National Environmental Policy. Vice President's Office. (Repealed).

²²⁸ *ibid*, policy statement 12(vi).

²²⁹ The United Republic of Tanzania. (1997). National Environmental Policy. Vice President's Office. (Repealed), policy statement 59.

²³⁰ The United Republic of Tanzania. (2021). National Environmental Policy, Vice President's Office.

²³¹ *ibid*. See also United Republic of Tanzania. (2019). Third State of the Environmental Report. Vice President's Office. Retrieved May 20, 2023 from the World Wide Web: <https://www.vpo.go.tz/uploads/publications/en-1592550740-State%20of%20Environment-pdf>

²³² The Environmental Management Act, No.20 of 2004, section 63.

any conflict between the two legislations, the Environmental Management Act prevails.²³³

3.2.2.3 The Forest Act

The Forest Act²³⁴ addresses forests protection complemented by its Regulations.²³⁵ As the principal legislation in respect of forest resources protection in Tanzania, the Forest Act²³⁶ sets several objectives in this regard.²³⁷ It seeks to achieve economic benefits from forest produces without compromising the needs of the future generations.²³⁸ This signifies protection of forests against unsustainable utilization and practices. To achieve effective protection of forests, it encourages public participation on the one hand, and delegate protection and management mandates to the lowest possible level of local management on the other hand.²³⁹ To this end, the Forest Act²⁴⁰ brings into action participatory forests management through Joint Forest Management and Community Bases Forest Management in managing forests reserves.²⁴¹

Again, protection and management of forests is enhanced through administrative and institutional set-ups. Forest protection mandates are strictly allocated to respective authorities. The constitutive department responsible for forests management of the MNRT is working closely with sub-divisions and working agencies within it to performing advisory, protective, restorative, enforcement, sensitization, detective, prosecution and other related activities with a view to protecting and managing forests in the country.

²³³ The Environmental Management Act, No.20 of 2004, section 64(1).

²³⁴ The Forest Act, [Cap. 323 R.E. 2002].

²³⁵ For the purpose of this study two Regulations are relevant, namely; the Forest Regulations, Government Notice No.153 of 2004 and the Forest (Sustainable Utilization of Logs, Timber, Withies, Poles or Charcoal) Regulations, Government Notice No.417 of 2019.

²³⁶ The Forest Act, [Cap. 323 R.E. 2002].

²³⁷ *ibid*, Part II.

²³⁸ *ibid*, section 3(a).

²³⁹ The Forest Act, [Cap. 323 R.E. 2002], section 3(b) and (d).

²⁴⁰ [Cap. 323 R.E. 2002].

²⁴¹ *ibid*, section Part III.

The Forest Act and Its Regulations set provisions prohibiting illegal logging practices. In the first place, the Forest Act²⁴² prohibits illegal entry and harvest of forest produce. It prescribes forest activities whose dealings require permits and licence.²⁴³ It requires obtaining permits for activities relating to felling or extracting timber whether for domestic use or commercial dealings,²⁴⁴ gathering and taking away forest produces,²⁴⁵ exporting forest produces²⁴⁶ and operating sawmills or other industrial processes in forest areas.²⁴⁷ Carrying out these activities without permit or licence is generally prohibited.²⁴⁸ To limit influx of loggers over a single issued permit, the law prohibits transferability and/or negotiability of licences or permits.²⁴⁹

Regulatory extensions on the precise use of permits and licence were brought through the Forest (Sustainable Utilization of Logs, Timber, Withies, Poles or Charcoal) Regulations.²⁵⁰ Under this Regulation, prohibition of dealing with forests without permit or licence applies in both commercial and domestic-purposed dealings. It requires both; for domestic purpose and for commercial purpose forest dealers to obtain permit or licence as the case may be.²⁵¹ It is the spirit of this Regulation that any person who intends to harvest trees for logs, timber, withies, poles or charcoal for commercial purpose should obtain permit from the District Forest Manager²⁵² while for household consumption, one should obtain permit from the Village or *Mtaa* Executive Officer.²⁵³

Extended prohibitive measures under this Regulation touch permits or licences' conditions for grant. In other words, it restricts harvest to the terms and conditions of

²⁴² [Cap. 323 R.E. 2002].

²⁴³ *ibid*, section 49(1).

²⁴⁴ *ibid*, section 49(1)(a)(i).

²⁴⁵ *ibid*, section 49(1)(b).

²⁴⁶ *ibid*, section 49(1)(h).

²⁴⁷ *ibid*, section 49(1)(e).

²⁴⁸ The Forest Regulations, Government Notice No. 153 of 2004, regulation 20(1).

²⁴⁹ *ibid*, regulation 23(2).

²⁵⁰ Government Notice No. 417 of 2019.

²⁵¹ *ibid*, regulation 13 and 14.

²⁵² *ibid*, regulation 13.

²⁵³ *ibid*, regulation 14.

the permit or licence.²⁵⁴ It requires that when a person is authorized to fell trees for purposes of logs, timber, withies, poles or charcoal, he is restricted to felling species specified in the licence and no others.²⁵⁵ To ensure sound compliance with conditions for grant, the authorities reserve a right to revoke permit or licence upon breach of conditions.²⁵⁶

Again, the Forest Act and its Regulations prohibit exporting forests produce without documentations. Exporting forests produce requires, along with dealings permit or licence, exporting certificate. Section 58(1)(a) of the Forest Act²⁵⁷ prohibits transporting forests produce without a valid export certificate. Export certificate is valid and so issued in respect of 'graded timber.'²⁵⁸ The law restricts issuance of export certificate in a number of ways. It requires a satisfaction of grading and, that grade of each piece of timber should accord with the marks thereon.²⁵⁹ Similarly, issuance of export certificate is preceded over by proof of a valid grading certificate.²⁶⁰ Applications for export certificate should be accompanied by a valid grading certificate referring to the timber for which application is made.²⁶¹

Forest protection against unsustainable logging is emphasized through the process of issuing export certificate. The law requires that the issued export certificate shall include a signed certification that timbers approved for export were sustainably harvested from a sustainably managed forest cover in the country.²⁶² Where applicable, export certificate shall include a certification signed by the CITES Management

²⁵⁴ The Forest Act, [Cap. 323 R.E. 2002], section 52(1). It should be noted that under the Forest Regulations, Government Notice No. 153 of 2004, any terms and conditions endorsed on a permit are mandatorily construed as an integral part of the Regulation; see regulation 21 thereto.

²⁵⁵ The Forest (Sustainable Utilization of Logs, Timber, Withies, Poles or Charcoal) Regulations, Government Notice No.417 of 2019, regulation 9.

²⁵⁶ The Forest Act, [Cap 323. R.E. 2002], section 56(6). See also the Forest Regulations, Government Notice No. 153 of 2004, regulation 22(1).

²⁵⁷ [Cap. 323 R.E. 2002].

²⁵⁸ *ibid*, section 58(2).

²⁵⁹ *ibid*.

²⁶⁰ The Forest Regulations, Government Notice No. 153 of 2004, regulation 12(a).

²⁶¹ *ibid*, regulation 12(d)

²⁶² *ibid*, regulation 13.

Authority indicating compliance with CITES conditions.²⁶³ To ensure compliances with certificates requirements, the authorities reserve the right to cancel any certificate before expiry of time upon satisfaction that grant conditions are breached or it is in the public interest to do so.²⁶⁴

Another aspect of prohibition is unlawful transportation of forests produce. Under the forest legal regime, obtaining export certificate is one thing and, transporting forest produces is a differently regulated aspect altogether. Unlawful transportation of forests produce includes a number of erred principles within it. In the first place, it includes transporting forests produce harvested in contravention of the law.²⁶⁵ The law prohibits any person from evacuating, hauling or transporting logs, timber, withies, poles or charcoal on transit, unless they are lawfully obtained.²⁶⁶ It is in the spirit of the law that he who transports forest produces should have with him, among other things, a forest produces allocation certificate²⁶⁷ and a licence to fell and collect forest produces.²⁶⁸

Again, transportation of forests produce is unlawful and prohibited if it is done in absence of 'Transit Pass.' The law prohibits transportation of forest produces unless he who transports obtains a Transit Pass.²⁶⁹ Issuance of Transit Pass is dependent upon satisfaction of bona fide origin of the forests produce subject of transportation.²⁷⁰ This is to satisfy that the applicant of a Transit Pass, legally harvested the produces. The law extends a duty to the owner of any means of transport, not to accept any forest produce for transportation unless the forest produce concerned is covered under a valid Transit

²⁶³ The Forest Regulations, Government Notice No. 153 of 2004, regulation 14.

²⁶⁴ The Forest (Sustainable Utilization of Logs, Timber, Withies, Poles or Charcoal) Regulations, Government Notice No.417 of 2019, regulation 12 (1) and (2).

²⁶⁵ The Forest Regulations, Government Notice No. 153 of 2004, regulation 3(1).

²⁶⁶ The Forest (Sustainable Utilization of Logs, Timber, Withies, Poles or Charcoal) Regulations, Government Notice No.417 of 2019, regulation 16(1).

²⁶⁷ *ibid*, regulation 20(1)(a).

²⁶⁸ *ibid*, regulation 20(1)(d).

²⁶⁹ The Forest Regulations, Government Notice No. 153 of 2004, regulation 13 (1).

²⁷⁰ *ibid*, regulation 13 (2).

Pass.²⁷¹ To ensure that this requirement is abided to, the law places liability to the owner for breaching this requirement.²⁷²

Moreover, transportation of forest produces is unlawful and prohibited if it not carried through the defined tracks and routes and, within the prescribed time. It is the requirement of the law that forest produces should be transported on a track or road prescribed in the licence or Transit Pass as the case may be.²⁷³ In this regard, the law ordains further that any person transporting logs, timber, withies, poles or charcoal, serve for domestic purposes, should pass through the roads or routes and checkpoints stipulated on the Transit Pass for inspection purposes.²⁷⁴ The law prohibits, on the one hand, delaying transportation or removal of forest produces within prescribed time²⁷⁵ and, on the other hand, transporting forest produces at any time before 06:00am or after 06:00pm.²⁷⁶ If forests produce remain unremoved from the forest reserve after expiration of the licenced period or the extended period, the law orders forfeiture.²⁷⁷

While transporting or moving forest produces, one should also have with him; forest produce allocation certificate, Transit Pass, licence to fell and collect forest produces, certificate for registration as a forest produce dealer and a government receipt.²⁷⁸ These documents are vital as copies thereto validates final disposal especially through sale and purchase. The law requires that in the event a person buys the forest produces from the holder of the forest produce allocation certificate, is required to have valid copies of all these documents originally under the certified dealer.²⁷⁹

²⁷¹ The Forest Regulations, Government Notice No. 153 of 2004, regulation 13 (4).

²⁷² *ibid*, regulation 13 (5).

²⁷³ *ibid*, regulation 8 (3).

²⁷⁴ The Forest (Sustainable Utilization of Logs, Timber, Withies, Poles or Charcoal) Regulations, Government Notice No.417 of 2019, regulation 16(2).

²⁷⁵ The Forest Regulations, Government Notice No. 153 of 2004, regulation (8)1.

²⁷⁶ The Forest (Sustainable Utilization of Logs, Timber, Withies, Poles or Charcoal) Regulations, Government Notice No.417 of 2019, regulation 17(1).

²⁷⁷ The Forest Regulations, Government Notice No. 153 of 2004, regulation 8(2).

²⁷⁸ The Forest (Sustainable Utilization of Logs, Timber, Withies, Poles or Charcoal) Regulations, Government Notice No.417 of 2019, regulation 20(1) (a-e).

²⁷⁹ *ibid*, regulation 20(2).

Further, the law prohibits unlawful possession of forest produces. The Forest Act²⁸⁰ prohibit persons without authority to take, receive or possess forests produce.²⁸¹ Possession of forest produces is statutorily required to be lawful. The lawfulness of such possession depends on possession of valid licences, permits and certificates as the case may be. According to Regulation 10 of the Forest Regulations²⁸² it is unlawful to acquire or keep in possession any forest produces unless such produces were obtained with licence and duly marked by the registered mark.²⁸³

Similarly, unlawful trade in forest produces is strictly prohibited in Tanzania. The Forest Act²⁸⁴ prohibits any person without lawful authority to offer for sale or buy forest produces harvested in contravention of the law.²⁸⁵ This prohibition is meant to ensure that the chain of forest produce dealings is mannered by authorized dealers. For the purpose of sale in forest produces, a person is an authorized seller only if he or she is registered as a forest produce dealer under the Forest regulation.²⁸⁶ It is the requirement of the law that no person shall deal with or trade in forest produces without applying for and obtain a certificate of registration as a forest produce dealer or trader.²⁸⁷ For the buyer to assume lawful possession upon purchase of forest produces, he or she should require to be served with copies of the seller's authoritative documents.²⁸⁸

Again, it is the requirement of the law that any sale of forest produces should be in accordance with the descriptions shown in the relevant licence or Transit Pass and not otherwise.²⁸⁹ Any sale of forest produces in contravention of stipulated descriptions is prohibited. The descriptions may include the manner of sell, conditions for sell and

²⁸⁰ The Forest Act, [Cap. 323 R.E. 2002].

²⁸¹ *ibid*, section 88.

²⁸² The Forest Regulations, Government Notice No. 153 of 2004.

²⁸³ *ibid*, regulation 10.

²⁸⁴ The Forest Act, [Cap. 323 R.E. 2002].

²⁸⁵ *ibid*, section 89(d).

²⁸⁶ The Forest Regulations, Government Notice No. 153 of 2004.

²⁸⁷ *ibid*, regulation 54(1).

²⁸⁸ The Forest (Sustainable Utilization of Logs, Timber, Withies, Poles or Charcoal) Regulations, Government Notice No. 417 of 2019, regulation 20(2).

²⁸⁹ The Forest Regulations, Government Notice No. 153 of 2004, regulation 9.

exhibition. The law, for instance, requires exhibition for sale of forests produce to be strictly in registered stowage. In this spirit, therefore, the law prohibits exhibit for sale of forest produces in unregistered yard, stores, sites or selling centres.²⁹⁰

Apart from these aspects of illegal logging prohibition, the Forest Act and its Regulations criminalizes trivial to serious acts of forest dealings. In the first place, the Forest Act²⁹¹ criminalizes a mere entry into forest reserves without lawful authority or right.²⁹² If a person is found within or in the vicinity of forest reserve in possession of any implement for cutting or taking forest produces is also committing a different offence altogether.²⁹³ It is immaterial whether he or she has, for any purpose, used the implement. If a person is found guilty of either of these criminalized acts, he becomes liable to a fine of not less than thirty thousand shillings and not exceeding one million shillings or to imprisonment for a term not exceeding two years or both such fine and imprisonment.²⁹⁴ This is a very nethermost level of criminalization as it covers a mere entry into forest reserves or caught in hold of a felling gadget in the vicinity of forests.

The subsequent aspect of criminalization touches specific acts of unauthorized felling down of trees in forest reserves. It is an offence to fell or cut trees without licence, permit or other lawful authority.²⁹⁵ The spirit embodied under this criminalization is prohibition of illegal harvest of forests produce. The law criminalizes illegal harvest whether for commercial or domestic consumption. Therefore, the law makes it an offence to unlawfully harvest forests produce.²⁹⁶ The law restricts harvest to the terms and conditions of the permit or licence.²⁹⁷ Therefore, when a person is authorized to

²⁹⁰ The Forest (Sustainable Utilization of Logs, Timber, Withies, Poles or Charcoal) Regulations, Government Notice No. 417 of 2019, regulation 19(1).

²⁹¹ The Forest Act, [Cap. 323 R.E. 2002].

²⁹² *ibid*, section 84(1) (a).

²⁹³ *ibid*, section 84(2) (a).

²⁹⁴ *ibid*, section 84(5) (a).

²⁹⁵ The Forest Act, [Cap. 323 R.E. 2002], section 85.

²⁹⁶ *ibid*, section 89(a).

²⁹⁷ *ibid*, section 52(1).

harvest forests produce, he or she is restricted to felling species specified in the licence and no others.²⁹⁸

Another aspect of criminalized acts relates to transportation of forest produces. It is an offence to operate or cause to operate vehicles to transport forest produces unlawfully harvested.²⁹⁹ During transportation, it is an offence to deviate the roads or routes specified in the Transit Pass. In the event the forest produces were obtained legally, on conviction, a person is liable to a fine of not less than five hundred thousand shillings but not exceeding one million shillings or imprisonment for a term not less than three months.³⁰⁰ If the forest produces were obtained illegally, on conviction, one may be fined to the tune of one million shillings or three times of the market value of the forest produces whichever is greater or imprisonment for a term not less than two years but not exceeding seven years including confiscation of the forest produces.³⁰¹ If it is realized that a convict is a habitual transporter, on top of conventional stipulated punishments, the mechanically propelled vehicle on which the forests produce were loaded and transported with, shall also be confiscated.³⁰²

Similarly, it is an offence to transport or move forest produces without forest produce allocation certificate, Transit Pass, licence to fell and collect forest produces, certificate for registration as a forest produce dealer and a government receipt.³⁰³ In absence of the prescribed documents on transit, the transporter commits an offence. On conviction, the offence attracts a punishment of a fine of not less than five million shillings but not exceeding ten million shillings or imprisonment of a term not less than three years but

²⁹⁸ The Forest (Sustainable Utilization of Logs, Timber, Withies, Poles or Charcoal) Regulations, Government Notice No. 417 of 2019, regulation 9.

²⁹⁹ The Forest Act, [Cap. 323 R.E. 2002], section 89(b).

³⁰⁰ The Forest (Sustainable Utilization of Logs, Timber, Withies, Poles or Charcoal) Regulations, Government Notice No. 417 of 2019, regulation 16(3) (a).

³⁰¹ *ibid*, regulation 16(3)(b).

³⁰² *ibid*, regulation 16(3) (c).

³⁰³ The Forest Act, [Cap. 323. R.E. 2002], section 89(h).

not exceeding five years.³⁰⁴ The law does not employ an option for both fine and imprisonment.

Another criminalized act is unlawfully possession of forest produces. According to section 88 of the Forest Act,³⁰⁵ whoever unlawfully possesses forest produces commit an offence. The law provides that, on conviction, a person is liable to a fine of not less than one hundred thousand shillings but not exceeding five million.³⁰⁶ If the unlawfully possessed forest produces were also obtained illegally, on conviction, one may be fined to the tune of one million shillings or three times of the market value of the forest produces whichever is greater or imprisonment for a term not less than two years but not exceeding seven years.³⁰⁷ Correspondingly, the forest produces shall be confiscated.³⁰⁸

Again, the forest legal regime criminalizes unlawful trade in forest produces. In the first place it is an offence to offer for sale or purchase of forest produces unlawfully harvested.³⁰⁹ This offence attracts, on conviction, a fine to the tune of one million shillings or three times of the market value of the prohibited produce whichever is greater or to imprisonment for a term not less than two years but not exceeding seven years.³¹⁰ Likewise, the law criminalizes exhibiting for sale of forest produces in unregistered yards, stores, sites or selling centres.³¹¹ Upon conviction, one is liable to a fine of not less than five million shillings and not exceeding ten million shillings or imprisonment of a period not less than six months and not exceeding two years.³¹² On

³⁰⁴ The Forest (Sustainable Utilization of Logs, Timber, Withies, Poles or Charcoal) Regulations, Government Notice No. 417 of 2019, regulation 20(3).

³⁰⁵ [Cap. 323 R.E. 2002], as amended by section 28 of the Written Laws (Miscellaneous Amendment) (No.2) Act No.4 of 2016.

³⁰⁶ *ibid.*

³⁰⁷ The Forest (Sustainable Utilization of Logs, Timber, Withies, Poles or Charcoal) Regulations, Government Notice No. 417 of 2019, regulation 16(3)(b).

³⁰⁸ *ibid.*

³⁰⁹ The Forest Act, [Cap. 323 R.E. 2002], section 89(d).

³¹⁰ *ibid.*, section 89, as amended by section 28 of Written Laws (Miscellaneous Amendment) (No.2) Act, No.4 of 2016.

³¹¹ The Forest (Sustainable Utilization of Logs, Timber, Withies, Poles or Charcoal) Regulations, Government Notice No. 417 of 2019, regulation 19(2).

³¹² *ibid.*

top of that, the forest produces subject of unauthorized exhibition for sale, are confiscated to the government.³¹³

To further control illegalities, the law conditions potential buyers. It criminalizes purchasing forest produces without evidence as to the lawful authority of the forest produce dealer. Therefore, it is an offence to purchase forest produces without obtaining from the seller copies of forest produce allocation certificate, Transit Pass, licence to fell and collect forest produce, certificate for registration as a forest produce dealer and a government receipt.³¹⁴ This offence attracts a punishment of a fine not less than five million shillings but not exceeding ten million shillings or imprisonment of a term not less than three years but not exceeding five years.³¹⁵

Moreover, the Forest Act³¹⁶ and its regulations criminalize several other trivial and substantial illegal logging practices with a view to protecting forests. It criminalizes falsified grading. It is an offence for a grader to issue grading certificate knowing or having reasons to believe that the same is false in any material particular.³¹⁷ Again, it is an offence for any person other than a grader to issue grading certificate.³¹⁸ This is also referred to as marking or grading timber without authority.³¹⁹ It is also an offence to stock forest produces unlawfully harvested.³²⁰ In respect of unauthorized grading and stocking, a convict can be fined to the tune of one million shillings or three times of the market value of the prohibited produce whichever is greater or to imprisonment for a term not less than two years but not exceeding seven years.³²¹

³¹³ The Forest (Sustainable Utilization of Logs, Timber, Withies, Poles or Charcoal) Regulations, Government Notice No. 417 of 2019, regulation 19(2).

³¹⁴ *ibid*, regulation 20(3).

³¹⁵ *ibid*.

³¹⁶ The Forest Act, [Cap. 323 R.E 2002].

³¹⁷ The Forest Regulations, Government Notice No. 153 of 2004, regulation 50(12)(b).

³¹⁸ *ibid*, regulation 50(12)(c).

³¹⁹ The Forest Act, [Cap. 323 R.E. 2002], section 89(f).

³²⁰ *ibid*, section 89(e).

³²¹ The Forest Act, [Cap. 323 R.E. 2002], section 89, as amended by section 28 of Written Laws (Miscellaneous Amendment) (No.2) Act, No.4 of 2016.

Furthermore, the Forest Act³²² provides for general punitive powers to forest officers and additional orders on top of sentences. It is the requirement of the law that any authorized officer may prevent movements of illegally harvest forest produces and may seize any boats, vehicles, aeroplanes, machineries, tools, equipment or implement used in such illegal logging.³²³ Additional orders may include cancelling the permit and disqualification from holding permits,³²⁴ forfeiture of forest produce in respect of which an offence is committed and anything used in commission of the offence³²⁵ and pay the forest manager of the respective forest reserve up to ten times of the amount of royalties or fees which had the offensive action been authorized would have been payable.³²⁶

3.3 Institutional Framework

3.3.1 International Institutional Framework

The international institutional framework on forests protection and specific roles on deterring illegal logging of forests is twofold. It is comprised of both institutions within and out of the United Nations auspice. In this section, an analysis is made on global organs, in and out the United Nations, whose roles in forest protection are vital. The idea behind a two-fold institutional presentation in this study is that protection of forests against illegal logging is an important agenda in and outside the United Nations. Therefore, a sense of complementarity is highly relevant.

3.3.1.1 United Nations Forum on Forests

The United Nations Forum on Forests (UNFF) is an intergovernmental policy forum established on 18th October, 2000 by the United Nations Economic and Social Council as its subsidiary body.³²⁷ The coming into being of the UNFF marks a milestone and

³²² The Forest Act, [Cap. 323 R.E. 2002].

³²³ *ibid*, section 93(c).

³²⁴ *ibid*, section 97(1)(a).

³²⁵ *ibid*, section 97(1)(b).

³²⁶ *ibid*, section 97(1)(e).

³²⁷ United Nations. (2011). United Nations Forum of Forests Fact Sheet: Celebrates Forests for People. Retrieved March 24, 2023 from the World Wide Web: <https://www.un.org/esa/forests/wp-content/uploads/bsk-pdf->.

consolidation of forest protection initiatives since the United Nations Conference on Environment and Development. It came to progress notable global forest initiatives undertaken under then, the Intergovernmental Panel on Forests (IPF) between 1995 and 1997 and the Intergovernmental Forum on Forests (IFF) between 1997 and 2000.³²⁸ The main objective of the UNFF is to promote management, conservation and sustainable development of all types of forests with a view to strengthening long-term states' commitment to its end.³²⁹

In principle, the UNFF exercises specific mandates in relation to promotion of international cooperation on forest related issues, monitoring progress assessment and to consider the prospects of legal framework on forests.³³⁰ In its endeavour to alleviate the legal framework on forests, the UNFF follows the Forest Principles which basically urges holistic conservation and management of global forests through, *inter alia*, tackling illegal logging practices.³³¹ To effectively manage and conserve forests, the UNFF urges tackling illegal forest practices.³³² The UNFF strengthens states' capacity to address forest-related illegal practices in accordance with their domestic legislation.³³³ It urges states' improvement of forest-related legislation and strengthening enforcement of forest law with a view to eradicating forest illegal practices including illegal logging.³³⁴

³²⁸ Nilsson, K. (2001). The Proposal for Action: Intergovernmental Panel on Forests (IPF) and Intergovernmental Forum on Forest (IFF) in the Swedish Context. (Swedish University of Agricultural Sciences). pp.3-6. Retrieved March 24, 2023 from the World Wide Web: <http://shop.skogsstyrelsen.se/shop/9098/art99/4645999-5f15b8-1630.pdf>.

³²⁹ *ibid*, p.6. See also United Nations. (2011). *Loc. cit*.

³³⁰ Nilsson, K. (2001) *Loc. cit*.

³³¹ United Nations. (2007). United Nations Forum on Forests: Report of the Seventh Session (Economic and Social Council). p.8 Retrieved March 24, 2023 from the World Wide Web: <https://www.un.org/esa/forests/wp-content/uploads/2013/09/E-2007-42-UNFF7Report.pdf>. See also Taccon, L. (2007). Illegal Logging and Related Trade: Who Combat it as Legal Subjects. *Open Journey of Forestry*. Vol.6(1).

³³² *ibid*.

³³³ *ibid*.

³³⁴ United Nations. (2007). *Op. cit*. p.7; see also Capistrano, D. *et al.* (2007). Revitalizing the United Nations Forum on Forests: Critical Issues and Way Forward (Centre for International Forest Research). Retrieved March 24, 2023 from the World Wide Web: https://www.researchgate.net/publication/262766335_Revitalizing_the_United_Nations_Forum_on_Forests_Critical_issues_and_ways_forward.

3.3.1.2 United Nations Food and Agriculture Organization

The United Nations Food and Agriculture Organization (FAO) is a specialized agent of the United Nations born in 1945.³³⁵ Although its central aim is to defeat hunger through ensuring food security and regular access to high-quality food for all, FAO is also working on global forestry programmes.³³⁶ The Forestry Programmes run under the auspice of FAO seeks to bring about transformational impact of the global forests benefiting both forests and forest dependent communities.³³⁷ The transformational approach intends to balance economic, social and environmental objectives with a view to enabling the present generation to benefit from forest resources without compromising the needs of future generations.³³⁸

The forest work under FAO is coordinated by its Committee on Forestry and Regional Forest Commissions.³³⁹ These are technical organs guiding forest works of FAO. One among the priority areas of FAO forest works is to work on forest law enforcement, governance and trade with a view to eliminate illegal logging and to promote the legal production and consumption of forest produces especially timber.³⁴⁰ It puts emphasis on effective enforcement of forest laws in deterrence of illegal logging. To achieve this, FAO campaigns the so-called ‘Forest Law Enforcement, Governance and Trade (FLEGT) programme.’³⁴¹ The FLEGT programme is guided with a mission to reduce and eventually eliminate illegal logging.³⁴² In its work, it promotes both legal production and consumption of timber. The spirit behind this is that, decreasing illegal logging of forests contributes to the Sustainable Development Goals through alleviating

³³⁵ Official website of the United Nations Food and Agriculture Organization (FAO). Retrieved March 24, 2023 from the World Wide Web: <https://www.fao.org/about/en/>.

³³⁶ *ibid.*

³³⁷ *ibid.*

³³⁸ Through this approach, FAO helps a move to archive the 2030 Agenda for Sustainable Development and the Sustainable Development Goals (SDG).

³³⁹ Official website of the United Nations Food and Agriculture Organization (FAO). Retrieved March 25, 2023 from the World Wide Web: <https://www.fao.org/about/en/>.

³⁴⁰ *ibid.*

³⁴¹ United Nations Food and Agriculture Organization (FAO)-Forest Law Enforcement, Governance and Trade (FLEGT). Retrieved March 24, 2023 from the World Wide Web: <https://www.fao.org/in-action/eu-fao-flegt-programme/en/>.

³⁴² *ibid.*

poverty,³⁴³ ensuring food security,³⁴⁴ mitigating climate change³⁴⁵ and sustainable management of forests.³⁴⁶

Along with specific attention on illegal logging deterrence, FAO works closely on eliminating other human and non-human threats to forests sustainability. It mainstreams biodiversity conservation in forest management and support countries in their endeavours to manage forest fires and forest pests.³⁴⁷ It supports forest restoration projects, promotes cooperation on sustainable use and management of forest genetic resources while improving forest education to increase global understanding of forests and forestry.³⁴⁸

3.3.1.3 United Nations Environmental Programme

The United Nations Environmental Programme (UNEP) is the principal environmental authority in the United Nations. It was established in 1972 and it serves as a global environmental steward setting global environmental standards and promotes implementation of environmental dimensions of sustainable development.³⁴⁹ Among its key areas of concentration, UNEP focuses on climate change and ecosystem management. Through its specific programmes on ecosystem management and climate change, UNEP encourages global protection of forests with a view to mitigating climate change and enhancing sound and sustainable management of the global ecosystems including forests.³⁵⁰

Apart from its general mandates on climate change and ecological management, UNEP is arguably playing a significant role in fighting illegal logging of forests. It is

³⁴³ SDG 1.

³⁴⁴ SDG 2.

³⁴⁵ SDG 13.

³⁴⁶ SDG 15.

³⁴⁷ Official website of the United Nations Food and Agriculture Organization (FAO). Retrieved March 25, 2023 from the World Wide Web: <https://www.fao.org/about/en/>.

³⁴⁸ *ibid.*

³⁴⁹ Official website of United Nations Environmental Programme (UNEP). Retrieved March 24, 2023 from the World Wide Web: <https://www.unep.org/about-un-environment>.

³⁵⁰ United Nations. United Nations Environmental Programme. (Office of Secretary-General's- Envoy on Youth). Retrieved March 24, 2023 from the World Wide Web: <https://www.un.org/youthenvoy/2013/08/unep-united-nations-environment-programme/>.

evidenced that, in partnership with other international bodies,³⁵¹ UNEP plays a vital role in tackling illegal logging and associated corruption, tax fraud and money laundering.³⁵² Efforts to fight illegal logging of forests are centered on its grave threats to sustainability of the global forest cover. Undoubtedly, illegal logging drives deforestation, loss of biodiversity, climate change and ruins individual livelihoods.³⁵³

3.3.1.4 Inter-Agency Task Force on Forests

Inter-Agency Task Force on Forests (ITFF) is a United Nations forest-based task force established in 2016.³⁵⁴ The purpose for the establishment of the ITFF is to promote a holistic approach within the United Nations system to address trade in wild and forest products.³⁵⁵ It similarly watches over law enforcement activities.³⁵⁶ It is an inter-agency task force on its constitutive structure. It is constituted of members from CITES secretariat, United Nations Development Programme, UNEP, United Nations Office on Drugs and Crimes, Department of Economic and Social Affairs, Department of Political Affairs, Department for Peacekeeping Operations, and Department of Public Information.³⁵⁷

The ITFF works on effective enforcement of forest and wildlife laws while fighting illegal trades in forest and wildlife products. In its mandates, the ITFF enhances sustainable protection of forest resources and fights illegal logging through intervening

³⁵¹ Especially in partnership with International Police (INTERPOL).

³⁵² See Background Document on the Non-Legally Binding Instrument on All Types of Forests, the Global Objectives of Forests, and the Millennium Development Goals: Actions Reported by Countries to the United Nations Forum on Forests. p.12. Retrieved March 28, 2023 from the World Wide Web: https://www.un.org/esa/forests/wp-content/uploads/2015/07/nlbi_background-document.pdf.

³⁵³ Fern. (2021). Why is it Important to Fight Illegal Logging? (FAQ 2021). Retrieved March 28, 2023 from the World Wide Web: <https://www.fern.org/publications-insight/why-is-it-important-to-fight-illegal-logging-faq-2303/>.

³⁵⁴ United Nations Office of Drugs and Crime. (2017). First Major Event of UN Inter-Agency Task Force Held in Bangkok, as Countries in Africa and Asia Unite to Address Wild Life Crime. Retrieved March 28, 2023 from the World Wide Web: <https://www.unodc.org/unodc/en/frontpage/2017/July/first-major-event-of-un-inter-agency-task-force-held-in-bangkok--as-countries-of-africa-and-asia-unite-to-address-wildlife-crime.html>.

³⁵⁵ Permanent Missions. (2017). Inter-Agency Task Force Launched to Combat Illicit Wild Trade. Retrieved March 28, 2023 from the World Wide Web: <https://www.un.int/news/inter-agency-task-force-launched-combat-illicit-wildlife-trade>.

³⁵⁶ *ibid.*

³⁵⁷ Permanent Missions. (2017). *Loc. cit.*

with illegal trades in forest products. In partnership with other agencies, the ITFF hold forums with states on a reflection of states' legal regimes. Through these forum participants assess the best of their legislation in contexts of prohibition and penalization of forest related offences and plan to strengthen their national legal frameworks to combat wildlife and forest related crimes.³⁵⁸ Tanzania has recorded its participation in such forums.³⁵⁹

3.3.1.5 International Tropical Timber Organization

The International Tropical Timber Organization (ITTO) is an intergovernmental organization for forests conservation and trade in tropical forest resources established under Article 3(1) of the 1983 International Tropical Timber Agreement (ITTA).³⁶⁰ The ITTA came into full operation in 1985, with subsequent iterations in 1994 and 2006. The more recent ITTA 2006 came into force on 7th December 2011 and it governs the recent affairs of the ITTO.³⁶¹ The objective of ITTO is to promote sustainable management and conservation of tropic forests and regulate international trade in tropical timber from sustainably managed and legally harvested forest.³⁶² It develops internationally acceptable guidelines for sustainable forest management and implement them through projects and field activities.³⁶³

The ITTO has influenced global forests protection, thus, it impacts both its members and non-member states. This is viable through its commitment to regulate 'trade in forest produces legally harvested.'³⁶⁴ In a way, it guards against illegal harvest of forest produces elsewhere, breach of which the ITTO denies regulation in its forest produce

³⁵⁸ United nations Development Programme. (2018). Strengthening Legal Frameworks to Combat Wildlife Crime. Retrieved March 28, 2023 from the World Wide Web: <https://www.undp.org/publications/strengthening-legal-frameworks-combat-wildlife-crime>.

³⁵⁹ *ibid.*

³⁶⁰ The International Tropical Timber Agreement, No.23317 UNTS 68. Vol.1393, I-23317 (1983), entered into force in 1985.

³⁶¹ Official website of the Australian Government Department of Agriculture, Fisheries and Forestry. Retrieved March 24, 2023 from the World Wide Web: <https://www.agriculture.gov.au/agriculture-land/forestry/international/forums/itto>.

³⁶² Official website of the ITTO. Retrieved March 28, 2023 from the World Wide Web: https://www.itto.int/about_itto/.

³⁶³ *ibid.*

³⁶⁴ *ibid.*

trading chain. Through its field actions, ITTO supports myriad activities targeting to enhance forest law enforcement and tackling illegal logging.³⁶⁵ It recognizes threats of illegal logging in forests sustainability. It is on this basis that ITTO balances the two-way interests; harvesting forests legally on the one hand, and sustainable management of the world's forest cover on the other hand.³⁶⁶

3.3.2 Domestic Institutional Framework

The institutional framework of forest protection in Tanzania is top-to-down based. This is its basic feature. It starts from the MNRT down to the communities living in and/or around the vicinity of forest reserves. It is an interactive structure with institutions for specific and general forest protection functions. The institutional framework is composed of institutions with administrative, advisory, detective, enforcement, research and funding as well as specific reserve mandates.

3.3.2.1 Ministry of Natural Resources and Tourism: Forest and Beekeeping

Division

The FBD is one of divisions of the MNRT established as a merger result in 1985.³⁶⁷ Its overall objective is to develop, implement and monitor mechanisms for sustainable conservation and management of forest and bee resources and services in Tanzania.³⁶⁸ The division's specific aspects of forest protection, management and conservation are handled by its sub-division namely 'Forest Development.'³⁶⁹ This sub-division is tasked to develop, review, monitor and implement forest legal and policy instruments. Again, it is mandated to regulate forest extension services and researches undertaken by institutions and organizations.³⁷⁰ To coordinate and facilitate establishment and management of forest reserves and to provide guidance in formation of community

³⁶⁵ Official website of the ITTO. Retrieved March 28, 2023 from the World Wide Web: https://www.itto.int/about_itto/.

³⁶⁶ *ibid.*

³⁶⁷ Official website of the Ministry of Natural Resources and Tourisms (Tanzania). Retrieved March 18, 2023 from the World Wide Web: <https://www.maliasili.go.tz/sectors/category/forest-and-beekeeping>.

³⁶⁸ Official website of the Ministry of Natural Resources and Tourisms (Tanzania). Retrieved March 18, 2023 from the World Wide Web: <https://www.maliasili.go.tz/sectors/category/forest-and-beekeeping>.

³⁶⁹ *ibid.*

³⁷⁰ *ibid.*

forest management groups, among others.³⁷¹ Most of its forest protection, conservation and management functions are exercised by its subordinate institutions.³⁷²

3.3.2.2 The National Forest Advisory Committee

The National Forest Advisory Committee (NFAC) is a Ministerial advisory body established under section 10(1) of the Forest Act.³⁷³ Its constitutive members are appointed by the Minister of Natural Resources and Tourism on the basis of, *inter alia*, expertism, qualification and interest in aspects of forest management and market of forest produces.³⁷⁴ The central function of the NFAC is to advise the responsible Minister on matters relating to issuance of concessions, declaration of forest reserves and review of the forest policy.³⁷⁵ Again, the NFAC plays a great role in advising the responsible Minister on matters pertaining to the management of forest reserves.³⁷⁶ When the Director of Forest is determining the respective authority to manage a particular national forest reserve, a consultation needs to be made to the responsible Minister.³⁷⁷ As a Ministerial advisory body, the NFAC is served with a report for expert comments, which are mandatorily taken into account in such determination.³⁷⁸

The functioning of the NFAC is statutorily regulated. In discharging its ordinary duties, the NFAC follows prescribed requirements for meetings and procedural matters.³⁷⁹ Markedly, in discharging its functions the NFAC is considerably autonomous with mandates to regulate its own proceedings.³⁸⁰ In the course of its mandates, the NFAC is duty bound to prepare annual report setting out their contemporary activities and

³⁷¹ United Republic of Tanzania. (2010). Tanzania Forest Service: Strategic Plan, Ministry of Natural Resources and Tourism, July 2010-June 2013. Retrieved March 18, 2023 from the World Wide Web: https://www.tfs.go.tz/uploads/tfs_strategic_plan_2009_april_2010_1.pdf.

³⁷² Especially the Tanzania Forest Service (TFS) Agency.

³⁷³ [Cap. 323 R.E. 2002].

³⁷⁴ *ibid*, section 10(2)(a).

³⁷⁵ *ibid*, section 10(4)(a) (b) and (d).

³⁷⁶ *ibid*, section 10(4)(c).

³⁷⁷ *ibid*, section 27(2) which reads together with sub section 1 there to and section 10(4)(c).

³⁷⁸ The Forest Act, [Cap. 323 R.E. 2002], section 27(5) which reads together with sub section 2 thereto and section 10(4)(c).

³⁷⁹ *ibid*, the First Schedule.

³⁸⁰ *ibid*, paragraph 5(9).

indicating prospective future activities with a set of audited account to be handed to the Minister who has to table the same before the Parliament.³⁸¹

3.3.2.3 Tanzania Forest Service Agency

The Tanzania Forest Service (TFS) Agency is a semi-autonomous government executive agency working under the MNRT.³⁸² The TFS is established under section 3(1) of the Executive Agencies Act³⁸³ which empowers Ministers to establish Executive Agencies when it is appropriate, to carry out functions in the departments within their Ministries. It was then published through the Establishment Order via the Government Notice No. 269/2010 and became operational in the financial year 2011/12.³⁸⁴ Notably, the TFS came as a result of institutional hindrances in the management and conservation of forest and bee resources. Its inclusive mandates are to manage national forest and bee resources sustainably through supply of myriad forest and bee products and services, stable ecosystem and sound maintenance of biological diversity.³⁸⁵

The specific mandates of the TFS in forest include; establishing and managing national natural forest reserves, forest plantations and apiaries; managing forests in general land; enforcing forest legislation in area of its jurisdiction; provide forest extension services in areas of its jurisdiction; collecting forest revenue and marketing forest products and services.³⁸⁶ Through its forest legislation enforcement mandates, TFS is mandated to work on illegal logging deterrence within the area of its jurisdiction. Working with other law enforcement machineries working on specific aspects of forest justice or general criminal justice system, TFS is duty bound to fight illegal logging. This is

³⁸¹ The Forest Act, [Cap. 323 R.E. 2002], first schedule, paragraph 6.

³⁸² United Republic of Tanzania. (2014). Ministry of Natural Resources and Tourism, Tanzania Forest Service Agency: Three Year Implementation Report for the Financial Year 2011/2012-2013/2014, p.2. Retrieved March 18, 2023 from the World Wide Web: https://www.tfs.go.tz/TFS_THREE_YEARS_IMPLEMENTATION_REPORT_2011-2014.pdf.

³⁸³ [Cap. 245 R.E. 2009].

³⁸⁴ United Republic of Tanzania. (2014) *Loc. cit.*

³⁸⁵ Official website of the TFS. Retrieved March 18, 2023 from the World Wide Web: <https://www.tfs.go.tz/index/en/about/category/functions-and-mandate>. Accessed 18 March 2023.

³⁸⁶ Official website of the TFS. Retrieved March 18, 2023 from the World Wide Web: <https://www.tfs.go.tz/index/en/about/category/functions-and-mandate>. Accessed 18 March 2023.

through apparent deterrence of illegal forest practices strictly prohibited and/or criminalized under the forest legal regime in Tanzania.

3.3.2.4 Tanzania Forest Fund

The Tanzania Forest Fund (TaFF) is a public conservation trust fund under the MNRT, established as a sustainable funding mechanism for supporting forests protection, conservation, management and development in Mainland Tanzania.³⁸⁷ The fund is established under section 79(1) of the Forest Act.³⁸⁸ It became operational in 2010 through Treasury Circular No. 4 of 2009.³⁸⁹ Section 80 of the Forest Act³⁹⁰ sets out the objects and purposes of the TaFF. In the first place, TaFF endeavours to promote awareness on significances of protecting, developing and sustainably using of forest resources through public education and training.³⁹¹ As a forest fund, TaFF provides financial assistance in the development of community forestry directed towards conservation and protection of forest resources of the country, to group of persons wishing to form themselves into groups.³⁹²

The fund engineers forest researches. On the one hand, TaFF promotes and fund researches into forestry under its very capacity.³⁹³ On the other hand, it assists and enables Tanzanians to benefit from international initiatives and international funds directed towards conservation and protection of biological diversity and the promotion of sustainable development of forest resources.³⁹⁴ Through funding researches, TaFF plays a vital role in protection of forest resources. It gathers up-to-date information on threats to forest sustainability and disseminate findings for action. It has been, through its calls for research projects, designing forest protection priority areas to gear

³⁸⁷ Official website of the TaFF. Retrieved March 18, 2023 from the World Wide Web: <https://www.mfukowamisitu.go.tz/index.php/about/who-we-are>.

³⁸⁸ [Cap. 323 R.E. 2002].

³⁸⁹ Official website of the TaFF. Retrieved March 18, 2023 from the World Wide Web: <https://www.mfukowamisitu.go.tz/index.php/about/who-we-are>.

³⁹⁰ [Cap. 323 R.E. 2002].

³⁹¹ *ibid*, section 80(a).

³⁹² *ibid*, section 80(b).

³⁹³ The Forest Act, [Cap. 323 R.R. 2002], section 80(c).

³⁹⁴ *ibid*, section 80(d).

researches. For instance, researches on improving forest protection, conservation and management; improving quantity quality and value addition for sustainable use of forest produce; enhancing capacity building; improving livelihood of communities living adjacent to forest resource base; tree nurseries and tree planting among others.³⁹⁵

3.3.2.5 Local Government Authorities

Local Government Authorities (LGAs) are mandated with forest protection roles both under local government and environmental legislation. The Local Government (District Authorities) Act³⁹⁶ obliges every District Council to take all necessary measures to provide for the protection and proper utilization of the environmental resources for sustainable development.³⁹⁷ This implies mandate to intervene and deter activities threatening sustainability of natural resources inclusive of illegal logging of forests. The Local Government (Urban Authorities) Act,³⁹⁸ on the other hand, requires Urban Authorities to take measures for the conservation of natural resources.³⁹⁹ Mandates to assume measures for conservation of natural resources signifies Urban Authorities' obligation to protect forest resources against illegal logging among other threats to forests' sustainability.

The Environmental Management Act⁴⁰⁰ designates in each City, Municipal, District and Town Council an Environmental Management Officer, who exercises general and specific environmental and natural resources management roles.⁴⁰¹ The Environmental Management Officer is statutorily required to possess both general education qualification and specific competence in environmental management.⁴⁰² Among other responsibilities, the Environmental Management Officer is duty bound to promote

³⁹⁵ See for instance the TaFF 2023 Call for Proposals to Request Grants. Retrieved March 10, 2023 from the World Wide Web:

https://www.mfukowamisitu.go.tz/uploads/TANZANIA_FOREST_FUND_CALL_OF_PROJECT_PROPOSALS_2023.pdf.

³⁹⁶ [Cap. 287 R.E. 2002].

³⁹⁷ *ibid*, section 122(1)(g).

³⁹⁸ [Cap. 288 R.E. 2002].

³⁹⁹ *ibid*, section 62(1)(b).

⁴⁰⁰ No.20 of 2004.

⁴⁰¹ *ibid*, section 36(1).

⁴⁰² *ibid*, section 36(2).

awareness on the protection and conservation of natural resources.⁴⁰³ Again, he is required to gather and manage information on utilization of natural resources within the area of his jurisdiction.⁴⁰⁴

Deliberate forest conservational measures including engagement of the local community through promotion of awareness are seemingly the centre of LGAs role in forest protection. This is important since LGA units are primary protectors of forest resources. To ensure that LGAs are actively engaged in forest protection, the Forest Act⁴⁰⁵ requires the Director of Forest to use his best endeavours to ensure that all LGAs and associations of local authorities are consulted and kept posted about legal requirements for management of forests.⁴⁰⁶

3.3.2.6 The Community Forest Management Group

The Community Forest Management Group presupposes civilian forest management initiatives. These are groups formed by persons who are members of a village or who are living in or near to a forest or who are desirous of managing a forest reserve or part thereof.⁴⁰⁷ These groups are usually formed on forest land owned either by central or local government.⁴⁰⁸ Formation and operation of these groups is governed by myriad cardinal principles. Essentially, potentiality of membership, operational procedures and arrangement for management are statutorily regulated.⁴⁰⁹ Functions exercisable by these groups include establishment and management of forests reserves, reviewing the existing customs, practices and rights of the members with respect to use of forests;

⁴⁰³ The Environmental Management Act, No.20 of 2004, section 36(3)(c).

⁴⁰⁴ *ibid*, section 36(3)(d).

⁴⁰⁵ [Cap. 323 R.E. 2002].

⁴⁰⁶ *ibid*, section 8(1).

⁴⁰⁷ *ibid*, section 42(1).

⁴⁰⁸ Bromley, T. and Iddi, S. (2009). Participatory Forest Management in Tanzania (1993-2009): Lessons Learned and Experience to Date. United Republic of Tanzania-Ministry of Natural Resources and Tourism (Forest and Beekeeping Division). Retrieved March 18, 2023 from the World Wide Web: <https://www.un-redd.org/sites/default/files/2021-10/PFM%20IMPACT%202009.pdf>.

⁴⁰⁹ The Forest Act, [Cap.323 R.E. 2002], section 42(2) (a-d).

and, abolish those customs, practices and rights if in the opinion of the group they would like to impede the management of the community forests reserves.⁴¹⁰

Similarly, the Community Forest Management Group may make rules to facilitate management of community forest reserves.⁴¹¹ In respect of forest reserves under their management, they are mandated to collect revenues from fees, royalties and charges.⁴¹² Further, they assist in facilitating the implementation of any forests management plan, to comply with and assist in the enforcement of any rules.⁴¹³ The essence of Community Forest Management Group is to let the communities own, manage and co-manage forests under a wide range of conditions and management arrangements. The Forest Act is notable in embracing the principle of subsidiarity. Through its objective setting, it aims to delegate responsibility for management of forest resources to the lowest possible level of local management.⁴¹⁴

3.4 Conclusion

This chapter has presented the legal and institutional framework of forest protection globally and in Tanzania. It has been noted that the global legal framework on forest protection remains fragmented. To date, there is no a single comprehensive global instrument on forests protection. Nonetheless, the analysis of existing separate international instruments concerning specific aspects of ecological governance has shown a relatively comprehensive global forest protection legal framework. Binding and non-binding bilateral and multilateral agreements prohibits threats to forest sustainability including illegal logging. Analysis of global institutional framework on forests protection has depicted that there are institutions within and outside the auspice of the United Nations responsible for protecting forests. However, a big number of actively working global institutions on forest protection is under the auspice of the United Nations.

⁴¹⁰ The Forest Act, [Cap.323 R.E. 2002], section 46(1) (b).

⁴¹¹ *ibid*, section 46(1) (c).

⁴¹² *ibid*, section 46(1) (f).

⁴¹³ *ibid*, section 47 (c) (d).

⁴¹⁴ *ibid*, section 3(c).

A specific attention on the domestic legal framework has depicted that the forest legal regime is seemingly comprehensive of protective provisions. It has been noted that the laws in place strictly prohibits illegal logging of forests by express deterrence of illegal entry, harvesting without licence, illegal exportation and transportation of forest produces, unlawful possession and trade in forest produces. It has also been noted that the law criminalizes certain specific acts with penal sanctions to include fine, confiscation and imprisonment. Analysis of the legal framework has demonstrated a top-down forests protection structure. It has been noted that forest protection in Tanzania is regulated from ministerial level to community level. This is because the forest legal set-up is subsumed to, *inter alia*, an object to delegate responsibility for management of forest resources to the lowest possible level of local management. The next chapter is on research findings.

CHAPTER FOUR

DISCUSSION OF FINDINGS

4.1 Introduction

This chapter discusses the findings of the study in respect of the research guiding objectives and questions. The research questions guiding this study were three: Firstly, what does the existing legal framework relating to forests protection provide in relation to curbing illegal logging? Secondly, what are the legal and practical challenges in protecting forests against illegal logging in Tanzania? Thirdly, what measures should be put in place to strengthen the protection of forests from illegal logging? Section 4.2 responds to the first research question; where sections 4.3 and 4.4 address the second research question. The third research question is addressed in chapter five of this study.

4.2 Legal Mechanisms for Curbing Illegal Logging of Forests

Overcoming the perils of illegal logging requires the establishment of strong legal measures. In chapter three of this study, a description of the laws deployed to curb illegal logging of forests is provided.⁴¹⁵ This section emanates from that discussion to draw key findings on the contribution of the established legal framework in curbing illegal logging of forests.

4.2.1 Prohibition of Illegal Harvesting of Forests Produce

Illegal harvesting of forests is the starting point of the chain of illegal logging.⁴¹⁶ Thus, the law prohibits entry into forest reserves and harvest forests produce without permits or licences.⁴¹⁷ This prohibition operates as deterrence to illegal harvest of forests produce. The law prohibits the transferability and/or negotiability of licences or permits.⁴¹⁸ Thus, only permit or licence holders are authorised to harvest forests. This requirement limits the influx of forest loggers over a single permit. The law restricts the

⁴¹⁵ See a discussion on the 'legal and institution framework on forests protection against illegal logging in Tanzania' addressed under Chapter Three of this work. The specific discussion is addressed under item 3.2 of this dissertation.

⁴¹⁶ Guentin, C. E. (2003). *Loc. cit.*

⁴¹⁷ The Forest Regulations, Government Notice No. 153 of 2004, regulation 20(1).

⁴¹⁸ *ibid*, 23(2).

harvesting to the terms and conditions of the permit or licence,⁴¹⁹ thereby controlling overharvesting. Execution of a permit or licence to harvest forests produce is restricted in terms of the quantity of produce, species to be harvested and the duration of harvesting. It is submitted in this study that legislative restriction of harvesting to the conditions of the permit or licence is crucial for curbing illegal logging. This is because although the major test for unlawfulness of harvesting forests produce is seemingly lacking licence, permit or other lawful authority, one may commit illegal logging practices by harvesting in contravention of the licence or permit descriptions. Likewise, possessing a valid permit may not be sufficient to deter illegal logging unless the law sets mechanisms for compliance with conditions for grant of such permits. To that end, a licence or permit may be revoked where the holder breaches the prescribed conditions.⁴²⁰

4.2.2 Prohibition of Unlawful Exporting of Forests Produce

The law prohibits the exportation of forests produce without a valid export certificate. The law requires exported forests produce, especially timber, to be accompanied by export certificate which is issued in respect of graded timber.⁴²¹ The law restricts issuance of export certificate to a satisfaction of grading and that grading of each piece of timber should accord with the marks thereon.⁴²² This requirement is important since grading is only in respect of lawfully harvested forests produce. Hence, the issuance of an export certificate serves as clearance of the lawfulness of exported forests produce.

Restricting exportation of timber to holders of valid export certificates is vital since harvesters may not necessarily be exporters. Therefore, to ensure that exported forests produce was also legally harvested, there should be proof of authority. In such a way,

⁴¹⁹ The Forest Act, [Cap. 323 R.E. 2002], sections 52(1) and 56(6). See the Forest Regulations, Government Notice No. 153 of 2004, regulation 22(1). See also the Forest (Sustainable Utilization of Logs, Timber, Withies, Poles or Charcoal) Regulations, Government Notice No. 417 of 2019, regulation 9.

⁴²⁰ The Forest Act, [Cap. 323 R.E. 2002], section 56(6). See also the Forest Regulations, Government Notice No. 153 of 2004, regulation 22(1).

⁴²¹ The Forest Act, [Cap. 323 R.E. 2002], sections 58(2).

⁴²² *ibid.*

whoever exports forest produce is under duty to prove legality through showing a valid export certificate. In absence of a valid export certificate, officials in checkpoints may easily notice illegality in harvesting the exported forests produce.

4.2.3 Prohibition of Unlawful Transportation of Forests Produce

The existing forest legal regime prohibits unlawful transportation of forests produce. In the first place, the law prohibits transporting forests produce harvested in contravention of the law.⁴²³ This implies that legality of transportation of forests produce depends on the legality of harvesting. This requirement is significant in curbing illegal logging of forest because transportation of forests produce requires proof of authority to harvest. To ensure that transportation of forests produce is not employed to effect illegal logging, the law requires transporters to obtain a transit pass.⁴²⁴ A transit pass specifies the type of forests produce transported, carrying on track and specific routes. To start with specification of type of forest produce, this study found that this requirement is important in deterring illegal forest dealings since it deters transportation of forests produce than those specified in the transit pass. To ensure that this requirement is abided with, the law obliges the owner of any means of transport not to accept any forests produce for transportation unless the forests produce concerned is covered under a valid transit pass.⁴²⁵ This requirement ensures that the means of transport are not deployed to transport illegal forests produces.

Another aspect is the requirement of the law that forests produce should be transported on a track and through the routes prescribed in the licence or transit pass as the case may be.⁴²⁶ This study found that this requirement serves as a way to deter transportation of otherwise illegally harvested forests produce. This is because it

⁴²³ The Forest Regulations, Government Notice No. 153 of 2004, regulation 3(1). See also the Forest (Sustainable Utilization of Logs, Timber, Withies, Poles or Charcoal) Regulations, Government Notice No. 417 of 2019, regulation 16(1).

⁴²⁴ The Forest Regulations, Government Notice No. 153 of 2004, regulation 13 (1).

⁴²⁵ *ibid*, regulation 13 (4).

⁴²⁶ *ibid*, regulation 8 (3).

restricts deviation of specified routes.⁴²⁷ Compelling transportation through the defined routes simplifies inspection of transported forests produce in checkpoints where transported forests produce than those specified may easily be noticed. Achieving a well-regulated transportation of forests produce requires instant inspections. This study found that regulating transportation routes enhance attained such objective. It is made possible because this requirement avoids deviation of routes for the sake of transporting forests produce which may have otherwise been illegally obtained.

Analysis of the legal regime has depicted that another significant requirement in transportation of forests produce is time. The law prohibits, on the one hand, delaying transportation or removal of forests produce within prescribed time⁴²⁸ and, on the other hand, transporting forests produce at any time before 06:00am or after 06:00pm.⁴²⁹ This study found that the first prohibition is meant to cure unnecessary delay of forests produce removal. Thus, it ensures that licenced harvest is fully executed within the permitted time. This requirement avoids forest dealings after the expiration of licence even though the forests produce were harvested legally at the time the licence was still operational. Consequently, forests produce which remains unremoved from the forest reserve after expiration of the licenced period or the extended period are forfeited.⁴³⁰ The second prohibition intends to control transportation of illegal forests produce during night hours. This study found that this prohibition, unquestionably, seeks to control transportation of illegally obtained forests produce. This is because, on the one hand it demands transportation of forests to be carried out during day hours to easing inspection in checkpoints, while on the other hand it prohibits night hours transportation as it is difficult or occasionally impossible to conduct thorough inspection.

⁴²⁷ The Forest (Sustainable Utilization of Logs, Timber, Withies, Poles or Charcoal) Regulations, Government Notice No. 417 of 2019, regulation 16(2).

⁴²⁸ The Forest Regulations, Government Notice No. 153 of 2004, regulation (8)1.

⁴²⁹ The Forest (Sustainable Utilization of Logs, Timber, Withies, Poles or Charcoal) Regulations, Government Notice No. 417 of 2019, regulation 17(1).

⁴³⁰ The Forest Regulations, Government Notice No. 153 of 2004, regulation 8(2).

Again, this study found that the existing legal regime is designed in a way to ensure that acts of unlawful transportation of forests produce are backed up with sanctions. The law makes it an offence to operate or cause to operate vehicles to transport forests produce unlawfully harvested.⁴³¹ This aspect of criminalization burdens transporters and track owners, who in most cases are not forest dealers, to ensure that they satisfy themselves on the legality of such produce. During transportation, it is an offence to deviate the roads or routes specified in the transit pass.⁴³² As stated herein above, this ensures effective inspections. Similarly, it is an offence to transport or move forests produce without forest produce allocation certificate, transit pass, licence to fell and collect forest produces, certificate for registration as a forest produce dealer and a government receipt.⁴³³ The law requires that he who transports forests produce should have documents which shows registration and authorization to deal with forests produce including proof of payment of government fees. In absence of the prescribed documents on transit, the transporter commits an offence and the law sets corresponding sanctions.⁴³⁴

4.2.4 Prohibition of Unlawful Possession of Forests Produce

The existing forest legal framework prohibits persons without authority to take, receive or possess forests produce.⁴³⁵ The lawful authority of such possession depends on possession of valid licences, permits and certificates as the case may be. The essence here is that they must be harvested legally so that they can be possessed lawfully. This study found this prohibition significant in protecting forests against illegal logging. One of the significant pillars of illegal logging is entering possession of forests produce unlawfully. Thus, prohibiting and sanctioning such unauthorized possession is with the effect to deter illegal logging of forests. The law makes it an offence to whoever

⁴³¹ The Forest Act, [Cap. 323 R.E. 2002], section 89(b).

⁴³² The Forest (Sustainable Utilization of Logs, Timber, Withies, Poles or Charcoal) Regulations, Government Notice No. 417 of 2019, regulation 16(3).

⁴³³ *ibid*, regulation 20(3). See also the Forest Act, [Cap. 323. R.E. 2002], section 89(h).

⁴³⁴ *ibid*, regulations 16(3) (a) (b) and (c) and 20(3).

⁴³⁵ The Forest Act, [Cap. 323. R.E. 2002], section 88.

unlawfully possesses forests produce and on conviction that person is liable to a fine⁴³⁶ or imprisonment term in default to pay the fine⁴³⁷ and, confiscation of forests produce unlawfully possessed.⁴³⁸ This study found the prohibition, penal criminalization and sanction of unlawful possession of forests produce important in curbing illegal logging. This is especially significant since illegal loggers may successfully harvest and transport forests produce illegally. Thus, prohibiting and sanctioning unlawful possession of forests produce save as a cure in the event harvesting and transporting legal restrictions were avoided.

4.2.5 Prohibition of Unauthorized Trade in Forests Produce

Analysis of the existing forest legal regime has depicted that the law prohibits certain acts of trade in forests produce. In the first place, the law prohibits any person without lawful authority to offer for sale or buy forests produce harvested in contravention of the law.⁴³⁹ This study found this prohibition significant in curbing illegal logging since its chain characterizes trade. It is the finding of this study that this prohibition is meant to ensure that the chain of forests produce dealings is mannered by authorized dealers even during the process of sale and purchase.

For the purpose of sale in forests produce, a person is an authorized seller only if he or she is registered as a forest produce dealer. It is the requirement of the law that no person shall deal with or trade in forest produces without applying for and obtain a certificate of registration as a forest produce dealer or trader.⁴⁴⁰ Therefore, this certificate authorizes a person to engage in forests produce trade, in absence of which the trader becomes illegal forest dealer. For the buyer to assume lawful possession upon purchase of forests produce, he or she is obliged to obtain copies of the seller's

⁴³⁶ The Forest Act, [Cap. 323. R.E. 2002], section 88.

⁴³⁷ The Forest (Sustainable Utilization of Logs, Timber, Withies, Poles or Charcoal) Regulations, Government Notice No. 417 of 2019, regulation 16(3)(b).

⁴³⁸ *ibid.*

⁴³⁹ The Forest Act, [Cap. 323 R.E. 2002], section 89(d).

⁴⁴⁰ The Forest Regulations, Government Notice No. 153 of 2004, regulation 54(1).

authoritative documents.⁴⁴¹ Consequently, this requirement deters illegal forest dealings during the process of sale and purchase. The seller must have documents authorizing dealings, the buyer must obtain copies of such documents in absence of which one is condemned illegal logger. To ensure that such prohibitions are given effect, the existing legal regime criminalizes and sanctions acts of unlawful trade in forests produce.⁴⁴²

4.3 Legal Challenges Undermining the Protection of Forests against Illegal Logging

The discussion addressing the Tanzania's legal framework on forests protection in the previous chapter has depicted that there are statutory laws ranging from principal to subsidiary legislation on the matter. The above discussion has revealed that such legal regime prohibits, criminalizes and punishes illegal logging practices. However, such legal regime is questionable of its sufficient and lenient sanctions and unclear construction of some offences. This section discusses these legal challenges which undermine protection of forests against illegal logging.

4.3.1 Insufficient and Lenient Sanctions

Forest-related offences attract, in most cases, fines and imprisonment terms under the Forest Act.⁴⁴³ Outside this Act, the existing legal regime depicts that two forest offences relating to listed wild plants and trade in forests produce falls and are sanctioned under the Economic and Organized Crime Control Act (EOCCA).⁴⁴⁴ These offences are established under sections 86 and 89 of the Forest Act⁴⁴⁵ respectively. The offence of trade in forests produce falls under the scope of this study. Notwithstanding the punishment provided under the Forest Act,⁴⁴⁶ this offence attracts imprisonment of

⁴⁴¹ The Forest (Sustainable Utilization of Logs, Timber, Withies, Poles or Charcoal) Regulations, Government Notice No. 417 of 2019, regulation 20(3).

⁴⁴² The Forest Act, [Cap. 323 R.E. 2002] section 89 as amended by section 28 of Written Laws (Miscellaneous Amendment) (No.2) Act, No.4 of 2016. This section reads together with Paragraph 33 of the First Schedule to, and sections 57(1) and 60(2) of the Economic and Organized Crimes Control Act [Cap. 200 R.E. 2022].

⁴⁴³ [CAP 323 R.E. 2002], Part XI.

⁴⁴⁴ [CAP 200 R.E. 2022], paragraph 33 of the First Schedule to the Act.

⁴⁴⁵ [CAP 323 R.E. 2002].

⁴⁴⁶ *ibid.*

a term not less than twenty years but not exceeding thirty years under EOCCA.⁴⁴⁷ In addition, the law provides for confiscation to the government of any instrumentalities or proceeds derived from the offence committed.⁴⁴⁸ Nonetheless, since section 89 of the Forest Act⁴⁴⁹ only covers trade in forests produce, illegal forest acts constituting such offence are only those with aspects of trade. Therefore, save such acts triable and sanctioned under EOCCA, other forest-related offences are punished under the Forest Act and its Regulations, which this study finds to have relatively lenient sanctions as discussed herein bellow.

The Forest Act⁴⁵⁰ and its Regulations punish offenders to fines ranging between thirty thousand to ten million shilling.⁴⁵¹ The law makes it an offence to transport or move forests produce without forest produce allocation certificate, transit pass, licence to fell and collect forest produce, certificate for registration as a forest produce dealer and a government receipt.⁴⁵² This is undoubtedly the centre of forest dealing criminalization since it touches authorization to deal with forests produce. Nonetheless, this offence attracts a punishment of fine not less than five million shillings but not exceeding ten million shillings or imprisonment of a term not less than three years but not exceeding five years.⁴⁵³ The law sets ten million as the maximum fine. This amount of maximum fine may be occasionally unrealistic and lenient. In the event the forest dealer transport forests produce worth millions or billions of shillings, imposition of a fine of five to ten million is without deterrence effect.

An offence of unlawful possession established under section 88 of the Forest Act⁴⁵⁴ attracts a fine of not less than one hundred thousand shillings but not exceeding five

⁴⁴⁷ [CAP 200 R.E. 2022], section 60(1).

⁴⁴⁸ *ibid*, section 60(3).

⁴⁴⁹ [CAP 323 R.E. 2002].

⁴⁵⁰ *ibid*.

⁴⁵¹ *ibid*, section 84(5). See also the Forest (Sustainable Utilization of Logs, Timber, Withies, Poles or Charcoal) Regulations, Government Notice No. 417 of 2019, regulation 20(3).

⁴⁵² *ibid*.

⁴⁵³ *ibid*.

⁴⁵⁴ [CAP 323 R.E. 2002].

million.⁴⁵⁵ This is similarly lenient. In the event unlawful possessor is in possession of forests produce worth millions or billions of shillings, imposing a fine of one hundred thousand to five million is without deterrence effect. Thus, this study found that in some of forest-related offences, the existing legal regime imposes relatively lenient sanctions. Such lenient sanctions, neither threats nor discourage illegal logging. Therefore, lenient sanctions which lacks deterrence effect undermines protection of forests against illegal logging, since illegal loggers may be able to pay such fines easily given the profit they obtain. Consequently, illegal logging practices escalate since fines imposed are relatively lenient compared to the benefit gained in such dealings. Unlike conventional crimes, forest-related crimes largely affect individuals, economy and nature. Therefore, to curb illegal logging practices is inevitable while severe and deterring punishments are required.

Analysis of the existing legal regime depicts that most of forest-related offences are punished by fines or imprisonment. The language often employed is, the offender shall be liable to a fine or imprisonment term. The principle is that in the event an offence is punishable to a fine or a term of imprisonment, the imposition of fine or imprisonment is the matter of courts' discretion.⁴⁵⁶ The interviewed Magistrate informed this study that the exercise of such discretion has often been in favour of imposition of fines over imprisonment.⁴⁵⁷ This was similarly supported by the interviewed State Attorney.⁴⁵⁸ Therefore, this study found that, in most cases, offences relating to forests are punished by imposition of fines. In absence of severe fines with deterrence effect, efforts to curbing illegal logging are undermined, since existing fines are easily payable. Makoye

⁴⁵⁵ The Forest Act, [Cap. 323. R.E. 2002], section 88 as amended by section 28 of Written Laws (Miscellaneous Amendment) (No.2) Act, No.4 of 2016.

⁴⁵⁶ The Penal Code, [Cap. 16 R.E. 2019], section 29(a).

⁴⁵⁷ Information obtained through interview conducted with a Resident Magistrate-Kilosa District Court (Morogoro) in March 2023.

⁴⁵⁸ Information obtained through interview conducted with a State Attorney-serving in Kilosa District and a Senior State Attorney-serving in Morogoro Municipal Council (Morogoro) in March 2023.

rightly noted that fines and penalties imposed to illegal loggers are relatively low.⁴⁵⁹ In his views, these low fines do not deter illegal logging since offenders can easily pay.⁴⁶⁰ This study submits in the same order. It finds that low fines never deter illegal loggers, consequently, they undermine the efforts to curbing illegal logging in the country.⁴⁶¹

4.3.2 Unclear Construction of Some Offences and Sentences

Analysis of the existing forests protection legal framework depicts unclear construction of some offences and sentences. Consequently, such construction undermines prosecution of such offences or awarding such sentences. For instance, the Forest Act⁴⁶² establishes an offence of unlawful possession of forests produce. It requires that to prove such offence ‘one should be found in possession of forests produce with respect to which an offence against the Forest Act has been committed.’⁴⁶³ This implies that there should be an independent offence under the Forest Act in relation to the forests produce in possession. For instance, the forests produce in question should have been harvested illegally or transported through illegal. This study found that this construction restricts prosecution of certain acts of possession of forests produce which may otherwise be threatful. This is mainly because in forest dealings, one may enter possession of forests produce in circumstances which are logically threatful, without committing a separate offence under the Forest Act, as it is required to establish an offence of unlawful possession.

Notably, the existing forest protection legal regime does not criminalize acts such as possession of forest produce after expiration of licence. Nonetheless, extended possession is logically unlawful especially when it is maintained negligently or with a dishonest motive. Consequently, although extended possession after expiration of

⁴⁵⁹ Makoye, K. (2015). How to Stop Illegal Logging in Tanzania, (World Economic Forum 2015). Retrieved April 4, 2023 from the World Wide Web: <https://www.weforum.org/agenda/2015/01/how-to-stop-illegal-logging-in-tanzania/>.

⁴⁶⁰ *ibid.*

⁴⁶¹ For instance, in the would-be grave forest deterioration due to illegal logging, the offender is fined to the tune of one hundred thousand. See for instance *Robert Yohana vs Republic* (Criminal Appeal No. 20 of 2021) [2021] TZHC 4284 (26 July 2021).

⁴⁶² [Cap. 323 R.E. 2002].

⁴⁶³ The Forest Act, [Cap. 323 R.E. 2002], section 88.

licence may be logically unlawful, it cannot be punished since such act cannot meet the construction of unlawful possession. Therefore, this study found that the existing construction of an offence of unlawful possession of forest produce undermines the effort to fighting illegal logging practices through their effective prosecution, since it creates a loophole through which logically unlawful possession acts may not be prosecuted successfully. In *Director of Public Prosecutions vs Danford Roman @ Kanani*⁴⁶⁴ the accused person was alleged to have interred unlawful possession of 5,200 pieces of timber. The charge against him was merely unlawful possession of the said timber. The court found in the accused's favour on the ground that the charges were merely of unlawful possession of the said pieces of timber in absence of a separate offence against the Forest Act in respect of such possession to qualify an offence of unlawful possession of forests produce. Therefore, this study found that this construction restricts punishing logically unlawful lone standing acts of possession of forest produce which are likely to be committed and they are very often in forest dealings.

With regard to unclear sentences, the Forest Act⁴⁶⁵ imposes the punishment of forfeiture. The language used is confiscation of 'anything' used in the commission of the offence.⁴⁶⁶ The term 'anything' can simply be translated to include harvesting, transporting or processing implements in relation to illegal forests produce. Nonetheless, the law does not specify whether confiscation covers only properties owned by the convict or even properties not owned by the convict but used in commission of a forest crime. Consequently, it has brought different interpretations by courts in circumstances where some confiscated implements were ordered by higher courts to be returned. Although a plain interpretation would seem to make a question "who owns" irrelevant, that has not been the approach by courts. In *Juliana Seki Mwakatagwe vs The Republic & Two Others*,⁴⁶⁷ the applicant filed a revision before the

⁴⁶⁴ (Criminal Appeal No. 236 of 2018) [2019] TZCA 295 (9 September 2019).

⁴⁶⁵ [Cap. 323 R.E 2002].

⁴⁶⁶ *ibid*, section 97(1) (b).

⁴⁶⁷ (Criminal Application No. 59 of 2022) [2022] TZHC 15241 (8 December 2022).

High Court to challenge motorcycle confiscation order made by the District Court. Before the District Court, two accused persons who were using the applicant's motorcycle to transport forests produce illegally, were found guilty and convicted. Following that conviction, the District Court ordered forfeiture of the motorcycle used in the commission of the said offence. The appellant successfully challenged the forfeiture and the High Court ordered return of the said motorcycle to applicant. It was the reasoning of the court that the applicant was neither among the accused persons nor was she called to show causes why her property should not be forfeited.

Analysis of this case depicts two major observations. On the one hand, while the District Court interpreted that 'who owns' the motorcycle is irrelevant, the High Court, on the other hand, found that the question is relevant.⁴⁶⁸ While one would think forfeiture sentence is construed irrespective of whether the convict is the owner or not, the courts of record construe the sentence otherwise. This study found that different interpretation is a result of such construction. This is likely to affect the relevance of confiscation punishment which is ostensibly of relatively sufficient deterrence effect. In offences relating to illegal transportation of forests produce drivers may not necessarily be owner of trucks. In most cases those who are caught on routes are mere drivers. Consequently, in many cases non-ownership may be an excuse. Supposedly, even if illegal business is of the owner, the caught may easily collude with the owner to deviate the truth so that trucks are not confiscated for disposal. As a result, this undermines efforts to fight illegal logging of forests.

⁴⁶⁸ *Novatus Anselimi Moshy vs The Republic* (Criminal Appeal No. 31 of 2021) [2022] TZHC 9535 (13 May 2022) depicts the similar incident. Following conviction on unlawful possession of forest produce, the district court ordered forfeiture of a Lorry Fuso RN.731 CVA used to carry the produce. The appellant challenged the forfeiture order successful on the ground that the truck did not belong to the convict.

4.4 Practical Challenges Undermining the Protection of Forests against Illegal Logging

Through in-depth interviews with field respondents and documentary review, this study sought to explore practical challenges in curbing illegal logging of forests. Those challenges are discussed below:

4.4.1 Absence of Qualified Staff and Limited Material Resources for Forest Patrols at the TFS

Lack of staff with qualifications to undertake forest patrols at the TFS was found to be one of the challenges undermining efficiency in protection of forests against illegal logging. It was revealed that, although the TFS mandates require field operations, the agency is lacking qualified military personnel for such operations.⁴⁶⁹ It was further revealed that this is mainly because the TFS is still a civil-agency under transformation into military-agency.⁴⁷⁰ Being a civil-agency, the TFS is manned with officials who are not qualified to undertake field patrols.⁴⁷¹ It was revealed that the TFS is working with semi-trained forest guard officers, simply went through a short-time programme meant to equip them with elementaries in forest patrols.⁴⁷² It was further revealed that such programme does not acquaint them with sufficient qualifications for forest field missions, drawing from the qualifications required under its resembling agency, the Tanzania National Parks.⁴⁷³ Drawing an impression from the Tanzania National Parks, it was revealed that the TFS is expected to transform to a military agency, to have a full-military programme for its patrol officials.⁴⁷⁴ As such, having qualified military personnel was alleged difficult since the TFS is still a civil-agency.⁴⁷⁵ Being the information from TFS officials, this study accedes to, in absence of similar views from

⁴⁶⁹ Information obtained through interview conducted with a TFS-Forest Protection Officer (Morogoro) in February 2023.

⁴⁷⁰ *ibid.*

⁴⁷¹ *ibid.*

⁴⁷² Information obtained through interviews conducted with a TFS-Forest Protection Officer & a TFS-Head of Forest Patrol (Morogoro) in February 2023.

⁴⁷³ *ibid.*

⁴⁷⁴ *ibid.*

⁴⁷⁵ *ibid.*

other respondents. The effect of the current state of the TFS set-up is that it cannot conduct effective forest patrols with a view to detecting illegal loggers. It should be noted that, allegedly, most of illegal loggers are found well-armed and ready to battle patrol officials.⁴⁷⁶ This implies that in absence of well-trained forest patrol officials, efforts to protect efforts are undermined. This is mainly because illegal loggers may not always be detected and fought against, especially during harvesting of forests produce.

It was also found that insufficient material resources for forest patrols at the TFS is one of the challenges undermining efficiency in protection of forests against illegal logging. It was revealed that the TFS is lacking enough cars for instant forests inspection and visitation.⁴⁷⁷ The TFS officers claim that they don't have enough special cars for routine forest patrols. Forest patrol officers revealed that sometimes they lack motorcycles to reach mountainous forests.⁴⁷⁸ This view was supported by community members living adjacent forest reserves who maintained that there are no regular patrols.⁴⁷⁹ Local leaders were of the same view that forest patrols are rarely conducted in their surrounding forests.⁴⁸⁰ It seems therefore that there is no routine, sudden and periodic forest patrol. The impact of insufficient forest patrols is that it creates a more relaxed atmosphere for illegal forest dealings. This is mainly because instant forest patrol plays a vital in detecting and arresting illegal loggers, especially those who practices illegal forest activities within vicinity of forests. Similarly, instant forest patrol threatens illegal loggers and discourages unauthorized entries. Therefore, in absence of routine and sudden forest patrols, illegal logging escalates.

⁴⁷⁶ Information obtained through interview conducted with TFS-Forest Patrol Officers (semi-trained forest guard officers) (Morogoro) in February 2023.

⁴⁷⁷ Information obtained through interviews conducted with a TFS-Forest Protection Officer & a TFS-Head of Forest Patrol (Morogoro) in February 2023.

⁴⁷⁸ Information obtained through interview conducted with TFS-Forest Patrol Officers (semi-trained forest guard officers) (Morogoro) in February 2023.

⁴⁷⁹ Information obtained through interview conducted with Community Members in Ruaha and Ihombwe Villages, in March 2023.

⁴⁸⁰ Information obtained through interview conducted with Village Chair persons and VEOs in Ruaha and Mkangawalo Villages, in March 2023.

Further, it was found that when the TFS manages to conduct forest patrols using its semi-trained forest guards, they similarly lack weapons.⁴⁸¹ Forest patrol officers reported that they are not mannered with weapons, and usually resorts to using local weapons.⁴⁸² This was confirmed by TFS officials who still based the argument on the ground that the TFS is a civil-agency, thus, it has no enough infrastructures for undertaking activities which requires a fully military-based agency.⁴⁸³ This affects efficiency in such patrols. This is mainly because sometimes illegal loggers are mostly found deep in forests, well-armed and occasionally ready to battle patrol officers. This is possible, for instance, when an illegal logger is found having harvested so many pieces of timer or charcoal, and s/he is not ready to easily surrender and face arrest for further legal processes. As a result, such patrols become of no significance in protecting forests. This is mainly because curbing illegal logging starts with detecting its chain. Often, the chain of illegal logging commences with illegal entries and harvesting forests produce. Thus, its detection is effective only if instant, continuous and effective forest patrols are conducted. Therefore, in absence of promising resources to protect forests, illegal logging of forests escalates while efforts to fight it are undermined.

4.4.2 Corruption among Responsible Forest Protection Officials

Corruption among responsible officials was found to be one of the reasons that hinder efficiency in prosecution of illegal logging cases. Some forest officials pointed out that some local leaders are occasionally corrupted by illegal loggers to hide their identities during investigation.⁴⁸⁴ In addition, corrupt practices among local leaders turn them unready to disclose information that implicates the suspects during prosecution of

⁴⁸¹ Information obtained through interview conducted with TFS-Forest Patrol Officers (semi-trained forest guard officers) (Morogoro) in February 2023.

⁴⁸² *ibid.*

⁴⁸³ Information obtained through interviews conducted with a TFS-Forest Protection Officer & a TFS-Head of Forest Patrol (Morogoro) in February 2023.

⁴⁸⁴ Information obtained through interview conducted with TFS-Forest Patrol Officers (semi-trained forest guard officers) (Morogoro) in February 2023.

illegal logging cases.⁴⁸⁵ It has to be noted that, local leaders are the key stakeholders in forests protection against illegal logging. Thus, in the event their role is compromised, efforts to fight illegal logging are undermined. This is mainly because, local leaders are the first authority who encounter with suspects, and therefore they have a key role to play in the prosecution process. Hence, in absence of active roles of local leaders as a result of corruption, protection of forests against illegal logging is undermined. This is because corruption may affect exercising their roles as local forest protectors and local supporters of investigation and prosecution of illegal logging acts. Instead of disclosing illegal loggers, they may turn a blind eye to them, in turn of bribes. As a result, illegal loggers go unpunished.

This study also found that, forest officials are reportedly alleged to receive bribes during the process of permits grant and clearances.⁴⁸⁶ In the first place, licenced forest dealers revealed that those who illegally operate forest business especially due to expiration of licences, they bribe forest officials who turns a blind eye to them as if they still have active licences.⁴⁸⁷ It was also revealed that forest officials demand bribes during fresh grant and renewal of permits even when a person qualifies.⁴⁸⁸ In response to this, forest officials were of the view that forest dealers always try to avoid paying government taxes and they normally try to bribe forest officials.⁴⁸⁹ However, VEOs and WEOs⁴⁹⁰ were concerned about corruption on the part of forest officials on account that they receive such complaints on a regular basis. It seems therefore that corruption on the part of forest officials exists. The effect of corruption in this process is that, when qualified forest dealers are denied permits for failure to pay demanded bribes, they may

⁴⁸⁵ Information obtained through interview conducted with a State Attorney-serving in Kilosa District (Morogoro) in March 2023.

⁴⁸⁶ Information obtained through interview conducted with a Forest Dealer in Morogoro Municipal Council in March 2023.

⁴⁸⁷ *ibid.*

⁴⁸⁸ Information obtained through interview conducted with Forest Dealers in Morogoro Municipal Council and Kilosa in March 2023.

⁴⁸⁹ Information obtained through interview conducted with a TFS-Forest Protection Officer & a TFS-Head of Forest Patrol (Morogoro) in February 2023.

⁴⁹⁰ Information obtained through interview conducted with VEO and WEO in Kilombero District and in Morogoro Municipal Council in March 2023.

turn into illegal loggers. Similarly, the unqualified applicants may be granted with permits when they do not deserve. Hence, when the process of granting permits and renewal is unfair as a result of corruption, number of illegal loggers may increase and therefore, undermine forest protection efforts.

Further, law enforcement machineries are similarly reportedly alleged of corruption.⁴⁹¹ Forest patrol officers are alleged to receive bribes from illegal loggers, to allow them to transport or trade in forests produce illegally.⁴⁹² In response to this, forest patrol and checkpoint officers were of the view that forest dealers often transport forests produce which may otherwise be legally harvested, but without required documentation for transportation especially transit pass and government receipts.⁴⁹³ That, when they are caught in absence of such documentation, forest dealers normally try to bribe forest officials. However, forest dealers were concerned of corruption on the part of patrol and checkpoints forest officials on the ground that they often demand bribes from them.⁴⁹⁴ Local leaders revealed that they often receive corruption complaints.⁴⁹⁵ On this basis, it seems therefore that corruption on the part of forest patrol and checkpoint officials exists. The effect of corruption among forest patrol and checkpoint officials is that it affects legal compliance with exportation, importation and transportation of forests produce. Therefore, in situations where the law requires harvested forest to be transported through prescribed routes, diversions may be used due to corruption. It has been observed for instance that to be able to pay in return of bribes, illegally harvested forest produces are transported through illegal routes with the loggers having fully assistance of such officers pretending to inspect, while in fact, they are assisting

⁴⁹¹ Information obtained through interviews conducted with a State Attorney serving in Kilosa District, Village Chairpersons, VEO and community members in Ruaha-Kilosa District in March 2023

⁴⁹² *ibid.*

⁴⁹³ Information obtained through interview conducted with TFS-Forest Patrol Officers (semi-trained forest guard officers) (Morogoro) in February 2023.

⁴⁹⁴ Information obtained through interview conducted with Forest Dealers in Morogoro Municipal Council and Kilosa in March 2023.

⁴⁹⁵ Information obtained through interview conducted with VEO and WEO in Kilombero and Districts in March 2023.

loggers.⁴⁹⁶ Therefore, while the law intends to achieve thorough inspection of forests produce in checkpoints, this intention is defeated. Consequently, efforts to curb illegal logging of forests are undermined.

Furthermore, this study found that, courts are reportedly alleged of corruption practices.⁴⁹⁷ Although this view was given by two respondents, being the view by a forest official and public prosecutor, this view was taken as a strong one. They alleged that some magistrates are bribed by rich illegal loggers or financiers of illegal logging activities, the result of which is unfounded and unjustifiable discharge of illegal loggers.⁴⁹⁸ It has to be noted that, the forest legal regime is designed in a way to criminalize and sanctions illegal logging practices. It follows therefore that effective fight against illegal logging of forest requires strong adjudicative machineries. In the absence of integrity among judicial personnels, prosecution of illegal loggers become ineffective and difficult. As a result, the spirit of the law cannot be realized. Therefore, the alleged corruption in courts is likely to undermine forest protection against illegal logging practices.

4.4.3 Administrative Intervention with Efforts to Deal with Illegal Loggers

Intervention by political leaders, especially Village Chairpersons, Ward Councillors and political party rulers was found to be one of the challenges that undermine forest protection against illegal logging. Some Village Chairpersons, Ward Councillors in support of political party rulers are reportedly alleged to intervene forest patrol officials when they arrest illegal loggers.⁴⁹⁹ Allegedly, they order release of some suspects of illegal logging activities on the ground that arresting them is troubling their voters.⁵⁰⁰ Officials at the TFS were concerned with politicians' interventions during forest

⁴⁹⁶ Makoye, K. (2015). *Loc. cit.*

⁴⁹⁷ Information obtained through interview conducted with a State Attorney serving in Kilosa District in March 2023 and interview with TFS-Patrol Officers (semi-trained forest guard officers) (Morogoro) in February 2023.

⁴⁹⁸ Information obtained through interview conducted with a State Attorney serving in Kilosa District in March 2023.

⁴⁹⁹ Information obtained through interview conducted with TFS-Forest Patrol Officers (semi-trained forest guard officers) (Morogoro) in February 2023.

⁵⁰⁰ *ibid.*

operations on account that they receive such complaints from their forest patrol officers on a regular basis.⁵⁰¹ However, in reply to this, the Village Chairpersons revealed that as leaders, in companion with Ward Councillors, they only air out their views when they feel that the citizens are bullied by forest officials.⁵⁰² Nonetheless, this implies that such interventions exist. This is mainly because, it is not their duty to determine whether arrest of citizens is bullying or not. Such determination is legally left to the courts of law. As such, it is likely that such intervention is done for their political interests. The effect of such interferences is that it may inflict state of fear on the part of forest patrol officials the effect of which is to undermine their efforts.

It has to be noted that, fighting illegal logging of forest requires having forest officials who are independent and free in the exercise of their mandates. In absence of such independence and freedom, efforts to curbing illegal logging are undermined. This study found that existence of such interferences by politicians affect performance of forest patrol officials. They opined that political influence and interference turns their work tough as they operate under state of fear.⁵⁰³ Therefore, political intervention with forest officials' activities relating to forest protection undermines effort to protect forests against illegal logging. This is mainly because such influence and intervention create tension and failure of objectivity. As a result, forest officials are likely to fail in dealing with illegal loggers who are seemingly having support of politicians.

Further, it was revealed that as a result of such intervention, accused persons of illegal logging activities are in such cases released without being tried.⁵⁰⁴ This implies that, while forest officials arrest illegal loggers, politicians influence their release for political interests. The effect of such influence and intervention is to undermine forests

⁵⁰¹ Information obtained through interview conducted with a TFS-Forest Protection Officer & a TFS-Head of Forest Patrol (Morogoro) in February 2023.

⁵⁰² Information obtained through interview conducted with Village Chairpersons-Kilosa and Kilombero Districts in March 2023.

⁵⁰³ Information obtained through interview conducted with a TFS-Forest Protection Officer & a TFS-Head of Forest Patrol (Morogoro) in February 2023.

⁵⁰⁴ *ibid* and Information obtained through interview conducted with TFS-Forest Patrol Officers (semi-trained forest guard officers) (Morogoro) in February 2023.

protection against illegal logging. This is mainly because, as a result of such influence and interventions, favoured illegal loggers may feel assured of political backup to operate confidently than they would have been, in absence of such immoral supports. As a result, illegal logging activities escalate since some illegal loggers may not be often dealt with.

4.4.4 Deficiencies in Prosecution of Illegal Logging Practices

Deficiencies in prosecution of illegal logging practices were found to be one of the challenges in protecting forests against illegal logging. One of the deficiencies found is delay in prosecution of illegal logging cases. It was allegedly reported by forest patrol officials that prosecution of some forest related cases takes too long.⁵⁰⁵ While forest officials claimed prolonged prosecution, prosecutors and magistrates confirmed such delay alleging that prolonged prosecutions of such cases results from overloads of courts and delay in investigation.⁵⁰⁶ Although the reasons for delay in prosecutions may be valid, yet the information remains intact to show that there are delays in prosecution of such cases. It has to be noted that effective prosecution of illegal loggers play a vital role in curbing illegal logging of forests.⁵⁰⁷ This is mainly because effective and timely prosecution sends a message to illegal loggers that illegal logging is not without immediate and serious consequence.⁵⁰⁸ Contrarily, if illegal loggers are not effectively dealt with, it similarly sends a message that illegal logging is without immediate and serious consequences.⁵⁰⁹ Therefore, in absence of effective and timely prosecution, efforts to curbing illegal logging of forests are likely to be undermined.

This study maintains that when the state machineries are actively dealing with illegal loggers in such a way that the caught illegal loggers are brought before the courts of

⁵⁰⁵ Information obtained through interview conducted with TFS-Forest Patrol Officers (semi-trained forest guard officers) (Morogoro) in February 2023.

⁵⁰⁶ Information obtained through interview conducted with a Resident Magistrate-Kilosa District Court, a State Attorney-serving in Kilosa District and a Senior State Attorney-serving in Morogoro Municipal Council (Morogoro) in March 2023.

⁵⁰⁷ Solodov, D. and Zebek, E. (2022). Unlawful Prosecution in the Case Regarding Destruction of a Forest Ecosystem. *RBDPP*. Vol.8(2). pp.653-677.

⁵⁰⁸ *ibid.*

⁵⁰⁹ *ibid.*

law, timely prosecuted and sentenced, illegal logging practices are likely to decrease. In absence of such effective prosecution, efforts to curbing illegal logging are defeated and illegal practices may escalate as almost legal.⁵¹⁰ This is mainly because, delay in prosecution may affect continuation of forest protection mandates since forest officials, in different occasions, may often be demanded in such cases especially during investigation and, as witnesses in courts. As a result, this may affect their concentration on illegal logging deterrence which is important in fight illegal logging. Similarly, prolonged prosecutions may occasion costs, perhaps higher than the value of illegal forests produce in question. In such a way, delay in prosecution undermines effort to curbing illegal logging since it indicates ineffective prosecution. Despite that it may end up encouraging illegal logging, such delay may subject the government into costs greater than fines imposed to the loggers at the end of the case.

Further, this study found that in most cases prosecution process is not touching all who are involved in the chain of illegal logging. It was allegedly reported that sometimes the chain of illegal logging of forest includes people who are not directly participating in perpetration of illegal logging activities.⁵¹¹ They often support illegal harvesters and, stay waiting to receive or purchase such forests produce as the case may be, when harvesting and transportation to where they are succeeds.⁵¹² Prosecutors supported this view maintaining that there are people behinds those who are obviously dealt with in courts.⁵¹³ It was further reported that that there are forest dealers who only finance and use working agents who are often arrested.⁵¹⁴ It was reported that some of these financiers are known, only that they distance themselves from active engagement such that to have strong evidence against them becomes difficulty.⁵¹⁵ Hence, looking at the

⁵¹⁰ Odhiambo, N. *Loc. cit.*

⁵¹¹ Information obtained through interview conducted with a TFS-Forest Protection Officer & a TFS-Head of Forest Patrol (Morogoro) in February 2023.

⁵¹² *ibid.*

⁵¹³ Information obtained through interview conducted with a State Attorney-serving in Kilosa District and a Senior State Attorney-serving in Morogoro Municipal Council (Morogoro) in March 2023.

⁵¹⁴ *ibid.*

⁵¹⁵ *ibid.*

situation, it seems that prosecution of forest cases is not thorough to touch the whole chain of illegal logging.

The effect of such situation is that, while some perpetrators are arrested and prosecuted, some are not. Consequently, this poses difficulties in curbing illegal logging. It seems therefore that there are no effective mechanisms to ensuring that the whole chain of illegal logging is detected and all who are involved are prosecuted. Thus, even if the working agents are arrested, prosecuted and finally sentenced, these financiers may simply arrange other working agents to keep on their illegal forest dealings. Although the reason that failure to prosecute the whole chain of illegal logging is valid, since there can be no successful criminal prosecution in absence strong evidences; preferably, finding them in possession of forest produce, this maintains that such failure results into increase in illegal logging. This is mainly because while active-role playing illegal loggers are dealt with, inactive-role playing ones are not dealt with. Therefore, this undermines forest protection against illegal logging.

4.4.5 Inadequate Night Forest Patrols to Deter Mid-Night Illegal Logging Activities

Protection of forests against illegal logging requires, among other things, detecting and arresting illegal loggers. Although detection and arrest are important, illegal loggers are reported to invade forests at night.⁵¹⁶ Forest patrol officials opined that illegal loggers enter forests in night hours to avoid detection and arrest.⁵¹⁷ This was similarly supported by local leaders who opined that illegal loggers harvest forests produce during night hours since they cannot be detected and arrested easily.⁵¹⁸ As a result, acts of illegal harvesting and transportation of products exists, while harvesters and

⁵¹⁶ Information obtained through interview conducted with a TFS-Forest Protection Officer, TFS-Head of Forest Patrol & TFS-Forest Patrol Officers (semi-trained forest guard officers) (Morogoro) in February 2023.

⁵¹⁷ Information obtained through interview with TFS-Forest Patrol Officers (semi-trained forest guard officers) (Morogoro) in February 2023.

⁵¹⁸ Information obtained through interviews conducted with Village Chairpersons, VEOs and WEOs Kilosa and Kilombero Districts in March 2023.

transporters are unnoticed.⁵¹⁹ Amidst the reported mid-night illegal logging of forest operations, it was reported that night patrols in forests are inadequate.⁵²⁰ Inadequate night forest patrols may link with the state of TFS set-up today. The TFS is still a civil-based agency under transformation to a military agency.⁵²¹ Thus, it is not mannered with military personnels who may effectively undertake instant and routine night patrols in forest reserves. The effect of lacking instant and routine night forest patrols is that illegal loggers may take advantage to enter and harvest forests produce illegally. This is mainly because illegal loggers may freely enter and harvest forests produce undetected.

4.4.6 Poor Cooperation between Some Forest Protection Stakeholders

Poor coordination between some forest protection stakeholders was found to be one of the challenges in effective forest protection against illegal logging. Forest officials were concerned that local leaders in villages and wards adjacent to forests afford them little cooperation in their forest protection operations.⁵²² Local leaders were reportedly alleged to hide illegal loggers.⁵²³ This was similarly a concern of the prosecutors that local leaders are often reluctant to cooperate during prosecution of illegal loggers believed to be known to them.⁵²⁴ Nonetheless, local leaders revealed that they are not actively engaged on issues relating to deterring illegal logging.⁵²⁵ In most cases, they are engaged on specific-case-dealing to disclose required information.⁵²⁶ It was therefore their concern that their role in forest protection is not recognized, only that

⁵¹⁹ Information obtained through interviews conducted with Village Chairpersons, VEOs and WEOs Kilosa and Kilombero Districts in March 2023.

⁵²⁰ *ibid.*

⁵²¹ Information obtained through interview conducted with a TFS-Forest Protection Officer (Morogoro) in February 2023.

⁵²² Information obtained through interview conducted with TFS-Head of Forest Patrol & TFS-Forest Patrol Officers (semi-trained forest guard officers) (Morogoro) in February 2023.

⁵²³ *ibid.*

⁵²⁴ Information obtained through interview conducted with a Senior State Attorney serving in Morogoro Municipal Council in February 2023.

⁵²⁵ Information obtained through interviews conducted with Village Chairpersons, VEOs and WEOs Kilosa and Kilombero Districts in March 2023.

⁵²⁶ *ibid.*

they are consulted as informers of alleged illegal loggers.⁵²⁷ This view was supported by community members who alleged that Village Chairpersons, VEOs and WEOs are not fully encouraged to participate in the fight against illegal logging basing their view on the ground that they have not observed their local leaders exercising specific forest protection mandates.⁵²⁸

Looking at the situation, it appears that there is poor cooperation between some stakeholders. While forest officials and prosecutors allege that local leaders do not pay cooperation, the reason could be their feeling that they are not actively engaged, thus their role is seemingly passive. The implication is that forest officials are working on their own and only seek for local leader's assistance when things go wrong. It has to be noted that local leaders are the key stakeholders in forests protection since they are the first authority who encounter with suspects. Hence, they often have knowledge of illegal forest dealers. Therefore, the effect of poor cooperation between forest officials and local leaders is that many illegal loggers may go unpunished even in circumstances where they could be easily detected through disclosure by their local leaders. As a result, efforts to fight illegal logging of forest are undermined. This is mainly because of reluctance of local leaders to cooperate in forest protection, does not only imply that it affects prosecution of illegal loggers, but also that there is no active forest machinery at the very local level, the result of which illegal logging escalates.

This study also found that community members are not effectively engaged in forest protection activities. It was revealed that community members are even not aware of their key roles in forests protection.⁵²⁹ This was affirmed by forest officials who revealed that the spirit of community engagement in forest protection has not been sufficiently transformed to community members on the ground that the move to

⁵²⁷ Information obtained through interviews conducted with Village Chairpersons, VEOs and WEOs Kilosa and Kilombero Districts in March 2023.

⁵²⁸ Information obtained through interviews conducted with community members in Ruaha-Kilosa and Mkangawalo-Kilombero Districts in March 2023.

⁵²⁹ *ibid.*

impacting education to them is ongoing, however, slow.⁵³⁰ It has to be noted that the Forest Act⁵³¹ embraces the principle of subsidiarity. That is to say, it aims to delegate responsibility for management of forest resources to the lowest possible level of local management.⁵³² Thus, inactive engagement of community members implies defeating intention of the law. This is mainly because, although the spirit of the law is to transform the local community members from being illegal loggers to protectors, this spirit is not correctly born in their minds. It appears that community members lack elementary understanding on management of forest resources surrounding them. Therefore, they ought to be protectors, lack sufficient knowledge of their mandates.

These loopholes hamper efforts to curbing illegal logging. In the event key stakeholders are not cumulatively engaged and cooperating, the protection patterns miss the flow. The prevailing poor engagement and cooperation especially in respect of local leaders and community members, implies that the task to protect forests against illegal loggers is not practically decentralized to the local level. As a result, illegal loggers are not disclosed even when they are known. Hence, while local leaders are reluctant to disclose illegal loggers as a result of what they feel to be their passive engagement along with often elements of brotherhood and sisterhood, community members hide them as a result of ignorance of their roles in forests protection, perhaps thinking that they will end up been drawn as blabbermouths.

4.4.7 Excessive Forest Dependency for Energy and Economic Gains

Excessive dependency on forests as source of energy and activities for economic gain was found to be one of the challenges that encounter forests protection against illegal logging. It was revealed that communities living adjacent to forests depends largely on forests for energy and economic gain.⁵³³ Forest officials reported that in most of such

⁵³⁰ Information obtained through interview conducted with a TFS-Forest Protection Officer, & a TFS-Head of Forest Patrol (Morogoro) in February 2023.

⁵³¹ The Forest Act, [Cap.323 R.E. 2002].

⁵³² *ibid*, section 3(c).

⁵³³ Information obtained through interview conducted with a TFS-Forest Protection Officer, & a TFS-Head of Forest Patrol (Morogoro) in February 2023.

communities, their dependency on forests is just for survival.⁵³⁴ Patrol officers supported this view alleging that most of illegal loggers caught regularly allege that they have no alternative means to secure energy than harvesting forest trees.⁵³⁵ It was further revealed that in most cases, the prosecuted illegal loggers, especially those who are caught with charcoal bags, often defend themselves that they had to harvest since they neither have alternative economic activities, nor they can afford alternative sources of energy.⁵³⁶ Again, some community members affirmed their dependency on forests. They based their view on the ground that they depend on wood fuel since that is what they can afford.⁵³⁷ Local leaders opined that their community members live in state of poverty, thus, they depend on forests produce as the most accessible and affordable source of energy and economic gain.⁵³⁸ Therefore, it seems that excessive forest dependency for energy and economic gains exists.

This study found that people living adjacent to forests in Tanzania earn money from their surrounding forests.⁵³⁹ Those community members increasingly engage in timber harvesting, firewood cutting and charcoal making for business.⁵⁴⁰ Similarly, studies show that at least 90 percent of rural-household energy consumption in Tanzania comes from firewood and charcoal.⁵⁴¹ While the reasons for excessive dependence on forests are many, poverty is highly cited in Tanzania.⁵⁴² Statistics show that more than two-

⁵³⁴ Information obtained through interview conducted with a TFS-Forest Protection Officer, & a TFS-Head of Forest Patrol (Morogoro) in February 2023.

⁵³⁵ Information obtained through interview with TFS-Forest Patrol Officers (semi-trained forest guard officers) (Morogoro) in February 2023.

⁵³⁶ Information obtained through interviews with an Advocate in Morogoro Municipal Council & a Resident Magistrate in Kilosa-District Court in March 2023.

⁵³⁷ Information obtained through interviews conducted with community members in Ruaha-Kilosa and Mkangawalo-Kilombero Districts in March 2023.

⁵³⁸ Information obtained through interviews conducted with Village Chairpersons, VEOs and WEOs Kilosa and Kilombero Districts in March 2023.

⁵³⁹ Mhache, E. P. Impact of Wood Fuel Production on the Livelihood of the People in Bagamoyo District, Tanzania. *The Open University of Tanzania*. p.196. Retrieved May 8, 2023 from the World Wide Web: <https://www.ajol.info>.

⁵⁴⁰ *ibid*.

⁵⁴¹ Ntiyakunze, M. S. & Stage, J. (2022). *Op. cit.* p.8.

⁵⁴² *ibid*. See also Kideghesho, J. R. (2015). Realities on Deforestation in Tanzania: Trends, Drivers, Implications and the Way Forward. Retrieved May 8, 2023 from the World Wide Web: Retrieved from <https://www.intechopen.com/chapters/48904>.

third of the country's population live below the conventional income poverty line of USD 1.25 per day, with about 26 million people living in extreme poverty by 2022.⁵⁴³ Amidst the existing situation of poverty in the country, alternative sources of energy, preferably liquified petroleum is expensive. The price update for liquified petroleum gas is accessible at a price between Tshs.11, 500 to 15,000 for 3kg; 20,500 to 25,000 for 6kg; 49,000 to 60,000 for 15kg; and, 110,000 to 115,000 for 38kg.⁵⁴⁴ These prices are undoubtedly expensive given the state of poverty of majority population especially in rural areas. The effect is that, a resort is made to wood fuel.

Such excessive dependency on forests for energy and economy is not without consequences. It suggests one major hypothesis that fighting illegal logging is difficult and, perhaps endless. This is mainly because forests dependence is in such cases for survival. Hence, unauthorised access to forest is likely to continue in absence of accessible and affordable alternative sources of energy in communities living adjacent to forests. The result of such excessive dependence on forests is to undermine efforts to protect forests against illegal logging. This is mainly because, in such cases, dealers are most likely to prioritize their survival over fear of being arrested.

4.4.8 Lack of Commitment among Some Forest Officials

Lack of commitment among responsible personnels in forest protection was found to be one of the challenges in curbing illegal logging. Some forest officials were allegedly uncommitted to effectively exercise their forest protection mandates.⁵⁴⁵ It was revealed that some forest officials placed on duty in checkpoints are not doing intensive checking during transportation of forests produce.⁵⁴⁶ This view was supported by forest dealers who opined that there are areas where transportation of forest produce, however illegal, is possible since officers stationed in checkpoints are not taking

⁵⁴³ Kamer, L. (2022). Number of People Living in Poverty in Tanzania. Retrieved May 23, 2023 from the World Wide Web: <https://www.statista.com/statistics/1230404/number-of-people-living-in-extreme-poverty-in-tanzania/>.

⁵⁴⁴ Price Tanzania. Liquid Petroleum Gas. Retrieved May 23, 2023 from the World Wide Web: Retrieved from <https://priceintanzania.com/other/categorie/lpg>.

⁵⁴⁵ Information obtained through interview conducted with members of a CBO-Ruaha in March 2023.

⁵⁴⁶ *ibid.*

trouble to do intensive checking.⁵⁴⁷ The TFS officials affirmed this on the basis that they receive such complaints.⁵⁴⁸ Looking at the situation, it seems that there is lack of commitment to some forest officials. The effect of having uncommitted forest officials, especially in checkpoints, is that forests produce harvested illegally may be successfully transported.

It should be noted that the law requires transportation of forests produce to be on prescribed routes for the purpose of inspection in checkpoints.⁵⁴⁹ The purpose of checking in checkpoints is to keep track of trade identity and the kinds of forest products transported.⁵⁵⁰ This to say, it helps the responsible authorities to check whether or not transported forests produce accords to the law. It involves checking whether such produce was legally harvested, not exceeding the allocated quotas, only includes authorized species, marked and graded, transported through the identified track and routes as prescribed in the transit pass and transporter has all documentations including certificate of allocation, permits, transit pass and a government receipt. Therefore, in absence of intensive checking and inspections, there can be no ascertainment of legality or illegality of transported forests produce as well as compliances and non-compliance with the law on transportation of forests produce. As a result, it encourages illegal transportation and trade in forest produces, hence, it undermines effort to curbing illegal logging of forests.

4.5 Conclusion

This chapter analysed and discussed the findings of this study. Analysis of the present legal framework on forests protection against illegal logging has shown that such legal framework is satisfactorily designed in a way to curbing illegal logging. It has shown

⁵⁴⁷ Information obtained through interview conducted with Forest Dealers in Morogoro Municipal Council and Kilosa in March 2023.

⁵⁴⁸ Information obtained through interview conducted with a TFS-Forest Protection Officer, & a TFS-Head of Forest Patrol (Morogoro) in February 2023.

⁵⁴⁹ The Forest Regulations, Government notice No. 153 of 2004, regulation 8(3).

⁵⁵⁰ Mgaza, A. (2022). Tracking the Trade: Increasing Efficiency and Transparency in Tanzania's Timber Sector (TRAFFIC-East Africa 2022). Retrieved May 6, 2023 from the World Wide Web: <https://www.worldwildlife.org/pages/tnrc-practice-note-tracking-the-trade-increasing-efficiency-and-transparency-in-tanzania-s-timber-sector>.

that the present legal regime is comprehensively designed in a way to recognize, criminalize and punish conventional illegal logging practices. This chapter has conversely depicted that such legal regime is on the other hand questionable of insufficient and lenient sanctions, vague construction of some offences and sentences as well as absence of a specific institution to deal with forest-related offences in a judicial elegance. It has further been pointed that there are myriad practical challenges for combating illegal logging in Tanzania to include insufficient human and non-human resources at the TFS occasioning absence of effective, sufficient, sudden, routine and periodic forest patrols; politicians interfere with detection, arrest and prosecution of illegal loggers; corruption among responsible personnels resulting to turning a blind eye to illegal loggers; challenges relating to prosecution; excessive forest dependence; poor forest governance; mid-night illegal forest operations; untrustworthy, irresponsible and uncommitted forest officials; and, unhealthy cooperation between stakeholders. The subsequent chapter provides a summary of the key findings of this study, conclusions and recommendations.

CHAPTER FIVE
SUMMARY OF KEY FINDINGS, RECOMMENDATIONS AND
CONCLUSION

5.1 Introduction

This study was conducted to examine the current legal framework and practical situation of forests protection against illegal logging in Tanzania. It sought to examine efficiency of the forest legal regime in curbing illegal logging, having informed by the practical situation which suggests increasing illegal logging of forests in the country. As an impact-oriented study, it sought to explore the responsible legal or practical challenges in combating illegal logging. With the arguably sound and protective forest legal regime in Tanzania, this study analysed such legal regime and questioned the increasing trend of illegal logging amidst the existence of such legal regime. The purpose was to establish the comprehensives of such legal regime in alignment with the actual state of illegal logging to establish the weak link. Consequently, an exploration was made to reveal legal and practical incongruities in combating the increasing illegal logging activities in the country.

The general objective of this study was to examine the law and practice in protecting forests against illegal logging in Tanzania. Its specific objectives were: to examine the existing forest protection legal framework with a particular focus on harvesting of forests; to identify legal and practical challenges associated with protection of forests against illegal loggings in Tanzania; and, to recommend best ways to protect forest from illegal loggings. To achieve these objectives, this study was guided by three research questions: How does the existing legal framework regulating forests harvesting is couched in a manner to curbing illegal loggings? What are legal and practical challenges for combating illegal loggings in Tanzania? And, what measures should be put in place to adequately address illegal logging?

To respond to the key questions guided this study, primary and secondary data was used. Primary data was collected from field respondents through face-to-face and phone interviews. Secondary data was collected through review of legal texts and

scholarly works. Both primary and secondary data were qualitatively analysed, evaluated and interpreted according to the research objectives and questions in the preceding chapter. This chapter presents summary of key findings, general conclusion of the study and recommendations.

5.2 Summary of Key Findings

The first key finding of this study is that, the present legal framework on forest protection is satisfactorily designed in a way to curb illegal logging. This study found that the present legal regime prohibits and criminalizes illegal logging practices. Existing literature conceptualizes illegal logging of forests to mean any unlawful practices in the whole chain of forest produce dealings. As presented under chapter two of this study, literature identifies such practices. Analysis of the present legal regime has shown that the existing laws identify, prohibits and criminalize such practices including illegal entry and harvesting of forests produce, unlawful exportation and transportation of such products as well as unlawful possession and trade in forests produce. Similarly, this study found that the existing legal regime sanctions and punishes such practices, although a few punishments are relatively lenient to deter illegal loggers.

The second key finding of this study is that the existing forest protection legal framework is not without challenges. This study found that the existing legal regime is questionable of sufficient sanctions and unclear construction of some offences and sentences. It is the finding of this study that the law sets relatively lenient sanctions especially low fines. Serve for an offence of unlawful trade in forest produce which is similarly sanctioned and punished under the EOCCA, other forest offences are sanctioned under the specific forest protection statute and regulations. it is the finding of this study that, in most cases, convicts of illegal logging are fined. Therefore, in absence of severe fines, illegal logging escalates since issued fines are easily paid. As a result, existing fines becomes unrealistic and lacks deterrence effect.

Similarly, this study found that the existing legal regime is endowed with unclear construction of some offences and sentences. For instance, this study found the offence of unlawful possession of forests produce adopts the doctrine of recent possession which presupposes existence of a separate offence in relation to unlawfully possessed forests produce. However, this study found this may not always be the case in forest produce dealings. This is because, in such cases, one may obtain the forest produce lawfully and possess them unlawfully in circumstances creating no separate offence than that of unlawful possession. Consequently, this study found that its interpretation occasions the would-be unlawful possessor of forests produce go unpunished. On the other hand, the law imposes the sentence of forfeiture of anything used in the commission of offences which is found unclearly construed. It does not state the relevancy or irrelevancy of the question whether or not the owner is the convict. This study found that, as a result, it has occasionally created varied interpretation. Through reviewing judicial decisions, this study found that while some courts interpret forfeiture to cover anything irrespective of whether the owner is the convict or not, other courts interpret forfeiture to only cover things owned by the convict.

The third key finding of this study is that, escalation of illegal logging activities is largely due to practical factors. This study found that there are limited human and non-human resources especially at the TFS. Absence of qualified staff to undertake forest operations effectively and insufficient material resources especially cars and weapons for forest patrols were among such factors. This has therefore resulted into reduced patrol routines as well as sudden and periodic forest patrols which are key in deterring illegal logging activities. Consequently, illegal loggers are inadequately detected and dealt with since they cannot easily be caught in the field. This study also found that efforts to curbing illegal logging of forests are undermined by political interferences. Politicians intervene with detection, arrest and prosecution of illegal loggers who are their voters for their political advantages.

Similarly, corruption among some forest officials is found to impede enforcement of forest laws in curbing illegal logging. This study found that some forest officials are

corrupted to allow illegal loggers to operate. During issuance of licences and permits, officials are corrupted to qualify the unqualified. During investigation of forest crimes, investigators are corrupted to delay and to render the process unsuccessful. Courts are similarly implicated. Rich illegal loggers are influencing court's decisions. As a result, responsible officials turn a blind eye to illegal loggers the effect of which illegal logging escalates.

Moreover, this study found some deficiencies in prosecution which affect combating escalation of illegal logging. Some cases take too long to impede protective efforts while occasioning excessive prosecution costs. More importantly, this study found that there is no thorough prosecution. It was reported that many illegal loggers work with forefront agents who are often arrested and prosecuted. Therefore, even if they are arrested, prosecuted and sentenced, still their sponsors operate employing other agents. Similarly, some illegal loggers operate in mid-night hours to avoid patrols. In absence of sufficient forest patrols, mid-night operations pose threats to forests sustainability since some illegal loggers go undetected.

Lastly, excessive forests dependence and lack of cooperation between stakeholders were found to add on factors undermining efforts to combat escalation of illegal logging. This study found that a large number of community members living adjacent to forests largely depend on forest resources, economically and for energy. Inability to afford alternative source of energy and, alternative works for economic gains has resulted to excessive dependence on forest resources, consequently, it has increased illegal forest dealings. While illegal logging is at a rise, this study found unhealthy engagement and cooperation between stakeholders. The local community members are not effectively engaged as forest protectors. Local leaders are insufficiently engaged as forest protectors. As a result, disclosing illegal loggers who may be known in their communities has become difficulty as they feel to have passive than active role.

5.3 Recommendations

Following the study findings on legal and practical challenges in combating illegal logging of forests in Tanzania, this study recommends the following:

5.3.1 Recommendations to the Government

The government should encourage and facilitate the use of alternative sources of energy. This study recommends a two-way approach in resort to alternative sources of energy. It recommends encouraging and facilitating. That is to say, encouraging the use of alternative sources of energy should go hand in hand with facilitating affordability. This study found that increase of and failure to curb illegal logging is, among others, resulting from excessive dependence on forests for energy. The state of excessive dependence is certainly not always a result of deliberate reluctance of the communities to use alternative sources of energy, but inability to afford. It has been pointed out that such dependence is for survival. A large number of rural households depend on wood fuel with poverty adding to sole reliance on forests for energy ostensibly. Population growth amidst the state of poverty is undoubtedly linked with such reliance. Thus, illegal loggers who at least do so for the sake of energy; may employ whatever tricky to avoid the tracking hands on illegal logging.

Consequently, this study recommends the need to facilitate affordability of alternative sources of energy especially to rural communities with a view to reducing illegal logging for household services. The government should endeavour to invest on cheap and available gas energy. Encouraging local communities to resort to alternative sources of energy should be backed up with facilitating affordability and accessibility. At least in areas where forests are highly relied on for energy, the government should swiftly start this may reduce pressure on forests and lay a basis through which illegal logging can be fought successfully.

Further, the government should encourage and facilitate alternative economic activities for earnings. This study found that over dependence on forests amongst the rural communities living adjacent to forests is for economic gains. Timber harvesters,

charcoal and firewood collectors are largely doing so to earn a living. Consequently, they are reluctant to stop harvesting illegally since they have no alternative economic activities for gains. On their familiarity with forest areas adjacent to their homes, they can always discover tactics to harvest however illegally without facing the hands of law. While patrols are in most cases day-operations, they can use mid-night hours to harvest forests. Thus, to creating favourable environment for investing on alternative economic activities especially agriculture may support a successful fight against illegal logging. The government should finance and commercialize rural agricultural activities. It should create a stable and reliable market for their yields. This may turn communities' focus on illegal logging to agricultural activities.

The government through the MNRT should expedite the process of transforming the TFS from a civil-agency to military-agency. While illegal loggers are cited to be deadly, the TFS who are number one forest protectors work with semi-trained military officials as its patrol officers. This subjects their patrols to effectiveness questioning. Despite the fact that they are not military men, the TFS patrol officials are rarely mannered with military defensive and protective weapons. This study found that where there is a need to face the battle with illegal loggers, the patrol officers cannot stand. As a result, serious illegal logging incidents may not be successfully intervened. While illegal loggers, especially well-armed loggers, may not easily surrender themselves and the produce, patrol officers are not morally and materially fit to compel surrender. Therefore, transforming the TFS to a military-agency may strengthen the agency especially in its field operations and poses a protective threat to illegal loggers. Since such transformation has commenced, this study recommends speeding up the process given the escalation of illegal logging activities to give a quick response to the situation.

5.3.2 Recommendations to the Tanzania Forest Service Agency

This study recommends that amidst insufficient human and non-human resources facing the TFS, it should improve and strengthen its working capacity. It should carry out routine, sudden, periodic and where possible, joint patrols with the police in forest

areas. These needs promising internal logistics to facilitate frequent forest patrols using the limited resources they have. Whereas insufficient human and material resources is acknowledged, unfounded excuses to exercise their mandates on the basis of limited resources are suspected to arise. It is on this basis that this study recommends deliberate endeavours to protect forests with the limited resources they have. Well-planned and strategic forests visitation and inspections should be executed. In areas where facing illegal loggers is seemingly disastrous to the TFS patrol officers, joint patrols with the police should be resorted.

It has been noted in this study that local community members and leaders are not sufficiently engaged in forests protection against illegal logging. As a result, instead of exposing illegal loggers for legal actions, they hide them. This study found that such a behaviour is associated with the feelings among the local leaders that their role is passive, only to act as informers. This study recommends that active engagement of local leaders should be encouraged. The TFS should work very closely with local leaders in their field and non-field operations to make them part and parcel of the process. Local leaders may play a significant role in discouraging illegal logging behaviour among their citizens as they can primarily notice them before the TFS. Similarly, community members may not be confident and active to execute illegal logging activities knowing that the protectors are just surrounding them. Therefore, this study recommends cooperation especially through decentralizing forest protection mandates to local leaders to actively act as forest protectors.

This study recommends meticulous engagement of community members in forest protection activities, especially, against illegal logging. The forest laws objects to decentralizing forests protection mandates to the lowest level. However, community engagement is found not promising. It should be noted at this juncture that community members especially those living adjacent to forests are the main forest deteriorators. Therefore, decentralizing protective mandates to them implies turning their minds from deteriorators to protectors. This falls within mandates of the TFS. It should reach the

communities living adjacent to forests to educate them, first of their roles as forest protectors and, two of how they actively participate in deterring illegal logging.

Further, this study recommends that TFS should provide education to the general public including politicians on the relevance of protecting forests. Politicians should be educated on how it is also important for them to take lead in educating their voters instead of defending them because one of the effects of increasing illegal logging is climate change. In effect, climate change does not recognise political affiliation and will affect all of us indiscriminately. This will similarly ensure strict adherence of the laws of the land and equal treatment of all. Moreover, it will add confidence and impartial exercise of duties to the forest officials who otherwise are threatened by political interferences in discharging their mandates.

The TFS should also insist on working efficiency and integrity of its staff. Officials placed in checkpoints should do comprehensive checking, responsibly and without favour. Officials responsible for issuance of permits and licences as well. This will add to effective working of authorities responsible for forests protection the result of which is to comprehensively fight illegal logging of forests. Similarly, the TFS should work on integrity of its staff. Corrupt practices which are seemingly threatening forest sustainability, were found persisting amongst its staff. Therefore, the TFS should stand for and insist high level of integrity to its staff through fighting corrupt practices which turns their eyes blind to illegal loggers to pay back for enjoyed bribes.

The TFS should resort into modern forest protection tactics where they have not done so. The world is rapidly moving with advancement of technology. The terrain through which technology advances has not left forest protection tactics. This study found, *inter alia*, that carrying out routine, sudden and periodic forest patrols is occasionally impossible. Along with insufficient human and non-human resources, difficulties in accessing some forest areas frequently are reported. This is occasioned by mountainous state of forest reserve locations and deep-in-forest harvesting stations. Thus, this study recommends the use of technology to protect the areas. The TFS should facilitate

stationing surveillance cameras tracking illegal activities in areas where routine, sudden and periodic patrols are hard or impossible. This is practicable and relevant since it is not a new approach since it is practiced in some forest reserves especially those used for controlled tourism activities. Thus, this study recommends employing this technological approach in protecting forests through technological detection of illegal loggers.

The TFS is primary, forest laws enforcement machinery. This study found that, despite trivial legal incongruities, forest laws are seemingly good enough to protect forests against illegal logging. The study found that the problem is on effective enforcement of the existing laws. Although this study appreciates that forest law enforcement machineries are diverse, the TFS still leads the functioning of enforcement roles of the forest laws. Thus, this study recommends that the TFS should adopt deliberate means to ensure that forest laws are effectively implemented. It should stand for insisting every relevant enforcement machinery to act accordingly. It should be noted that enforcement of forest laws is unique since it entails balancing competing interests including economic and ecological interests. Therefore, the TFS should ensure that forest laws are effectively enforced within its context. This study puts more emphasis on technical enforcement of penal aspects of forest laws. The TFS should ensure that forest offences are clearly crafted, defined and prosecuted by cooperating closely with prosecuting machineries.

5.3.3 Recommendations to the Parliament

This study recommends a slight revisit of the Forest Act. This study has noted that one among the challenges in curbing illegal logging of forests is insufficient and lenient sanction in some offences. This study found that in almost all forest offences, on conviction, the law imposes, among others, fines and imprisonment. Following such thorough emphasis on imposition of fines on forest crimes convictions, this study recommends that the Forest Act should be amended to increase the relatively low fines. Serve for a few amended fine rates, most of the existing fines were incorporated since the making of the Forest Act in 2002. Over 20 years later, these fines are unrealistic,

relatively low and affordably payable. Consequently, they do not discourage illegal logging since illegal loggers benefit than the seemingly low fines one may be ordered to pay.

It is recommended further that imprisonment should be imposed in some offences without an option of fines. Grounded on rule that where both fines and imprisonment are provided in alternative, imprisonment should be ordered in default to pay fine, this study recommends that the Forest Act should be amended to either impose imprisonment sentence in most serious forest crimes or a fine in addition to imprisonment term. These should apply in offences relating to illegal harvest and transportation, unlawful possession and trade in forests produce. In addition, compensation should be ordered with a view to making good for the harms occasioned.

This study recommends amendment of the Forest Act to address unclear construction of some offences and sentences. It has been noted herein that the offence of unlawful possession of forests produce is unclearly construed in a way the interpretation of the offence of unlawful possession may let the ought to be unlawful possessor of forests produce go unpunished. Therefore, to avoid absurdity and ensure that illegal loggers are comprehensively accommodated under the existing offences, the Forest Act should be revisited with a view to certainly construe vague forest offences. Similarly, this study recommends that sentences should be clear. It has been noted above that, for instance, the sentence of forfeiture of anything used in the commission of offences is vaguely construed. As a result, it has occasionally created varied interpretation. While other courts interpret forfeiture to covers anything irrespective of whether the owner is the convict or not, other courts interpret the same to only cover things owned by the convict. This confusion is brought in by its vague construction as the Forest Act only says ‘anything.’ Therefore, this study recommends that the Forest Act be amended to set the sentence certain.

5.3.4 The Judiciary of Tanzania

This study recommends that courts should give effect to ecological and economic impacts associated with illegal logging of forests in imposing sentences. This study takes cognizance of the fact that courts exercise discretion in awarding sentences including determining the weight of sanctions to be imposed. It is a recommendation of this study that the discretion on sentencing has to be exercised judiciously. In assessing fines to be imposed, courts should consider ecological and economic threats resulting from illegal logging practice in question. This is important because illegal logging of forest practices threatens the sustainability of ecology and economy. Consequently, considering economic and ecological interests is important.

This study recommends that the judicial administration should maintain integrity of its personnels who are revealed to receive bribes from illegal loggers to defeat justice. This study found that Magistrates are bribed and unjustifiably discharge illegal loggers. Consequently, the discharged illegal loggers continue their illegal forest operation. This hampers effort to combat illegal logging since illegal loggers go unpunished since the bribed judicial personnels turn a blind eye to illegal loggers. Along this, courts should handle forest cases expeditiously with a view to supporting effective prosecution of illegal loggers since this is one of the ways through which illegal logging of forests can be comprehensively fought against.

5.4 Conclusion

This study was conducted to examine the law and practice in protection of forests against illegal logging. This study advanced from the fact that in 2002 the country passed the Forest Act followed by myriad regulations ranging from the 2004 main regulations to the 2019 regulation. That, this legal regime is designed in a way to curbing illegal logging of forests by defining prohibited illegal logging practices, criminalizing them and setting sanctions on breach. However, existing literature suggests that amidst this legal framework in place, illegal logging of forests in the country is on increasing on a year-year-basis. Literature depicts that while the country loses its forest land to about 400,000 to 500,000 hectares annually, over 70 percent of

that loss is due to illegal logging. This has resulted into biodiversity loss, climate change, and disruption of livelihoods and loss of government revenues. Therefore, this study was conducted to specially examine the existing forests protection legal framework with particular focus on harvesting of forests; identify legal and practical challenges associated with protection of forests against illegal loggings in Tanzania; and, recommend best ways to put in place in order to protect forest from illegal logging.

To achieve the objectives of this study, efforts were made to review the existing legal texts including the Constitution, statutes, regulations and judicial decisions with a view to establish the comprehensiveness or incomprehensiveness of the existing legal regime to combating illegal logging of forests. Such analysis was important to ascertain whether or not the laws in place are designed to deter or to pave a way for illegal logging of forests. The analysis of the existing legal framework brought about promising results with trivial legal issues. After analysis of such legal framework, efforts were made, using empirical methods, to explore practical challenges for combating illegal logging of forests. Face-to-face and phone interviews were conducted with the identified key respondents who fed this study with myriad practical challenges in combating illegal logging of forests. To complement field information, a resort was made to analyse relevant literature addressing the question of forest protection against illegal logging. Finally, this study came up with findings responding to its key questions.

The findings of this study show that, the present legal framework is designed in a way to curbing illegal logging. In this respect, it has been depicted that the present legal regime is comprehensively designed in a way that it recognizes, criminalizes and punishes all common acts constituting illegal logging of forests. The laws in place strictly prohibits illegal logging of forests by express deterrence of illegal entry, harvesting without licence, illegal exportation and transportation of forests produce, unlawful possession and trade in forest produces. It has also been noted that the law criminalizes certain specific acts with penal sanctions to include fine, confiscation and

imprisonment. Nonetheless, this study found that such legal regime is on the other hand questionable of insufficient and lenient sanctions, vague construction of some offences and sentences as well as absence of specific institution to deal with forest-related offences in a judicial elegance. Consequently, this affects effort to combat illegal logging of forests.

It has further been pointed out that there are myriad practical challenges for combating illegal logging of forests in Tanzania. It was found that the TFS, which is the principal agency for forests protection in the country, suffers from insufficient human and non-human resources. As a result, such insufficient has occasioned absence of effective, sufficient, sudden, routine and periodic forest patrols. Again, this study found that politicians interfere with detection, arrest and prosecution of illegal loggers to hamper protective efforts. Corruption among responsible personnels is similarly found to impede efforts to combat illegal logging of forests. It was observed that, forest officials are corrupted the result of which is to turning a blind eye to illegal loggers. Furthermore, challenges relating to prosecution including delays and absence of thorough prosecution; excessive forest dependence on forests for energy and economic gain; poor forest governance; mid-night illegal forest operations in absence of tight and frequent patrols; presence of untrustworthy, irresponsible and uncommitted forest officials; and, unhealthy cooperation between key stakeholders including local leaders and community members, add to practical challenges in curbing illegal logging in Tanzania. As a result, illegal logging of forests has been in increase on a year-to-year basis.

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APPENDICES
INTERVIEW GUIDE I
(TFS, TaFF & TAFORI)

1. How long have you been working with this institution?
Umefanya kazi na taasisi hii kwa muda gani?
2. What are the roles of this institution in forests protection?
Ni nini majukumu ya taasisi hii kwenye ulindaji wa misitu?
3. What are your specific roles in forests protection especially against illegal logging?
Ni nini majukumu yako kwenye ulindaji wa misitu hususani dhidi ya uvunaji haramu?
4. How many cases you receive annually relating to illegal logging of forests?
Probe: How many cases in year 2022? (Statistics for 3-4 years).
Mnapokea kesi ngapi kwa mwaka zinazohusiana na uvunaji haramu wa misitu?
Dadisi: Mlipokea kesi ngapi mwaka 2022? (Taarifa za miaka 3-4).
5. What are the forests protection requirements breached often?
Probe: Licence, entrance in protected areas, overharvesting?
Ni matakwa yapi ya ulindaji wa misitu yanakiukwa mara kwa mara?
Dadisi: kibali, kuingia kwenye maeneo yaliyo zuiliwa, kuvuna kuzidi kiasi?
6. Is the number of illegal logging cases increasing or decreasing on year-to-year basis?
Je, idadi ya kesi za uvunaji haramu wa misitu zinaongezeka au zinapungua mwaka hadi mwaka?
7. Do you think why illegal logging of forests is at the rate you have identified above?
Probe: Factors responsible; institutional, legal, practical?
Unadhani ni kwa nini uvunaji haramu wa misitu ni wa kiwango ulichokitambua hapo juu?

Dadisi: Sababu husika; kitaasisi, kisheria, kiutendaji?

8. Do you consider the existing legal structure sufficient enough to protect forests against illegal logging?

Je unaona mfumo wa kisheria uliopo unajitosheleza kwenye kulinda misitu dhidi ya uvunaji haramu?

9. What challenges do you experience in curbing illegal logging of forests? How do you overcome them?

Ni changamoto gani unakutana/mnakutana nazo katika kupambana na uvunaji haramu wa misitu? Mnazitatua vipi?

10. In relation to the roles of this institution, what are the current and continuing efforts to curbing illegal logging of forests?

Kama taasisi ni juhudi gani za sasa na za kuendelea zenye lengo la kuzuia uvunjwaji haramu wa misitu?

11. What are impacts of the increasing illegal logging of forests?

Probe: Environmental, revenue, livelihoods?

Ni madhara gani yanayosababishwa na ongezeko la uvunaji haramu wa misitu?

Dadisi: kimazingira, kimapato, kujikimu?

12. What should be done to better protect forests against illegal logging?

Probe: Detection/investigation, Prosecution, Institutional, Enforcement.

Nini kifanyike ili kulinda misitu dhidi ya uvunaji haramu?

Dadisi: ugunduzi/uchunguzi, uendeshaji mashitaka, taasisi, usimamizi wa sheria.

INTERVIEW GUIDE II

(STATE ATTORNEYS, ADVOCATES & MAGISTRATES)

1. How long have you been working in this position?

Umefanya kazi kwenye nafasi hii kwa muda gani?

2. Have you ever handled a case on illegal logging of forests?

Je umewahi kushugulikia case ya uvunaji haramu wa misitu?

3. What were the charges against the dealer(s)?

Mhusika/wahusika (mtuhumiwa/watuhumiwa) alikuwa na mashitaka gani?

4. What were the defences advanced by the dealer(s)?

Probe: Compliance processes? Livelihood?

Upi ni utetezi uliotolewa na mhusika/wahusika (mtuhumiwa/watuhumiwa)?

Dadisi: mchakato wa kufuata taratibu, hali ya kujikimu/uchumi?

5. How did the case end? In who's favour?

Kesi iliishaje? Nani alishinda?

6. How threatful do you consider illegal activities constituted charges in 3 above in forest protection?

Probe: Environmentally, economically?

Kwa namna gani shughuli haramu zilizojenga mashitaka kwenye namba 3 tano hapo juu ni tishio kwenye ulindaji misitu?

Dadisi: Kimazingira, kiuchumi?

7. Basing on your experience in handling illegal forest dealing cases, do you find any legal challenges in protecting forests?

Probe: loopholes in licencing (issuance and renew) institutional framework, sentences?

Kwa uzoefu wako kwenye kushughulika kesi za uvunaji haramu wa misitu, unaona kuna changamoto zozote za kisheria kwenye utunzaji wa misitu?

Dadisi: mianya kwenye vibali (utuaji na kuhuisha) muundo wa kitaasisi, adhabu?

8. What are the practical challenges in enforcing forest laws to curbing illegal logging of forests?

Je ni changamoto gani mnakutana nazo kwenye utekelezaji wa sheria kuzuia uvunaji haramu wa misitu?

9. What are impacts of the increasing illegal logging of forests?

Probe: Environmental, revenue, livelihoods?

Ni madhara gani yanayosababishwa na ongezeko wa uvunaji haramu wa misitu?

Dadisi: Kimazingira, kimapato, kujikimu?

10. What should be done to better protect forests against illegal logging?

Probe: Suggestions on legal framework? practical situation, enforcement mechanisms?

Nini kifanyike ili kulinda misitu dhidi ya uvunaji haramu?

Dadisi: Mapendekezo kwenye mfumo wa sheria? Katika utendaji, namna ya utekelezaji?

INTERVIEW GUIDE III
(FOREST PATROL OFFICERS)

1. How long have you been working as a police officer?

Umefanya kazi kama ofisa wa polisi kwa muda gani?

2. What are your specific responsibilities in forests protection?

Probe: Patrol, investigation/detection, arrest?

Majukumu yako maalum kwenye ulindaji wa misitu ni yapi?

Dadisi: *Doria, uchunguzi/ugunduzi, ukamataji?*

3. In a range of one year, how many cases on illegal logging of forests do you dealt with?

Probe: How many cases in year 2022?

Kwa wastani wa mwaka mmoja, ni kesi ngapi za uvunaji haramu wa misitu unazishughulikia?

Dadisi: *kesi ngapi kwa mwaka 2022?*

4. What are the often accusations against the dealers?

Zipi ni shutuma za mara kwa mara dhidi ya wahusika?

5. What are their often defences?

Probe: Compliance processes? Livelihood?

Upi ni utetezi wao mara kwa mara?

Dadisi: *mchakato wa kufuata taratibu, hali ya kujikimu/uchumi?*

6. How threatful do you consider illegal activities cases you have dealt with, in forest protection?

Probe: Environmentally, economically?

Kwa namna gani shughuli haramu ulizoshugulika nazo ni tishio kwenye ulindaji wa misitu?

Dadisi: *kwa mazingira, kiuchumi?*

7. Basing on your experience in dealing with illegal logging cases, do you find any legal challenges in protecting forests?

Kwa uzoefu wako kwenye kushughulika kesi za uvunaji haramu wa misitu, unaona kuna changamoto zozote za kisheria kwenye utunzaji wa misitu?

8. What challenges do you often face in enforcing forest laws to curbing illegal logging?

Je ni changamoto zipi mnakutana nazo kwenye utekelezaji wa sheria kuzuia uvunaji haramu wa misitu?

9. How do you cooperate with other authorities in protecting forests against illegal logging?

Probe: WEO/VEO/Village Chairpersons, Prosecutors, courts, other authorities.

Unashirikiana vipi na mamlaka zingine kwenye kulinda misitu dhidi ya uvunaji haramu?

Dadisi: Watendaji wa kata/vijiji, wenyeviti wa vijiji, waendesha mashtaka, mahakama, mamlaka nyingine.

10. What are impacts of the increasing illegal logging of forests?

Probe: Environmental, revenue, livelihoods?

Ni madhara gani yanayosababishwa na ongezeko wa uvunaji haramu wa misitu?

Dadisi: Kimazingira, kimapato, kujikimu?

11. What should be done to better protect forests against illegal logging?

Probe: Suggestions on legal framework? practical situation, enforcement mechanisms?

Nini kifanyike ili kulinda misitu dhidi ya uvunaji haramu?

Dadisi: Mapendekezo kwenye mfumo wa sheria? Katika utendaji, namna ya utekelezaji?

INTERVIEW GUIDE IV

(NGO & CBO)

1. How long have you been working with this NGO?
Umefanya kazi kwa muda gani na shirika hili?
2. What are the roles of this NGO in forests protection?
Nini majukumu ya shirika hili kwenye ulindaji wa misitu?
3. What specifically this NGO does in protection of forests especially against illegal logging?
Nini shirika hili linafanya kwenye ulindaji wa misitu haswa dhidi ya uvunaji haramu?
4. On your experience, is the rate of illegal logging of forests increasing or decreasing on year-to-year basis?
Je, kwa uzoefu wako kiwango cha uvunaji haramu wa misitu kinaongeza au kinapungua mwaka hadi mwaka?
5. What are the reasons for the rate of illegal logging of forests is at the rate you have identified?
Nini sababu za kiwango cha uvunaji haramu kama ulivyotambua?
6. What are the forest protection requirements breached often?
Ni matakwa yapi ya utunzaji misitu yanavunjwa mara kwa mara?
7. In relation to the roles of this NGO, what are the current and continuing efforts in curbing illegal logging in the region?
Ni juhudi gani za sasa na za kuendelea zenye lengo la kuzuia uvunjwaji haramu wa misitu?
8. What challenges do you face in exercising your forests protection duties, especially against illegal logging?
Je ni changamoto gani mnakutana nazo kwenye utekelezaji wa majukumu yenu ya ulindaji wa misitu, haswa kuzuia uvunaji haramu wa misitu?
9. What are impacts of the increasing illegal logging?

Probe: Environmental, revenue, livelihoods?

Ni madhara gani yanayotokana na ongezeko la uvunaji haramu wa misitu?

Dadisi: *Kimazingira, kimapato, kujikimu?*

10. What should be done to better protect forests against illegal logging?

Probe: Suggestions on legal framework? practical situation, enforcement mechanisms?

Nini kifanyike ili kulinda misitu dhidi ya uvunaji haramu?

Dadisi: *Mapendekezo kwenye mfumo wa sheria? Katika utendaji, namna ya utekelezaji?*

INTERVIEW GUIDE V

(FOREST PRODUCE DEALERS)

1. For how long have you been dealing with forest produces?

Umekuwa ukifanya shuguli za uvunaji misitu kwa kipindi gani?

2. Do you have licence?

Je, una leseni?

3. If yes, when did you obtain your licence?

Kama ndio, uliipata lini?

4. What is your specific business over forest produces?

Biashara yako maalumu ni ipi kwenye mali misitu?

5. Have you ever operated your business illegally? If yes why?

Probe: Expiry of licence, Avoid charges? etc.

Umewahi kufanya biashara yako isivyo halali? Kama ndio kwa nini?

Dadisi: Leseni iliisha muda wake, kukwepa ushuru? n.k.

6. Have you ever heard or met illegal logger?

Probe: One without licence, overstay, illegal transporter, illegal seller or purchase?

Je, umewahi kumsikia au kukutana na mvunaji haramu za misitu?

Dadisi: ambaye hakuwa na leseni, aliyekaa nje ya muda, msafirishaji haramu, muuzaji au mnunuzi haramu?

7. Are there serious complications in obliging to legal requirements in forest dealing?

Probe: challenges in procuring licence, corruption indicators to authorities?

Je, kuna vikwazo kwenye kufuata taratibu za kisheria kwenye uvunaji misitu?

Dadisi: changamoto kwenye upatikanaji wa leseni, viashiria vya rushwa kutoka kwa mamlaka?

8. Do you think why there is a number of illegal loggers despite that the law sets requirements for lawful dealing with forests?

Unadhani ni kwa nini kuna idadi ya wavunaji haramu japokuwa sheria imeweka matakwa ya kuvuna misitu kihalali?

9. Do you consider law enforcers just and fair in discharging their functions?

Unadhani watekelezaji wa sheria za misitu wanatenda haki na usawa kwenye kutekeleza majukumu yao?

10. What should be done to better protect forests against illegal logging?

Probe: Suggestions on legal framework? practical situation, enforcement mechanisms?

Nini kifanyike ili kulinda misitu dhidi ya uvunaji haramu?

Dadisi: Mapendekezo kwenye mfumo wa sheria? Katika utendaji, namna ya utekelezaji?

INTERVIEW GUIDE VI

(VEOs, WEOs & VILLAGE CHAIRPERSONS)

1. How long have you taken hold of this position?
Umeshika wadhifa huu kwa muda gani?
2. What are your specific roles in protection of forests?
Ni nini makukumu yako maalum kwenye ulindaji wa misitu?
3. How do you engage your community in forests protection?
Kwa namna gani unaihusisha jamii yako kwenye utunzaji wa misitu?
4. Do you have any idea on what illegal logging of forest is? What is it?
Unafahamu maana ya uvunaji haramu wa misitu? Nini maana yake?
5. How do you deal with illegal loggers?
Unashughulika vipi na wavunaji haramu?
6. What challenges do you face in protection of forests against illegal logging?
Ni changamoto gani unakutana nazo kwenye ulindaji wa misitu dhidi ya uvunaji haramu?
7. Have you ever been enticed either way by a forest illegal dealer to stop dealing with him/her or to allow illegal operation?
Umewahi kushawishiwa kwa namna yoyote na mvunaji haramu wa misitu ili usimshugulikie au uruhusu aendelee kuvuna kiharamu?
8. If yes, what was the enticement? how did you react?
Kama ndio, ushawishi ulikuwa ni upi? ulifanyaje?
9. How do you cooperate with other authorities in detecting and reacting to the chain of illegal logging of forests?
Probe: Feedbacks, challenges, etc?
Unashirikiana vipi na mamlaka nyingine kwenye kugundua na kushughulikia mnyororo wa uvunaji haramu wa misitu?
Dadisi: kutoa majibu/maoni, changamoto?
10. What are impacts of the increasing illegal logging?
Probe: Environmental, revenue, livelihoods?

Ni madhara gani yanayotokana na ongezeko la uvunaji haramu wa misitu?

Dadisi: *kimazingira, kimapato, kujikimu?*

11. What should be done to better protect forests against illegal logging?

Probe: Suggestions on legal framework? practical situation, enforcement mechanisms?

Nini kifanyike ili kulinda misitu dhidi ya uvunaji haramu?

Dadisi: *Mapendekezo kwenye mfumo wa sheria? Katika utendaji, namna ya utekelezaji?*

INTERVIEW GUIDE VII
(COMMUNITY MEMBERS)

1. For how long have you lived in this village/ward?
Umeishi kwenye kijiji/kata hii kwa muda gani?
2. What is your main activity for earning?
Shughuli yako kuu inayokupatia kipato ni ipi?
3. How do you economically depend on forests?
Kwa namna gani unategemea misitu kiuchumi?
4. How threatful to the forests' sustainability is your dependency?
Kwa namna gani utegemezi wako ni hatari kwenye ustawi wa misitu?
5. Do you know your responsibilities as a forest protector by living in a village bordering forests?
Je, unafahamu majukumu yako kama mlinda misitu kwa kuishi kwenye kijiji kinachopakana na misitu?
6. If yes, how do you implement this duty?
Kama ndio, ni kwa namna gani unatekeleza wajibu wako huu?
7. Do you have any idea on what illegal logging of forests is? What is it?
Unafahamu maana ya uvunaji haramu wa misitu? Nini maana yake?
8. Have you ever heard or met any incident of illegal logging of forests? If yes, how did you do?
Probe: Reporting, detecting?
Umeshawahi kusikia au kukutana na suala lolote linalohusiana na uvunaji haramu wa misitu? Kama ndio, ulifanyaje?

Dadisi: utoaji taarifa, ugunduzi?
9. How do you cooperate with responsible authorities in dealing with illegal loggers?

Unashirikiana vipi na mamlaka husika kwenye kushughulika na wavunaji haramu?

10. Do you think your local leaders in this area are doing the needful?

Je, unadhani viongozi wa serikali za mitaa katika eneo hili wanatekeleza wajibu wao ipasavyo?

11. What challenges do you face in protecting forests against illegal dealers?

Ni changamoto gani unakutana nazo kwenye kulinda misitu dhidi ya uvunaji haramu?

12. What are impacts of the increasing illegal logging?

Probe: Environmental, revenue, livelihoods?

Ni madhara gani yanayotokana na ongezeko la uvunaji haramu wa misitu?

Dadisi: Kimazingira, mapato, kujikimu?

13. What should be done to better protect forests against illegal logging?

Probe: Suggestions on legal framework? practical situation, enforcement mechanisms?

Nini kifanyike ili kulinda misitu dhidi ya uvunaji haramu?

Dadisi: Mapendekezo kwenye mfumo wa sheria? Katika utendaji, namna ya utekelezaji?