



## Combating Illegal Logging to Mitigate Climate Change Impact in Tanzania: A Quest for Sustainable Solutions

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### Abstract

This article examines the legal framework and practical challenges in protecting forests against illegal logging as a climate change vulnerability in Tanzania. By examining the nexus between illegal logging of forests and climate change, it identifies the gaps that hinder effective enforcement of the existing laws in addressing illegal logging, including ambiguous legal provisions and lenient penalties. It further identifies practical challenges, including excessive dependence on forests, corruption, and inadequate resources. The article recommends transformative reforms, emphasizing the necessity of a holistic approach integrating community engagement, promoting alternative economic activities and renewable energy sources, judicial integrity, and innovative technologies in protecting forests. Ultimately, it underscores that combating illegal logging is essential not only for protecting vital ecosystems but also for achieving climate change mitigation.

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## 1. INTRODUCTION

Tanzania is home to some of the world's most diverse and ecologically significant forests.<sup>1</sup> Her forest land covers 45 million hectares, approximately 51 per cent of the country's total land area.<sup>2</sup> These forests play a pivotal role in climate regulation and supporting the sustainability of local communities. Studies show that, forests offer essential climate services in adaptation and mitigation to climate change. In mitigating climate change, forests are net carbon sink through absorbing greenhouse gas emissions from the atmosphere.<sup>3</sup> In adapting to climate change, forests provide ecosystem-based solutions enhancing the resilience of communities and landscapes to the impacts of climate change, such as regulating water flows and preventing soil erosion and extreme weather events.<sup>4</sup> Consequently, forests are considered a nature-based climate change solution.<sup>5</sup>

Despite the significant role of forests in climate regulation, illegal logging is pervasive in Tanzania, posing a real threat of deforestation and habitat loss. Reportedly, the country loses between 300,000 and 500,000 hectares of its forest land annually.<sup>6</sup> Of that loss, more than 70 percent is due to illegal logging.<sup>7</sup> The consequences of illegal logging extend far beyond local impacts. Illegal logging exacerbates climate change mainly through deforestation and degradation. Studies show that deforestation and degradation account for about 6 to 17 per cent of global carbon emissions, triggering global warming and disrupting weather patterns.<sup>8</sup> As the country grapples with climate change challenges, addressing illegal logging becomes imperative.

This article examines the pressing issue of illegal logging in Tanzania and its impacts on climate change. By analysing the current legal and policy frameworks, the paper proposes

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<sup>1</sup> Matilda S. Ntiyakunze and Jesper Stage, 'Forest Dependency in Tanzania: Analysis of the Determinants of the Perceived Forest Dependency' (2022) 8(3) *Trees, Forests and People* 1.

<sup>2</sup> World Bank Group, 'Forest Area (% of Land Area) (Food and Agriculture Organization Electronic Files and We site)' (WBG 2024) <<https://data.worldbank.org/indicator/AG.LND.FRST.ZS?skipRedirection=true&view=map>> accessed 20 January 2024.

<sup>3</sup> Kyriaki Psistaki, Georgios Tsantopoulos and Anastasia K. Paschalidou, 'An Overview of the Role of Forests in Climate Change Mitigation' (2024) 16(14) *Sustainability* 1; see also Matteo Vizzarri, Roberto Pilli, Anu Korosuo, Ludovico Frate and Giacomo Grassi, 'The Role of Forests in Climate Change Mitigation: the EU context' in Roberto Tognetti, Melanie Smith and Pietro Panzacchi (eds), *Climate-smart forestry in mountain regions* (Springer Cham 2022) 507.

<sup>4</sup> Alexandra Paige Fischer, Mohammad Aminur, Rahman Shah, Alcade C. Segnon, Custodio Matavel, Philip Antwi-Agyei, Yuanyuan Shang, Maegan Muir, and Rachel Kaufmann, 'Human Adaptation to Climate Change in the Context of Forests: a Systematic Review' (2023) 43 *Climate Risk Management* 100573; see also Daniela Rajasugunasekar, Avdesh K. Patel, Khumanthem B. Devi, Akhilesh Singh, Panneer Selvam and Anup Chandra, 'An Integrative Review for the Role

of Forests in Combating Climate Change and Promoting Sustainable Development' 13(11) *International Journal of Environment and Climate Change* 4331.

<sup>5</sup> Kristina J. Anderson-Teixeira and Ethan P. Belair, 'Effective Forest-based Climate Change Mitigation Requires Our Best Science' (2022) 28(4) *Global Change Biology* 1200; see also Lian P. Koh, Yiwen Zeng, Tasya Vadya Sarira & Kelly Siman, 'Carbon Prospecting in Tropical Forests for Climate Change Mitigation' (2021) 12(1) *Nature Communications* 1.

<sup>6</sup> Pauline Kairu, 'Africa's Forest Cover Drops despite Greater Efforts to Save Trees' (The East African 2022) <<https://www.theeastafrican.co.ke/tea/science-health/-3781926>> accessed 20 January 2024; see also Food and Agriculture Organization, 'Global Forest Resources Assessment: How the World's Forest Changing?' (Rome 2015) <<https://www.fao.org/3/i4793e/i4793e.pdf>> accessed 28 March 2025.

<sup>7</sup> Christable Ligami, 'In Tanzania, Ownership of the Forest Offers New Prospects for Old Loggers' (2019) <<https://www.climatechangenews.com/2019/10/15/tanzania-ownership-forest-offers-new-prospects-old-loggers/>> accessed 20 January 2024.

<sup>8</sup> Olivia Dakeyne, 'Illegal Logging: A Driver of Climate Change and Conflicts' (2022) <<https://www.wearethemis.com/uk/about/blog/illegal-logging-a-driver-of-climate-change-and-conflict/>> accessed 20 January 2024.

solutions that seek to address illegal logging and promote sustainable forest management. The analysis and discussion in this article are based on data collected during a Master's degree research project, which employed documentary review, interviews, and observation methods. This paper proceeds as follows: it conceptualizes illegal logging and provides a working definition while analysing its magnitude in Tanzania. It then explores the nexus between illegal logging and climate change, analysing the role of forests in climate change and how illegal logging weakens the role of forests in climate regulation. The article further reviews current measures aimed at addressing illegal logging. It highlights specific prohibitions on entering forest reserves, harvesting, transporting, and trading forest produce. Further, it explores legal and practical challenges in addressing illegal logging. It discusses gaps and inconsistencies in legislation, resource constraints, corruption, and inadequate monitoring systems, among others, as legal and practical challenges hindering effective control of illegal logging activities. Finally, the article concludes with recommendations to strengthen legal frameworks and address practical constraints to promote sustainable forest management practices as part of a broader effort to achieve climate-smart forestry.

## 2. ILLEGAL LOGGING AND ITS MAGNITUDE IN TANZANIA

There are diverse conceptualisations of 'illegal logging.' However, it generally refers to timber-harvesting-related activities which are inconsistent with national or sub-national laws.<sup>9</sup> It takes place when harvesting, transporting, buying, or selling violates the law.<sup>10</sup> This understanding is what Simon recapitulates as 'contravention of national or international law at any point along the trade chain from the source to consumer.'<sup>11</sup> Tacconi gives an insight into the nature of laws contravened in the edifice of illegal logging. He considers that illegal logging in forests involves contravening laws or regulations that are designed to protect forests from unsustainable exploitation of biological resources.<sup>12</sup>

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'<sup>13</sup> or 'unauthorized logging.'<sup>14</sup> Wide-ranging constitutive practices of illegal logging are documented about harvesting and transportation. Brack asserts that the harvesting process may be illegal if it involves corruption as a means getting access to cutting down trees, extracting forest produce without a valid license or exploiting strictly protected areas, cutting protected species, or exceeding allocated

<sup>9</sup> Carl-Éric Guertin, 'Illegal Logging and Illegal Activities in the Forestry Sector: Overview and Possible Issues for the UNECE Timber Committee and FAO European Forestry Commission' (2003) 3 <<https://unece.org/fileadmin/DAM/timber/docs/tc-sessions/tc-61/presentations/guertin-paper.pdf>> accessed 10 February 2024.

<sup>10</sup> *ibid*

<sup>11</sup> Simon A. H. Milledge, Ised K. Gelvas and Antje Ahrends, 'Forestry, Governance and National Development: Lessons Learned from a Logging Boom in Southern Tanzania' (2007) 22 <<https://www.traffic.org/site/assets/files/3612/logging-boom-southern-tanzania.pdf>> accessed 10 February 2024.

<sup>12</sup> Luca Tacconi, 'Defining Illegal Forest Activities and Illegal Logging' in Daniela Kleinschmit, Stephanie Mansourian, Christoph Wildburger and Andre Purret (eds), *Illegal Logging and Related Timber Trade – Dimensions, Drivers, Impacts and Responses: A Global Scientific Rapid Response Assessment Report* (International Union of Forest Research Organizations 2016) 24.

<sup>13</sup> UNODC, 'Illegal Logging Corruption in Forest Sector: UNODC Anti-Corruption Talk Series with Special Focus on Forests' (Friends of the Earth-Indonesia 2011) <<https://www.unodc.org/documents/southeastasiaandpacific/pdf>> accessed 20 February 2024.

<sup>14</sup> Guertin (n 9).

timber-cutting quotas.<sup>15</sup> During transportation, illegalities may relate to illegal processing and exporting, mis-declaration to customs, and avoidance of taxes and other charges.<sup>16</sup>

Guertin is even more descriptive of 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 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.<sup>17</sup> Committing any or cumulative of either of these acts constitutes an act of illegal logging.<sup>18</sup> Therefore, in this paper, illegal logging is used to suggest acts contravening the law at any point during harvesting, transporting, or trading of forest products.

Regarding the root-causes of illegal logging, Mugadza identified them to include inadequate

rules and penalty systems, weak forest governance, poverty, poor monitoring and enforcement capacity, economic and political instability, lack of transparency, corruption influence on government, favouritism, and poor concessional agreements.<sup>19</sup> Government officials are allegedly allowing loggers to exceed their logging limits, gain forest access using corrupt means, contravene forest protection laws, and capitalize massively on gaps in the existing laws.<sup>20</sup> In this study, legal and practical challenges in addressing illegal logging of forests are the subject of discussion. The logic is to unveil the up-to-date legal and practical drivers for the impediment of the forest legal regime to curbing illegal logging.

The increase of illegal logging in Tanzania is documented.<sup>21</sup> Statistics show that, Tanzania loses between 300,000 to 500,000 hectares of forests annually out of the 45.7 million hectares of the country's forest land area.<sup>22</sup> Between 2001 and 2021, Tanzania lost about 2.86 million hectares of its forest land.<sup>23</sup> Reports show that such loss is due to climate change, farming, settlement, and illegal logging.<sup>24</sup> However, the most of all causes is illegal logging, which accounts for 70 percent of the forest loss.<sup>25</sup> This has resulted in biodiversity

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<sup>15</sup> Duncan Brack, 'Illegal Logging and the Illegal Trade in Forest and Timber Products' (2003) 5(3) International Forestry Review 195.

<sup>16</sup> *ibid*

<sup>17</sup> Guertin (n 9) 4.

<sup>18</sup> *ibid*

<sup>19</sup> Alois A. Mogadza, 'The Legal Protection of Forests in International Environmental Law: Shortcomings and Comparative Analysis' (PhD Thesis, University of Girona 2020) 75; See also Benno Pokornyin, 'Drivers of Illegal and Destructive Forest Use' in Daniela Kleinschmit, Stephanie Mansourian, Christoph Wildburger and Andre Purret (eds), *Illegal Logging and Related Timber Trade – Dimensions, Drivers, Impacts and Responses: A Global Scientific Rapid Response Assessment Report* (International Union of Forest Research Organizations 2016) 61.

<sup>20</sup> *ibid*

<sup>21</sup> Felician Kilahama, 'Forest Governance Monitoring System in Tanzania' (Forest and Beekeeping Division-

Ministry of Natural Resources and Tourism) <<https://www.un-redd.org>> accessed 20 February 2024.

<sup>22</sup> Kairu (n 6).

<sup>23</sup> Global Forest Watch, 'Components of Net Change in Tree Cover in Tanzania' (2023) <<https://www.globalforestwatch.org/dashboards/country/TZA/14/4/>> accessed 21 February 2024.

<sup>24</sup> The United Republic of Tanzania, 'National Forest Policy Implementation Strategy 2021-2031' (MNRT 2021) 4; see also Egger Topper, 'Evaluation of the Agriculture, Rural Development and Forest Sector Programmes in Africa: Country Report, Tanzania' (2019) 15 <<https://um.fi/documents>> Accessed 21 February 2024.

<sup>25</sup> Food and Agriculture Organization, 'The State of the World's Forests: Forests, Diversity and the People' (2020) <<https://www.fao.org/3/ca8642en/ca8642en.pdf>> accessed 25 February 2024; See also Ligami (n 7); See also The United Republic of Tanzania, 'A Forest Inventory by the Tanzania Forest Service Agency. Report

loss, climate change, disruption of livelihoods, and loss of government revenues.<sup>26</sup>

Odhiambo argues that in Tanzania, illegal logging is almost legal, pointing out that the forest land is subjected to risk as a result of illegal logging.<sup>27</sup> The author submits that the government is seemingly unable to address the problem, as its officials (own forest staff) are accused of being directly involved in illegal logging.<sup>28</sup>

### **3. ILLEGAL LOGGING OF FORESTS AND CLIMATE CHANGE**

#### **3.1. The role of forests in climate change regulation**

Forests offer essential climate services. In mitigating climate change, forests are a net carbon sink through absorbing greenhouse gas emissions from the atmosphere.<sup>29</sup> In adapting to climate change, forests provide ecosystem-based solutions, enhancing the resilience of communities and landscapes to the impacts of climate change, such as regulating water flows and preventing soil erosion and extreme weather events.<sup>30</sup> In mitigating climate change, forests are integral to carbon sequestration, absorbing carbon dioxide from the atmosphere and thus acting as a buffer against climate change. According to the Food and Agricultural Organization, forests worldwide store approximately 289 gigatons of carbon in their

biomass, making their protection crucial in mitigating greenhouse gas emissions.<sup>31</sup>

Studies show that forests play a vital role in achieving the Paris Agreement's ambition of maintaining the global temperature rise well below 2 °C above preindustrial levels.<sup>32</sup> Vizzarri *et al* argue that forests contribute to climate change mitigation by removing a substantial amount of total greenhouse gas emissions from the atmosphere.<sup>33</sup> Consequently, measures to achieving climate change mitigation may not leave forest sustainability out. On this, Canadell and Raupach argue that since forests act as carbon stocks, there is a need to consider regulating forest activities in climate policies. The authors firmly sustain this argument, pointing out that forests can contribute to climate change protection.<sup>34</sup>

#### **3.2. Impact of illegal logging on climate change**

Illegal logging contributes to climate change in several ways. The major impact is by contributing to deforestation, which is a major driver of carbon emissions. According to FAO, deforestation accounts for approximately 11 per cent of global greenhouse gas emissions.<sup>35</sup> This figure highlights the urgency of addressing illegal logging activities. In Tanzania, where forests cover about 45 million hectares, illegal logging has led to a significant loss of tree cover. A study by the National Forest

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by Tanzania Forest Service Agency' (2015) <<http://news.mongabay.com/2016/10/>> accessed 25 February 2024.

<sup>26</sup> Caroline Kimeu, 'Means of Survival': Tanzania Booming Charcoal Trade Drivers Unchecked Deforestation (2022) <<https://www.theguardian.com/global-development/2022/>> accessed 21 February 2024.

<sup>27</sup> Nicodemus Odhiambo, 'Tanzania: Where Illegal Logging is almost Legal (World Rainforests Movement 1999)' <<https://www.wrm.org.uy/print/pdf/node/>> accessed 25 February 2024.

<sup>28</sup> *ibid*.

<sup>29</sup> Psistaki, Tsantopoulos and Paschalidou (n 3); see also Vizzarri, Pilli, Korosuo, Frate and Grassi (n 3).

<sup>30</sup> Fischer, Aminur, Shah, Segnon, Matavel, Antwi-Agyei, Shang, Muir, and Kaufmann (n 4); see also Rajasugunasekar, Patel, Devi, Singh, Selvam and Chandra (n 4).

<sup>31</sup> Food and Agricultural Organisation, 'Global Forest Resources Assessment' (2020) <<https://www.fao.org/interactive/forest-resources-assessment/2020/en/>> accessed 1 July 2024

<sup>32</sup> Vizzarri, Pilli, Korosuo, Frate and Grassi (n 3) 508.

<sup>33</sup> *ibid*

<sup>34</sup> Joseph G. Canadell, 'Managing Forests for Climate Change Mitigation' (2008) 320(5882) *Science* 1456.

<sup>35</sup> Food and Agriculture Organization (n 31).



Resources Monitoring and Assessment indicates that Tanzania is increasingly losing its forest cover, primarily due to illegal activities.<sup>36</sup> Scientifically, when trees are felled and not replaced, the carbon stored in their biomass is released back into the atmosphere as carbon dioxide, contributing to global warming.<sup>37</sup> As a result, addressing illegal logging is not only for local environmental health but also for achieving climate change mitigation.

Again, forests play a crucial role in regulating local climate systems through scientific processes such as evapotranspiration, which contributes to precipitation patterns. When forests are degraded or destroyed, these processes are disrupted, leading to altered weather patterns and increased vulnerability to climate extremes.<sup>38</sup> A report by the FAO highlights that forest loss can result in decreased rainfall and increased temperatures, which can exacerbate drought conditions and negatively affect agricultural productivity.<sup>39</sup> In Tanzania, where many communities depend on rain-fed agriculture, the impacts of illegal logging can be devastating. Changes in rainfall patterns due to forest loss can lead to crop failures, threatening food security and livelihoods. Furthermore, the loss of forest cover increases soil erosion and reduces water quality, compounding the challenges faced by local communities.

Further, studies show that, illegal logging is a sign of weak forest governance. It is a symptom

of inconsistent law enforcement, endemic corruption, unclear laws and policies, and poor oversight of forest management activities.<sup>40</sup> As many of these exist in a country, they present a significant risk to the ability of the country to reduce emissions from forest loss successfully. As a result, climate change impacts upsurge, while the country's climate change mitigation efforts are similarly threatened. Consequently, studies reveal that addressing illegal logging is part of a comprehensive approach to achieving climate change regulation actions.<sup>41</sup>

### 3.3. An overview of legal and policy responses in Tanzania

It is worth noting that, Tanzania is a part to international climate change-related instruments such as the United Nations Framework Convention on Climate Change<sup>42</sup> the Convention on Biological Diversity<sup>43</sup> and the Paris Agreement.<sup>44</sup> These instruments require states to assume appropriate measures to protect forests. Being party to these instruments,<sup>45</sup> Tanzania is imposed with obligations to ensure that the spirit embodied under these instruments is fully realised.<sup>46</sup> Consequently, the country has legal and policy frameworks aimed at forest protection which are essential components in the fight against climate change. The key policy instruments are the National Forest Policy, 1998, and the National Environmental Policy, 2021. The key legal instruments are the Forest Act, 2002, the Forest Regulations, 2004, and the Forest

<sup>36</sup> National Forest Resources Monitoring and Assessment, 'Sampling Design Options for 2nd Biophysical Inventory (NAFORMA II)' (2022) <<https://openknowledge.fao.org/items/5b5b5d06-c621-4575-9efb-6741f7b0527f>> accessed 5 July 2024.

<sup>37</sup> Kyle P. Whyte, 'How does Illegal Logging Affect Climate Change (the Tribal Climate Camp 2024)' <<https://www.tribalclimatecamp.org/how-does-illegal-logging-affect-climate-change/>> accessed 10 August 2024.

<sup>38</sup> *ibid*

<sup>39</sup> Food and Agriculture Organization (n 31).

<sup>40</sup> Florence Daviet, Lauren Goers, Larry Macfaul, Andrea Johnson, and Kirsten Stasio, 'Tracking Transformative

Forest Actions to Reduce Emissions: An Illegal Logging Case Study' (The World Resources Institute 2010) 6.

<sup>41</sup> *ibid*

<sup>42</sup> The United Nations Framework Convention on Climate Change 1992.

<sup>43</sup> The United Nations Convention on Biological Diversity 1992.

<sup>44</sup> The Paris Agreement on Climate Change 2015.

<sup>45</sup> The UNFCCC was ratified on 17 April 1996, the CBD on 8 March 1996 and the Paris Agreement on 18 May 2018.

<sup>46</sup> See the UNFCCC articles 3 & 4 and the CBD article 6.

(Sustainable Utilization of Logs, Timber, Withies, Poles or Charcoal) Regulations, 2019.

It is also worth noting that, the existing legal and policy frameworks provide the groundwork for sustainable forest management and outline the responsibilities of various stakeholders in conserving forest resources. The National Forest Policy, for instance, emphasizes sustainable use, conservation, and the involvement of local communities in forest management, recognizing their critical role in protecting these ecosystems.<sup>47</sup> The National Environmental Policy advocates strengthening sustainable regimes for forest resource conservation, utilization, and protection. It further recognizes climate change as a growing threat, thereby urging multifaceted mechanisms to address climate change impacts including through protecting forest resources.<sup>48</sup>

In the absence of a specific policy on climate change, Tanzania has the Climate Change Strategy of 2012. The strategy reinforces the role of forest conservation in achieving national climate resilience goals. It outlines strategies for integrating climate change considerations into forest management practices and emphasizes the need for collaboration between government agencies, local communities, and civil society. By promoting community-based forest management, the strategy aims to empower local populations to take an active role in protecting their forests, fostering a sense of ownership and responsibility.<sup>49</sup> One of the most significant initiatives in this context is REDD+ (Reducing Emissions from Deforestation and Forest Degradation), which aligns forest conservation efforts with climate action. The REDD+ framework incentivizes

countries to reduce deforestation rates by providing financial support in exchange for measurable results in forest preservation. Tanzania has made strides in implementing REDD+ projects, focusing on capacity building, stakeholder engagement, and establishing monitoring systems to track deforestation and degradation.<sup>50</sup> These projects not only contribute to climate change mitigation but also promote sustainable livelihoods for local communities.<sup>51</sup>

While Tanzania has a legal and policy framework in place aimed at forest conservation to address climate change, illegal logging of forests has impeded the realization of this end. Therefore, to ensure sustainable forest protection as a potential solution to mitigate climate change, addressing illegal logging is imperative. This can be achieved by unveiling the responsible legal and practical challenges in addressing illegal logging in the country and exploring possible measures for recommendation.

#### **4. CURRENT MEASURE FOR ADDRESSING ILLEGAL LOGGING OF FORESTS IN TANZANIA**

Overcoming the perils of illegal logging requires the establishment of strong legal measures. This section analyses the mechanisms enshrined under the existing legal framework relating to forest protection in curbing illegal logging of forests in Tanzania.

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<sup>47</sup> The United Republic of Tanzania, National Forest Policy (1998) Government Printers, Dar es Salaam.

<sup>48</sup> The United Republic of Tanzania, National Environmental Policy (October 2021) Vice President's Office-Dar es Salaam.

<sup>49</sup> The United Republic of Tanzania, Climate Change Strategy (2012).

<sup>50</sup> Mary Nantongo, Arild Vatn, and Geoffrey Soka, 'REDD+: The Perfect Marriage between Conservation and Development? A Comparative Study of the Impacts of REDD+ on Livelihoods and Deforestation in Tanzania' (2024) 173 World Development.

<sup>51</sup> *ibid*

#### **4.1. Prohibition of illegal harvesting of forests Produce**

Illegal harvesting of forests is the starting point of the chain of illegal logging.<sup>52</sup> Thus, the law prohibits entry into forest reserves and harvests forest produce without permits or licences.<sup>53</sup> This prohibition operates as a deterrence to the illicit harvest of forest produce. The law prohibits the transferability and/or negotiability of licences or permits.<sup>54</sup> Thus, only permits or licence holders are authorised to harvest forests. This requirement limits the influx of forest loggers over a single permit. The law restricts the harvesting to the terms and conditions of the permit or licence,<sup>55</sup> thereby controlling overharvesting. Execution of a permit or licence to harvest forest 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 the unlawfulness of harvesting forest produce is seemingly lacking a 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 the grant of such permits. To that end, a licence or permit may be revoked where the holder breaches the prescribed conditions.<sup>56</sup>

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<sup>52</sup> Guertin (n 9).

<sup>53</sup> The Forest Regulations, Government Notice No. 153 of 2004, regulation 20(1).

<sup>54</sup> *ibid*, regulation 23(2).

<sup>55</sup> The Forest Act, 2002 (R.E 2002), sections 52(1) and 56(6). See also the Forest (Sustainable Utilization of Logs, Timber, Withies, Poles or Charcoal) Regulations, Government Notice No. 417 of 2019, regulation 9.

#### **4.2. Prohibition of unlawful exporting of forests produce**

The law prohibits the exportation of forest produce without a valid export certificate. The law requires exported forest produce, especially timber, to be accompanied by an export certificate which is issued concerning graded timber.<sup>57</sup> The law restricts issuance of an export certificate to a satisfaction of grading and that grading of each piece of timber should accord with the marks thereon.<sup>58</sup> This requirement is important since grading is only in respect of lawfully harvested forest produce. Hence, the issuance of an export certificate serves as clearance of the lawfulness of exported forest produce.

Restricting the exportation of timber to holders of valid export certificates is vital since harvesters may not necessarily be exporters. Therefore, to ensure that exported forest produce was also legally harvested, there should be proof of authority. In such a way, whoever exports forest produce is under a duty to prove legality by showing a valid export certificate. In the absence of a valid export certificate, officials at checkpoints may easily notice illegality in harvesting the exported forest produce.

#### **4.3. Prohibition of unlawful transportation of forest produce**

The existing forest legal regime prohibits unlawful transportation of forest produce. In the first place, the law prohibits transporting forest produce harvested in contravention of the law.<sup>59</sup> This implies that the legality of transportation

<sup>56</sup> The Forest Act, 2002 (R.E 2002), section 56(6). See also the Forest Regulations, Government Notice No. 153 of 2004, regulation 22(1).

<sup>57</sup> The Forest Act, 2002 (R.E 2002), sections 58(2).

<sup>58</sup> *ibid*

<sup>59</sup> 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).



of forest produce depends on the legality of harvesting. This requirement is significant in curbing illegal logging of forests because the transportation of forest produce requires proof of authority to harvest. To ensure that the transportation of forest produce is not employed to effect illegal logging, the law requires transporters to obtain a transit pass.<sup>60</sup> A transit pass specifies the type of forest produce transported, carrying on track and specific routes. To start with the specification of the type of forest produce, this study found that this requirement is important in deterring illegal forest dealings since it deters the transportation of forest produce than those specified in the transit pass. To ensure that this requirement is complied with, the law obliges the owner of any means of transport not to accept any forests produced for transportation unless the forests produce concerned are covered under a valid transit pass.<sup>61</sup> This requirement ensures that the means of transport are not deployed to transport illegal forest produces.

Another aspect is the requirement of the law that forest produce should be transported on a track and through the routes prescribed in the licence or transit pass as the case may be.<sup>62</sup> This study found that this requirement serves as a way to deter the transportation of otherwise illegally harvested forest produce. This is because it restricts the deviation of specified routes.<sup>63</sup> Compelling transportation through the defined routes simplifies the inspection of transported forests produce in checkpoints where transported forests produce than those specified may easily be noticed. Achieving a well-regulated transportation of forest produce requires instant inspections. This study found

that regulating transportation routes enhances attained such objective. It is made possible because this requirement avoids deviation of routes for the sake of transporting forest produce that may have otherwise been illegally obtained.

Another significant requirement in the transportation of forest produce is time. The law prohibits, on the one hand, delaying transportation or removal of forest produce within prescribed time<sup>64</sup> and, on the other hand, transporting forest produce at any time before 06:00 am or after 06:00 pm.<sup>65</sup> The first prohibition is meant to cure unnecessary delay of forest produce removal. Thus, it ensures that licenced harvest is fully executed within the permitted time. This requirement avoids forest dealings after the expiration of the licence even though the forests produce was 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.<sup>66</sup> The second prohibition intends to control transportation of illegal forests produce during night hours. 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.

The existing legal regime is designed in a way to ensure that acts of unlawful transportation of forests produce are backed up with sanctions.

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<sup>60</sup> The Forest Regulations, Government Notice No. 153 of 2004, regulation 13 (1).

<sup>61</sup> *ibid*, regulation 13 (4).

<sup>62</sup> The Forest Regulations, Government Notice No. 153 of 2004, regulation 8 (3).

<sup>63</sup> The Forest (Sustainable Utilization of Logs, Timber, Withies, Poles or Charcoal) Regulations, Government Notice No. 417 of 2019, regulation 16(2).

<sup>64</sup> The Forest Regulations, Government Notice No. 153 of 2004, regulation (8)1.

<sup>65</sup> The Forest (Sustainable Utilization of Logs, Timber, Withies, Poles or Charcoal) Regulations, Government Notice No. 417 of 2019, regulation 17(1).

<sup>66</sup> The Forest Regulations, Government Notice No. 153 of 2004, regulation 8(2).

The law makes it an offence to operate or cause to operate vehicles to transport forests produce unlawfully harvested.<sup>67</sup> 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 from the roads or routes specified in the transit pass.<sup>68</sup> As stated herein above, this ensures effective inspections. Similarly, it is an offense to transport or move forest produce without a forest produce allocation certificate, transit pass, license to fell and collect forest produces, certificate for registration as a forest produce dealer, and a government receipt.<sup>69</sup> The law requires that he who transports forest produce should have documents that shows registration and authorization to deal with forest produce including proof of payment of government fees. In the absence of the prescribed documents on transit, the transporter commits an offense and the law sets corresponding sanctions.<sup>70</sup>

#### **4.4. Prohibition of unlawful possession of forests produce**

The existing forest legal framework prohibits persons without authority to take, receive, or possess forest produce.<sup>71</sup> The lawful authority of such possession depends on the 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 the possession of forest 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 unlawfully possesses forest produce and, on the conviction, that person is liable to a fine<sup>72</sup> or imprisonment term in default to pay the fine and, confiscation of forest produce unlawfully possessed.<sup>73</sup> The prohibition, penal criminalization, and sanction of unlawful possession of forest produce are 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 forest produce save as a cure in the event harvesting and transporting legal restrictions were avoided.

#### **4.5. 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.<sup>74</sup> This prohibition is significant in curbing illegal logging since its chain characterizes trade. It 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

<sup>67</sup> The Forest Act, 2002 (R.E 2002), section 89(b).

<sup>68</sup> The Forest (Sustainable Utilization of Logs, Timber, Withies, Poles or Charcoal) Regulations, Government Notice No. 417 of 2019, regulation 16(3).

<sup>69</sup> *ibid*, regulation 20(3). See also the Forest Act, 2002 (R.E 2002), section 89(h).

<sup>70</sup> The Forest (Sustainable Utilization of Logs, Timber, Withies, Poles or Charcoal) Regulations, Government

Notice No. 417 of 2019, regulations 16(3) (a) (b) and (c) and 20(3).

<sup>71</sup> The Forest Act, 2002 (R.E 2002), section 88.

<sup>72</sup> *ibid*.

<sup>73</sup> The Forest (Sustainable Utilization of Logs, Timber, Withies, Poles or Charcoal) Regulations, Government Notice No. 417 of 2019, regulation 16(3)(b).

<sup>74</sup> The Forest Act, 2002 (R.E 2002), section 89(d).

registration as a forest produce dealer or trader.<sup>75</sup> 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 authoritative documents.<sup>76</sup> 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.<sup>77</sup>

## **5. CHALLENGES IN ADDRESSING ILLEGAL LOGGING IN TANZANIA**

### **5.1. Legal challenges**

Analysis of the legal framework relating to forest protection has depicted that such legal framework is not without challenges in addressing illegal logging in the country. In the first place, the existing legal regime is questionable of sufficient sanctions. The law sets relatively lenient sanctions especially low fines to convicts of illegal logging practices. Serve for an offence of unlawful trade in forest produce which is similarly sanctioned and punished under the Economic and Organized Crime Control Act (EOCCA),<sup>78</sup> which provides for severe sanctions, other forest offences are

sanctioned under the Forest Act<sup>79</sup> and its regulations. This legal regime embodies punishments to offenders of fines ranging between thirty thousand to ten million shilling.<sup>80</sup>

To set a scene, for instance, 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.<sup>81</sup> 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.<sup>82</sup> An offence of unlawful possession established under section 88 of the Forest Act<sup>83</sup> attracts a fine of not less than one hundred thousand shillings but not exceeding five million.<sup>84</sup> This paper submits that these sanctions are seemingly unrealistic and lenient. In the event the forest dealer transports forests produce worth millions or billions of shillings, imposition of a fine of five to ten million is without deterrence effect. Sanctions of a kind, neither threats nor discourage illegal logging, since illegal loggers may be able to pay such fines easily given the profit they obtain. Consequently, illegal logging practices escalate.

<sup>75</sup> The Forest Regulations, Government Notice No. 153 of 2004, regulation 54(1).

<sup>76</sup> The Forest (Sustainable Utilization of Logs, Timber, Withies, Poles or Charcoal) Regulations, Government Notice No. 417 of 2019, regulation 20(3).

<sup>77</sup> The Forest Act, 2002 (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, 1984 (R.E. 2022) (EOCCA) .

<sup>78</sup> EOCCA, paragraph 33 of the First Schedule to the Act.  
<sup>79</sup> R.E 2002.

<sup>80</sup> *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).

<sup>81</sup> *ibid*.

<sup>82</sup> *ibid*.

<sup>83</sup> R.E 2002.

<sup>84</sup> *ibid*, section 88 as amended by section 28 of Written Laws (Miscellaneous Amendment) (No.2) Act, No.4 of 2016.

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.<sup>85</sup> The interviewed Magistrate informed this study that the exercise of such discretion has often been in favour of imposition of fines over imprisonment.<sup>86</sup> This was similarly supported by the interviewed State Attorney.<sup>87</sup> Therefore, in absence of severe fines with deterrence effect, efforts to curbing illegal logging are undermined. Makoye rightly submits that when fines and penalties imposed to illegal loggers are relatively low, they do not deter illegal logging since offenders can easily pay.<sup>88</sup> This paper submits in the same order. It finds that, low fines neither threatens, nor deter illegal loggers. Consequently, illegal logging leads in the country.<sup>89</sup>

Another legal challenge is the unclear construction of some offences and sentences. For instance, the Forest Act<sup>90</sup> 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.’<sup>91</sup> This implies that there should be an independent offence under the Forest Act in relation to the forests produce in possession.

For instance, that the forests produce in question were harvested or transported illegally. Nonetheless, in forest dealings, one may enter possession of forests produce in circumstances which are logically threatful, without committing a separate offence, for instance, extended possession.

Consequently, although extended possession after expiration of licence may be logically unlawful, it cannot be punished since it falls short of the construction of unlawful possession. Therefore, this study submits that the existing construction of an offence of unlawful possession of forest produces undermine the effort to fighting illegal logging practices. This is because it creates loopholes through which logically unlawful possession acts may not be prosecuted successful. In *Director of Public Prosecutions vs Danford Roman @ Kanani*<sup>92</sup> 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.

With regard to unclear sentences, the Forest Act<sup>93</sup> imposes the punishment of forfeiture. The language used is confiscation of ‘anything’ used in the commission of the offence.<sup>94</sup> The

<sup>85</sup> The Penal Code, [Cap. 16 R.E. 2019], section 29(a).

<sup>86</sup> Information obtained through interview conducted with a Resident Magistrate-Kilosa District Court (Morogoro) in March 2023.

<sup>87</sup> 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.

<sup>88</sup> Kizito Makoye, ‘How to Stop Illegal Logging in Tanzania’ (World Economic Forum 2015) <<https://www.weforum.org/agenda/2015/01/how-to-stop-illegal-logging-in-tanzania/>> accessed 4 April 2023

<sup>89</sup> 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 Yohan v. The Republic*, Criminal Appeal No.20 of 2021, High Court of Tanzania, District Registry Kigoma at Kigoma (unreported).

<sup>90</sup> R.E 2002.

<sup>91</sup> *ibid*, section 88.

<sup>92</sup> Criminal Appeal No.236 of 2018, Court of Appeal of Tanzania Dar es Salaam (Unreported).

<sup>93</sup> R.E 2002.

<sup>94</sup> *ibid*, section 97(1) (b).



term ‘anything’ literally and logically includes 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 implements judged confiscated by lower courts 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 as a result of unclear construction of such sentence.

In *Juliana Seki Mwakatagwe vs The Republic & Two Others*,<sup>95</sup> the applicant filed a revision before the 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.<sup>96</sup>

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<sup>95</sup> Criminal Application No.52 of 2022, High Court of Tanzania, District Registry of Mbeya at Mbeya, (unreported).

<sup>96</sup> *Novatus Anselimi Moshy v. The Republic* (DC) Criminal Appeal No.31 of 2021, High Court of Tanzania, District Registry of Kigoma at Kigoma (Unreported) depicts the similar incident. Following conviction on unlawful possession of forest produce, the district court

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 submits 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 invoked as 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. As a result, this undermines efforts to fight illegal logging of forests.

## **5.2. Practical challenges**

To explore practical challenges in curbing illegal logging, a resort to field responses was necessary. Through interviews conducted with different stakeholders, it was generally observed that the escalation of illegal logging activities is largely due to myriad practical challenges. Those challenges are discussed below.

### **5.2.1 *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 efficiencies in the protection of forests against illegal logging. To date, the TFS is still a civil agency.<sup>97</sup> Thus, it is working with semi-trained forest guard officers,

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.

<sup>97</sup> Information obtained through interviews conducted with a TFS-Forest Protection Officer & a TFS-Head of Forest Patrol (Morogoro) in February 2023.



who went through a short-time programme meant to equip them with elementary in forest patrols.<sup>98</sup> As such, having qualified military personnel was allegedly difficult.<sup>99</sup> The effect of the current state of the TFS setup is that it cannot conduct effective forest patrols to detect illegal loggers. It should be noted that, allegedly, most illegal loggers are found well-armed and ready to battle patrol officials.<sup>100</sup> This implies that in the 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 the harvesting of forest produce.

Further, it was revealed that the TFS lacks enough cars for instant forest inspection and visitation.<sup>101</sup> Forest patrol officers revealed that sometimes they lack motorcycles to reach mountainous forests.<sup>102</sup> This view was supported by interviewed community members living adjacent to forest reserves who maintained that there are no regular patrols.<sup>103</sup> Local leaders were of the same view that forest patrols are rarely conducted in their surrounding forests.<sup>104</sup> 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.

### **5.2.2 *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.<sup>105</sup> In addition, corrupt practices among local leaders turn them unready to disclose information that implicates the suspects during prosecution of illegal logging cases.<sup>106</sup> 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.

Further, forest officials were reportedly alleged to receive bribes during the process of permits grant, renewal and clearances.<sup>107</sup> In response to this, forest officials were of the view that forest

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<sup>98</sup> *ibid*

<sup>99</sup> *ibid*

<sup>100</sup> Information obtained through interview conducted with TFS-Forest Patrol Officers (semi-trained forest guard officers) (Morogoro) in February 2023.

<sup>101</sup> Information obtained through interviews conducted with a TFS-Forest Protection Officer & a TFS-Head of Forest Patrol (Morogoro) in February 2023.

<sup>102</sup> Information obtained through interview conducted with TFS-Forest Patrol Officers (semi-trained forest guard officers) (Morogoro) in February 2023.

<sup>103</sup> Information obtained through interview conducted with Community Members in Ruaha and Ihombwe Villages, in March 2023.

<sup>104</sup> Information obtained through interview conducted with Village Chair persons and VEOs in Ruaha and Mkangawalo Villages, in March 2023.

<sup>105</sup> Information obtained through interview conducted with TFS-Forest Patrol Officers (semi-trained forest guard officers) (Morogoro) in February 2023.

<sup>106</sup> Information obtained through interview conducted with a State Attorney-serving in Kilosa District (Morogoro) in March 2023.

<sup>107</sup> Information obtained through interview conducted with a Forest Dealer in Morogoro Municipal Council in March 2023.

dealers always try to avoid paying government taxes and they normally try to bribe forest officials.<sup>108</sup> The effect of corruption in this process is that, when qualified forest dealers are denied permits for failure to pay demanded bribes, they may 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.

Furthermore, this study found that, courts are reportedly alleged of corruption practices.<sup>109</sup> 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.<sup>110</sup> 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.

### 5.2.3 *Deficiencies in prosecution of illegal logging practices*

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.<sup>111</sup> While forest officials claimed prolonged prosecution, prosecutors and magistrates confirmed such delay alleging that prolonged prosecutions of such cases result from overloads of courts and delay in investigation.<sup>112</sup> 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.<sup>113</sup> This is mainly because effective and timely prosecution sends a message to illegal loggers that illegal logging is not without immediate and serious consequence.<sup>114</sup> Contrarily, if illegal loggers are not effectively delt with, it similarly sends a message that illegal logging is without immediate and serious consequences.<sup>115</sup> Therefore, in absence of effective and timely prosecution, efforts to curbing illegal logging of forests are likely to be undermined.

Further, it was found that in most cases, prosecution process is not touching all who are involved in the chain of illegal logging. It was

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<sup>108</sup> Information obtained through interview conducted with a TFS-Forest Protection Officer & a TFS-Head of Forest Patrol (Morogoro) in February 2023.

<sup>109</sup> 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.

<sup>110</sup> Information obtained through interview conducted with a State Attorney serving in Kilosa District in March 2023.

<sup>111</sup> Information obtained through interview conducted with TFS-Forest Patrol Officers (semi-trained forest guard officers) (Morogoro) in February 2023.

<sup>112</sup> 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.

<sup>113</sup> Denis Solodov and Elżbieta Zębek, 'Unlawful Prosecution in the Case Regarding Destruction of a Forest Ecosystem' (2022) 8(2) *RBDPP* 653.

<sup>114</sup> *ibid*

<sup>115</sup> *ibid*

allegedly reported that sometimes the chain of illegal logging of forest includes people who are not directly participating in perpetration of illegal logging activities.<sup>116</sup> 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.<sup>117</sup> It was reported that some of these financiers are known, only that they distance themselves from active engagement such that having strong evidence against them becomes difficult.<sup>118</sup> 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.

#### **5.2.4 *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.<sup>119</sup> Forest patrol officials opined that illegal loggers enter forests in night hours to avoid detection and

arrest.<sup>120</sup> 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.<sup>121</sup> As a result, acts of illegal harvesting and transportation of products exists, while harvesters and transporters are unnoticed.<sup>122</sup> Amidst the reported mid-night illegal logging of forest operations, it was reported that night patrols in forests are inadequate.<sup>123</sup> Inadequate night forest patrols may link with the state of TFS set-up today. The TFS is still a civil-based agency under transformation into a military agency.<sup>124</sup> Thus, it is not mannered with military personnel 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 forest produce undetected.

#### **5.2.5 *Excessive forest dependency for energy and economic gains***

Communities living adjacent to forests depend largely on forests for energy and economic gain. Forest officials reported that in most of such communities, their dependency on forests is just for survival.<sup>125</sup> Patrol officers supported this view alleging that most of illegal loggers caught regularly allege that they have no alternative means to secure energy.<sup>126</sup> Again, people living adjacent to forests in Tanzania

<sup>116</sup> Information obtained through interview conducted with a TFS-Forest Protection Officer & a TFS-Head of Forest Patrol (Morogoro) in February 2023.

<sup>117</sup> *ibid*

<sup>118</sup> *ibid*

<sup>119</sup> 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.

<sup>120</sup> Information obtained through interview with TFS-Forest Patrol Officers (semi-trained forest guard officers) (Morogoro) in February 2023.

<sup>121</sup> Information obtained through interviews conducted with Village Chairpersons, VEOs and WEOs Kilosa and Kilombero Districts in March 2023.

<sup>122</sup> *ibid*

<sup>123</sup> *ibid*

<sup>124</sup> Information obtained through interview conducted with a TFS-Forest Protection Officer (Morogoro) in February 2023.

<sup>125</sup> Information obtained through interview conducted with a TFS-Forest Protection Officer, & a TFS-Head of Forest Patrol (Morogoro) in February 2023.

<sup>126</sup> Information obtained through interview with TFS-Forest Patrol Officers (semi-trained forest guard officers) (Morogoro) in February 2023.

earn money from their surrounding forests.<sup>127</sup> Those community members increasingly engage in timber harvesting, firewood cutting, and charcoal making for business.<sup>128</sup> Studies show that at least 90 percent of rural household energy consumption in Tanzania comes from firewood and charcoal.<sup>129</sup>

Such excessive dependency on forests for energy and the economy is not without consequences. It suggests one major hypothesis that, fighting illegal logging is difficult and, perhaps endless. This is mainly because forest dependence is in such cases for survival. Hence, unauthorised access to forests is likely to continue in the 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.

## **6. CONCLUSION AND RECOMMENDATIONS**

The analysis of legal challenges has depicted that, one of the challenges in curbing illegal logging of forests is insufficient and lenient sanctions for some offenses. In almost all forest offenses, on conviction, the law imposes, among others, fines and imprisonment. Following such thorough emphasis on the imposition of fines, this paper recommends that the Forest Act should be amended to increase the relatively low fines. It recommends further that imprisonment should be imposed for serious forest offenses without an option of fines. In addition, compensation should be ordered to mitigate the climate impacts associated with the illegal forest act in question. Further, this paper recommends an amendment to the Forest Act to address the unclear

construction of some offenses and sentences. This paper found that, the offense of unlawful possession of forest produce is unclearly construed in such a way that its interpretation may let the ought-to-be unlawful possessor of forest produce go unpunished. Therefore, to avoid absurdity and ensure that illegal loggers are comprehensively accommodated under the existing offenses, the Forest Act should be revisited. Similarly, this paper recommends that sentences should be clear. It has been noted above that the sentence of forfeiture of anything used in the commission of offenses is vaguely construed. As a result, it has occasionally created varied interpretations. While other courts interpret forfeiture to cover 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 paper recommends a clear construction, especially that forfeiture covers anything irrespective of whether or not the owner is the convict.

Moreover, this paper recommends strengthening the working capacity of the TFS. In the first place, it recommends transforming the TFS into a military agency to strengthen the agency, especially in its field operations, and pose a protective threat to illegal loggers. Also, it recommends that the government should ensure sufficient human and non-human resources at the agency. This will enable the agency to carry out routine, sudden, periodic patrols. Again, this paper recommends the effective engagement of local leaders by the TFS. It has been noted that these key players are not sufficiently engaged in forest protection against illegal logging. As a result, instead of exposing illegal loggers to legal actions, they hide them. The TFS should work very closely

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<sup>127</sup> Emmanuel P. Mhache, ‘Impact of Wood Fuel Production on the Livelihood of the People in Bagamoyo District, Tanzania’ The Open University of Tanzania 196 <<https://www.ajol.info>> accessed 8 May 2023.

<sup>128</sup> Mhache (n 127).

<sup>129</sup> Ntiyakunze and Stage (n 1) 8.

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 loggers since they can primarily confront them before the TFS. Further, this paper recommends that the TFS should resort to the use of technology in addressing illegal logging. Employing technology is crucial in the fight against illegal logging and enhancing climate change mitigation. Implementing advanced monitoring systems, such as satellite imagery and remote sensing, can provide real-time data on forest cover changes and identify illegal logging activities more accurately. Further, this paper recommends developing and enforcing comprehensive legal frameworks that define corruption in the forestry sector, outlining specific penalties for violations. The TFS should establish secure channels for whistle-blowers to report corruption without fear of retaliation, ensuring their safety and confidentiality. This may also be achieved through collaboration with non-governmental organizations and civil society in monitoring the forestry sector and advocate for anti-corruption measures.

Furthermore, meticulous engagement of community members in forest protection activities, especially, against illegal logging is recommended. Local communities are arguably possessing intimate knowledge of their

environments and are often the first to notice changes or illegal activities in the forests. By actively involving them in monitoring and protecting forest areas, communities can take ownership of conservation efforts.

This not only enhances the effectiveness of conservation strategies but also strengthens the social fabric, ensuring that the benefits of forest resources are equitably shared and that illegal logging activities are promptly reported and addressed. Along with this, the government should encourage and facilitate the use of alternative sources of energy. This paper recommends a two-way approach in resort to alternative sources of energy that is encouraging and facilitating. This is to say, encouraging the use of alternative sources of energy should go hand in hand with facilitating affordability. This is because the state of excessive dependence is certainly not only a result of the communities' deliberate reluctance to use alternative energy sources but also their inability to afford them. It has also been pointed out that such dependence is for survival. Therefore, this paper recommends that the government should encourage and facilitate alternative economic activities for earnings. Creating a favourable environment for investing in alternative economic activities especially agriculture may support a successful fight against illegal logging to mitigate climate change.