

GUIDE TO GOOD PRACTICE IN CONTRACT LABOUR IN FORESTRY



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Report of the UNECE/FAO
Team of Specialists on Best Practices in Forest Contracting

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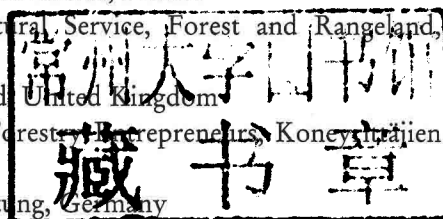
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PREFACE

One aspect of the social pillar of sustainable forest management, which has so far received little attention at the policy level, is the forest workforce. There has been little recognition at the international level of the obvious fact that sustainable forestry requires a sustainable workforce. Increasingly, forestry operations, -notably harvesting- are carried out by contractors. These are often small or very small enterprises, which therefore face major challenges in terms of occupational safety and health and economic viability as they lack a strong structure of cooperation and mutual support.

A team of specialists was set up under the integrated programme of the UNECE Timber Committee and the FAO European Forestry Commission to address this issue. This team, led by Edgar Kastenholz of ENFE, has drawn up a *Guide to Good Practice in Contract Labour in Forestry*, intended to help these contractors, and those working with them, to understand the issues, and function in a truly sustainable way. The Guide is based on European and North American conditions, but many of its suggestions are applicable elsewhere. We hope that this good practice guide will take its place alongside other good practice guides prepared by FAO and its partners as a very practical contribution towards achieving sustainable forest management.

We take this opportunity to thank the team members for their work in opening up a new field of activity and drawing attention to a range of issues which need attention, but which, as this Guide shows, may also be solved by applying basic principles and learning from the experience of others. The work was supported from the FAO staff side by Joachim Lorbach.



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SUMMARY

A MODEL FOR GOOD PRACTICE IN CONTRACT LABOUR IN FORESTRY

This guide illustrates how good practice in contract labour in forestry can be implemented. A number of examples of tools, instruments and strategies are presented. References and contact details to obtain further information complement these guidelines.

The following model is a summary of the various criteria for good practice that make up the content of this guide. It does not simply explain what the working conditions should be. Instead, it outlines framework conditions contributing to a good business environment – thereby allowing fair competition and partnerships between forestry contractors and their clients as well as among contractors themselves.

The good forestry contractor should:

- ... be registered as a business with the competent national or regional authority according to the regulations in force. These are based on rules recognized by the entire sector and that lay down the criteria for the registration of a business with the public authorities;
- ... have a competent and qualified business management that not only has the ability to take operational decisions but also to conduct a business in an entrepreneurial way. In order to do this the business management has management staff with accounting skills as well as expert knowledge of investment planning and assessment of offers;
- ... employ qualified staff. All employees are qualified for the tasks assigned to them. Anyone taking on new duties without adequate experience is extensively instructed and trained before starting work. Staff skills should always be up to date through further training. Employees need to be informed about and to be involved in business decisions, particularly when their own working conditions depend upon any changes in procedures and work organization;
- ... possess adequate, well maintained equipment that ensures operations are carried out as safely as possible and to a high standard of excellence;
- ... have sufficient provision of capital to be able to recruit and employ qualified staff on a long-term basis and to afford investments in necessary technology in spite of a fluctuating volume of orders;
- ... attain and maintain a quality management system to continually improve structures and processes. The management system documents and provides evidence that the quality of business management and performance is approved by an external supervision that is in accordance with clear standards recognized by the entire sector. Because of the quality management system the business increases in competitiveness, compared with uncertified contractors, as clients give preference to businesses possessing quality supervision;
- ... regulate health and safety at work within an occupational safety management system that clearly describes and documents structures and processes of cooperation with other contractors and with subcontractors. All employees of the business should participate in its implementation;
- ... conclude long-term labour contracts with his employees, in which working conditions and payment of a socially adequate kind and amount are laid down in a juridical way. Labour contracts are based on tariff agreements. The contractor should contribute to the content of

the tariff agreement through his participation in a forestry contractors' association;
 ... be supported by a national or regional forestry contractors' association that represents the interests of all forestry contractors at national or regional level towards their clients, be they large forest owners or the timber industries. It should also represent their interests towards public authorities, trade unions and various NGOs. The forestry contractor association should act in the interests of its members by influencing the formulation of laws and regulations. It should also contribute to the development of criteria for the recognition and registration of businesses and of criteria for the use of contractors in certified forest enterprises.

The good client should ...

... employ only recognized and registered contractors who comply with the sectorial criteria establishing the formal recognition of forestry contractors. The client should participate in formulating these recognition criteria through his trade association;
 ... conclude clearly written contracts with contractors specifying the scope of work and description of the quantity and quality requested and of environmental requirements;
 ... have an occupational safety management system in which the distribution of responsibilities and competences in matters of safety at work are organized, that contains information on supervision and sanction of infringements of operational safety rules, and that is communicated to the contractor;
 ... place long-term orders. Contractors in the region in which good business relations exist are informed of the planning of orders on a long-term basis, allowing them, as well, to plan staff and investments according to the expected volume of orders. The client should be interested in long-term cooperation with contractors who offer good performance and quality. He thereby utilizes the development potential of contractors in order to improve his own economic success;
 ... give preference to contractors possessing a quality management system and a certificate of good practice, because he knows that such businesses meet the criteria of forest certification better than contractors with no quality control;
 ... apply fair competition rules;
 ... communicate with the contractor frequently;
 ... pay the contractor on time.

The legislator and public authorities should ...

... lay down and enforce laws and regulations that consistently demand health protection and safety in forestry work. Laws and other regulations should agree with internationally recognized rules, particularly with the International Labour Organization (ILO) Conventions and Recommendations and the ILO Code of Practice on Safety and Health in Forestry Work (ILO, 1998);
 ... lay down and enforce laws and regulations that enable fair and open competition both within each country and in cross-border operations;
 ... define clear rules on qualification requirements for forestry contractors and their employees in cooperation with contractors' associations, forest owner organizations and industry. They should support forestry contractors' associations in harmonizing these qualification requirements with systems in other countries to enable mobility of contractors;
 ... outline minimum requirements for social benefits for the contractors and their staff;
 ... establish an administration and inspectorate to enforce these regulations and impose sanctions where necessary.

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PART A: INTRODUCTION

PURPOSE OF THIS GUIDE

The use of contractors in forestry is of increasing importance worldwide. The emergence of contracting in forestry brings not only a number of challenges for the whole forestry and wood industry sectors, challenges within the contracting enterprises themselves, but also regarding their competitive behaviour, between themselves and towards workers under contract in forest owners' enterprises.

Contractors in forestry, and in related lines of trade found in rural areas, should develop into economically and socially sustainable and sound businesses. These should be able to fulfil the standards of performance and quality not only required by their clients – forest owners and the timber industry – but also by society in an optimal manner, taking into account all national and international social and labour rules. These businesses should be able to offer and further develop viable employment opportunities for people from and in rural areas. Existing competences of contractors and employees need to be used. The qualifications necessary for future development need to be further improved. The employment situation should allow adequate income as well as socially acceptable conditions. Contractors should develop not only strategies and systems to ensure the health and safety of their employees as well as of the self-employed, but also guarantee the quality of their services. These strategies and systems are needed to ensure the ability of these businesses to survive and develop themselves within the constraints of increasing international competition. Forestry contractors equally help to create and maintain work and employment in rural areas. By this means they are making a valuable contribution to the maintenance and the improvement of the social, economic and ecological structures in rural areas.

Within the past 20 years there have been many attempts to increase understanding for the situation of forestry contractors. Based on this recent work and experience, the idea has evolved to draw up a guide to good practice in contract labour in forestry, which outlines a wide variety of examples of good practice. These are intended to foster the sustainable and viable development of contracting enterprises in forestry for the present and the future. Contract labour will be the most important source for carrying out all those operations in forestry necessary to achieve sustainable forest management and timber utilization.

SCOPE

These guidelines will mainly focus on contract labour in the region of the United Nations Economic Commission for Europe (UNECE), Europe and North America. However, it is felt that this guide is sufficiently generic to be useful for the establishment of good practices in any country, when it comes to outsourcing of labour from direct employed workforce to contractors, as is the case in most parts of the world. Although the situation and available information differ between the countries, there is a general trend indicating that the involvement of contractors in the management of the world's forests will continue to increase.

ROLE OF PARTNERS (WHO)

These guidelines have been developed by a Team of Specialists working under a mandate of the *FAO/ECE/ILO Network of Experts for the implementation of sustainable forest management*. Thus this work is part of the *Joint FAO European Forestry Commission and ECE Timber Committee* programme of work. The team included a broad expertise, hence its members represent forestry contractors, workforce, science and public authorities, supported by FAO forestry experts.

APPROACH

In many countries and regions good examples exist for the organization and regulation of forestry contractors' operations. This guide forms a compilation of exemplary ways of proceeding – of good practices – for contract labour in forestry. This is therefore a practical guide offering help and advice for the development of decent and socially sound working conditions and fair competition. It can be of use for forestry practice, for forestry contractors, forest owners, timber industry, representatives of workers' unions and also for political decision-makers.

This guide comprises examples of relationships between forestry contractors themselves, between different contractors and mandating forest or timber industry.

DESIGN AND STRUCTURE

This guide is composed of three parts. Following this introduction, Part B will describe the roles and tasks of the various actors associated with contract labour in forestry. It includes instruments that foster good practice in contract labour.

Part C will lead through various dimensions of contracting enterprises, focusing on human resources and working conditions. Additional chapters will deal with quality management, economic viability, competition, cooperation and organization of contractors.

Each issue will be treated in a structured way, giving a description of the issue *what it is*, presenting, *guiding principles* for good practices, followed by the *objectives* of good practice. There will be a brief description of *potential consequences* of inadequate practices. Examples of good practices will be given in highlighted textboxes.

PART B: ACTORS

THE ACTORS – COOPERATION AND INTEGRATION

All actors in the forest supply chain – whether contractors, their clients in the form of industry or forest owners, the public supervision authorities, influential bodies or pressure groups, along with those offering support services – cannot be treated independently, but should be viewed as an integral whole. The actions of all actors should be coordinated to maximize the benefits within the whole supply chain.

THE TARGET GROUP – FORESTRY CONTRACTORS

Forestry contractors comprise three main actor groups: contractors (entrepreneurs), employees (often, but not predominately organized in workers unions) and subcontractors (self-employed individuals working for a main contractor). In this section, the formal requirements of contractors will be dealt with.

There are a number of formal requirements that need to be met by contractors. Many of the requirements described hereafter are already covered by national laws and international conventions, which means that the first principle common to all forestry contractors is that they must comply with all relevant national laws. Apart from that, there are further significant criteria:

- Contractors need to have the status of a formally recognized business company. This usually means that they must be registered by the competent national authority. The conditions laid down for this differ considerably from one country to another. The lowest common denominator of contractors seems to be that they all have to pay taxes and other levies.
- A qualified business management is of increasing importance for the economic and social survival of contractors.
- Implementing work safety and health protection is a basic duty of all contractors. It is their responsibility to ensure health and safety of employees at their place of work (*ILO Code of practice on safety and health in forestry work*, ILO, 1998).
- Contractors must be able to provide adequate equipment for the task in question. Minimum standards of equipment for forestry work comprises, in any case, tools and machines that comply with the security standards required, as well as any personal protective equipment necessary for the task.
- All above-mentioned demands require that contractors and their workers must be provided with an adequate income. However, the standards for what is to be considered as an adequate income do differ from one region to another.

With the present rapid development of the services sector in forestry, contractors are often competing under unequal competition conditions. The inequalities have many causes, ranging from diverging tax assessments to distinct differences in qualification and technical standards, even within the same region.

EMPLOYEES AND WORKERS' UNIONS

Even if contractors run generally small enterprises, they need qualified and motivated employees to successfully do their business. Contractors have to respect employees' rights, and employees have to fulfil their obligations towards the enterprise. Working conditions, remuneration and social security are of course subject to negotiations between employers and employees.

In the past, social dialogue in many countries has led to acceptable or even very good working conditions and fairly secure jobs. This is at least the case in traditional forestry, where workers were employed by forest owners. But the traditional social dialogue within forestry, which was based on powerful employers on one hand and on dependent employees organized in unions on the other hand, has lost its significance in many places over recent years, because the directly employed workforce has been replaced by contractors who are contracted either by the forest owner or the industry.

Apart from a few exceptions, forestry contractors are small- and medium-sized enterprises. Their employees do not always make use of their rights to organize themselves, for whatever reasons. Considering the increasing significance of contractors in forestry, it is a challenge for workers' unions to win the contractors' employees as members. The continued existence of workers' unions as socially relevant interest groups for forestry matters is of general importance, because they contribute to ensuring decent work and acceptable remuneration in forestry work, and this again is a core requirement for raising the attractiveness of this profession.

SUBCONTRACTORS

In principle, charging subcontractors with a task is not a problem in the case of (small) enterprises grouping themselves for a project, or when a contractor occasionally "takes on board" a partner for a partial order. However, this form of cooperation becomes problematical when it does not involve two equal partners, for example, when a small, weaker business is employed by the other, but is forced to work as an independent business, carrying all the risks involved in the enterprise.

Establishing subcontracting relationships with what are in fact dependent employees is contrary to the development of the forestry services sector. This applies even if in some regions it is quite customary and permissible, according to custom and the national legal provisions in force, to employ what are formally dependent employees as subcontractors. Labour-only contractors cannot be considered as businesses in the proper sense of the term; it should be one of the objectives in the development of forestry contractors to reduce this form of subcontracting.

THE CLIENTS OF CONTRACTORS – FOREST OWNERS AND THE TIMBER INDUSTRY

Clients of contractors are mainly forest owners and the timber industries. For both customers groups basically the same criteria apply, as far as contract labour is concerned. Above all, forestry contractors expect contract conditions that are fair and that guarantee subsistence. One of these conditions is grouping tasks into "package deals" rather than giving only short-term orders. For this reason it is only possible to appeal to clients to maintain long-term business relationships with contractors pointing out that both sides benefit from cooperation and reliability.

In some cases, national or regional regulations deal with selection criteria for contractors.

These lay down in a more or less binding fashion that orders may only be given to contractors who comply with respective rules for the recognition and registration as contractors.

A clear distribution of responsibilities, competences and duties is necessary, either by the definition of rules for cooperation in job contracts, or through forest owners including forestry contractors in the implementation of occupational safety and quality management systems.

As a rule, the contractors have the responsibility for ensuring lawful and social working conditions rather than the forestry enterprises as clients. There are probably only a few exceptions in some countries where there is the formal possibility of obliging forest owners to take a share of some kind of responsibility upon them.

Contracts often contain the statement that the contractor carries the responsibility for compliance with occupational safety regulations. These contracts, however, seldom contain specific information on the implementation of occupational safety measures that exceed legal obligations. Rules and operational procedures that go beyond labour contracts and address the cooperation between employees of forest estates and contractors, as well as the cooperation between several contractors working at the same site are necessary. This is of great importance not only for safety at work, but also for the quality of the results. Occupational safety management systems may act as possible frameworks for this (see section Occupational safety management systems in Part C).

Explicit statement of responsibilities in contracts could and should be used by clients to implement and control compliance with legal obligations and with quality standards throughout all contractual work. It should also be used to sanction transgressions by giving the possibility of immediate notice of termination of the contract. Nevertheless, there is a suspicion that such contract clauses serve rather to exculpate the client in the case of infringements of legal provisions than to demand and put into practice standards for good work in the field.

For this reason it seems inappropriate to regulate sound practice for contracting only in work contracts to achieve social and qualitative standards. Instead, additional measures such as the quality management systems presented below or sectorial agreements on the recognition of contractors are needed.

BEST PRACTICE 1. THE RELATIONSHIP BETWEEN A CLIENT AND A CONTRACTOR

... is always laid down in a work contract in writing. Independently of its form, such a contract contains information on the kind and amount of work required, as well as on the amount, kind and time of payment.

Besides, every contract should clearly state rights and duties of both parties and should contain information on shared responsibilities and competences. This implies that contractors must be able to provide the client with:

- evidence of his trade recognition by the competent authorities, namely taxation authorities;
- evidence of sufficient insurance against accidents for all employees;
- a list of all persons involved in fulfilling the order, including the necessary labour permits for foreign employees;
- evidence of competences of those carrying out the work;
- evidence of sufficient professional liability insurance (min. US\$ 2 million).

PUBLIC AUTHORITIES / LABOUR INSPECTION

The most important duty of public authorities is to ensure compliance with national legislation and other legal provisions at work places through labour inspection, not only by control and sanction, but also through preventive and proactive action (i.e. information and training). The main focus of labour inspections should comply with the respective national regulations on occupational safety – demonstrating that safety at work is the key working condition. Labour inspections should also provide supervision authorities with information about adherence to laws and regulations, and most of all, to notify them in cases of abuse or infringements. However, labour inspections are also an opportunity for advising contractors on how to comply with legal obligations.

Labour inspection can be conducted by separate institutions, focusing on the following aspects:

- working conditions;
- work relationships;
- safety at work and health protection.

Labour inspections can take very different forms, depending on the structure of the organization and on national legal provisions. A comprehensive view of the organization of labour supervision in more than 20 countries may be found in the ILO Working paper *Approaches to labour inspection in forestry* (ILO, 2000), and the *Guide to labour inspection in forestry* (ILO, 2005).

Labour inspection authorities worldwide have much in common. Generally, sufficient laws and regulations concerning labour inspection are in place to empower and commit supervisors to assure occupational health and safety at the workplace. While roles and responsibilities are clearly stated in the legal framework, the practical implementation is still problematic. Most labour inspections are understaffed regarding their considerable duties in forestry. Moreover, they often do not have adequate professional knowledge concerning the specific working conditions in forestry. This leads to numerous problems, the biggest being that the working places the inspectors are supposed to control are mostly in rural areas, far from their offices. To meet the requirements, these inspections should be performed on regular basis and not just occasionally when inspectors are notified of abuses or when accidents need to be dealt with and documented.

Depending on legal provisions of the country in question, supervision authorities have limited possibilities for controlling and sanctioning self-employed contractors, as labour legislation mostly relates to the situation of dependent employees. This applies to compliance with working hours as well as to wages and occupational safety. The legislation of many countries is not very specific in this respect. It may be argued that this is one of the reasons for the attractiveness of involving self-employed subcontractors.

Effective labour inspection is hardly possible in small service-providing businesses without support of forest owners and the timber industry. The legal framework for this is based on national legislation (see *ILO Code of practice on safety and health in forestry work*, ILO, 1998). Clients are encouraged to work solely with contractors who comply with all regulations. In addition, business and sectorial policies are needed to ensure that these conditions become a clear objective of forest management, too. For this reason, self-inspection can be regarded as a supplement but not as a replacement for public labour inspections, providing an effective tool to implement normative rules on the use of forestry contractors.

CERTIFICATION AND AUDITORS

Certification and its impact can be viewed as a complimentary instrument to labour inspection. Forest certification therefore considerably improves the effectiveness of regulations on social security and safety at work, and also complements supervision and sanction. Through certification, legal regulations and international social standards become part of a business commitment. This increases the chances of their implementation. As opposed to authoritative state supervision and sanction, whose limits were already critically reviewed in the foregoing section, the compliance with these rules is inspected by independent bodies. Certification furthermore requires that forest owners need to describe and document their business processes in a transparent way. This again necessitates, or indeed enhances, the introduction of quality and occupational safety management systems.

Contractors worldwide need to cope with the increasing demands of society and of the public interested in forest management, expressed by the efforts to certify sustainable forest management. By including social and labour-policy issues and problems in forest certification, there is the possibility of raising the awareness of the forestry sector concerning the labour and socio-political dimension of forest management. The implementation of social criteria of certification, for instance, gave ILO an opportunity of proposing the importance of international standards regarding the protection of employees in forest management.

Since the forest owner decides about certification of his forests, certification criteria are clearly a clients' request, whereby the forest owner binds the contractor. For this reason, forestry contractors wishing to sustain their business must conform to certification criteria.

BEST PRACTICE 2. COMMUNITY RELATIONS AND WORKERS' RIGHTS

Principle 4 of the Forest Stewardship Council (FSC)

Forest management operations shall maintain or enhance the long-term social and economic well-being of forest workers and local communities.

1. The communities within, or adjacent to, the forest management area should be given opportunities for employment, training, and other services.
2. Forest management should meet or exceed all applicable laws and/or regulations covering health and safety of employees and their families.
3. The rights of workers to organize and voluntarily to negotiate with their employers shall be guaranteed as outlined in Conventions 87 and 98 of ILO.
4. Management planning and operations should incorporate the results of evaluations of social impact. Consultations shall be maintained with people and groups directly affected by management operations.
5. Appropriate mechanisms should be employed for resolving grievances and for providing fair compensation in the case of loss or damage affecting the legal or customary rights, property, resources, or livelihoods of local peoples. Measures should be taken to avoid such loss or damage.

Source: Internet homepage of FSC, www.fsc.org

The certification scheme Programme for the Endorsement of Forest Certification (PEFC), equally takes account of social criteria in the certification of forest enterprises (Best Practice 3).

BEST PRACTICE 3. SOCIAL CRITERIA OF THE PEFC SCHEME

Criterion 6: Maintenance of other socio-economic functions and conditions

The forest owner carries a comprehensive responsibility towards society as a whole, but particularly towards the employees working in his forest. These responsibilities are:

- The maintenance or creation of well qualified staff resources should be adapted to the conditions in the enterprise.
- The forestry contractors employed additionally must possess the necessary qualifications and must comply with legal regulations in force, also in relation to their own employees.
- Preference should be given to trained forestry staff.
- Accident prevention regulations should be complied with.
- The entire workforce should have access to adequate initial and advanced training.
- Salaries of the workforce should correspond to qualification and are based on tariff agreements in force.
- Employees should have the opportunity to participate in business operations within the legal frame.

Source: Internet homepage of PEFC: http://www.pefc.org/internet/resources/5_1177_289_file.136.pdf according to Criterion 6. Maintenance of other socio-economic functions and conditions of the Pan-European Operational Level Guidelines for Sustainable Forest Management which were completely implemented by PEFC.

INFLUENTIAL BODIES OR PRESSURE GROUPS

Three main groups of influential bodies or pressure groups are included in this section: forestry standards organizations, NGOs and the insurers that have a major role (e.g. using insurance premiums as an economic tool) in applying standards to help reduce accidents and claims.

National forestry standards organizations

The need for sustainable forest management has led to national governments playing an increasing role in establishing national forestry standards partly as a result of the widening activity (and conflict between) certification bodies, such as FSC and PEFC, and the need for independent standards without the imposition of wide-ranging international standards. The United Kingdom is a case in point, where the Forestry Commission together with industry and environmental non-governmental organizations (NGOs) produced the UK Woodland Assurance Standard (UKWAS). Several certification bodies have based their criteria for certification of woodland and forest in the United Kingdom upon this standard.

Environmental NGOs

In recent years, environmental NGOs have played a major role in imposing standards for sustainable forest management. Organizations such as the World Wide Fund for Nature (WWF), Greenpeace or various national organizations influenced public attitudes towards forestry and tried to promote with publicity campaigns the role of sustainable forest management in alleviating potential damage to forests from poor management, over-cutting and illegal logging. Such organizations reflect public attitudes and have the potential to encourage sustainable forest management practices. In the United Kingdom, for example, the development of UKWAS was only possible by the involvement of NGOs in the formulation process.