

SCOPING STUDY

**ON THE BENEFITS OF INCORPORATING FORESTRY INTO
THE EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE,
WITH SPECIFIC REFERENCE TO LIBERIA**

Arthur G Blundell, PhD
Natural Capital Advisors, LLC

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EXECUTIVE SUMMARY

Good governance of natural resources is key to national development. For resource-dependent countries¹, the economies of democracies grow faster than despotic autocracies—provided, however, that sufficient restraint on political power exists. Where ‘checks and balances’ are absent, democracies actually lag behind. Thus, the importance of oversight mechanisms like the Extractive Industries Transparency Initiative (EITI), which requires the regular publication, reconciliation and audit of all material benefits received by government from individual companies in the oil, gas and mining sectors.

When Liberia joined the EITI, it decided to include forestry in its reporting. Over the last two decades, logging had been a source of patronage; previous governments colluded with industry to evade millions of dollars in taxes. However, lost revenue was not the only impact on governance. Loggers trafficked weapons and revenue from logging fueled violent conflict, so that in 2003 the Security Council sanctioned timber from Liberia.

In many ways, however, Liberia is not unique. Illegal logging—harvesting in excess of authority, or avoiding taxes—comprises up to a third of all timber in trade. An estimated US\$10 billion a year is lost worldwide. But the costs are more than just financial. Persistent impunity for illegal loggers challenges the authority and legitimacy of the state; hand in hand with erosion of rule of law is the entrenchment of corruption. All of which has implications not only for economic development but for the human security of already vulnerable rural people. The ceding of forests to logging companies represents a significant loss of forest-based livelihoods, as well as cultural uses of the forest. In relatively lawless regions, security forces intimidate community members, violating human rights, in order to protect logging operations and gain access to forests. In fact, financial oversight is just one of the mechanisms necessary to confront illegal logging.

Nonetheless, the EITI can play a valuable role in reinforcing rule of law. In developing countries, privately held companies dominate the forestry sector. Free of the reporting requirements of publicly listed companies, this opacity increases the risk that logging companies are mere shell companies with little assets to recover. And the tax structure of logging creates clear incentives for companies to ‘cut and run’. Indeed, after the regime of Charles Taylor, logging companies remain \$64 million in arrears—undoubtedly a vast underestimate given the dramatic under-reporting of exports due to smuggling and/or transfer-pricing.

The Liberia EITI (LEITI) can help avoid a resumption of this ‘business as usual’. The existing forestry law requires all logging operations to report “a list of all payments and other considerations provided...to the Government”. To facilitate a full reconciliation and audit of all such payments, the LEITI should publish:

- The pre-qualification and evaluation reports prepared in awarding each logging contract—to ensure that the companies are *bona fide* without tax arrears;
- The contract, Social Agreement (with the affected communities), and the pre-harvest certificate—that codify each company’s revenue obligations and that verify the posting of performance bonds; and,
- The annual reports by the company, the Forestry Development Authority (FDA), and Liberia’s timber tracking system (*i.e.*, the chain-of-custody system run by SGS Group)—to document actual payments made and received.

Because logging companies bid on the amount of taxes to be paid, it is impossible to

¹ Where resources rents comprise more than 8% of national income (Collier 2007).

reconcile what *was* paid with what *should* be paid without this full reporting. Moreover, given that the forestry law provides free public access to all these reports, the LEITI should initially require full reporting, and only exclude companies if it can be shown that their contribution is immaterial and that their reporting is not cost-effective, for both the company and the LEITI. According to the World Bank, the more successful EITI programs allow as much quality data as possible to be released into the public domain.

The FDA expects 20-30 commercial logging operations at any one time. However, this would increase if the FDA allows pitsawing (where trees are cut into planks using chainsaws) or if small operators, such as community enterprises, begin logging. In this case, the LEITI may learn from the EITI's experience dealing with artisanal miners and the efforts of forestry initiatives to 'group-certify' small operations. Certainly the FDA should ensure that the loggers understand the reporting requirements. Any assistance is likely to have knock-on effects that improve the overall management of the resource.

Likewise, the EITI itself is structured to have multiple governance benefits. In addition to reporting, the EITI requires the participation of civil society in design, monitoring and evaluation. In Liberia, after the war ended, civil society was a major player in the Liberia Forest Initiative, which helped manage the reform of the sector. They played key technical roles in the Forestry Concession Review Committee, which rigorously documented the behaviour of the sector. Furthermore, civil society's participation provided strong legitimacy to the process, both within Liberia and abroad.

The LEITI is capitalizing on this history; civil society is playing a strong role in oversight (ensuring that the information reported is accurate), in outreach (developing a constituency of informed Liberians that demand access to such information), and in decision-making (involving locals in managing their forests). In part these roles are structured through the LEITI's Multi-Stakeholder Steering Group (MSSG). However, the LEITI can further empower civil society, especially community-based organizations, by using them as service providers, facilitating workshops, educating politicians and the media, and providing technical and financial assistance. Furthermore, the LEITI should ensure that information is easily accessible, for example over the internet, so that the public can gain access anonymously. Civil society can assist the LEITI by publicizing clear, understandable synopses, across, for example, local radio networks.

Such policies can be supported by other initiatives. Donors may support 'archivists' at key ministries, who could help interpret information. Customs and the FDA's chain-of-custody timber tracking system, being built by SGS Group, will ensure that appropriate taxes are paid prior to export. The European Union's Voluntary Partnership Agreement—under which Liberia would license all timber exports to assure legality, and EU customs agents would bar entry to unlicensed shipments—also involves broad civil society engagement in oversight, thus reinforcing rule of law and the LEITI.

The laws are in place for the good governance of the timber sector, now it is about implementation. Traditionally, the EITI has focused on oil, gas and mining, but forestry has played a significant role in Liberia. This report outlines a template to incorporate commercial logging operations into the LEITI. It examines the governance issues related to illegal logging, in particular tax regimes and the corporate structure of logging operations. The LEITI can play a critical role in reinforcing accountability so that the prudent use of natural resource wealth is be an important engine for sustainable economic growth that contributes to development and poverty reduction.

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Glossary

| | |
|---------------------------------|--|
| chain-of-custody | a system for tracking individual logs from their stump through to the point of sale/export in order to ensure that illegal logs do not enter the legal supply chain and that taxes are paid |
| FDA | Forestry Development Authority, the agency with the mandate to manage forests in Liberia; the FDA has a semi-independent status with its own Board of Directors |
| FMC | Forest Management Contract: licenses awarded by the FDA to private companies to log large areas (>50,000 hectares) of public forest over a long time (25 years) |
| FOB | Free On Board. The 'FOB price' is the price paid for a shipment when the seller fulfills his or her obligation to deliver the goods over the ship's rail at the port of shipment. The buyer has to bear all further costs and risks to loss of or damage to the goods. |
| forest concession | A lease or contract for the extraction and use of forest resources within a specified time period for a given area of forest |
| illegal logging | practices that violate domestic laws and regulations—harvesting without, or in excess of authority, or avoiding taxes and fees |
| land rental | an annual tax paid on each hectare of a logging concession |
| pitsawing | where trees are cut into planks using chainsaws rather than sawmills |
| rentier state | a state reliant on revenue or rents derived from the extraction of natural resources, and not from the domestic population's surplus production. Given that natural resources play a dominant role in the national income, extraction companies wield substantial influence, especially compared to the domestic population. |
| reserve bid on FMCs/TSCs | the minimum bid that the government will accept for land rental in an auction for an FMC or TSC. The reserve is calculated by an independent party, and kept confidential from all parties, including the FDA. The reserve bid ensures that the state receives fair compensation for the license to harvest timber even if collusion exists among bidders. |
| resource curse | the paradox that states with an abundance of natural resources tend to have less economic growth than those without such resources. This may arise for many reasons, including a decline in the competitiveness of other economic sectors (caused in large part by currency appreciation as resource revenues enter the national economy), volatility of revenues from the natural resource sector, government mismanagement, and/or political |

corruption (provoked by the inflows of easy windfalls from the resource sector in such a rentier state).

| | |
|----------------------------------|--|
| royalty | a payment made for the use of a natural resource. The amount is usually a percentage of revenues obtained through its use. |
| shell company | a company with no or nominal assets |
| social agreement | prior to logging, an agreement negotiated by the logging company and the affected community under free prior informed consent. The agreement articulates the rights (including access) and responsibilities of both the communities and the logging company and its employees, and details the benefits the communities will receive in exchange for allowing the logging. |
| social license to operate | local stakeholder acceptance of the legitimacy of a company's business so that normal operations are not disrupted |
| stumpage | taxes and royalties paid to the government based on the volume and value of the timber harvested. In Liberia, stumpage is calculated on a percentage of the FOB value of the harvested logs— <i>i.e.</i> , stumpage is not paid on waste wood left in the forest. |
| transfer pricing | the practice of undervaluing goods or services sold to an overseas subsidiary (usually wholly owned) in order to repatriate profits or reduce tax or duty bills in the company's favour |
| TSC | Timber Sale Contracts: licenses awarded by the FDA to private companies to log over a short time (3 years) small areas (<5,000 hectares) of public forest, which are generally due to be cleared |

Acronyms

| | |
|----------------|---|
| BOT | Build, operate and transfer |
| CBL | Central Bank of Liberia |
| CBOs | Community-based organizations |
| CFDC | Community Forest Development Committee |
| CITES | Convention on International Trade in Endangered Species of Wild Fauna and Flora |
| EITI | Extractive Industries Transparency Initiative |
| EC | European Commission |
| FAOSTAT | Food and Agriculture Organisation Statistics |
| FDA | Forestry Development Authority |
| FSC | Forest Stewardship Council |
| GoL | Government of Liberia |
| GTA | Global Trade Atlas |
| ITTO | International Tropical Timber Organization |
| LEITI | Liberia Extractive Industries Transparency Initiative |
| LFI | Liberia Forest Initiative |
| MDA | Mineral Development Agreement |
| MoC | Ministry of Commerce |
| MSSG | Multi-Stakeholder Steering Group |
| NFMS | National Forest Management Strategy |
| NFP | National Forest Policy |
| NFRL | National Forestry Reform Law of 2006 |
| NGOs | Non-governmental organizations |
| OTC | Oriental Timber Corporation |

| | |
|--------------|---|
| PPCA | Public Procurement and Concessions Act |
| SLIMF | Small and Low Intensity Management Forest |
| UNSC | United Nations Security Council |
| US\$ | United States dollars |
| VPA | Voluntary Partnership Agreement |

Websites

| | |
|-------------|--|
| FDA | www.fda.gov.lr |
| LFI | fao.org/forestry/site/lfi |
| PPCA | www.mofiberia.org/procurement.pdf |
| NFRL | www.unep.org/dec/docs/Liberian%20forestry%20law.pdf |

Extractive Industries Transparency Initiative

Implementation Criteria

1. Regular publication of all material oil, gas and mining payments by companies to governments (“payments”) and all material revenues received by governments from oil, gas and mining companies (“revenues”) to a wide audience in a publicly accessible, comprehensive and comprehensible manner.
2. Where such audits do not already exist, payments and revenues are the subject of a credible, independent audit, applying international auditing standards.
3. Payments and revenues are reconciled by a credible, independent administrator, applying international auditing standards and with publication of the administrator’s opinion regarding that reconciliation including discrepancies, should any be identified.
4. This approach is extended to all companies including state-owned enterprises.
5. Civil society is actively engaged as a participant in the design, monitoring and evaluation of this process and contributes towards public debate.
6. A public, financially sustainable work plan for all the above is developed by the host government, with assistance from the international financial institutions where required, including measurable targets, a timetable for implementation, and an assessment of potential capacity constraints.

The Liberia Extractive Industries Transparency Initiative will include forestry along with oil, gas and mining.

Introduction

In 2007, the Government of Liberia announced it was joining the Extractive Industries Transparency Initiative (EITI) and that it would include forestry along with the traditional oil and gas and mining sectors. This was a demonstration of the government's commitment to reform of the forestry sector. Such reform was necessary given the history of forestry in Liberia.

In 2005, a review committee concluded that the area claimed by logging companies was 2.5 times the area of forests in the entire country. Logging concessions had been used as a form of patronage to reward the loyal and enrich the elite. Further, revenue from the sector had been used to fuel conflict in the region, so that in 2003 the Security Council sanctioned timber from Liberia. The sanctions were only lifted in 2006, when the newly elected government met the conditions to demonstrate their control over the forest and the resources (including revenue) that flow from forest management.

This report outlines the issues surrounding the inclusion of forestry into the Liberia EITI.

Part I assesses the *Problem* in a global context: that is, Part I examines the governance issues related to illegal logging (Chapter 1), in particular tax regimes (Chapter 2) and the corporate structure of logging operations (Chapter 3).

Part II assesses the *Landscape* specific to Liberia: that is, Part II examines existing laws and regulations to document the reporting requirements of logging operations (Chapter 4), contracting procedures (Chapter 5), and audit requirements (Chapter 6).

Part III suggests the *Way Forward*: that is, Part III recommends a template for companies and government to use to report revenue from logging (Chapter 7), how to more effectively use Customs authorities, and initiatives by industry and the international community to ensure legal compliance in the timber sector (Chapter 8), and how to build civil society's participation in the EITI (Chapter 9).

Finally, Part IV provides a *Summary Strategy* for implementing forestry within the LEITI (Chapter 10).

1 Illegal logging: What is it and why does it matter?²

Objective: *Review the impact of illegal logging on the global timber trade, and Liberia in particular*

Determining the precise scope and impact of illegal logging is difficult because of its fugitive nature. Illicit practices are shielded by corrupt officials, and further hidden by the remote location of logging operations and the lack of a political voice for those who lose. Nevertheless, conservative estimates are that as much as 23-30% of the global roundwood and plywood trade is “of suspicious origin” (Seneca Creek Assoc. 2004). Estimates for the proportion of illegal wood from individual countries range as high as 80-90% of Bolivian (Superintendencia Forestal 2000), Burmese (Brunner 1998), and Cambodian (World Forest Monitor 1998) timber, and roughly half of Indonesian (Scotland 2000) and Cameroonian (GFW Cameroon 2001) hardwood. These illegalities translate into huge financial loss. In 2006, the World Bank (2006) reported that illegal logging in Indonesia represented an annual loss of US\$3 billion to the country and its citizens, approximately what the country spent on health that year, and more than the World Bank’s spending on active projects in Indonesia (World Bank 2007).

However, the impacts of illegal logging are more profound than simply economic. A review of forest concessions operating in Liberia between 1997-2003 found that 100% of logging companies were in violation of the most basic concession requirements (see Chapter 3). Given this environment, which included a complete lack of financial transparency, loggers appear to have evaded up to \$200 million in taxes. These funds often went to corrupt payments and ultimately aided in the purchase of weapons by Charles Taylor in a brutal war that destabilized the entire region (Blundell et al. 2003, 2007).

In this chapter, Section 1 outlines the types of illegal logging, and Section 2 identifies their impacts on governance, economic, and social and ecological environments. The chapter aims to highlight the scope of illegal logging and its impacts, as well as the ways that transparency initiatives can best address different facets of the problem to minimize mismanagement that leads to corruption, worsened poverty, and potentially even violent conflict.

1.1 Types of illegal logging

In addition to the difficulties mentioned above, part of the problem with quantifying illegal logging lies in the vague terms by which ‘legality’ is often defined. Properly defined, ‘illegal logging’ involves those practices that violate domestic laws and regulations—harvesting without, or in excess of authority, or avoiding taxes and fees. More specifically, these violations can be grouped into three categories:

- Illegal products;
- Illegal locations; and,
- Illegal practices.

1.1.1 *Illegal Products*

It is illegal to harvest protected species and/or individual trees that are either under or over the allowable size (diameter limit). The only permit that allow these individuals to be harvested legally are those specifically designed for land clearing, where all the trees are to be cut.

For trained personnel, protected species are often easily identifiable through visual examination, even once harvested and mixed in amongst other species. For example, the German government

² This chapter is co-authored by Emily E. Harwell and Arthur G. Blundell.

has prepared an interactive guide for timber identification.³

The diameter of logs is also easily measured. However, it may be difficult to determine whether a tree was under-sized when harvested because a ‘small log’ could also be the top of a legal-sized tree that was cut in half after harvesting. Obviously, this is not a problem for over-sized logs, which would clearly be illegal if they exceed the maximum diameter-limit. However, few countries have laws that restrict the maximum-diameter for harvest, whereas almost all jurisdictions have minimum-diameter laws (*e.g.*, Sist et al. 2003).

1.1.2 Illegal Locations

Other products are illegal because of the location where they were harvested. Wood harvested from outside of a licensed area is by definition illegal. This includes trees stolen from private lands, including community forests, or trees poached from parks. Even wood harvested from within a concession is illegal if it is harvested from prohibited sites, such steep slopes or close to streambeds.

These products are difficult to identify once harvested, especially if the documents that identify origin are falsified. However, rigorous mechanisms for timber tracking and anti-counterfeiting mechanisms can help combat these problems (Rhodes et al. 2006). In addition, remote sensing and—most importantly—field investigations can determine when these illegal operations occur.

1.1.3 Illegal Practices

The most difficult form of illegal logging to detect is the failure to comply with concession requirements. For these violations it is not possible to visibly assess the log in order to verify whether or not it was harvested in compliance with the permit.

Of special relevance to transparency initiatives such as the Extractive Industries Transparency Initiative (EITI), is the failure to comply with the competitive bidding process, typically by bribing officials to secure contracts or colluding with competitors to avoid paying appropriate market value for the license to log.⁴

Once the contract is won, common violations of terms include cutting over the allotted volume, operating without proper permits (or with fraudulent permits) for harvesting, transport, processing, and export, including CITES⁵ species. Other common violations include the failure to submit management plans, environmental and social impact assessment and mitigation plans. Key officials are often bribed to overlook these violations.

1.1.4 Additional sources of illegality

Other illegalities that taint logging operations are violations of national labor laws such as unsafe working conditions, employment of foreign labor, contractual violations related to wages and hours, use of casual labor over contracted workers, and the restriction of union organizing and protest. Of particular concern, especially in areas of conflict, are the use of logging security forces who violate criminal law in protecting logging employees and assets, breaking up protests, intimidating organizers and community members who have grievances against the logging company.

³ [cites.org/eng/com/PC/16/E-PC16-23-02.pdf](https://www.cites.org/eng/com/PC/16/E-PC16-23-02.pdf)

⁴ Note: the Liberia Extractive Industries Transparency Initiative (LEITI) has not yet taken a decision on whether or not to include contracts in the reporting criteria.

⁵ The Convention on International Trade in Endangered Species of Wild Fauna and Flora

1.1.5 Illegal financial practices

Common illegalities relevant to the EITI are activities associated with financial manipulation that result in leakage of revenue to corrupt loggers, officials and belligerents. These illegalities include failure to comply with on-time and complete payment of taxes and fees, and the avoidance of such revenues by smuggling, manipulating pricing or the direct bribery of officials.

In comparison to the first two categories (*i.e.*, illegal products and locations), illegal practices are probably the most pervasive form of illegal logging. They are also the most insidious precisely because they thrive in the absence of responsive governance and rule of law—state structures that the proliferation of such illegalities further undermines.

1.1.6 Legality according to which laws?

Occasionally it is difficult to determine when logging is actually in legal compliance. This is the case in circumstances of overlapping and contradictory regulations, and where jurisdiction is unclear or contested. In many developing countries, for example, indigenous rights to land and resources are recognized in the national constitution but are ignored in national forestry laws that claim forestlands for the state.

Likewise, in areas of decentralized authority, regional or local officials often charge fees that essentially ‘legalize’ wood that is in violation of national laws. A lack of coordination and a competition for control of resources between agencies within government can often result in the same plot of land being issued as concession to a logging company, a plantation agriculture company, and a mining company, without a clear indication of which user takes precedence.

Text Box 1 Behaviour of local authorities in Liberia

In Liberia, regional authorities cannot license logging operations, nor are they permitted to tax logging operations. Despite this, locals unofficially ‘tax’ illegal logging activities, such as pitsawing (where trees are cut into planks with chainsaws). For example, local authorities in River Cess County demanded a share in the revenue from the illegal pitsawing, going so far as to jail the logging-boss, ‘Commander Kofi’—who was also a former member of Charles Taylor’s rebel army (Blundell et al. 2005).

Although local authorities are, thus, complicit in the illegal logging, the central government sometimes also confuses the tenure situation by giving multiple licenses to the same area. For example, the Government of Liberia awarded a mineral development agreement (MDA) for an iron ore deposit in Nimba County to Mittal Steel Liberia that included the right to harvest needed timber free of charge from the mine concession area. Meanwhile, a small part of the MDA area is designated a Strict Nature Reserve by the Protected Areas Act of 2003. Fortunately Mittal has promised to develop “an Environmental Impact Assessment which is to be approved by the government which will directly address this issue.”

The veneer of legality provided by local authorities or ministry regulations on what is otherwise illegal wood is very difficult to address without widespread, and often contentious, legal reforms. However, such reforms are often necessary in order to clarify jurisdiction between national and local governments, as well as between different government ministries.

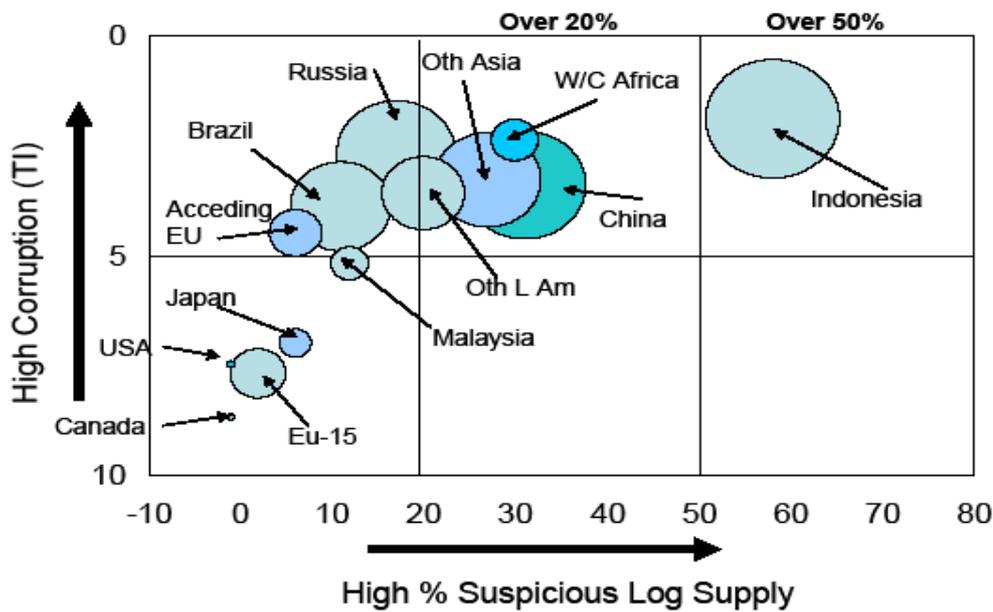
Section 1 focused on the supply side of illegal logging (illegal transport and processing could be added too). However, the role of demand in encouraging illegal activity should not be ignored (Rhodes et al. 2006). Indeed, the UN Security Council sanctions in 2003 on timber *imports*—as opposed to *exports*—from Liberia implicitly suggests that consumers could not be trusted to ensure that their purchase did not contribute to conflict in West Africa. Most consumer countries do not have laws that prohibit the importation of illegal timber⁶. When buyers do not demand verification to ensure legality, they can maintain plausible deniability about the knowledge of the origin of the wood. Thus, consumer-country reform is also needed to address the illegal trade.

One such initiative currently being considered by Liberia is a Voluntary Partnership Agreement (VPA) with the European Union, where Liberia would license all shipments to Europe to verify legality. European customs officers would prohibit entry to any shipment that was not licensed, thus reinforcing rule of law in Liberia. The Government of Liberia could also ask non-European importers—*e.g.*, China comprised 60% of reported exports in 2002⁷—to implement the VPA.

1.2 Impacts of Illegal Logging

The most often recognized impacts of illegal logging are those that are most visible—the environmental destruction caused by over-harvesting, and the consequent species and habitat loss, the erosion and loss of soil fertility, and the decline in water quality and quantity. Yet equally profound, if often unrecognized, is the impact of illegal logging on governance, economies, and social wellbeing.

Figure 1. Relationship between illegal logging and corruption.



TI = Transparency International. The size of the circles represents the volume of suspect log supply, including imports. (Source: Seneca Creek Assoc. 2004).

⁶ The U.S.A. recently amended the Lacey Act to make it illegal to import illegally obtained timber. The UK is considering similar legislation.

⁷ Table 4 (Blundell et al. 2003).

1.2.1 Governance impacts

The most wide-reaching impact of pervasive illegal logging is the undermining of governance. There is a strong correlation between indices of corruption and illegal logging (Figure 1). Persistent impunity for illegal operators sends a message that there is no rule of law. The impunity acts as a direct challenge to the authority and legitimacy of the state. Hand in hand with the erosion of rule of law is the further entrenchment of official corruption. Officials see their position primarily as an opportunity for self-enrichment and view themselves as accountable, not to their constituents, but to the cultivated patronage of powerful economic interests. This deterioration of the authority and capacity of the state is further exacerbated by the loss of revenue from forgone taxes and fees—funds that could have been used to provide social services, thereby supporting the legitimacy of the state as protector of its peoples' welfare.

Furthermore, a weak state without rule of law or legitimacy—one that is ripe for internal conflict—will deter foreign investment, and therefore undermine economic development, as investors avoid the associated risk. Those investors that are willing to accept the high risk require a concomitantly high return—one that often can only be achieved through corrupt practices. Thus, creating a vicious cycle of corruption and state failure. Indeed, studies by the World Bank found that half of countries resume civil war within a decade, often because the misappropriation of revenue from natural resources allows belligerents to fund the resumption of fighting (Azam et al. 2001). Certainly this contributed to the resumption of fighting in Liberia in 1999.

Text Box 2 Lack of governance in forestry leads to violent conflict in Liberia

In 2005, the area claimed by timber concessions was 2.5 times greater than the total area of forest in Liberia (see Chapter 3). The overlapping claims were the result of successive Presidents using concessions as patronage, without regard to prior claims. This led to legal uncertainty over who had the right to log. Such legal uncertainty actively discouraged investment by legitimate operators.

The legal uncertainty precipitated a review of the logging concessions in 2005. However, once the review committee investigated who had the legal right to log, they found that in fact no company had a full and valid legal claim to concession ownership (see Chapter 3). The review further found overwhelming evidence of a conspiracy between corrupt government officials and logging companies to defraud the people of Liberia, including widespread tax evasion, violations of logging, labor, and environmental regulations, and evidence of human rights violations and war crimes associated with the security forces of certain logging companies.

It was this behavior that helped fuel conflict in the region and led the UN Security Council in 2003 to sanction timber imports from Liberia. These sanctions were only lifted in 2006 when the new government initiated reforms to reduce the likelihood that forestry would become a source of instability. These reforms included many efforts to discourage illegal logging, such as:

- The allocation of forest licenses through competitive bidding, with reserve bids;
- Pre-qualification requirements to ensure that only legitimate companies without tax arrears can bid;
- Annual management plans, environmental impact assessments, and social agreements with local communities prior to logging;
- Freedom of information;
- Transparency/reporting requirements, including the incorporation of forestry in the Liberia EITI—the first country to do so;

- Chain-of-custody tracking of logs from stump to point-of-sale in order to reduce the amount of illegal logs that enter the legal supply and to ensure tax payment. SGS Group has been contracted by the Government of Liberia to build, operate and eventually transfer the system to the Forestry Development Authority (FDA).

1.2.2 Social impacts

The loss of government revenue to the pockets of corrupt loggers and officials represents a loss of social spending. In addition, the ceding of forests to logging companies is often a significant loss of forest- and farming-based livelihoods for local people, as well as a loss of the cultural uses of the forest. This may result in violent conflicts between loggers and communities (*e.g.*, armed conflict has occurred between illegal mahogany loggers and Amerindians in Peru [Kommeter et al. 2004]). Further, unaccounted for timber revenue has often provided cash for violent campaigns and human rights abuses by dictators and/or rebel belligerents.

More prosaically, the shift from farming and gathering of forest products to logging often marks a shift in income to young men, away from women and older men, who are not as often employed as loggers. This can pit one segment of the community against another, especially when loggers co-opt the community elite in order to gain access to forest. Additionally, as discussed above (Chapter 1.2.1), in places where illegal logging is most rampant there is little investment in log processing industries that might provide alternative incomes to replace the loss of rural livelihoods.

1.2.3 Economic impacts

Just as the amount of illegal logging is difficult to quantify, so too is its precise economic effect. Estimates by the World Bank in 2001 put global losses in assets and revenue to producing countries at over US\$10 billion annually (Contreras-Hermosilla 2001).

In Liberia, corruption in the timber industry may have cost the state as much as half the entire country's budget. During the Taylor period, the most that the government reported for annual timber exports was US\$80 million (Table 1), whereas importing countries reported more than US\$225 million in timber trade from Liberia. If this difference represents under-reporting by logging companies and/or corrupt officials in order to evade taxes, then Liberia lost approximately US\$36 million in revenue in 2001⁸. In fact, this is probably an underestimate given that an unknown—but undoubtedly sizeable—amount of wood was smuggled from Liberia, without any reporting at all, especially through the porous eastern border to sawmills in Ivory Coast.

Table 1. Timber exports (US\$ million) from Liberia.

| Year | FDA | CBL | GTA | FAO | ITTO |
|------|--------|--------|---------|---------|---------|
| 1999 | \$22.6 | • | \$37.2 | \$23.4 | \$23.5 |
| 2000 | \$67.5 | \$59.5 | \$106.8 | \$212.5 | \$213.9 |
| 2001 | \$79.9 | \$60.3 | \$103.7 | \$225.0 | \$239.5 |
| 2002 | • | • | \$146.5 | \$325.0 | \$282.5 |

Sawnwood and roundwood combined. • = report not available. (Source: OCHA (2003): the Forestry Development Authority (FDA), the Central Bank of Liberia (CBL), the Global Trade Atlas (GTA); FAOSTAT (2008): the Food and Agriculture Organisation (FAO); ITTO (2008): the International Tropical Timber Organization.)

⁸ Given the tax rate of approximately 20%.

An often unmeasured economic loss caused by illegal logging is the inefficient use and depletion of public assets by ‘mining’ forests rather than through careful management for sustained production and maintenance of ecosystem services, such as watershed and soil protection, and forest-based livelihoods. Under-estimating harvesting volumes not only results in lost revenue, but makes silvicultural planning and, thus, responsible forestry management, much more difficult.

Of direct concern to both legal and illegal operators alike is the negative effect on global markets of the glut of cheap illegal products. Simulations conducted by Seneca Creek Assoc. (2004) estimate that illegal products depress global wood prices by 7-16% annually. Likewise, legal operators lose market share to lower priced illegal wood; Seneca Creek Assoc. (2004) estimate that illegal wood costs US producers \$460 million annually in lost exports. In Liberia, legal loggers may find it difficult to compete when the FDA taxes the (illegal) pitsawyers at a rate that is probably less than \$10 cubic meter of wood harvested (*i.e.*, less half the rate of legal timber).

Another often-overlooked side effect of persistent impunity is the undermining of fiscal rule of law. A state that will not or cannot enforce forestry law will almost invariably fail to enforce financial laws. This fiscal impunity thereby encourages unstable “hollow growth” of the type exemplified by the kleptocracy of Indonesia’s former president Suharto. Investment and economic growth boomed in Indonesia under crony capitalism, but the endemic grand corruption encouraged moral hazard for banks that made bad loans to sprawling conglomerates controlled by the Suharto family and its cronies. When flight of foreign capital caused the banks to collapse in 1997, it ruined the nation’s economy and investor confidence for years.

Text Box 3 The relative importance of the various types of illegal logging in Liberia

Given its fugitive nature, it is very difficult to assign absolute, or even relative, values to the various types of illegal logging discussed in Section 1. However, because of the UN timber sanctions, an effort was made to establish some basic parameters in Liberia (Blundell et al. 2003, 2004, 2005, 2006).

In terms of failure to pay taxes, the concession review (see Chapter 3) found that only 14% of declared taxes and fees were actually paid during the regime of Charles Taylor. This is undoubtedly an underestimate because it does not include revenue lost due to smuggling and transfer pricing. To get a minimum estimate of such loss, one can compare the reports of timber exports with that of imports from Liberia (Table 1). It thus appears that exports were at least three- to four-times more than that reported by Liberian authorities, and thus tax payments were likely less than 5% instead of 14%.

However, tax evasion did not mean that loggers were not required to make other payments, bribes in particular. The largest company, the Oriental Timber Corporation (OTC⁹), deposited at least US\$7 million directly into the personal bank account of Charles Taylor in exchange for receipts indicating tax payment (Blundell et al. 2007, Annexes III-V).

In addition to tax evasion, loggers grossly over-harvested. Based on company reports, OTC was harvesting at four-times the legal rate (Blundell et al. 2003). If OTC was also under-reporting by three- to four-times (*i.e.*, consistent with Table 1), then their over-harvesting was closer to 15-times the legal rate.

⁹ OTC contributed about half of production during the Taylor period (Blundell et al. 2003).

On top of violations of environmental and forestry regulations, there is clear evidence that labour/immigration laws were also violated. Companies brought skilled and unskilled labour from neighbouring countries; OTC brought more than 600 from Asia (Blundell et al. 2003). Migrant labour was preferred in part because locals have social, family, and farming commitments that frequently draw them from the workplace. These hiring practices represented a substantial loss in income to rural residents in Liberia, where formal employment rates are less than 15%.

Likewise, there were clear violations of UN sanctions and human rights, as well as war crimes. OTC paid for military equipment in violation of UN arms sanctions on Liberia, *e.g.*, OTC received tax credit for a helicopter and a patrol boat (Blundell et al. 2003.)

Although the scale of OTC's economic crimes was exceptional, their practices were not. In another case, General Sumo, who was paid to provide security to the Maryland Wood Processing Industry—on express instructions of the FDA—used his militia to massacre more than two hundred people in the village of Youghbor in Southeastern Liberia (Blundell et al. 2004, Annex XIII).

1.3 Summary

Although difficult to document with precision, both the scope and impact of illegal logging are profound. This argues for greater enforcement of rule of law by the Government of Liberia, and the FDA in particular. This should be complemented by greater due diligence from consumer countries through, for example, initiatives such as the European Union's VPA

Revenue transparency on its own will not reduce all forms of illegal logging nor mitigate all types of impacts. But, as part a suite of reforms, public revenue reporting can serve a vital role in combating financial mismanagement and bolstering public oversight, which in turn can help strengthen accountability overall. Such accountability that tackles corruption will reduce poverty and ameliorate the factors that lead to violent conflict. Thus, forestry reporting within the LEITI serves a vital role in the development of Liberia.

2 Accounting for different fiscal regimes in forestry

Objective: *Examine how different fiscal regimes can be accounted for in EITI, and in the LEITI in particular*

When the Security Council imposed timber sanctions on Liberia in 2003, one of the preconditions for lifting was the establishment of a transparent system of revenue collection.

Although modest compared to oil and gas or mining, the timber sector is still a significant contributor to government budgets in many parts of Africa. Annual forest taxes total between US\$3.85 million for DRC up to US\$50 million in Gabon (Karsenty 2007)—and if it were not for illegal logging, in many places this revenue would be much higher (see Chapter 1). The Government of Liberia expects to receive about US\$20 million annually once the industrial timber sector is revived, which would be approximately 10% of the country’s annual budget.

Countries tax their forestry sector to achieve the dual—and often conflicting—objectives of maximizing revenue while achieving an appropriate level of harvest that maintains their forests and their forest industry. Like all taxes, different types of forestry tax have both positive and negative aspects. No single tax can encourage both efficient revenue generation and sustainable harvesting. Therefore, many jurisdictions employ a suite of taxes. Section 1 reviews the issues surrounding the taxation of extractive industries. Section 2 examines the different types of forestry taxes. Section 3 examines how forestry taxes can be accounted for in the Extractive Industries Transparency Initiative (EITI), and considers how the use of levies that are easy to administer can promote greater transparency in the sector. Section 4 reviews Liberia’s tax structure and the implications for the Liberia EITI (LEITI).

2.1 Resource tax

2.1.1 Natural resources

Government should aim to ensure that each sector in the economy makes its due contribution to public revenue. However, the natural resource sector is somewhat special in that the government, as the resource manager, must also determine when to exploit its natural capital, given the related objectives of revenue generation while ensuring sustainable exploitation (IMF 2005). Maximizing the first objective (revenue) is often seen in conflict with achieving the second (sustainability). Moreover conflict is not limited to the two management functions of government; industry also finds itself in conflict with regulations that seek to limit over-exploitation while maximizing tax collection. That is, governments aim to secure their share of resource rent whereas the investor aims to reduce the tax burden to compensate for risk—both commercial risk and sovereign risk¹⁰. Conflicts further arise as governments try to receive taxes as rapidly as possible, whereas companies seek to delay taxes to recoup capital outlay. Governments try to avoid the under-valuation of production (especially a problem in sectors dominated by transnationals that can sell commodities to affiliates in low-tax jurisdictions) and to minimize information asymmetries as to profitability, whereas companies would prefer to shift the risk to the government and merely pay tax on profit (if at all).

¹⁰ Sovereign risk is the possibility that changes in regulations will lead to expropriation or a lack of fiscal stability, e.g., tax rates will change, such as windfall profit taxes when commodity prices rise.

Natural resources further differ from many other sectors in that they have the potential for a few companies to provide governments with huge revenue through royalties. Indeed, oil and gas and/or mining can dominate the entire economy of developing countries (World Bank 2008), as did forestry during the Charles Taylor regime in Liberia (1997-2003). The IMF (2005) calculated that logging represented up to 26% of GDP in Liberia in 2002. Governments reliant on natural resources as a tax base can be less responsive to their citizens compared to governments reliant on individual income taxation (Karl 2007).

Moreover, the dominance of individual companies, often foreign-controlled, can make control over the sector difficult for the government to maintain. This can lead to a ‘race to the bottom’ as countries pursue aggressive incentives to attract investment. Such tax breaks can promote overcapacity in processing, with the perverse incentive of generating over-harvesting¹¹.

Furthermore, control is difficult for governments to maintain because the large revenues create massive temptations for corruption (Grote 2007), especially to poorly paid public servants. Governments also become tempted to change fiscal regimes as they watch commodity prices rise and companies gain windfall profits—a relatively common event given the volatility of commodity prices. Temptation is fostered in part by a simple lack of transparency and accountability regarding tax proceeds; shortcomings that the EITI attempts to overcome.

2.1.2 Forestry

However, within natural resources, renewable resources are distinct because as the resource is exploited, it can be replenished naturally or through additional management, like reforestation. (The harvest does not represent a simple exchange of natural capital for financial capital.) Therefore, the tax structure must be sufficiently nuanced to avoid perverse incentives that limit the renewability of the resource. This is especially important for forests given that they provide multiple services to society, not just the value of the timber and taxes paid. These services include such benefits as climate moderation and watershed protection, biological diversity including medicinal plants, recreation, aesthetic and spiritual values. Because traditionally many of these services have not been sold, loggers will make harvesting decisions that may diverge from maximizing social benefits. Indeed, the value of the timber may be a small fraction of the true (although non-marketable) value of the forest. In the interest of its citizens, government should make more rational decisions regarding where and when to log through an appropriate tax regime that aims to internalize the true costs of logging.

2.2 Fiscal regimes in forestry

The most common fees that apply to the forest sector are:

- stumpage fees, *i.e.*, royalties based on the amount of timber harvested;
- post-harvest fees, *i.e.*, based on the value of processed products;
- profit taxes, *i.e.*, a form of corporate tax;
- export taxes;
- concession taxes, *i.e.*, a lump-sum fee paid on obtaining a concession; and,
- area taxes, *i.e.*, charged on an equal and annual basis on each hectare under concession.

In addition, there may be fees for certain services provided by the forestry authorities, such as fees for transport licenses. Likewise, there may be specialized taxes, such as reforestation or conservation fees that aim to better internalize the externalities associated with harvest. There should also be fines and penalties to further internalize the costs of unacceptable behaviour, such as over-harvesting and other illegal practices that are environmentally or socially destructive.

¹¹ This argues for greater regional coordination in tax structures.

In addition to fines, fees and taxes, many developing countries use concessions as a way to deliver services to local communities (Karsenty 2007). These responsibilities are organized through a ‘cahier des charges’ in which guidelines are provided by the forest administration. The agreements are often completed at local levels, after negotiations with the local authorities and the communities themselves. While this may be the most productive way to provide such services in the case of poorly performing states, concessionaires may also find such a role to be strategic, as it helps them develop the ‘social license to operate’ with the local communities, allowing the companies to resist tax escalation, or even ask for tax breaks or other benefits. The system can also undermine the evolution of local systems of public representations, such as accountable local councils (Hardin in Karsenty 2007).

2.2.1 Taxes & fees

Stumpage is usually based on the volume and the value of the trees harvested. In the U.S.A. stumpage is calculated based on an estimate of the standing timber volume in the forest prior to logging—thus, creating the incentive to log as much as possible. This is acceptable when the management strategy is clear-cut logging, but it may become a perverse incentive under a selective-harvest scenario. In this case stumpage should be calculated based on the volume harvested.

In general, if different species have different rates (with the more desired species taxed at a higher proportional rate) and updated frequently to reflect market conditions, stumpage has the potential to yield a high proportion of revenue. However, stumpage calculations can be complex, which can burden understaffed and poorly funded authorities. Corrupt companies can use these complexities to their advantage, leading to gross under-reporting.

Calculations based on volume may appear simple because they only require measuring the trees, but this is less than straightforward because of irregularities in the shape of logs, as well as decisions as to whether to include ‘waste’ left behind in the forest. As difficult as this is, it can be even more difficult to arrive at an ‘appropriate’ value, especially because it is in the loggers’ self-interest to undervalue to avoid tax. Appropriate training in measurement (scaling) and timely information about world market prices can help address these problems. Likewise, making companies provide copies of shipping manifests can help ensure accurate reporting. Companies may provide fraudulent statements to government that undervalue shipments, but the companies are less inclined to do so on shipping manifests because under-reporting might jeopardize insurance coverage or run afoul of customs authorities in countries more likely to prosecute fraud. In addition to shipping invoices, governments can also detect fraud by reconciling company reports with the actual sales invoices. (Although, once again, companies may maintain two sets of ‘books’: based on fraudulent sales invoices, and based on the real contracts, which might never even be written down.) In Liberia, the SGS Group has been contracted to build, operate, and eventually transfer to the Forestry Development Authority (FDA) a chain-of-custody timber tracking system (see Chapter 10.4.1). The system should be instrumental in ensuring that timber is properly evaluated and the appropriate fees collected.

Fees based on only the volume of timber harvested, rather than its value, provide an incentive to selectively log only the most valuable tree species, leaving lower-value, albeit harvestable timber standing. While this ‘high-grading’ is inefficient in that merchantable trees are left behind, it also represents inefficiencies in that the canopy is damaged for the sake of harvesting just a few trees. Avoiding such high-grading requires diligent site inspection and enforcement by government. Credible independent monitoring can complement such enforcement.

Post-harvest fees can be applied instead of (or in addition) to stumpage. For example, one such fee is an export fee based on a percentage of the value of the timber shipment. According to the IMF (2005), one of the main advantages of such post-harvest fees is that they can be applied to timber that was illegally harvested. Post-harvest fees also allow governments to provide escalating tax breaks to encourage companies to provide more labour-intensive processing in country, beyond raw logs to products such as sawnwood and veneer, progressing up the value chain to products like molding, and even more labour-intensive products like furniture.

But, as for stumpage, it is in the loggers' self-interest to undervalue exports in order to avoid export tax. Indeed, Karsenty (2007) found that such "taxes are notoriously plagued with low recovery rates". As with stumpage, inspection by appropriately trained officials, complemented by enforcement and independent monitoring, can help reduce evasion. Likewise, full accounting, including spot-checks to reconcile reported values with shipping manifests and sales invoices can help avoid under-valuation. As mentioned above, Liberia's chain-of-custody system should be a strong defense against such under-reporting.

Concession fees and land rental are not based on the amount harvested, and thus they do not have the inherent incentive for loggers to under-report production. Moreover, because they are set pre-harvest, either by the regulator or through competitive bidding, they do not decline with an increase in domestic processing.

The *concession tax* is a lump-sum amount specific to each contract. The *area tax* is charged on an equal and annual basis on each hectare under concession. However, because both concession and area taxes are irrespective of harvest, it is in the loggers' self-interest to harvest as much as possible and stop paying the area tax as soon as possible.

In their favour, pre-harvest taxes are generally easiest to calculate. But, loggers often feel 'cheated' as they are taxed the same no matter what sort of management, or level of exploitation, they employ. This is especially a stress to companies that do not have steady production or that are sensitive to variation in market prices. Consequently, pre-harvest tax policies favour the largest—or most corrupt—companies.

Indeed, Boscolo and Vincent (2007) found that weak enforcement in most jurisdictions meant that pre-harvest fees lead to a over-harvesting, and the higher the fees, the greater the incentive to harvest more rapidly. They also found that this is further accelerated when area fees coexist with harvest fees—as they almost always do in practice. This argues for effective inspection, enforcement, and independent monitoring. Moreover it implies that government must ensure that logging companies provide sufficient guarantees so that tax arrears, including future land rental, can be collected should companies 'cut and run' (see Chapter 3.1.1).

2.3 Accounting for forestry taxes in the EITI

Accounting for forestry taxes within the EITI should be relatively straightforward given the limited types of fees. That is, provided there is the political will among government and companies to share the information. Here it is worth remembering that in the past, taxes—as well as most all other laws and regulations—were ignored by the forestry sector in Liberia (Chapter 1.2.3).

The major methodological challenges for the EITI will be handling the number of companies. In a small country like Liberia this should not be too onerous. At any one time, the FDA expects to allocate at most 20-30 logging contracts on public lands. However, if private landholders, including communities start logging, then the number could increase dramatically. Here, the

LEITI Multi-Stakeholder Steering Group (MSSG) will have to decide on a level of ‘materiality’ as to whom should report (Chapter 6.3); that is, “an entity should be exempted from reporting only if it can show with a high degree of certainty that the amounts it reports would in any event be immaterial” (EITI 2005). It may be that the small operators on private or community land are too small to be material. Alternatively, the Government may work with these small holders to group them into cooperatives to facilitate reporting. Here, experience gained elsewhere—particularly in the forest certification arena—may be helpful in, for example, establishing logging cooperatives to share the burden and facilitate capacity building (see Chapter 6.3). Whatever the decision, outreach will be necessary in order to ensure that operators understand and can manage the reporting requirements. In doing so, there will undoubtedly be knock-on effects in improving forest governance overall.

Another example of the necessity of such outreach relates to ‘non-traditional’ actors that become involved in the timber sector. In Liberia the rubber sector is now exporting not just latex, but rubber trees themselves¹². Within the FDA there is a debate as to whether or not rubberwood should pay stumpage fees. If so—as indeed the law requires¹³—then the LEITI may include rubberwood producers and their payments to government. Once again, the chain-of-custody tracking system will help facilitate such reporting.

2.4 Liberia’s forest taxes and implications for the LEITI

Liberia passed the National Forestry Reform Law (NFRL) of 2006 that outlines the tax structure for the sector¹⁴: a combination of land rental, stumpage, and forest product fees¹⁵, the first of which is set by competitive bidding. All commercial operations on public lands, regardless of size, must pay the various taxes and fees outlined in

Table 2. (Operations on private lands do not pay land rental to the Government, but pay all the other taxes.) In addition, there are a number of other fees levied by the FDA, but these are standard and customary, and minor in comparison to those listed in

Table 2. In the interest of transparency, the FDA must maintain a list of all these fees.¹⁶

Table 2. Major forestry taxes and fees in Liberia.

| TAX/FEE | CATEGORY | AMOUNT (US\$) |
|-------------|------------------------|-----------------------|
| Land rental | FMCs | \$2.50/ha + bid |
| | TSCs | \$1.25/ha + bid |
| Stumpage | Category A <i>spp.</i> | 10% FOB |
| | Category B <i>spp.</i> | 5% FOB |
| | Category C <i>spp.</i> | 2.5% FOB |
| | Plantations | 50% of the above fees |

Forest products

¹² This trade is likely to grow given all the rubber trees in Liberia that have long since passed their prime productivity. Moreover, the trade is booming worldwide. Malaysia now exports more from rubberwood than rubber.

¹³ NFRL Section 5.7 c

¹⁴ NFRL Section 14.2

¹⁵ “fees associated with the production, registration, transport, transfer of ownership, use, or export of Forest Products” (NFRL Section 14.2b(iii))

¹⁶ NFRL Section 14.2 c (iv): The FDA must maintain “a single schedule of all forest-related fees, in plain language”.

| | | |
|-------------------------|-------------------------------|----------------------|
| <i>Log export fee</i> | A <i>spp.</i> logs | 10% FOB |
| | B <i>spp.</i> logs | 5% FOB |
| | C <i>spp.</i> logs | 2.5% FOB |
| <i>Wood product fee</i> | Made from A <i>spp.</i> | 5% FOB |
| | Made from B <i>spp.</i> | 2.5% FOB |
| | Made from C <i>spp.</i> | 1.5% FOB |
| Sawmill | > 1500 m ³ /yr | \$2,500 |
| | 750 ≥ 1500 m ³ /yr | \$1,000 |
| | < 750 m ³ /yr | \$750 |
| Administrative | All | \$1,000/yr |
| Inspection | All | \$50/km ² |
| Transportation | All | \$150/10 waybills |
| Export | All | \$100/license |

Timber species are divided into three categories (A - C) depending on the value of the species (*spp.*)—see Schedule 1 of FDA Regulation 107-07. FOB = free on board, *i.e.*, the shipment's sale price at export. Forest product fees are only charged for exported products, both from natural forests and plantations. FMC = Forest Management Contract; TSC = Timber Sale Contract; both refer to logging licenses allocated on public forestland (see Chapter 5.1.2).

Logging companies have additional financial obligations to local communities, codified through Social Agreements. The Agreements must be negotiated with the communities under free, prior, informed consent, and they must be worth at least equal US\$1 per cubic meter of logs harvested¹⁷. As discussed elsewhere (Chapter 4.5), such payments to local governments should be included in the LEITI so that communities are aware of revenue accrued locally from forestry activities.

In addition to the Social Agreement, local government is entitled to 60% of the land rental, divided equally between to communities and counties, with the remaining 40% to the Ministry of Finance¹⁸. This creates hazards for the recipients, as those that derive the most benefit (local governments) are not the entity most responsible for direct enforcement (the FDA). This is especially problematic for local governments because the benefits should be substantial; *i.e.*, given the bid premium in the first round of FMCs, land rental to the local communities will be between \$400,000 to \$500,000 per FMC each year, with the same amount for going to the affected counties (see Table 3, Chapter 3.2.2). Considering the incentives discussed above, strong enforcement from the FDA will be required to ensure that logging companies honour the entire commitment so that local governments receive their share. Moreover, the FDA must ensure that the logging companies provide adequate assurance that the government can recover tax arrears, should the company 'cut and run'.

¹⁷ FDA Regulation 105-07 on Major Pre-Felling Operations under Forest Resource Licenses, Section 34

¹⁸ NFRL Section 14.2e(ii)

Summary

The major conclusion of this review is that enforcement of tax payments and harvesting regulations is critical. Otherwise tax regimes—generally a combination of land rental, stumpage and other fees—are likely to promote rapid over-harvesting when the behaviour of loggers is not restrained. One key factor in restraining such behaviour is through transparency initiatives such as EITI so that an independent accounting can reduce the likelihood of tax evasion.

Liberia's chain-of-custody system should also provide useful coverage by ensuring that companies do not under-report volumes or values, and that they pay the appropriate taxes. But in the end it is the government, mainly through the FDA, that must provide adequate inspection and enforcement against illegal logging.

3 Corporate structure in the forestry sector

Objective: *Assess corporate structure in the forestry sector in developing countries, and the implications for EITI and for Liberia in particular*

Almost all of the major countries that export tropical timber have weak governance: of the top 20, 17 were in the bottom half of the World Bank's rule-of-law rankings, and 11 of the countries were in the bottom quarter (Boscolo and Vincent 2007). Such weak governance is problematic because of the strong correlation between corruption and illicit logging (see Figure 1). This chapter briefly reviews the major issues related to corporate governance in the logging sector of Liberia and other developing countries, with a particular emphasis on the implications for transparency initiatives, primarily the Extractive Industries Transparency Initiative (EITI).

3.1 Corporate structure in the logging sector

3.1.1 *Privately held vs. publicly traded*

Companies are either privately held or they trade openly on stock markets. Compared to privately held companies, publicly traded companies are thought to be more risk averse because their ownership is more dispersed (the banking sector, for example [Kwan 2004]). Therefore, it is predicted that privately held companies should be more common in high-risk environments, like that found in developing countries. Indeed in Liberia, all the logging companies that operated over the past 20 years were privately held (see Appendix 2).

This has implications for transparency. In order to inform investors and protect shareholders, stock exchanges require regular reporting of listed companies. In contrast, privately held companies, without reporting requirements, are much more opaque. Despite a thorough review in 2005 by the Forest Concession Review Committee (Text Box 4), nothing is known about the ownership of half of the companies that operated prior to 2003 (Appendix 2), and given the lax reporting environment that existed at the time, it is likely that what is known is incomplete, if not inaccurate. (The current structure of Liberian logging companies is discussed below, Section 3.2).

Murky ownership confounds government efforts to pursue assets (Boscolo and Vincent 2007). In the case of shell companies formed for the specific purpose of logging a concession, there may be few, if any, assets for the government to seize once the companies 'cut and run'. In Liberia, this is of special significance to local communities and counties, given that the main source of revenue derived from logging is from the land rental tax (Chapter 2). For the sake of local people, the government will have to insist that adequate assurance exists to ensure that tax arrears can be recovered—so far the Government of Liberia has been unsuccessful in recovering tax arrears of logging companies that operated prior to 2003.

Elsewhere, the corporate structure of tropical forestry is starting to change, especially in Southeast Asia. Many of the largest companies are becoming listed. Samling Global is listed on the Hong Kong stock exchange; Jaya Tiasa, listed in Singapore, covers much of the Rimbunan Hijau network; and WTK Holdings is listed in Kuala Lumpur. The major Southeast Asian pulp and paper companies, APRIL and Asia Pulp & Paper are also listed. Large buyers such as Danzer and Rougier are not listed, but DLH is listed on the Copenhagen exchange¹⁹.

¹⁹ I thank Sam Lawson of Forest Monitor for the information in this paragraph.

Text Box 4. Case study: The past corporate structure of the forestry sector in Liberia

In 2005, the Government of Liberia, through a multistakeholder Forest Concession Review Committee, reviewed all 72 of the logging companies that claimed the right to log (see Rochow et al. 2006 for detailed methodology). Of all the companies, not a single one could demonstrate that they had complied with the most basic business law; *i.e.*, not one company, in even one year that they operated, could produce the minimum legal requirements: of 1) articles of incorporation; 2) a valid business license; 3) a valid contract; and 4) a performance bond (Appendix 2). Only one-third of the companies had articles of incorporation or a business license, and only 19 companies had both.

Given the lax corporate structure, it is not surprising that there was no accountability among revenue payments for the companies. Although undoubtedly an underestimate, the review documented \$64 million in arrears (Appendix 3). The review also found widespread violations of environmental and forestry law, and evidence of human rights abuse, including crimes against humanity, as documented by the UN (Blundell et al. 2005). Moreover, the government had allowed logging based on patronage with no regard for existing claims: the area claimed by loggers was 2.5 times the area of forest.

3.1.2 Access to capital

A major reason for listing a company on a stock exchange is to gain access to capital. Capital can be a major limitation in many developing countries, particularly those that contain the ‘bottom billion’ of the world’s poorest people. In Africa, Collier (2007) calculated that 40% of the continent’s total wealth was held abroad. To compensate, forestry companies often look to foreign investment.

Such foreign investment can have mixed outcomes. In a review of Central Africa, Karsenty (2007) found that very large foreign-owned companies seem best able to cope with new regulations and export standards required by Western markets. Unable to compete, the smaller, national companies satisfy the local market. However, Karsenty (2007) also found that the national companies often use their ties with local administration and national governments to avoid costs that would be required if laws were actually enforced. In some cases, the large companies also use the smaller companies to supplement their timber supply and evade taxes and other regulations. Karsenty (2007) concluded that medium and large national companies are squeezed in the middle, subject to the disadvantages of ‘formality’—the visibility that makes corrupt operations difficult—and the increased competition and requirements of export markets. Thus, there is a trend in concentration of the export-oriented companies on the one hand, and fragmentation of the domestic-oriented sector on the other, at least in the Congo Basin.

Liberia’s experience has also been mixed²⁰. Access to capital is a huge problem. Because of a lack

²⁰ Investment by foreigners, most notably the large, resident Lebanese mercantile community, has been strained in Liberia, in part because the constitution (Article 27b) allows that “only persons who are Negroes or of Negro descent shall qualify by birth or by naturalization to be citizens of Liberia.” Thus, foreigners will never be able to gain citizenship—a disincentive to some willing to make a long-term investment. Note, however, that the new Public Procurement and Concessions Act defines ‘domestic business’ as a private sector entity or firm incorporated

of rule of law in the past, many bankers worry about being able to enforce repayment of loans. When one of the major bankers was asked what commercial rate he gives loggers, he replied “I do all I can to ensure my loans officers do not make any loans at all”²¹. Where credit can be found, commercial rates are 20% or more, and without collateral this credit is almost impossible to obtain. Therefore, loggers have to look outside Liberia for money.

In many cases foreign buyers front the money for operations on the agreement that they would get first right to the harvest.²² Again, the outcomes are mixed. The cash infusion can allow companies to log who would otherwise not have had sufficient capital, thus allowing the company itself to grow. But it has also led to operators that tend to over-harvest in order to pay the buyers back and make some profit as quickly as possible. In the case where the local company is only a ‘front’ for a for a larger company, this can also mean that the government will find that the local ‘shell’ company has no assets, should the government try to recover tax arrears. So far the Government of Liberia has had no success in recovering any of the arrears in Appendix 3, thus highlighting the importance of performance bonds and other assurances, especially when companies have little fixed assets. (A classic example is an Indonesian logging company owned by Djajanti [which is also the parent company of OTC, see Text Box 5]. When Djajanti defaulted on a \$100 million dollars owed to the Indonesian government, Djajanti itself bought the loan for 25 cents on the dollar, thus depriving the Indonesian taxpayers of \$75 million²³.)

3.1.3 Horizontal and vertical integration within the industry

In addition to direct foreign investment, many of the large companies in tropical forestry are part of widely diversified conglomerates under the control of families headed by powerful tycoons. In Latin America they are known as the grupos, in Korea as chaebols. These conglomerates can make strategic business partners given their diversification and market position (Kim et al. 2004). Many companies are both vertically integrated within the forestry sector, *e.g.*, processing the wood as well as logging, and horizontally integrated into other sectors, such as agriculture, fishing, or construction.

Such family conglomerates are particularly common in developing countries because local institutions are relatively weak. In countries with a functioning judiciary, banks can look to the law for protection when borrowers renege on contracts, but, as mentioned above, in many parts of the developing world, courts are corrupt or non-operational, and thus, financing is highly risky, expensive or non-existent. Business must look elsewhere for capital. Under these conditions, many successful businesses rely on their own trusted networks, such as family- or ethnic-networks where societal pressure can be used to ensure that contracts are honoured. Thus, sprawling business groups are a way to compensate for weak institutions. In the words Dieleman (2008): “business groups fill institutional voids”.

But strong personal networks, when linked to politicians, cultivate the foundations for clientelism. Under these conditions, tycoons extract favourable terms from politicians in exchange for bribes, political support, or other patronage. Such corruption was indicated by an independent review, ordered by the Government of Papua New Guinea (PNG), that found that all four extensions for Rimbunan Hijau’s logging concessions were awarded illegally, as were

under the laws of the Republic of Liberia and operating in Liberia—and, thus, does not need be owned by a Liberian citizen.

²¹ The bank relies on service fees.

²² *e.g.*, One TSC has signed such a Memorandum of Understanding with a Ghanaian company, see Chapter 3.2.2.

²³ No other company was willing to pay more, given that the shell company had few assets and there was no hope of recovering from the parent company, Djajanti.

those awarded to other Malaysian companies: WTK Realty, Innovision, Kerawara, and PNG Forest Products, and to the Japanese/PNG Open Bay (Forest Trends 2006).

Text Box 5. Case study: The Oriental Timber Corporation—the largest logging company in Liberia

OTC was associated with the Indonesian conglomerate, the Djajanti Group, which was the second largest timber group in Indonesia (Brown 1999). Although OTC harvested about 50% of Liberia's timber production, they reported no Liberian shareholders. In documents submitted to the 2005 Concession Review, OTC listed its owners as Wong Kiia Tai Joseph (chairman), Teng Lung Cheng, Chan Han Kuong, and Gus Kouwenhoven. Nonetheless, Charles Taylor also referred to OTC as his “pepperbush” (meaning a source of wealth, akin to the goose that laid the golden egg).

Djajanti was founded by Burhan Uray (Bong Sun On), who began logging in West Kalimantan (Indonesian Borneo). Djajanti gradually expanded into fishing in the 1970s, and later into other sectors, such as cement and real estate, although wood processing, including plywood, remains a focus.

Djajanti is ‘politically diversified’, in that it “furnished funds to individuals or institutions who in turn provided political support to the President”, *i.e.*, a cousin and a brother-in-law of former president Suharto of Indonesia, as well as Ministers of Agriculture and of Foreign Affairs were shareholders (Brown 1999).

The Djajanti Group was a non-cooperative debtor (owing a reported US\$540 million) after the Indonesian banking crisis in the late 1990s, only to have legal action against them stalled by explicit instructions of the Chairman of the Indonesian Bank Restructuring Agency, albeit for reasons that remain unclear. Although unlisted itself, Djajanti has tried to list one of its timber companies, PT Artika Optima Inti. The first attempt, in 1993, apparently failed because of violations of forestry regulations; the second attempt, in 1997, was withdrawn, perhaps related to the Southeast Asian financial crisis.

Given its murky corporate structure, a number of conclusions can be drawn. After the Indonesian banking crisis of the late-1990s, the Djajanti Group, like many other horizontally integrated Asian companies, may have been looking for alternative investments outside the region. A weak state, like Liberia, where contracts could be obtained through corruption apparently looked attractive to Djajanti. OTC signed a Memorandum of Understanding with the Taylor government asserting that OTC was “desirous of investing in various business ventures in the Republic of Liberia including forestry, hotel and port management”. There were also allegations that Djajanti wanted to obtain fishing rights in Liberia, and OTC may have been seen as a ‘way in’ to Liberia for the conglomerate.

Djajanti is also a vertically integrated company. In the late-1990s, they lacked more than 1.3 million m³ of roundwood or about half of the supply needed for their mills in Indonesia (Brown 1999). In addition to supply from legal (albeit unsustainable) land clearing and illegal logging, Djajanti was driven overseas in their acquisition of timber concessions.

Vertically integrated companies in similar situations sometimes engage in under-reporting

through ‘transfer-pricing’²⁴ and smuggling in order to avoid taxes. Table 1 suggests that such under-reporting occurred on a vast scale in Liberia. In the case of OTC, smuggling would have been facilitated by the fact that OTC ran the port of Buchanan through their subsidiary, the Marine Development Corporation.

3.2 Lessons learned: Present corporate structure in Liberia

3.2.1 Lessons learned: corporate structure

The Ministry of Commerce (MoC) reported that 82 forestry-related companies have registered (Smith et al. 2007; Appendix 4), of which only 14 (17%) were registered during the Taylor period. Of the 82, 56 (68%) are Liberian-owned and a further 12 (15%) are joint ventures involving Liberians. The remaining companies are wholly owned by Chinese (5 companies), Ghanaians (2), Italians (2), Lebanese (2), Americans (1), Russians (1), and Sierra Leoneans (1).

In addition to these 82 companies, another 34 companies registered with the FDA (Appendix 4). However, of the 51 companies reported by the both the MoC and FDA, 36 (71%) had different, albeit similar, names in the two databases (so they may not necessarily be the same companies).

In order to pre-qualify to bid on logging contracts, companies must be free of tax arrears²⁵. In October 2007, the Association of Liberian Loggers requested that the pre-qualification process should defer, as a pre-requisite, the submission of tax clearance, especially as the regulation risks excluding pre-existing Liberian-owned logging companies on account of delinquent forestry tax, and thus at a disadvantage relative to new timber companies. The Deputy Minister of Finance “granted [the request] in concurrence with the FDA. Logging companies will submit their tax clearances along with the bid documents during the tender process. The payment of forestry tax arrears and issuance of tax clearances will commence after the pre-qualification which is estimated to end November 30, 2007.” (Annex VII, Smith et al. 2007). In fact, the Pre-qualification Panel ignored this approval and requested tax clearance for all companies.

In summary, all the companies currently registered with the FDA and MoC are relatively small, privately held companies. This is in part because the first logging contracts to be allocated by the FDA will be the small Timber Sale Contracts²⁶ (TSCs) and Forest Management Contracts (FMCs) for which only small, majority-Liberian owned companies can bid. Furthermore, most have no apparent history in the industry.

On their own, these small Liberian companies will be challenged to find the skills and/or capital to operate according to the harvest code and other laws and regulations. There is a real opportunity for the FDA to work with local companies to build their capacity, especially when negotiating with foreign backers. The FDA can help ensure that the Liberian companies are not treated as mere shell companies. The LEITI can play a positive role in allowing companies to demonstrate that all appropriate taxes and fees have been paid.

²⁴ Where product is shipped from the producing country to a low-tax jurisdiction and the declared value of the shipment is dramatically lower than the ‘true price’ in order to avoid taxes.

²⁵ Schedule 1 of FDA Regulation 103-07: companies must be “in good standing in its payments of corporate taxes and social security”, “forestry-”, and “trade-related fees”.

²⁶ Of the 84 companies registered by the FDA, only 8 pre-qualified to bid exclusively on TSCs. It appears that the majority of the sector does not want these small, short contracts, but prefer the certainty associated with the large (50,000 ha+), 25 year FMCs.

3.2.2 Lessons learned: competitive bidding

As of June 2008, the FDA has completed competitive bidding on the first logging contracts since the Taylor period and the lifting of UN sanctions. The FDA appears to have conducted a reputable bidding process (Table 3): reserve bids were used for all contracts, which were necessary in two TSCs (A6 and A9). Had the FDA not used a reserve bid—one that was calculated by an independent entity and unknown to anyone in Liberia, including the FDA—then the land rental due the Government of Liberia—60% of which will go to local communities and counties—would have been lower by almost \$420,000.

Table 3. Bid history for the first six Timber Sale Contracts (TSCs) and three Forest Management Contracts (FMCs) in Liberia.

| Contract | Timber volume (1000 m ³) | Bid (US\$) | 2 nd bid (US\$) | Highest bidder |
|----------|---|---------------|-------------------------------|------------------------|
| TSC A2 | 20 | 5 | | Tarpeh |
| TSC A3 | 18 | 5 | | Tarpeh |
| TSC A6 | 60 | 6.03 | 20 | B&B |
| TSC A7 | 30 | 1.91 | | B&B |
| TSC A9 | 18 | 6 | 20 | B&B |
| TSC A10 | 9 | 6 | | B&V |
| FMC A | ? | 13.50 | | Global Wood |
| FMC B | ? | 25.50 | | Kparblee Timber Corp.* |
| FMC C | ? | 26.00 | | Kparblee Timber Corp.* |

? = unknown because of errors in the bid prospectus documents. * The bid was accepted although KTC did not use the official bid form.

Evidence of improper behaviour

There is, however, evidence of improper corporate behaviour: 1) a lack of understanding in how to determine an appropriate bid, and, more problematic, 2) apparent collusion among bidders.

The FDA made errors in the TSC bid documents and quoted timber volumes 100 times smaller than inventory data suggest. In the FMC documents the estimates were completely wrong. Despite these errors²⁷, none of the 13 companies that bid asked for clarification. This suggests that they did not incorporate timber volume in their bid calculations, which further suggests that not all of the companies understand how to determine an appropriate bid. This undermines confidence in whether or not the companies have a valid business plan to demonstrate that they can pay the land rental in its entirety over the contract period. As mentioned above, this is especially a concern for local people, who will obtain 60% of the land rental revenue.

Moreover, there is a lack of statistical correlation between the first bid and timber volume for the TSCs²⁸, which further suggests that the three companies that bid do not know how to develop a business plan in order to make an appropriate bid. Finally, the FMC bids appear unrealistically high. Given that FMCs are 25 years, and thus the company can only log 4% of the FMC each year, the land rental bid should—all else being equal—be about 10 times smaller than for the three-year TSCs. Instead the FMC bids were, on average, higher than those for the TSCs (Table 3), which raises further concern about the companies' ability to pay the entire land rental over

²⁷ The FDA is working to correct these errors.

²⁸ The lack of correlation remained even when timber value was substituted from timber volume—timber volume is cited here because it is what was actually measured in the field.

the 25 years.

As far as apparent collusion goes, four of the TSCs had only one bidder. Moreover all three companies that bid won a contract where they were the only bidder. The probability that each of three companies, purely by chance—without collusion—would be the sole bidder on a separate contract is less than 1%. Mitigating this is the fact that the three companies appear to have focused on different geographical areas. Only Tarpeh bid on the two TSCs in Grand Bassa County (A2&3), whereas only B&V bid on TSC7 in Grand Cape Mount County, and B&B on TSC A10 in Gbarpolu/Bong Counties; however, both B&V and B&B bid on the remaining TSCs in Gbarpolu and Grand Cape Mount Counties (A6&9). B&B and B&V also submitted the exact same business plans in their pre-qualification materials, including one company failing to replace the other company's name in the document. In addition, Tarpeh and B&V appear to be backed by the same 'parent company' given that on two separate occasions deposits were made to the two companies for the same amount, on the same day, with sequential check numbers²⁹.

Furthermore, B&B signed a Memorandum of Understanding with a Ghanaian company that will provide the financing and expertise for logging in exchange for exclusive access to the entire harvest at a mutually agreed on price, until the loan is repaid. In the past such systems were open to abuse through transfer pricing, where the Liberian company would sell under-valued logs abroad, and the government would consequently lose tax revenue (*e.g.*, Table 1).

The FDA, however, has tried to address these problems in the TSCs by working with the three companies to develop realistic business plans and to structure their relationships with their 'parent companies' and financial backers in a way that will help develop the local companies. Moreover, the FDA insisted on a reserve bid that ensured fair value, even in the event of collusion. In addition to the FDA's due diligence, Liberia's chain-of-custody log tracking system should ensure that timber is not sold at dramatically below fair-market prices, and thus that the government recovers the appropriate stumpage and export fees.

3.3 Summary

With respect to transparency initiatives, such as the EITI, the corporate structure of logging companies in developing countries presents a number of clear challenges. Privately held companies—which comprise the entire sector in Liberia—are often opaque, hindering transparency and government's ability to recover assets. Large conglomerates that rely on ties to politicians can circumvent the law and obtain logging contracts and avoid taxes—such was the case in both Liberia (Rochow et al 2006) and Papua New Guinea (Forest Trends 2006). This tax evasion is facilitated if companies are vertically integrated, prompting them to under-report (either through transfer pricing or smuggling) the value of exports to their processing facilities abroad.

Clear reporting requirements, codified in law, are necessary to avoid these pitfalls. However, even the best laws fail to stop illegality if the laws are not enforced. To that end, initiatives such as the EITI can reinforce legal reporting requirements and will highlight when rule of law is ignored.

²⁹ Note that Section 44(a) of FDA Regulation 104-07 mandates that "No Person shall engage in behavior intended to suppress fair and open competition in bidding on a Forest Resource License", including: (1) Bid rigging; (2) Market division; and (3) Price fixing, and Subsection (b) requires that "the Government shall not award an FMC or TSC to any Person who has violated the prohibition on Subsection (a) of this Section in the course of that particular bid, and the Authority shall terminate the existing permits and contracts of any Persons found to have violated the prohibition."

4 Reporting requirements for the Liberian forestry sector

Objective: *Address the level of transparency and the scope and nature of disclosure in the forestry sector as a result of the National Forestry Reform Law (NFRL) and the introduction of the chain of custody system and other reform measures, including assessing the complementarity of these measures and the EITI process and whether voluntary reporting may produce benefits*

Improved transparency and accountability, through strengthened monitoring and reporting, plays a fundamental role in Liberia’s National Forest Policy³⁰. This chapter reviews all cases of the words “report”, “publish” and “disclosure”, and their various forms, in the:

- National Forest Policy (NFP);
- National Forestry Reform Law (NFRL);
- National Forest Management Strategy (NFMS) of the Forestry Development Authority (FDA), the agency with the mandate to manage Liberia’s forests;
- FDA’s major Regulations; and
- Contracts with forest resource licensees (hereafter referred to as ‘Operators’).

Section 1 briefly reviews the general reporting requirements of all actors in the forestry sector. The specific requirements are then listed in Section 2 (see Appendices 5 – 10 for the actual text), with an evaluation of those relevant to the Liberia Extractive Industries Transparency Initiative (LEITI). Section 3 reviews limitations to disclosure—in particular *confidential business information*. Section 4 discusses how these aspects relate to the LEITI.

4.1 General reporting requirements

4.1.1 Government

Under forestry law and regulation, the Government of Liberia (GoL) must publish data relevant to logging contracts, including all the information required by the LEITI, *i.e.*, all revenue and material benefits received by government from companies.

4.1.2 Operators

Companies are also required to report on their logging activities within 90 days of the year-end, and they must maintain the records for five years after their contract expires. Particularly relevant to LEITI, each year, logging operators must publish in Liberian newspapers all payments to government. Failure to meet these reporting requirements can result in the termination of the contracts.

The GoL may authorize independent monitors, including members of civil society, to determine the accuracy of company reports. As well, the public has free access to all documents and information in the possession of the FDA, with the limited exception of confidential business information and, for example, information that would promote illegal activity or interfere with law enforcement or national security.

³⁰ National Forest Policy Activity 8.2.2

4.2 Specific requirements

This next section (Table 4) lists in detail the specific reporting requirements (*i.e.*, all cases of “report”, “publish” and “disclosure”) in the forestry law, regulations and contractual obligations. Those requirements relevant to the LEITI are indicated by a ✓. In total, legal requirements already exist to ensure full reporting, including the ability to audit back to contract, for forestry in Liberia.

Table 4. Specific reporting requirements—and their legal basis—for all actors in the forestry sector, highlighting those relevant to the LEITI.

| Reporting requirement | Legal basis | Relevant to LEITI |
|--|------------------|-------------------|
| <i>Operators</i> | | |
| Information necessary to determine taxes on income and fees | C:B5.53(b&c) | ✓ |
| Including sufficient information to identify each tracked item, <i>i.e.</i> , the place of harvest (including the stump’s location), the tree species, the volume, and its unique identification mark | Reg108-07:23 | ✓ |
| Provide to the Ministry of Finance | C:B5.53(b) | ✓ |
| Provide to the FDA | C:B5.53(c) | ✓ |
| In a Monrovia newspaper, publish a list of all payments to GoL | NFRL:5.8 | ✓ |
| Security officers must report all offenses under the NFRL | NFRL:20.4 | ✓ |
| Work required by the Sustained Forest Management and Business Plans, including a description of harvesting blocks with operations ongoing, started, and completed during the year, and a full description of the kind and quality of timber produced | C:B5.52 | ✓ |
| Planned | | |
| Actual accomplishments | | ✓ |
| Information on the progress made on the development of the Forest Management Plan, 5-Year Management Plan, and EIA | C:B5.53(a)(ii) | ✓ |
| If one or more Affected Communities is not represented by a Community Forestry Development Committee | Reg105-07:32 | ✓ |
| The results of any reconnaissance of the various sites or proposed operations and activities | C:B5.53(a)(i) | |
| Discovery of additional areas, resources, or members of species needing special protection | C:B6.34 | |
| <i>FDA</i> | | |
| Information on Forest Resource License | NFRL:3.4 (b)(i) | ✓ |
| Location | Reg107-07:51 | ✓ |
| Contract Holder | | ✓ |
| Wood available for harvest by species | NFRL:3.4 (b)(ii) | ✓ |
| Volume | | ✓ |
| Location | | ✓ |

| | | |
|--|---------------------------------|---|
| Wood harvested by species | NFRL:3.4 (b)(iii) | ✓ |
| Processed | | |
| Volumes & Monetary value | | ✓ |
| Exported | | |
| Volumes & Monetary value | | ✓ |
| (Records must be reconciled) | Reg108-07:29 | ✓ |
| (All parts of Government must report) | NFRL:20.4, Reg108-07:42 | |
| Publish fees and taxes | NFRL:3.4 (b)(iv), 5.8, 14.2, | ✓ |
| Assessed & paid | Reg107-07:51 | ✓ |
| Benefits provided to each community | NFRL:3.4 (b)(v) | ✓ |
| Nature of benefits & Monetary value | | ✓ |
| Amount of money disbursed to Community Forestry Development Funds (CFDFs) from Government | Reg106-07: 41(a)(1) | ✓ |
| Amount of money disbursed to National Community Benefit Sharing Trust (NCBST) from Government | Reg106-07:41(a)(2) | ✓ |
| Amount of money disbursed to Community Forestry Development Committees (CFDCs) from NCBST | Reg106-07:41(a)(3) | ✓ |
| List of complaints from the public relating to the above CFDFs, NCBST, CFDCs | Reg106-07:41(a)(4) | ✓ |
| Penalties | | |
| Violations, arrests, settlements, and convictions assessed (by date & description) | NFRL:3.4 (b)(vi) | ✓ |
| (All Government employees must report violations) | NFRL:20.4 Reg109-07:31(a) | |
| (Government must investigate reported violations) | NFRL:20.11 | |
| (Including physical injury or significant economic harm to Operator's employees) | Reg109-07:31(c) | ✓ |
| Actions taken by Government or court | NFRL:20.11 (a)(iv) | ✓ |
| Penalties collected | NFRL:20.11 (a)(vi) | ✓ |
| Publish summary of debarment and suspension listings | Reg103-07:23 | ✓ |
| Twice a year, publish list of pre-qualified companies | Reg103-07:47 | ✓ |
| Operate the chain-of-custody system with full disclosure | Reg108-07 | ✓ |
| Analysis of local Forestry, ecological, and socio-economic data on the suitability of specific areas for proposed use | NFRL:4.5 | |
| Progress in developing a National Forest Management Strategy and validating Forest Land Use Actions to implement the Strategy | NFRL:5.2 | |
| Publish regulations | NFRL:19.2 | |

| | |
|---|---------------------------|
| Publish management plans for protected areas | NFRL:9.8 |
| Economic impacts of the priority bidding procedure on the Liberian Forestry sector | NFRL:5.3, 5.4 |
| Publish methods for entering data in the chain-of-custody system | Reg108-07:24 |
| Publish guidelines to index for inflation | NFRL:1.4 |
| Evaluate compliance with the requirements for security personnel of logging companies | NFRL:18.16 (e), 20.11 (b) |
| <i>Government officials</i> | |
| Government official prohibited from obtaining permission to conduct commercial forest Operations, shall file an annual report with the FDA declaring any instance of the Person or the Person's spouse, parent, sibling, or child having traded, as principal or agent, in forestry, whether in or outside the Republic | NFRL:5.2 |
| <i>Researchers</i> | |
| All data from privately conducted inventories, and other research | NFRL:16.2 |
| Reference is made to the relevant sections in the: NFRL = National Forestry Reform Law; Reg. = Regulations; C = Forestry Contracts. (See Appendices 5 – 10 for the full text). | |

4.3 Limitations on disclosure

Under the NFRL³¹, logging companies may write to the FDA to explain why the information outlined in Section 2, above, should be regarded as confidential business information, and thus, kept from public reporting. In order to protect commercial interests, such confidential business information could include information whose release is likely to interfere with the fair and competitive functioning of a procurement or concessions process, or personnel files, or communications with attorneys.

4.4 Relevance to the LEITI

While the law allows for the withholding from the public of confidential business information, the law, however, is also clear that this confidentiality does not pertain to the type of financial information relevant to the LEITI. That is, Section 18.15 of the NFRL (on Public Access to Information) makes it clear that the FDA must report:

- (ii) The information concern[ing] the amount and type of Timber a Person has harvested, the amount of forest-related taxes or fees and penalties or fines paid or owed to the Government, or the amount a Holder has spent or owes on community benefits.

Further, the law is also clear that the FDA in their annual audits of harvest contracts *must* report the sort of financial information required by the LEITI³². Even more significantly, the forestry

³¹ NFRL Section 18.15(b)

³² NFRL Section 3.4

law³³ also requires that twice each year the logging companies *themselves* report all the financial information relevant to the LEITI:

Publication of Payments

Each Holder of a Forest Management Contract or a Timber Sale Contract shall, no later than on March 15 (for the months of July through December) and September 15 (for the months of January through June), ensure that a notice containing the following information is published in a newspaper of general circulation in Monrovia:

- a. The Holder's name;
- b. A brief description of the area covered by the Holder's Forest Resources License;
- c. A list of all payments and other considerations provided by the Holder to the Government under the Forest Resources License; and
- d. The date of each payment.

4.5 Summary

In summary, the Liberian National Forestry Reform Law of 2006 lays out strict requirements for logging companies to report the payments and other considerations they provide to government (at all levels). This is exactly the financial reporting that the LEITI will need to publish. Given these legal requirements, any additional voluntary disclosure by companies of payments to the central government is unnecessary, although undoubtedly welcome as far as the LEITI is concerned.

³³ NFRL Section 5.8

5 Contracting procedures for forest licenses in Liberia

Objective: *Review the contracting procedure for forest licenses in Liberia and its influence on the LEITI*

Over the past 20 years the allocation of licenses to harvest timber in Liberia was used as patronage to reward individuals loyal to the government (see Chapter 3). By 2003, claims to logging concessions exceeded the area of forest by 2.5 times. Both presidents Samuel Doe and Charles Taylor used forestry to enrich themselves and those important to them. For example, the largest logging company during the Taylor period, the Oriental Timber Corporation, paid millions of dollars directly into the personal bank account of Charles Taylor in exchange for tax credits (Blundell et al. 2007). Samuel Doe provided the largest timber concession in West Africa to an Israeli company in exchange for ‘military training’ of an anti-terrorist unit (Reno 1998). Under new laws, however, such patronage would not be legal. The Public Procurement and Concessions Act (PPCA) of 2005 is explicit in requiring competitive bidding for all government contracts, including timber licenses. In addition, in 2006, the Government of Liberia codified many forestry-specific reforms in the National Forestry Reform Law (NFRL) that ensures free and fair competition for timber contracts through competitive bidding.

Section 1 of this chapter reviews the contracting procedures for forest licenses in Liberia³⁴. Section 2 reviews the influence of the bidding process on the Liberia Extractive Industries Initiative (LEITI).

5.1 Contracting requirements

5.1.1 Identifying areas to be contracted for harvest

Under the NFRL, the Forestry Development Authority (FDA) must base land-use decisions on scientific principles and in consultation with local communities. In particular, the National Forest Management Strategy must classify all forestlands “according to their legal status and potential use”. The FDA has tried to resolve the conflicting demands through scientific planning that accounts for the suitability of specific forest-areas to alternative uses (Christie et al, *in prep.*). That is, the planning effort identified areas that are good for logging, but with the lowest probability of conflicting with claims from conservation and local communities.

However, the requirement to define “legal status” has created some controversy with community-rights advocates whose legal analysis concluded that communities should have the right to title over their forested areas (Alden Wiley 2007). Certainly, as the area awarded for logging increases, it will be increasingly difficult to find forests not claimed by communities.

At present, the FDA has tasked civil society to draft a community forestry law that will clarify the forestry rights of communities. The timetable for submitting the law to the legislature is fluid, although, it is expected to be finalized soon.³⁵

Whatever form the law takes, commercial forestry operated by communities will be required to meet all the legal requirements, just like any other commercial logging company. Presumably this

³⁴ Much of Section 1 is based on the author’s work in a much more detailed analysis published by Forest Trends: forest-trends.org/documents/publications/LiberiaGuidelinesEng.pdf; forest-trends.org/documents/publications/Liberia%20Guidelines_chi-eng.pdf <Chinese translation>

³⁵ The NFRL stated that by October 2007, the FDA shall “present to the Legislature for consideration and passage a comprehensive law governing community rights with respect to Forest Lands.” This deadline was not met.

would include reporting requirements, including those of the LEITI. (Chapter 6.3 suggests ways to facilitate reporting by communities within the EITI.)

5.1.2 Types of contracts

The law allows for two distinct types of contracts for industrial logging on public lands:

1) Forest Management Contracts (FMCs) are long-term (25 years), for large areas of 50,000 to 400,000 hectares³⁶. 2) Timber Sale Contracts (TSCs) are short-term (less than 3 years), for smaller areas (less than 5,000 hectares)³⁷. TSCs are meant for areas that will likely be cleared for plantations or farming, and as such, the management planning required is less than that for FMCs.

The strategy of the FDA was to resume industrial logging slowly, with a half-dozen TSCs initially. These TSCs were within 75 miles of Monrovia, the capital city, in order to facilitate monitoring by the FDA. However, since 2008, the FDA has revised its schedule, planning to allocate approximately 2 million hectares by February 2009 (see Table 5, Chapter 7).

5.1.3 Competitive bidding

The FDA must award all FMCs and TSCs through competitive bidding. However, in order to promote Liberian business, areas less than 100,000 hectares are reserved for majority-owned Liberian companies only—where majority-ownership is defined as at least 51% ownership by Liberian citizens³⁸. There are no restrictions on company ownership for larger FMCs. However, for these contracts, bids may be adjusted using a Margin of Preference for domestic bidders, although the PPCA requires bidders to be informed of the criteria in the bid document³⁹.

In addition to nationality, potential bidders can be restricted based on their past performance. The FDA shall debar all loggers who have aided or abetted civil disturbances involving the use of weapons⁴⁰. The standard of proof for listing is clear and convincing evidence.

5.1.4 Pre-qualification

Companies not debarred that wish to bid on a contract must first pre-qualify⁴¹. This is to ensure that they are: a registered corporation; in good standing in tax payments; and not bankrupt. Likewise they must demonstrate that their “significant individuals” are not felons or otherwise restricted from logging, and that the company (including parent and subsidiaries) have not been convicted or penalized for violating relevant laws.

There are special requirements for those involved with logging in the past. They must:

- file a sworn statement with the Truth and Reconciliation Commission describing honestly and fully all illegal activities; and,
- cooperate with Government efforts to recoup funds lost due to illegal activity.

³⁶ NFRL Section 5.3

³⁷ NFRL Section 5.4

³⁸ NFRL: Sections 5.3(g) & 5.4(g)

³⁹ PPCA: Section 58(3)(f)i); Note: that ‘domestic business’ means a private sector entity or firm incorporated under the laws of the Republic of Liberia and operating in Liberia.

⁴⁰ FDA Regulation 103-07: Section 23

⁴¹ FDA Regulation 103-07: Schedule 1

5.1.5 Bidding

Bids are based on what companies are willing to pay for the annual land rental. Prior to evaluating the bids, an independent assessor contracted by the FDA must determine a reserve bid, which is held confidential⁴².

5.1.6 Requirements of Successful bidders

Performance Bond: The contract holder must post a performance bond worth a minimum of US\$25,000 to US\$250,000 (depending on the contract area), or half of the expected government revenue (excluding land rent) for the first year, up to a maximum of US\$1 million.

Social Agreements: The FDA must obtain free prior informed consent in writing from the local Community Forest Development Committee (CFDC)⁴³. This Social Agreement articulates the rights (including access) and responsibilities of both the communities and the logging company and its employees. It also details the financial benefits the communities will receive, which are paid by the company into an escrow account on a quarterly basis. This benefit must be at least US\$1 per cubic meter harvested⁴⁴.

Public information: Under law, the public has complete access to any information, provided it is not confidential business information, as narrowly defined (see Section 4.3), or will interfere with law enforcement or national security⁴⁵. This freedom extends to monitoring and oversight, citizens suits, and civil enforcement⁴⁶.

5.2 The Influence of the Bidding Process on the LEITI

Even though contract transparency is important in achieving revenue transparency and accountability, EITI (2005) criterion concerning reporting does not have any specific requirements related to the concession bidding process:

Regular publication of all material ... payments by companies to governments (“payments”) and all material revenues received by governments from ... companies (“revenues”) to a wide audience in a publicly accessible, comprehensive and comprehensible manner.

Nonetheless, given that fiscal provisions will be negotiated into individual contracts, the World Bank (2008) advocates audits against contract in order to ensure that companies are paying the correct amount of taxes. Therefore, it seems appropriate that LEITI include reporting of the financial requirements of the bidding process.

From the analysis in Section 1, there are four basic categories of financial information related to the contracting process:

- 1) Past performance: in order to pre-qualify, bidders must not have tax arrears;
- 2) Bid performance: in order to bid, the bidder must post a bid bond;

⁴² FDA Regulation 104-07: Section 45

⁴³ FDA Regulation 104-07: Section 22(j)(1); the CFDCs may seek legal/expert assistance to represent the communities.

⁴⁴ FDA Regulation 105-07: Section 34

⁴⁵ NFRL Section 18.15

⁴⁶ NFRL Section 20.10

- 3) Prior to logging: in order to hold a license, the winner must demonstrate the financial capacity to undertake the work, post a performance bond, and must agree to compensate affected communities;
- 4) Performance: regular and timely payment of all taxes and other fees, as outlined in the contract, which includes payments to local authorities, as outlined in the Social Agreements.

In order to audit against contracts, the LEITI should publish a comprehensive set of documents, not just the reporting template (Chapter 7). The next sections articulate where these documents can be found. Given that reporting is already required by both law and regulation (see Chapter 4), this additional reporting to the LEITI should pose no further burden on either the logging company or the FDA. Without the supporting documentation, audits against contracts are impossible and it will not be clear to the public whether or not correct taxes and fees have been paid. “The experience of countries is that the more successful programs allow as much useful, quality data as possible to be released into the public domain” (World Bank 2008).

5.2.1 Past Performance and Bid Performance

Under existing law and regulation, the financial standing of companies that bid on contracts is reported in the:

- Pre-qualification Panel’s notice of approval or rejection⁴⁷;
- FDA Procurement Unit’s Bid Evaluation Report, which includes the outcome of the due diligence evaluation process⁴⁸.

A high level of scrutiny in determining good-standing is vital given that during the Taylor period logging companies became at least US\$64 million in arrears (Appendix 3). The LEITI should consider requiring both the Pre-qualification Panel and the FDA Procurement Unit’s Bid Evaluation Report, and should reconcile the reports with existing data on the individual company’s tax arrears to government.

5.2.2 Prior to logging

The FDA must also certify that all pre-felling requirements are met⁴⁹, including copies of the executed Social Agreement. The LEITI should consider posting the contracts and Social Agreements for each TSC and FMC to allow reconciliation against contracts. As a check of compliance with the unique terms of the individual contracts and Social Agreements, the LEITI should post the FDA pre-felling certificates. These could then be reconciled with the logging operators’ annual reports.

5.2.3 Performance

Annual reporting using a template like those in Chapter 7 will allow reconciliation between the company reports of payments and the corresponding government reports of revenue received from the individual companies. Both of these should be reconciled against the contracts to ensure that the correct payments have been made and received.

⁴⁷ FDA Regulation 103-07: Section 44(d)

⁴⁸ PPCA: Sections 115-116

⁴⁹ FDA Regulation 105-07: Section 24

5.3 Summary

In order to audit against the individual logging contracts, the LEITI should publish for each company:

- The Pre-qualification Panel's notice of approval;
- The FDA Procurement Unit's Bid Evaluation Report;
- The logging contract;
- The Social Agreement;
- The FDA's Pre-felling Certificate;
- The LEITI Reports completed by the company and the government.

Such reporting will allow for full reconciliation to ensure that companies are paying their correct taxes and fees to the central and local authorities. In addition, such reporting will reinforce the collection of tax arrears prior to bidding and reinforce the posting of performance bonds. This will assist the Government of Liberia collect revenue from past arrears and help ensure that there is something to recover should the company renege on future obligations.

In the past, logging contracts were allocated through illegal patronage. Under law, this can no longer happen. A thorough reporting regime within the LEITI that starts with the contracting process will reinforce such rule of law.

6 Auditing requirements in the forest sector in Liberia

Objective: *Address differences in auditing requirements between commercial and community forestry*

Along with *transparency*, *accountability* is a fundamental principle of good governance (UNDP 1997). Consistent with good governance, the Liberian National Forestry Reform Law (NFRL) of 2006 requires the Forestry Development Authority (FDA) to conduct annual audits of all logging companies, including community operations. Section 1 examines these requirements; Section 2 examines practical issues related to implementation of the requirements by both commercial and community forestry operators; and Section 3 examines how reporting requirements in other forestry initiatives, especially forest certification, have attempted to assist communities overcome some of the obstacles to reporting.

6.1 Legal audit requirements

The NFRL explicitly requires the FDA to conduct annual audits on all operators⁵⁰, and to report:

- (i) The location and ownership of the land subject to the Forest Resources License;
- (ii) The volume and location of wood available for harvest under the Annual Coupe;
- (iii) The volumes and monetary values of the harvested Forest Resources, processed Forest Products, and exported Forest Products, in total and by species, produced under the Forest Resources License;
- (iv) The amounts of any fees and taxes assessed, and the amounts paid;
- (v) The nature and monetary value of benefits provided to local communities, in total and by community; and
- (vi) The charges of violations and the arrests, settlements, and convictions associated with Operations under the Forest Resources License and associated commerce in Forest Products; the penalties, if any, assessed or agreed to; and the penalties actually paid.

These compliance audits (not strictly financial audits) are to be conducted by the FDA on commercial operations on public lands⁵¹, as well as those on private property⁵², and are also required for non-commercial operations⁵³. For FMCs and TSCs, the FDA's Forestry Management Advisory Committee will invite loggers into individual sessions in which the contractor "will be asked to demonstrate that they are in full compliance with their contracts"⁵⁴, including "a copy of their audited accounts for the preceding fiscal year"⁵⁵. The contractors are also required to submit to "regular and routine monitoring" by "accredited third-party independent monitoring organizations"⁵⁶.

⁵⁰ NFRL: Section 3.4(b)

⁵¹ Forest Management Contracts (FMCs) and Timber Sale Contracts (TSCs)

⁵² Forest Use Permits (FUPs)

⁵³ Private Use Permits (PUPs)

⁵⁴ Contract: Section B8.8—Period Review

⁵⁵ Contract: Section B8.8(v)

⁵⁶ Contract: Section B8.8

6.2 Differences between commercial and community forestry

Under the law and regulations, the major difference in auditing requirements is not between commercial and community forestry, rather it is between commercial and non-commercial harvesting. While the FDA is required to conduct annual compliance audits on all logging operations, only commercial contracts on public lands require that the company themselves present audited financial accounts.

Community enterprises can engage in both commercial and non-commercial harvesting. The non-commercial, small-scale harvest for local use—under Forest Use Permits (FUPs)—was envisioned, as, for example, a community cutting down a few trees in order to build a school, clinic, church, palaver hut, *etc.* These are clearly non-commercial purposes, and the law is not meant to restrict the community from such improvements.

If communities decide to engage in commercial operations, then the LEITI will be faced with two problems. The first is the large increase in the number of companies that could be required to report to the LEITI. The second problem is one of cost to communities. Audits represent a fixed cost, which means the costs are disproportionately greater, relative to revenue, for small operators than large operators. The actual cost can be even greater if small operators lack experience with financial accounting.

6.3 Materiality

The first issue regarding the number of responding companies is something that the Multi-Stakeholder Steering Group (MSSG) of the LEITI must decide: whether or not all logging operations, including community enterprises and those others on private land must report to the LEITI. Guidance from the EITI (2005) is that “all material benefit streams must be reported”, where “a benefit stream is material if its omission or misstatement could distort the final EITI report”:

“It is recommended that a benefit stream be considered to be material if it is:
Alternative 1: more than A% of the host government’s estimated total production value for the reporting period;
Alternative 2: more than B% of the company’s estimated total production value in the host country for the reporting period; or
Alternative 3: more than USD C million [or local currency D million].”

The World Bank (2008) offers further decision-making criteria:

“Payment materiality: Some reportable payments made by companies may in fact be relatively small, and the process of gathering additional data on these very small transactions may exceed its benefit.
Company materiality: Since the size and output of companies...varies, a country, for reasons of cost efficiency, sets a materiality level based on physical output or on previous taxation payments below which a company would not have to report at all under EITI.”

Some countries have decided to require all companies—regardless of size or levels of payments—to report as part of the EITI process (World Bank 2008). If, however, companies are excluded as immaterial, then it is important that the stakeholder group is confident that all material payments are included in the EITI report. The World Bank (2008) suggests that this could be achieved: “either by a senior officer of the company providing written assurance that all material revenue streams are being disclosed; through publication of the full contracts or the fiscal provisions of the contracts; or by contracts being provided to the administrator/auditor on a confidential basis.”

There is no set materiality level prescribed by the EITI. The World Bank (2008) review concluded that experience shows that MSSG in countries “need to keep materiality under review to ensure cost or process efficiency, and also to guard against the reputational effect of a national EITI process that is perceived as only partially transparent.” This is particularly problematic if the exemption of small enterprises is seen as a loophole through which revenue can escape.

Given the threat to the LEITI’s reputation and the possibility that illicit operators will exploit any loophole, it would seem prudent to start from a position requiring full reporting and only then excluding companies if it can be shown that it is not cost-effective to require their reporting. Indeed, the World Bank (2008) found that “countries that tend toward more, rather than less, information disclosure are able to generate more trust among all stakeholders”.

If small operators are mandated to report, then the Government of Liberia and international donors should help small operators develop their capacity. The next section suggests assistance that can facilitate such reporting.

6.4 Assistance to communities in reporting requirements

The Liberian law has tried to minimize the costs of reporting on small operators by exempting small FUPs and the harvest on private land, even for commercial purposes, from formal, financial audits. Instead the burden of the annual compliance audit is on the government (*i.e.*, the FDA).

Some experience assisting small operators may be gained elsewhere, from other sectors. In many countries there are large numbers of “artisanal” or small-scale miners. Similar in many ways to small-scale community logging, artisanal mining is probably more difficult to control given how much easier it is to smuggle gems and gold than logs and planks. Thus far there is little experience within EITI as to how to include small-scale miners, though one possibility, as yet untried, might be to focus only on exporters and dealers in minerals, because such trade is often dominated by just a small number of individuals or firms (World Bank 2008). Perhaps LEITI could occasionally conduct a review of the timber trade and exports from Liberia’s ports and border crossings to ensure that all material flows of timber revenue are captured. For example, at present, a considerable—likely material—amount of (albeit illegal) pilsawn timber⁵⁷ is sold domestically. The MSSG will have to decide whether or not revenue from pilsawyers must be included in the LEITI.

Outside of the EITI, other initiatives offer lessons on how to solve the challenges faced by small operators. For example, forest certification, which uses extensive audits to verify that logging is sustainable—environmentally, but also socially and economically—has tried to overcome the obstacles confronted by small community operators through ‘group certification’, where a number of small operators join to share costs and exchange expertise. This is generally done through a formal process where the group enters into a legal entity that is responsible to the certification body for ensuring that all of the holdings in the group—the individual operators—comply with the certification requirements.

Group certification reduces costs by allowing evaluations to be based on a sample of operations and then spreading this lower total cost across all the operators. Group certification also helps by enabling small enterprises with insufficient individual capacity to use information and expertise that can be provided by the group management entity. Such cooperatives may be an important

⁵⁷ Trees are cut into planks using chainsaws rather than sawmills

first step in establishing good governance, particularly in countries where governments lack the capacity to deliver such assistance.

The major certification body, the Forest Stewardship Council (FSC) has further developed a “Small and Low Intensity Management Forest” (SLIMF⁵⁸) initiative, which seeks to promote access to information, streamline procedures and lower the costs of certification assessments (in some cases by 40%), and develop standards and performance indicators designed specifically for SLIMF operations.

6.5 Summary

The MSSG must decide on whether or not small operators, including pitsawyers, should be exempted from reporting within the LEITI. It would be seem prudent to work from a default position of complete reporting, excluding operators case-by-case, based on cost effectiveness—at least while the number of logging companies operating is small. If LEITI were to set up a two-track system, then the un-reported supply chain could provide an easy conduit for the laundering of illegal logging⁵⁹.

If communities decide to pursue logging, then the FDA, civil society, and international partners should assist communities in forming group management units (FSC 2008), not just to benefit from the economies of scale, but through sharing of lessons learned and other expertise. Garrett (2007) recommends establishing an expert group comprising key representatives of civil society, government, private sector and academia commissioned to develop a strategy for EITI implementation for small-scale operators. As he points out: EITI should not shy away from working with small-scale operators, who are often seen (unfairly) as ‘chaotic’ in their organization; it is likely that improved transparency among small-scale operators will have knock-on effects leading to improved governance of the sector, and even more broadly, of rural economies.

⁵⁸ fsc.org/slimf

For the purposes of the SLIMF, a forest management unit qualifies if it is either 'small' (<1,000 ha) or 'low intensity' where a) the rate of harvesting is <20% of the mean annual increment within the total production forest area, and b) the annual harvest is <5,000 m³

⁵⁹ As is occurring at present with pit-sawing.

7 LEITI Template for Forestry Company Reporting

The Secretariat of the Extractive Industries Transparency Initiative (EITI) has published templates that can be used in the reporting of revenues to government. There are two sets of templates: one for the companies and one for the host governments (EITI 2005).

Liberia is the first country to include forestry in the EITI. It is expected that over the next four years at most 35 companies on public lands will report (18 FMCs and 15 TSCs; Table 5). However, this could increase substantially if small-scale operators begin logging (see Chapter 6.3).

Table 5 The expected number of logging operations over the next four years in Liberia.

| | 2008 | 2009 | 2010 | 2011 |
|-------------------|------|------|------|------|
| Scenario A | | | | |
| FMCs | 0 | 4 | 8 | 11 |
| TSCs | 5 | 8 | 12 | 12 |
| Scenario B | | | | |
| FMCs | 0 | 1 | 3 | 9 |
| TSCs | 5 | 10 | 15 | 15 |
| Scenario C | | | | |
| FMCs | 17 | 18 | 18 | 18 |

Based on predictions by the Forestry Development Authority (FDA) in 2006, 2007 (for the SGS chain-of-custody contract), and 2008. FMC = Forest Management Contracts, TSC = Timber Sale Contracts.

This chapter contains suggested templates for forestry in the Liberia EITI (LEITI). The templates are designed to provide sufficient information to reconcile payment obligations versus actual payments made. That is, one can calculate tax obligations based on the land rental bid and the volumes and values harvested, by category of species. One can further examine the fines and penalties to determine if any corrective action was taken to recover evaded taxes. Finally, one can reconcile the company reports against the Government of Liberia reports.

On the basis of the templates alone, one cannot, however, confirm that the land rental and payments to local authorities are correct. In order to verify the correct payments, one would need access to the specific contract and the Social Agreement negotiated between the logging company and the affected communities. Therefore, the LEITI should consider publishing the contracts and Social Agreements to facilitate such reconciliation. Likewise, the LEITI should consider publishing all compliance reports to allow further verification and cross-reference of payments to government (Chapter 5.3).

Space is left at the end of the template for voluntary disclosure of any additional information. In Liberia, industry conveyed a strong desire that the public recognize the various contributions that the sector makes to society. Voluntary disclosure is an opportunity to publicize such activities.

7.1 Input templates

LEITI Input Template for Forestry Company Reporting Entities

Name of Company: _____

Type of logging contract: _____ Reporting Period: _____

Contract area: _____ ha Area logged in reporting period: _____ ha

| Ref | Volume | units | units | Value |
|---------------------------------------|-----------------------------|----------------|-------|-------|
| Benefit Stream | | | | |
| 1 | Harvested logs | | | |
| | Category A species | m ³ | US\$ | |
| | Category B species | m ³ | US\$ | |
| | Category C species | m ³ | US\$ | |
| 2 | Exported product | | | |
| | Category A species logs | m ³ | US\$ | |
| | Category B species logs | m ³ | US\$ | |
| | Category C species logs | m ³ | US\$ | |
| | Category A species products | m ³ | US\$ | |
| | Category B species products | m ³ | US\$ | |
| | Category C species products | m ³ | US\$ | |
| Payments to Central Government | | | | |
| Land rental fees | | | | |
| 3 | Area Based Fees | | | |
| | Base: US\$_____/ha + | | | |
| | Bid: US\$_____/ha | | | US\$ |
| | Amount to: | | | |
| | 40% Ministry of Finance | US\$ | | |
| | 30% Communities* | US\$ | | |
| | 30% Counties [†] | US\$ | | |

* To be distributed to affected communities through the National Community Benefit Sharing Trust

[†] To be distributed equally among the counties through the County Forestry Development Fund.

| | | | |
|----|--|------|------|
| 4 | Contract Administration Fees | | US\$ |
| 5 | Coupe Inspection Fees | | US\$ |
| 6 | Stumpage Fees | | US\$ |
| | Amount to: | | |
| | 90% Ministry of Finance | US\$ | |
| | 10% Protected Areas [‡] | US\$ | |
| | Forest Products Fees | | |
| 7 | Log Export Fees | | US\$ |
| 8 | Processed Product Export Fees | | US\$ |
| | Amount to: | | |
| | 90% Ministry of Finance | US\$ | |
| | 10% Protected Areas [‡] | US\$ | |
| 9 | Waybill Fees | | US\$ |
| 10 | Export License Fees | | US\$ |
| 11 | Sawmill License Fee | | US\$ |
| | Size of mill: _____ m ³ /yr | | |
| 12 | Corporate Income Tax | | US\$ |
| | Withholding Income Tax | | US\$ |
| 13 | Other Fees | | US\$ |
| | | | L\$ |
| | In-kind payments (& monetary value) | | |
| | _____ | | US\$ |

[‡] To be administered by the Forestry Development Authority to manage a network of protected areas.

| Payments to Local Governments | |
|---|---------------------------|
| 14 Harvest volume-based payments | <input type="text"/> US\$ |
| 15 Other monetary payments | <input type="text"/> US\$ |
| 16 In-kind payments (& monetary value) | |
| <input type="text"/> | <input type="text"/> US\$ |
| <input type="text"/> | <input type="text"/> L\$ |
| 17 Fines & penalties | |
| <input type="text"/> | <input type="text"/> US\$ |
| 18 Other voluntary disclosures | |
| <input type="text"/> | <input type="text"/> US\$ |

Management sign-off

We acknowledge [or *On behalf of the Board of Directors (or similar body) we acknowledge*] our responsibility for the fair presentation of the Reporting Template in accordance with the Reporting Guidelines, with the exception of:

- _____ ;
- _____ ;
- _____ ;
- _____ .

LEITI Input Template for Host Government Reporting

Name of Company: _____

Type of logging contract: _____ Reporting Period: _____

Contract area: _____ ha Area logged in reporting period: _____ ha

| Ref | | Volume | units | units | Value |
|---------------------------------------|-----------------------------|--------|----------------|-------|-------|
| Benefit Stream | | | | | |
| 19 | Harvested logs | | | | |
| | Category A species | | m ³ | | US\$ |
| | Category B species | | m ³ | | US\$ |
| | Category C species | | m ³ | | US\$ |
| 20 | Exported product | | | | |
| | Category A species logs | | m ³ | | US\$ |
| | Category B species logs | | m ³ | | US\$ |
| | Category C species logs | | m ³ | | US\$ |
| | Category A species products | | m ³ | | US\$ |
| | Category B species products | | m ³ | | US\$ |
| | Category C species products | | m ³ | | US\$ |
| Payments to Central Government | | | | | |
| Land rental fees | | | | | |
| 22 | Area Based Fees | | | | |
| | Base: US\$_____/ha + | | | | US\$ |
| | Bid: US\$_____/ha | | | | |
| | Amount to: | | | | |
| | 40% Ministry of Finance | US\$ | | | |
| | 30% Communities* | US\$ | | | |
| | 30% Counties [†] | US\$ | | | |

* To be distributed to affected communities through the National Community Benefit Sharing Trust

[†] To be distributed equally among the counties through the County Forestry Development Fund.

| | | | |
|----|--|------|------|
| 22 | Contract Administration Fees | | US\$ |
| 23 | Coupe Inspection Fees | | US\$ |
| 24 | Stumpage Fees | | US\$ |
| | Amount to: | | |
| | 90% Ministry of Finance | US\$ | |
| | 10% Protected Areas [‡] | US\$ | |
| | Forest Products Fees | | |
| 25 | Log Export Fees | | US\$ |
| 26 | Processed Product Export Fees | | US\$ |
| | Amount to: | | |
| | 90% Ministry of Finance | US\$ | |
| | 10% Protected Areas [‡] | US\$ | |
| 27 | Waybill Fees | | US\$ |
| 28 | Export License Fees | | US\$ |
| 29 | Sawmill License Fee | | US\$ |
| | Size of mill: _____ m ³ /yr | | |
| 30 | Corporate Income Tax | | US\$ |
| | Withholding Income Tax | | US\$ |
| 31 | Other Fees | | US\$ |
| | | | L\$ |
| | In-kind payments (& monetary value) | | |
| | _____ | | US\$ |

[‡] To be administered by the Forestry Development Authority to manage a network of protected areas.

| Payments to Local Governments | |
|---|---------------------------|
| 32 Harvest volume-based payments | <input type="text"/> US\$ |
| 33 Other monetary payments | <input type="text"/> US\$ |
| 34 In-kind payments (& monetary value) | |
| <input type="text"/> | <input type="text"/> US\$ |
| <input type="text"/> | <input type="text"/> L\$ |
| 35 Fines & penalties | |
| <input type="text"/> | <input type="text"/> US\$ |
| 36 Other voluntary disclosures | |
| <input type="text"/> | <input type="text"/> US\$ |

Host government sign-off

We acknowledge our responsibility for the fair presentation of the Reporting Template in accordance with the Reporting Guidelines, with the exception of:

- _____ ;
- _____ ;
- _____ ;
- _____ .

7.2 References for the Input Templates

This next section provides explanations for the various entries in the two reporting templates. Explanations are cross-referenced to the template based on the reference number (Ref.) on the extreme left of the templates.

7.2.1 Forestry Company Reporting Entities

Benefit Stream

Ref.

1. Harvested logs: This is the total annual production (m³ and value, in US\$, less any waste left in the forest) from the contract area (
2. Table 2). Production is divided into three categories based on the merchantability the species⁶⁶. If exported volumes are higher than the harvest, then excess production is either from previous years or it is illegal, being laundered through the legal supply chain.
3. Exported products: This is the total annual volume (m³) and value (US\$) of exports. The export fees also vary depending on the category of the timber species (
4. Table 2). Product fees are half that for logs.

Payments to Central Government

Land rental fees are composed of three classes of fees⁶⁷:

5. Area-based fees: annual, per hectare fees charged at a base rate of US\$2.50 for FMCs and US\$1.25 for TSCs⁶⁸, plus whatever bid premium was offered as part of the competitive bidding process for awarding the contracts⁶⁹. The area-based land rental fees are to be divided 30% to communities and 30% to counties, with the remaining 40% to the Ministry of Finance⁷⁰. The area-based fee may not be charged on private land⁷¹ or buffer strips⁷².
6. An annual administration fee of US\$1,000 per FMC and TSC⁷³.
7. An annual coupe inspection fee of US\$50 per km² block of area subject to harvest operations under the annual coupe plan⁷⁴.

Stumpage fees:

8. Stumpage fees are based on the “kind and amount” harvested⁷⁵; more specifically they are calculated based on the merchantable volume harvested, with the fee a variable percentage of value (FOB) depending on the category of species. Stumpage must be paid

⁶⁶ See Schedule 1, FDA Regulation 107-07 for the species-list for each category A – C. If a species is not listed in Schedule 1, it is assumed to be in Category C.

⁶⁷ NFRL Section 14.2b(ii)

⁶⁸ FDA Regulation 107-07, Section 33

⁶⁹ FDA Regulation 107-07, Section 33e

⁷⁰ NFRL Section 14.2e(ii)

⁷¹ National Forestry Reform Law (NFRL) Section 5.7c

⁷² NFRL Section 7.3c

⁷³ FDA Regulation 107-07, Section 32

⁷⁴ FDA Regulation 107-07, Section 34

⁷⁵ NFRL Section 14.2b(i)

within 30 days of harvest or sooner⁷⁶. Stumpage fees are assessed on harvest from both public and private lands, although the rate is cut in half for trees “artificially regenerated”⁷⁷. A tenth of stumpage fees are to support the operational costs of the Protected Forest Areas Network⁷⁸.

Forest products fees: are associated with the production, registration, transport, transfer of ownership, use, or export of forest products⁷⁹. The actual fees are comprised of permits, licenses, and an export fee, which must be paid prior to shipment⁸⁰.

9. Log export fees are based on percentage of the FOB value of the exported logs, with the percentage varying based on the category of species.
10. Wood product export fees are calculated at half the rate of log export fees, and if the product contains a mix of species in a way that makes it difficult to determine the amount of each species, then the fee is calculated at the highest rate that applies to any species in the mix⁸¹.
11. Waybill fees cost US\$150 for a book of ten waybills, which are used for the transportation of forest products within the chain of custody system⁸².
12. An export license, costing US\$100, is required for each shipment of forest products, and must not be granted until proof, through the chain of custody system, that all other taxes and fees have been paid⁸³.
13. A sawmill license must be paid for any “mechanized facility processing wood in any manner” other than charcoal⁸⁴. The rate varies depending on capacity: US\$2,500 if processing >1,500 m³ per year; US\$1,000 if $\geq 750 \text{ m}^3 \leq 1,500 \text{ m}^3$; US\$750 if < 750 m³.
14. *Corporate Income Tax* is to be paid on all net revenue. Under some contracts, a certain amount is to be withheld pending the company’s filing of their tax return.
15. *Other Fees* are to be reported, including those payments made in-kind (with an estimate of their monetary value).

Payments to Local Government

Payments to local authorities, both at the county and community level, are prescribed in the Social Agreement to be signed by the logging company and the Community Forestry Development Committees (CFDCs) of the affected communities⁸⁵. Logging may not commence

⁷⁶ FDA Regulation 107-07 Section 22

⁷⁷ NFRL Section 5.7c

⁷⁸ NFRL Section 14.2e(i)

⁷⁹ NFRL Section 14.2b(iii)

⁸⁰ FDA Regulation 107-07, Section 44

⁸¹ FDA Regulation 107-07, Section 45

⁸² FDA Regulation 107-07, Section 41

⁸³ FDA Regulation 107-07, Section 42

⁸⁴ FDA Regulation 107-07, Section 46

⁸⁵ NFRL Section 5.1f(iii), FDA Regulation 104-07, Section 22j

unless a Social Agreement is in force⁸⁶. The Social Agreements are valid for the three years of a TSC, but must be renegotiated every five years for an FMC⁸⁷.

16. Harvest-based payments must be a minimum of US\$1 per m³ but can be negotiated higher⁸⁸. The amount is based on verifiable information provided by the chain of custody system. These are to be paid on a quarterly basis into interest-bearing escrow account that the logging company shall hold in trust on behalf of all affected communities, to be released upon written request of a CFDC, with the consent of the FDA and provided no CFDC of an affected community objects⁸⁹.
17. Other monetary payments are possible in addition to the volume-based payments.
18. In-kind payments—although not explicit in the law or regulations, it is likely that affected communities will wish to include non-financial benefits such as schools, clinics, or other infrastructure, in the Social Agreements. These payments (and their monetary value) should be noted.

Fines & penalties

19. Fines and penalties are described in Chapter 20 of the NFRL, and implementation in FDA Regulation 109-07.

Other voluntary disclosure

20. In addition to the above reporting, companies may wish to make further voluntary disclosures. The World Bank (2008) found that companies are interested in “ensuring that there is a good public understanding of their impact and of the payments they make to the government.”

7.2.2 LEITI Input Template for Host Government Reporting

Reporting by the Host Government follows that for the individual companies (#1 – 18, above). The information should come directly from the chain of custody system, the FDA, the Ministry of Finance, and/or the Central Bank.

Payments to Local Government

The World Bank (2008) has found that the “capacity in subnational governments is sometimes insufficient to deal with the reporting requirements of an EITI program”. This is likely to be the case in Liberia. Therefore, until such a time as capacity is sufficient, reporting of payments to local government (#32 – 34) should be reproduced from the Annual Audit of the FMCs and TSCs conducted by the FDA⁹⁰.

⁸⁶ NFRL Section 5.3b(vi), FDA Regulation 105-07, Section 31b(2)

⁸⁷ FDA Regulation 105-07, Section 31b

⁸⁸ FDA Regulation 105-07, Section 34

⁸⁹ FDA Regulation 105-07, Section 33a(3&4)

⁹⁰ NFRL Section 3.4b(v)

8 Customs & certification - helping regularize tax payments

Objective: *Recommend how customs enforcement, certification, chambers of commerce, and other civil society can help regularize payments of taxes and forestry fees*

This chapter briefly examines how regulatory agencies, in addition to the Ministries of Forests and Finance, can help regularize payments of forestry-related taxes and fees. It also examines how other forest-related interventions, such as forest certification and the European Commission's (EC) Voluntary Partnership Agreements (VPAs), can help producer countries ensure that they recover appropriate forestry revenue. Finally, it examines how independent monitoring and other industry-led initiatives can help.

8.1 Export control

Standing at the end of the chain of logging activities, customs officers play an important role as gatekeeper in ensuring that forestry-related fees are collected. Indeed, Regulation 108-07⁹¹ of the Forestry Development Authority (FDA) requires port and customs officials to deny export to illegitimate shipments, including those that have not been entered into the chain-of-custody system and those that have not paid all the taxes and fees. The agents are also required to report any suspected illegal activities.

The one drawback to such a system is that it gives the agent a large degree of authority—being the last obstacle between the logger and his/her money. This provides a ready opportunity for the abuse of power by corrupt officials extorting export companies.

The role of customs agents can be complemented by independent companies, such as those that supply pre-shipment inspection (PSI), *e.g.*, SGS Group or Cotecna. Given that it is in the government's interest to see that PSI-inspectors ensure all taxes are paid, PSI provides a useful check that is absent when government alone is the collection authority. Of course this benefit is offset by the cost of the PSI. In Liberia, Bivac provides PSI at 1.4%⁹² of the shipment's declared value (FOB), although rubber and duty-free goods are exempt, as well as any shipment designated by government officials.

In the case of forestry, the Government of Liberia has contracted SGS Group to build, operate, and ultimately transfer (BOT) back to the FDA, a system to manage the chain-of-custody tracking of timber from stump to export, including verification of legal origin and full tax payments. This is likely to cost approximately 20% of government revenue during the BOT-phase (5-7 years). But this cost is offset by the estimate that the previous government collected far less than 5% of taxes and fees between 1997-2003.

8.2 Import control

In addition, importing countries can use their *own* customs agents to reinforce rule of law. Under the EC's VPA, producer countries must license all timber shipments as a verification of legality. If a shipment does not have a license, the customs agent in Europe will prevent entry. In this way, the EC would help producing countries, such as Liberia, ensure that all tax and fees are collected. Liberia is currently in informal negotiations with the EC. The FDA is awaiting a decision by its Board of Directors and the federal cabinet as to whether or not to enter formal negotiations. If

⁹¹ Section 41

⁹² Or a minimum of US\$250, of which the GoL receives approximately one-third of the total PSI.

Liberia agrees to a VPA, it could ask China, the other major importer of Liberian timber, to honour the VPA regulations (Blundell et al. 2006).

Even if Liberia does not enter into a VPA, importing countries should practice greater due diligence regarding the legality of the wood they purchase. This year the U.S.A. amended their law⁹³ to make it illegal to import illegally obtained timber. (The UK and the EC is considering similar legislation.) This is consistent with existing jurisprudence in the U.S.A.⁹⁴, which allows US Customs and the Animal Plant Health Inspection Service to “look behind” an apparently valid CITES export permit if the US authorities suspect that the document is invalid (not just fraudulent, but if the exporting country granted permits that are not in compliance with the treaty itself). In contrast, a U.K. court⁹⁵ ruled that it would be inappropriate for the UK government to look behind a permit from a sovereign management authority.

8.3 Third party certification

There are a number of independent licensing systems that reinforce the rule of law in the Liberian forest sector and that go beyond the VPA’s verification of legality (Table 6). The largest and best known, is the Forest Stewardship Council’s (FSC) certification programme, which verifies that shipments are sustainable—economically, environmentally, and socially. Such certification would reinforce revenue collection. Under FSC Criteria 1.2, auditors would verify that for all shipments, regardless of the country of import, “all applicable and legally prescribed fees, royalties, taxes and other charges shall be paid.”

Table 6: Comparison of the requirement of initiatives to deal with compliance.

| Compliance Issue | Law / Regulation | FSC Certification ⁹⁶ | VPA ⁹⁷ | SGS – CoC ⁹⁸ | LEITI ⁹⁹ |
|--------------------------------------|-----------------------|--------------------------------------|-------------------|-------------------------|---------------------|
| Financial reporting | ✓ | ✓ (Principles 1&8) | ✓ | ✓ | ✓ |
| Legal origin | ✓ | ✓ (P1) | ✓ | ✓ | |
| Chain-of-custody | ✓ | ✓ (P8) | ✓ | ✓ | |
| Environmental law | ✓ | ✓ (P1,6&9) | ✓ | | |
| Labour law | ✓ | ✓ (P1&4) | ✓ | | |
| Immigration law | ✓ | ✓ (P1) | ✓ | | |
| Forestry law | ✓ | ✓ (P1,3,4,5,7&8) | ✓ | | |
| Independent forest monitoring | Permitted | 3 rd party audit required | ✓ | ✓ | |
| Respect customary tenure rights | Consultation required | ✓ (P2) | as per law | | |
| Dispute resolution | ✓ | ✓ (P2) | as per law | | |
| Respect control by indigenous people | Consultation required | ✓ (P3) | as per law | | |
| Consider “social impact” | | ✓ (P4) | as per law | | |

⁹³ The Lacey Act

⁹⁴ *Castlewood Products L.L.C. et al. v. Norton et al.*, 264 F. Supp. 2d 9 (D.D.C. 2003), *aff’d* 365 F. 3d 1076 (D.C. Cir. 2004)

⁹⁵ R (*on the application of Greenpeace*) v. *Secretary of State for the Environment Food and Rural Affairs*, 1 WLR 3304 (Q.B. 2002)

⁹⁶ fsc.org/keepout/en/content_areas/77/134/files/fsc_std_01_001_v4_0_en_fsc_principles_and_criteria.pdf

⁹⁷ illegal-logging.info/uploads/1_Breifing_Note_6.pdf

⁹⁸ sgs.com/sgs_to_pioneer_timber_verification_in_liberia_forestry?viewId=641

⁹⁹ citiliberia.org

| | | | |
|---|---|--------|------------|
| Economic viability | ✓ | ✓ (P5) | as per law |
| Optimal use of timber, including local processing | ✓ | ✓ (P5) | as per law |
| Diversity local economy | | ✓ (P5) | as per law |

FSC = Forest Stewardship Council; VPA = EU Voluntary Partnership Agreement; SGS-CoC = SGS Group Chain-of-Custody system; LEITI = Liberian Extractive Industries Transparency Initiative.

8.4 Industry initiatives

The industry-led certification system in the U.S.A., the Sustainable Forestry Initiative, is not explicit in requiring all taxes and fees be paid, although its Principle 8 requires ‘Legal Compliance’, *i.e.*, that companies “comply with applicable federal, provincial, state, and local forestry and related environmental laws, statutes, and regulations”—which would presumably include taxes.

In Europe, the EC is working with the timber industry to reinforce good governance through the Forest Law Enforcement, Governance, and Trade (FLEGT) initiative. In addition to the VPA mentioned above, FLEGT is developing public procurement policies that require verification of legality, due diligence requirements for investors, and the prosecution of Europeans involved in the illegal timber trade. FLEGT provides assistance, both technical and financial, to producer countries to improve forest governance. Finally, FLEGT is working with the industry on corporate social responsibility standards and with European forest certification efforts.

8.5 Regulatory relief

As an incentive to becoming certified, the Government of British Columbia, in Canada, has developed a system where *bona fide* certified logging operations are given regulatory relief. Certified operations are exempted from the extensive audits conducted by the government Forest Resources Board. This is based on the assumption that certified operations have already been sufficiently audited to ensure compliance.

Liberia could consider the same. As well, once certification programmes begin working in Liberia, they should include the principle that companies must comply with the requirements of the LEITI.

8.6 Summary

Customs officials and port authorities have a statutory role in ensuring that timber shipments do not evade taxes. This is further reinforced by the chain-of-custody tracking system operated by SGS Group. If Liberia chooses to enter into a VPA trade agreement with the European Commission, then tax payment, and reporting of such, will be required. Likewise, if logging companies become certified, the certification organization should require full reporting. LEITI staff could ensure that all such information is reconciled with the company’s reporting. Civil society should also be encouraged to analyze these data to provide useful information to local people regarding the revenue derived from the exploitation of their forests, and to ensure that the public accrue the appropriate benefits.

9 Civil society and the EITI

Objective: *Examine what outreach efforts to broaden the representation of civil society will increase transparency, including FLEGT, independent monitoring and advocacy, and a forestry section on the LEITI website*

This chapter examines how to improve representation by civil society, one of the backbones of the Extractive Industries Transparency Initiative (EITI). It suggests ways to build their capacity, engage them more in the process, and ensure that they have access to accurate and timely information regarding revenue transparency.

9.1 Who is ‘civil society’?

There is no commonly accepted—let alone legal—definition of the term ‘civil society’. The EC (2002) adopted the term as shorthand to refer to a range of organizations including:

- Labour-market players (*i.e.*, trade unions and employers federations – the ‘social partners’);
- Organizations representing social and economic players, which are not social partners in the strict sense of the term (for instance, consumer organizations);
- Non-governmental organizations (NGOs), which bring people together in a common cause, such as environmental organizations, human rights organizations, charitable organizations, educational and training organizations, *etc.*;
- Community-based organizations (CBOs), *i.e.*, organizations set up within society at grassroots level that pursue member-oriented objectives, *e.g.*, youth organizations, family associations and all organizations through which citizens participate in local and municipal life; and,
- Religious communities.

It is noteworthy that the EC separates CBOs from NGOs in recognition that NGOs are not necessarily accountable to local communities, nor do they necessarily share common cause. EITI (2006) documents also refer to civil society as encompassing the media, academic and research institutions. Thus, ‘civil society’ refers to the principal structures of society outside of government and public administration, including economic operators not generally considered to be ‘third sector’ or NGOs.

9.1.1 Civil Society and the LEITI

The EITI has direct civil society involvement through Multi-Stakeholder Steering Groups (MSSG) that make policy for each of the national initiatives. In the Liberia, the government chairs the MSSG, represented by the Ministers of Finance and Lands, Mines, and Energy. Representation is government (3 members), private sector (4 members) and civil society (3 members), the last of which is represented by Publish What You Pay, the Liberia National Bar Association, and the National Council of Chiefs and Traditional leaders¹⁰⁰. In addition, other civil society, government officials and parliamentarians frequently attend the MSSG meetings.

Some EITI countries have been criticized for their treatment of civil society (Revenue Watch Institute 2006): according to a civil society member, the government of Mongolia for example, selected the civil society representatives to the MSSG, which “resulted in the appointment of individuals who represented company interests”. In order to best represent their constituents,

¹⁰⁰ eitransparency.org/Liberia

civil society should be allowed to self-select their own representatives to MSSG—as the LEITI has done.

9.2 How best to incorporate civil society

Civil society plays three important roles in the good governance of natural resources. First, as natural resources are a public good, society has a legitimate stake in their management. Government should consult its citizens, as represented by civil society, as to the objectives for the management and use of resources (both those harvested and the revenues produced).

Second, in fulfilling their responsibility to inform management, society must keep themselves informed. As such, they should demand the sort of information provided by transparency initiatives such as the EITI. Without a constituency demanding their products, transparency initiatives will soon fail from a lack of support.

Third, a subset of civil society has a vital oversight role in resource management. Accountability is an important pillar of good governance, and oversight goes hand-in-hand with transparency. Someone must ensure that the information provided to the public is in fact accurate.

This next section deals with these three roles, starting with oversight, then discussing how best to create a constituency for transparency, and finally how best to deliver information to the public, including mechanisms such as a website for the LEITI.

9.2.1 Independent monitoring

In many areas of the world, ‘Forest Watch’-type organizations led by NGOs alert governments and consumers about companies that violate the law. For example in Liberia, during the Charles Taylor regime, both international and domestic NGOs—especially Global Witness and SAMFU, respectively—carefully documented violations from forestry, tax and human rights angles.

More recently, civil society continues to play a significant oversight role in the Liberian timber sector. The forestry-focused NGOs have been joined by civil society efforts such as the Publish What You Pay initiative, which will analyze and publicize to local communities how much revenue their governments receive from the logging sector. Such initiatives are essential in order to develop a constituency of users for the information published by the LEITI.

In order to facilitate independent monitoring, funding must be found; in order to maintain their independence, monitors should not look to the Government of Liberia for this funding. Instead, the sector should pay into a fund to provide this oversight as the cost of doing business.

The government, however, does have other clear responsibilities in facilitating independent monitoring, especially in providing access to information. Further the government can implement whistle-blower legislation to protect those, including civil servants, who provide information in order to prevent illegal activities.

In addition to oversight, a major role for independent monitors should be the presentation of information in a manner accessible to local people. In addition to newspapers, radio is an important medium for transmitting such information, especially to rural people, for whom radio is the only accessible media.

By providing information to Liberian citizens, civil society can build a constituency of individuals that value transparency. This constituency can then be a major driver of change.

9.2.2 *Constituency to use the output of the EITI*

Liberia will need to build a cadre of citizens who can use the information from the LEITI to help inform their fellow Liberians about the management of natural resources and the benefits that accrue. This development can involve many different activities from funding and training, to procedural changes that ensure civil society has a guaranteed role in decision making.

Funding & training. There is no doubt that civil society, as well as government itself, needs more money to fulfill their responsibilities. Likewise, all parties need more training. However, in conversations with Liberians, all parties felt that instead of short-term workshops, longer interventions were needed¹⁰¹. But, aside from the cost, such trainings can take individuals out of Liberia for long periods, at a time when talent is sorely needed.

Another unintended consequence in training government staff is that once educated, they become attractive recruits for NGOs and the private sector. In developing countries, the reverse rarely happens—*i.e.*, unfortunately the government often cannot attract talent because of low salaries and the perception of corruption.

Creating a role for civil society. Initiatives such as the EITI and the EC's Voluntary Partnership Agreement (VPA) require multi-stakeholder collaborations, which can help increase trust among all parties. However, there are additional structural changes that can reinforce the role of civil society.

The first step is to recognize that not all groups sit at the table with equal power. Civil society, especially CBOs from rural areas, is often disadvantaged because of their low social status, traditional lack of representation in public forums, and/or poor negotiating skills (Edmunds & Wollenburg 2001). Facilitators should recognize the power imbalance and try to create equitable conditions by choosing a neutral meeting place, neutral processes of communication, impartial facilitation, shared criteria and indicators for decisions, and clearly understood rules of interactions among the stakeholders.

However, this assumes that civil society already has a seat at the table. Fortunately, Liberian law and regulations guarantees such a seat in many cases. FDA Regulation 101-07 on Public Participation codifies civil societies role and responsibility. Free, prior informed consent by CBOs prior to logging provides a legal role for local people in the management of their natural resources. As mentioned above, the LEITI also mandates a role for civil society in the MSSG. The EC's Forest Law Enforcement Governance and Trade programme has set minimum standards for civil society consultation¹⁰²:

- the content of consultation is clear;
- relevant parties have an opportunity to express their opinions;
- the consultations are widely published in order to meet all target audiences;
- participants are given sufficient time for responses (eight weeks for open public consultations); and
- acknowledgement and adequate feedback is provided.

¹⁰¹ To this end, it is promising that the U.S.A. has resumed its Peace Corps programme in Liberia.

¹⁰² In the Malaysian VPA process, certain civil society organizations withdrew from participation when they discovered their comments were not being addressed or even recorded in the meetings minutes.

Donors can promote civil society by using them as ‘service providers’, thus building capacity. For example, NGOs could be hired to translate programme documents (thereby increasing the NGOs understanding of the programmes); hired to run—rather than simply attend—workshops (which can help generate pressure on governments to behave responsibly); hired to lobby decision-makers and those connected to decision-makers; and work with the media (such as editor visits and training sessions for journalists to provide greater detail on how the EITI works, who is involved, and explanations of EITI reports).

In response to the UN Security Council sanctions on timber, the Government of Liberia and international donors collaborated closely with civil society, as described above, through the Liberia Forest Initiative (LFI¹⁰³). The LFI led the reform efforts in the timber sector. These reforms included the Forestry Concession Review Committee and the Forestry Reform Monitoring Committee, both of which had strong civil society components. Civil society not only provided skilled technicians, such as the legal services of the NGO Green Advocates in the concession review process, but their presence contributed to the legitimacy of the overall reform efforts.

9.2.3 Access to information

To exercise their responsibilities effectively, civil society needs timely and accurate information. Donors may consider funding an archivist at relevant ministries to facilitate access (and interpretation) of information. The archivist could work closely with information centres at partner organizations such as UNDP or the World Bank.

Further, the LEITI should consider developing content for the forestry section of their website as quickly as possible.

Increased transparency In a digital age, citizens have greater access to digital information than print. This is even true in Liberia, where internet cafes outnumber libraries. The US Agency for International Development spent \$40,000 to outfit a LEITI resource room, complete with internet access. Although access to information will continue to be a problem in weak states, like Liberia, the internet provides a relatively inexpensive conduit, at least for those in the larger cities.

Free access Not only do more Liberians have access to websites than libraries, but it is much more difficult to limit access to websites. When records are only held in libraries, or worse yet, at Ministries, then unscrupulous administrators can restrict access or demand bribes to gain access.

Anonymity The internet also provides a degree of anonymity to the user. When civil society requests information directly from Ministries—even when they have full rights to do so under law—it is often met with suspicion by government. Trust that has been built can evaporate quickly when the government suspects that the NGO’s agenda is counter to policy.

International recognition A functioning section of the LEITI website devoted to forestry, including full reporting of revenue payments, supporting documents, and links to relevant partners, will help increase the recognition of the LEITI internationally. When hard copies are the only available source of information, it makes it much more difficult for international researchers to gain access to data. This undermines projects such as those comparing different countries’ reporting- and management-systems.

¹⁰³ fao.org/forestry/29020/en/

Real time Moreover, information can be posted as soon as it is available.

Link to other initiatives At present, the LEITI website links to other EITI country initiatives and to the Ministry of Finance and GEMAP, but the LEITI should link to other forestry sector-related entities in Liberia, for example, the FDA and the LFI.

Caveat The benefits noted above are not an argument for the complete replacement of print copies of LEITI reports. The biggest limitation of reporting online is its vulnerability—a hacker could gain access to the database and change the content, or an unscrupulous government could shut the site down indefinitely. Although the major conduit of LEITI information should be electronic, disseminated over the internet, there is still an important role for print copies as the primary record. Moreover, once civil society has analyzed the LEITI information for the lay audience, there is a clear role for broadcasting the summarized findings as widely as possible. Although websites are a suitable conduit for urban people, radio broadcasts are likely the most effective way to transmit information to those rural people most affected by logging.

9.3 Summary

Civil society has a strong role to play in the LEITI, and in the management of Liberia's natural resources more broadly. Such a role was amply demonstrated through the LFI during the process that led to the lifting of the UN timber sanctions and reform of the forestry sector.

Citizens need accurate and timely information, confirmed through independent monitoring. This role can be strengthened, through both financial and technical assistance. The role can be further supported structurally, by mandating a seat at the table. Neutral facilitation can help address the traditional power imbalance between civil society on one hand, and government and the private sector on the other. Access to information can be supported through archivist positions in key ministries and through anonymous access via the internet and summary broadcasts over national radio programmes.

10 Implementing forestry reporting in the LEITI

Objective: *Assess the benefits of introducing a complimentary, top to bottom system of checks and balances, working within the EITI framework to deter corruption and ensure transparency; Examine the potential obstacles to LEITI implementation for forestry, including any legal changes that would be required; Assess the potential barriers to implementation of the LEITI; Identify any gaps and/or challenges in monitoring, enforcement, networking, logistical, technical, and decision-making capacities*

The history of reporting by the Liberian forestry sector is marred by a lack of transparency, created in part by the conspiracy between logging companies and government officials to defraud the state, and thus the people of Liberia (see Text Box 4, Chapter 3.1). The present Government of Liberia has indicated that such ‘business as usual’ will not be tolerated. President Johnson Sirleaf has declared a “zero tolerance” on corruption. To that end, the forestry sector has been subject to sweeping reforms: competitive bidding, sustainable forest management, chain-of-custody log tracking, full and open disclosure. The legal framework is in place—the challenge now is implementation.

Section 1 documents briefly the history of reporting in the Liberian forestry sector. Section 2 examines how a top-to-bottom system of checks and balances could work within the Liberia Extractive Industries Transparency Initiative (LEITI). Section 3 examines obstacles to such a system, with particular reference to legal obstacles. Section 4 provides a roadmap to the overcome these obstacles to ensure full and complete reporting of financial information for forestry within the LEITI.

10.1 History of reporting forestry data

Prior to the 2006 elections, Liberia was plagued with corrupt governments that used forestry to enrich themselves and as a source of patronage. Ultimately, logging became a major driver of violent conflict, which in 2003 led the United Nations Security Council (UNSC) to impose sanctions on all imports of timber from Liberia. The UNSC only lifted the sanctions in 2006, when the new government demonstrated that it had met the conditions outlined in paragraph 11 of UNSC Resolution 1521, including:

“all necessary steps to ensure that government revenues from the Liberian timber industry are not used to fuel conflict or otherwise in violation of the Council’s resolutions but are used for legitimate purposes for the benefit of the Liberian people, including development”.

One of the reasons that money from forestry could be used in violation of UNSC resolutions was the lack of transparency in the sector. As noted in Chapter 1, reporting was poor, where it even existed.

Given the large discrepancies in reporting, and the evidence of widespread tax evasion, the LEITI can play a significant role in assisting the government to hold the forestry sector accountable. Liberia’s redevelopment cannot afford a resurgence of the ‘business as usual’ collusion between loggers and corrupt government officials.

10.2 Forestry reporting in the LEITI – a model system

10.2.1 Top-to-bottom reporting

To be most effective, the LEITI could publish all information necessary to determine compliance with financial laws and regulations. Such a system of auditing against contracts would involve tracking information from the top (were all fees paid?), to the bottom (was the logging legal in the first place?). Information could then be reconciled throughout the various stages in the chain-of-custody from stump to sale/export, as well as among the various reporting parties, *i.e.*, the Government of Liberia (Forestry Development Authority (FDA), Ministry of Finance, Central Bank), SGS Group (as operator chain-of-custody system), and the loggers themselves.

As suggested in Chapter 5.3, LEITI could document on their website in a disaggregated manner (*i.e.*, for each of the 20-40 logging companies likely to be involved in the sector at any one time):

1. The Pre-qualification Panel's notice of approval;
2. The FDA Procurement Unit's Bid Evaluation Report¹⁰⁴;
3. The company's forest license (*i.e.*, the contract);
4. The company's Social Agreement with affected communities;
5. The FDA's pre-qualification certificate and annual audits of the company¹⁰⁵;
6. The chain-of-custody reports of company payments;
7. The company's bi-annual report published in local newspapers, listing all payments to government;
8. All LEITI submissions (based on the reporting template, Chapter 7).

Publication of the Pre-qualification and Bid Evaluation Reports (#1 & 2, above) are necessary to indicate that the logging company is in legal good-standing and that the contract was legally awarded—*i.e.*, that the company has the legal 'right to log'.

Publication of the contract and Social Agreement (#3 & 4) is necessary to determine the payment obligations to government.

These payment 'schedules' can be reconciled with those payments actually made, as reported by the FDA (#5), SGS (#6), the company itself (#7), and within the LEITI (#8).

Reports #1 – 7 are required by law and as such, there is no additional reporting burden on any party. Likewise, under the National Forestry Reform Law (NFRL), the public has free access to all these reports, and as such, there are no privacy/confidential business information issues regarding the publication of any of these reports (Chapter 4.3).

¹⁰⁴ The Inter-Ministerial Concession Committee report approving the forest license could also be added, as it contains much the same information.

¹⁰⁵ Section 3.4 of the National Forestry Reform Law requires the FDA prepare a report containing:

(i) The location and ownership of the land subject to the Forest Resources License;

(ii) The volume and location of wood available for harvest under the Annual Coupe;

(iii) The volumes and monetary values of the harvested..., processed..., and exported Forest Products, in total and by species, produced under the Forest Resources License;

(iv) The amounts of any fees and taxes assessed, and the amounts paid;

(v) The nature and monetary value of benefits provided to local communities, in total and by community; and

(vi) The charges of violations and the arrests, settlements, and convictions associated with Operations... the penalties, if any, assessed or agreed to; and the penalties actually paid."

10.2.2 Schedule of fees

Although not specific to any single company, the LEITI should consider posting the FDA's list of all fees relevant to forestry operations¹⁰⁶. This would accomplish two major objectives: 1) to ensure that the FDA maintains such a list; and more relevant to the LEITI, 2) to enable anyone to calculate whether or not the payments published in the reports #4-6, above, represent *all* material revenue due government.

10.3 Current obstacles to LEITI

10.3.1 Legal obstacles

In April 2008, the LEITI Secretariat retained the legal services of the Monrovia based law firm Jones & Jones to determine whether impediments to the LEITI exist in Liberian law. Their analysis suggests that Section 54 of the New Revenue Code provides for the "confidentiality of tax returns". However, as noted in Chapter 4.3, the more recent NFRL of 2006 would appear to remove this impediment. Indeed, NFRL Section 5.8 is explicit in requiring complete disclosure by logging companies of payments to government:

Each Holder of a Forest Management Contract or a Timber Sale Contract shall, no later than on March 15 (for the months of July through December) and September 15 (for the months of January through June), ensure that a notice containing the following information is published in a newspaper of general circulation in Monrovia:

- a. The Holder's name;
- b. A brief description of the area covered by the Holder's Forest Resources License;
- c. A list of all payments and other considerations provided by the Holder to the Government under the Forest Resources License; and
- d. The date of each payment.

10.3.2 Other obstacles

Until implementation of the LEITI is attempted, it is difficult to judge what obstacles exist. Although substantial challenges undoubtedly exist in Liberia's efforts to achieve accountability. The first rounds of bidding on forest licenses suggest that logging companies still have weak corporate behaviour (Chapter 3.2), which may translate into a reluctance to report to the LEITI.

In the past, a position in government provided civil servants with the opportunity to support their patronage networks, often based on ethnic and kinship ties (Blundell et al. 2006). Corrupt officials used their position to extract bribes and kickbacks from loggers. Unfortunately, ordinary Liberians are accustomed to relying on such networks to meet their needs in the absence of a government that adequately looks after their welfare. In particular, ex-combatants continue to rely on wartime-networks, although they have moved into other forms of organized crime, most especially resource extraction. UNSC reports detail the involvement of ex-combatants in logging, mining and rubber tapping, for example (Blundell et al. 2005, 2006, 2007).

The current government's efforts to rebuild Liberia are undermined by the competition for control of these illegal networks. This may be especially difficult in the timber sector; since the war, much of the illegal pitsawing¹⁰⁷ has been conducted by ex-combatants. If the ex-combatants

¹⁰⁶ Such a list of fees is required by Section 14.2 of the National Forestry Reform Law

¹⁰⁷ The processing of logs into planks using chainsaws

view the new, legitimate logging contracts as direct market competition then they may attempt to disrupt the legal operations.

Another potential difficulty in implementing rule of law in Liberia is the lack of enforcement by the FDA and the weak state of the judiciary (Smith et al. 2007). Without enforcement, compliance is problematic. And without recourse to the courts to enforce legal requirements, it is safe for scofflaws to ignore contractual obligations. Strong ‘political will’ in the government will be major determinant in the success of the LEITI.

10.3.3 Access to information

One clear indication of the government’s ‘political will’ is their attitude towards transparency. Although access to information is enshrined in the Liberia constitution¹⁰⁸ and in recent laws and regulation related to forestry (Chapter 4), civil society has found that many ministries are unresponsive to requests for information. For example, in 2007 the Center for Transparency & Accountability in Liberia (CENTAL¹⁰⁹) reported that they made 38 requests for information available by law from 18 ministries and agencies. They report receiving only 8 (21%) positive responses.

10.4 Mechanisms to assist the LEITI

Despite the above obstacles, there is strong reason for optimism. The most obvious is the sweeping reforms enacted by the government. A number of such initiatives are reinforcing with regards to financial reporting by logging companies: notably the incorporation of forestry within the LEITI; and the chain-of-custody system.

10.4.1 Chain-of-custody

In 2007, SGS Group won a contract to build, operate and eventually transfer a chain-of-custody log tracking system to the FDA. The system will not permit export until tax payments have been made. Thus, even if the courts continue to be dysfunctional and enforcement is weak in the forest, the government should expect to recoup most of the relevant forestry taxes and fees.

10.4.2 Re-enforcing initiatives

In addition to the LEITI, the FDA is considering entering into a Voluntary Partnership Agreement (VPA) with the European Union, and the FDA is encouraging logging companies, especially those with large areas, to become certified by an internationally accredited organization. Table 6 (Chapter 8) demonstrates how these different initiatives reinforce one another and especially forestry laws and regulations. Such reinforcing initiatives are especially valuable given the weak enforcement capacity of the FDA.

One option to facilitate adoption of voluntary initiatives is regulatory relief. For example, in Canada, the British Columbia Forest Resources Board allows for reduced government audits for operations that are independently certified by organizations such as FSC. Likewise, the Government of Liberia should allow certification audits to fulfill the Independent Forest Monitoring requirement of the EU’s VPA.

10.4.3 Mutual technical assistance

The above initiatives all involve multi-stakeholder groups. LEITI has a Multi-Stakeholder Steering Group (MSSG) composed of a balance of interests, including government, industry,

¹⁰⁸ Article 15: “there shall be no limitation on the public right to be informed about government and its functionaries”

¹⁰⁹ www.liberiatransparency.org

traditional leaders and other members of civil society. There is the opportunity for collaboration between initiatives—gains made in one forum should be exploited in other initiatives. For example, the LEITI has an effective steering group from which the VPA and SGS stakeholder initiatives could benefit. Likewise, the FDA’s Forest Management Advisory Committee can provide technical/policy advice to the LEITI and all other initiatives.

One obvious opportunity for direct technical assistance is related to engaging community forestry. The Kimberley Process Certification Scheme for rough diamonds has an initiative for artisanal miners that could provide a model for incorporating community forestry into the LEITI, as does the FSC’s Small and Low Intensity Management Forest” initiative (see Chapter 6.3).

10.4.4 Independent monitoring

A further reason for optimism is the vibrant civil society emerging in Liberia. The LEITI’s MSSG provides a clear conduit for participation. Chapter 9 assessed the status of civil society, and offered recommendations on how involvement can be strengthened. Certainly civil society played a key technical role in the reforms undertaken through the Liberia Forest Initiative. Their participation helped focus the government’s will during a politically fraught process. Moreover, their participation provided legitimacy to the entire reform effort.

11 Conclusion

In the past, rather than used for development, the forest sector of Liberia was used as patronage to enrich a few and destabilize the entire region. Good governance in the sector, including clear transparency and accountability, will be critical to a peaceful Liberia. Therefore, the LEITI has a clear role in the future of the region.

The Government of Liberia has demonstrated strong ‘political will’ in pursuing a robust policy of reform, including incorporating forestry into the LEITI. Fortunately, there are no legal obstacles to implementing the LEITI. Under existing law, both government and industry *must already* publish all information sufficient to conduct ‘audit to contracts’ of all commercial logging operations. LEITI will help reinforce the law, ensuring that all reports are published. LEITI will also facilitate dissemination, publishing over the internet in a timely and disaggregated manner, revenue information. Donors should consider funding an archivist position at key ministries in order to ease access and interpretation of this information. Civil society should also play a strategic role in dissemination, *e.g.*, broadcasting summary reports over regional radio stations.

The role of civil society extends beyond transmission of information. In countries with weak government, civil society can act as ‘service providers’, including the critical role of oversight. Given that countries with strong checks and balances on governance have greater economic growth than those without, it is critical that the role of civil society is protected. In Liberia, the role of communities in decision making related to the use of their forests is protected, as is the role of civil society in the LEITI MSSG.

The LEITI MSSG must now decide who should report what. The LEITI requires all material benefits be reported. Therefore, as a starting point, it is recommended that for all commercial logging operations the LEITI publish: pre-qualification/bid-evaluation reports (to ensure that the company is *bona fide* without tax arrears), contracts/Social Agreements/pre-harvest certificates (to establish revenue obligations), and FDA/chain-of-custody/company reports (to document annual payments). Eventually, if a company can show its payments are immaterial and

that reporting is not cost effective—and if the FDA can show that it will not create a loophole for tax evasion—then the LEITI might consider eliminating the reporting requirements for the smaller companies. In the interim, the Government of Liberia and donors should help companies, especially small community operators, acquire the expertise not just to report to LEITI, but to meet their overall legal requirements. Experience gained through the certification of small operators may be instructive. Certainly, any assistance in reporting is likely to have larger, positive, knock-on effects on governance more broadly.

The laws are in place, now it is up to implementation. In the past, there was a conspiracy between corrupt government officials and logging companies to defraud the people of Liberia through widespread tax evasion. Many obstacles remain—vertically integrated multinationals are tempted to under-report exports in order to evade taxes; privately held companies backed by foreign capital are potentially shell companies with no assets to recover in the event of tax arrears—and, thus, due diligence by government, especially the FDA, is critical. The LEITI can play a critical role in reinforcing accountability. If successful, the LEITI will realize its goals that the prudent use of natural resource wealth should be an important engine for sustainable economic growth that contributes to development and poverty reduction.

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Appendices

Scoping Study for the Implementation of EITI in the Forestry Sector

Appendix 1. Inception report

Arthur G Blundell, PhD
Natural Capital Advisors, LLC

Introduction

1. Liberia is the first candidate country in the Extractive Industries Transparency Initiative (EITI) to decide to incorporate the forestry sector in the EITI process. To support Liberia, the African Development Bank (ADB) has funded a scoping study to recommend how this can be best accomplished. The study consists of two parts:

- (i) How global EITI standards might be extended to the forestry sector in developing countries, and what issues such an extension might raise; and,
- (ii) How EITI might be applied specifically to the forestry sector in Liberia.

2. The scoping study will be conducted by Arthur Blundell, PhD of Natural Capital Advisors, LLC. Blundell is the former Chair of the Panel of Experts on Liberia, which monitored sanctions, including on timber, for the United Nations Security Council. The study will be completed over five months, including two trips to Liberia. This inception report lays out in brief the methods, timelines, and deliverables of the scoping study.

Methods

3. The scoping study will involve three distinct phases:

- (i) Desk study: during which background research will be conducted via:
 - i. Literature review of EITI, LEITI, and research on the initiatives;
 - ii. Interviews with EITI staff and academics working on the subject:
 1. EITI Secretariat
 2. International Financial Institutions: ADB, World Bank, International Finance Corporation, International Monetary Fund, European Bank of Reconstruction and Development, Organisation for Economic Co-operation
 3. Resource economists
 4. Advocacy organizations: Global Witness, Open Society Institute, Human Rights Watch
 5. Liberian civil society organizations: Green Advocates, Sustainable Development Institute, Center for Transparency and Accountability in Liberia
 6. Alternative transparency initiatives: Publish What You Pay Coalition, Revenue Watch Institute, Transparency International, International Budget Project, Public Sector Monitoring Initiative
 7. Other EITI candidate countries with large forestry sectors: Cameroon, Gabon, Ghana, Guinea, Nigeria, Peru
 8. EITI supporting countries with large forestry sectors: Canada, USA
 9. Supporting countries with large imports of forest products: Australia, Canada, European Union, USA,
 10. Non-EITI countries with large forestry imports: China
- (ii) Visit Liberia to discuss inclusion of forestry into the LEITI with:
 1. LEITI Secretariat
 2. Government of Liberia, including the Forestry Development Authority (FDA)
 3. Civil Society, including the Sustainable Development Initiative
 4. Liberia Timber Federation (domestic industry organization)
- (iii) Return to Liberia for presentation of report to fine-tune final recommendations.

Timeline

4. Phase one (desk-study) will be conducted during January, March and April, 2008.
5. Phase two (Liberia visit) will be conducted during February.
6. Phase three (final Liberia visit) will be conducted during May.

Deliverables

7. The three phases of the scoping study coincide with 19 separate deliverables, designed to be completed over the 5-month study:

(i) January:

- 1.1 Review the impact of illegal logging on the global timber trade
- 1.2 Assess the complementarity of existing domestic legal instruments relevant to forestry chain of custody, fiscal transparency and the LEITI
- 1.3 Review the contracting procedure in Liberia and its influence on the LEITI

(ii) February

- 2.1 Determine the scope and nature of disclosure in reporting for forestry in LEITI, and whether voluntary reporting may produce benefits
- 2.2 Examine the potential obstacles to LEITI implementation for forestry, including any legal changes that would be required
- 2.3 Examine how different fiscal regimes, such as land rental and stumpage rates, can be accounted for in EITI

(iii) March

- 3.1 Assess corporate structure in the forestry sector in developing countries and the implications for EITI
- 3.2 Review the corporate structure of the Liberian forestry sector and any implications on LEITI reporting requirements
- 3.3 Recommend solutions for customs enforcement and certification of origin and authenticity can help regularize payments of taxes and fees from forestry
- 3.4 Assess the benefits of adding a 'forestry section' to the LEITI website

(iv) April

- 4.1 Examine how public awareness is critical in community forestry and overview the challenges for including community forestry in EITI reporting regimes
- 4.2 Examine what outreach efforts to broaden the representation of civil society will increase transparency
- 4.3 Review civil society involvement with Forest Law Enforcement and Governance (FLEG), and how the use of independent monitoring and advocacy might be used to reduce forest crime through greater transparency
- 4.4 Address auditing requirements and how they differ between commercial and community forestry

(v) May

- 5.1 Assess the benefits of introducing a complimentary, top to bottom system of checks and balances, working within the EITI framework to deter corruption and ensure transparency
- 5.2 Based on current reporting templates provided by EITI and the Bank for use by the oil, gas and mining sectors, provide recommendations for any necessary adjustments for use in the forestry sector, including recommendations on the scope and nature of disclosure
- 5.3 Recommend changes to LEITI reporting templates to incorporate forestry
- 5.4 Assess the potential barriers to implementation of the LEITI
- 5.5 Identify any gaps and/or challenges in monitoring, enforcement, networking, logistical, technical, and decision-making capacities

Appendix 2. Companies that claimed to have the right to log in Liberia between 1980 and 2003.

| Company | Owner/ *Point of contact | Type of contract | Art. of incorp | Bus. Cert. | Rat. Cont. | Perf. bond |
|--|--|------------------|----------------|------------|------------|------------|
| African Hardwood, Inc. | ? | ? | N | N | N | N |
| Akkari Timber Inc | Jacob Akkari | C | Y | Y | N | N |
| Associated Liberian Timber Company | Susko Industrijsk KCZ of Yugoslavia (350 shares) + KA & EA Malhab (Gupi Bhattal) + C Pierre-Tolbert (50 shares each) | C | N | Y | N | N |
| BIN Liberia Inc | ? apparently associated with Mohammed Group of Companies | C | N | N | N | N |
| Bomi Hills Wood Processing | ? | C | N | N | N | N |
| Carlton Resources Inc | Hiap Seng Kee (375), John Gbedze, Andrew Stoke, and Dorian Morris (50 each) | C | Y | Y | Y | N |
| Cavalla Timber | Gabriel Doe | C | N | N | N | N |
| Cestos Timber Corporation | ? | S | N | N | Y | N |
| Daba Incorporated | Jacob Akkari | C | Y | Y | N | N |
| Debites & Grumes Liberia Incorp. | GD Roger* | 2 M+ 1 Co | N | N | 2Y, 1N | N |
| Ditraco | ? | S | N | N | N | N |
| Dunee | Monua Johnson* | C | Y | Y | N | N |
| EJ&J | ? | ? | N | N | N | N |
| Exotic Timber Corp Enterprise, Inc | Leonid Minin | ? | N | N | N | N |
| Evergreen Ltd | ? | M | N | N | N | N |
| Fedetemu Corporation | ? | C | N | N | N | N |
| Fomaco | ? | ? | N | N | N | N |
| Forest Hills | ? Victor Haikal | ? | N | N | N | N |
| Forestry and Agriculture Products Corp (FAPCO) | Ghazi Bazzi* | C | Y | N | N | N |
| Forum Africa | ? JM DeVlasco | C | N | N | N | N |
| Gamma Coroporation | ? Samuel B Cooper | ? | N | N | N | N |
| Gbahozon Lumber Corporation | Robert Karloh* | S | Y | Y | Y | N |
| Iberic Liberian Forestry Corp | ? JL Ruiz | ? | N | N | N | N |
| Inland Logging Corporation | Oscar Cooper | ? | N | N | N | N |

| Company | Owner/ *Point of contact | Type of contract | Art. of incorp | Bus. Cert. | Rat. Cont. | Perf. bond |
|---|--|------------------|----------------|------------|------------|------------|
| Ital Timber Corporation | Fabrizio Colombo, Ida Introzzi Colombo and Edmondo Trombetta | C | Y | N | N | N |
| J & G Associates Inc | J Gbedze* | C | N | N | Y | N |
| Jasus Liberian Logging Corp | George Dennis* | C | N | N | Y | N |
| Jay-Byne Intl Trading Corp | ? | S | N | N | N | N |
| Karel Logging Corporation | Victor Haikal (75%), Amanda Gibson (24%), Morris Gaye (1%) | C | Y | Y | N | N |
| Liberia Agricultural Logging and Mining Corporation | ? | ? | N | Y | N | N |
| Liberia Forest Development Corp | OTC (65%), RTC (35%) | C | Y | Y | N | N |
| Liberia Eastern Company | ? | C | N | N | N | N |
| Liberian Logging Wood Processing Corp (LLWPC) | Nassir Charafeddine-83%, Nansour Charafeddine-17%. | C | Y | N | N | N |
| Liberia Timber and Plywood Co | ? Yona Intl | C | Y | N | ? | ? |
| Liberia Wood Management Corp (LWMC) | Edward Merab (20%), Harrison Williams, Rudolph Merab, Michael Weah, Patrick Woodtor (10% each), Jonathan Akinrele (5%) nb: does not = 100% | C | Y | Y | N | N |
| Lofa Logging Company | Simon Rosenblum | C+T | N | N | Y | N |
| Mabow Logging Corporation | Marie Brown | S | N | N | Y | N |
| Mandin Enterprises Incorp. | Mohammaed Koromah & James Karmon | S+Co | Y | Y | N | N |
| Maryland Wood Processing Industry (MWPI) | Abbas Fawaz, Ali Addala, Zed Fawaz, Ibrahim Ezzedin, the Willie Tubman Family | C | N | Y | Y | N |
| Mohammed Group of Companies (MGC) | Moustapha Ali Salami – 65%, Mohammed Salami – 30% and Cllr. John Karanda -5% | C | Y | Y | Y | N |
| Mozara Timber | Ayoubu Jawaraka – 55%, Mohammed & Abraham Jawaraka, and Zakaria Johnson 15% each. | S | Y | N | N | N |
| Natura Liberia Inc. | ? – apparently a sister company to OTC | ? | N | N | N | N |
| North Eastern Logging Co. (NELCO) | Ricks Toweh | S | N | Y | Y | N |
| Oriental Timber Corporation (OTC) | Wong Kii Tai Joseph (chairman), Teng Lung Cheng, Chan Han Kuong, and Gus Kouwenhoven | M | Y | N | N | N |
| Prime Timber Products | Michael Ballman | C | Y | Y | N | N |
| Progressive Logging Corporation | Peter Johnson | C | Y | Y | N | N |
| RAD Forest Products Company Ltd | Wahib Rajab | C | N | N | N | N |
| R and H Associates | Clarence Teye | C | N | N | N | N |
| RAS Timber Corporation | ? | C | N | N | N | N |

| Company | Owner/ *Point of contact | Type of contract | Art. of incorp | Bus. Cert. | Rat. Cont. | Perf. bond |
|-----------------------------------|--|------------------|----------------|------------|------------|------------|
| Retco Liberia Timber Industry | ? | ? | N | N | N | N |
| Royal Timber Corporation (RTC) | Gus Kouwenhoven and Charles Taylor | C | N | N | N | N |
| Salami Mohammed Inc. | ? Apparently a sister to Mohammed Group of Companies | ? | N | N | N | N |
| Selected Logging Corporation | Nauhad & Kamil Abu Ghaida, Lavoisier Tubman, E. Nysietta Tubman, Weedor Karmu | C | Y | Y | N | N |
| Skywood Logging Company | John Gbedze – 25%, Hiap Seng Kee and Cheng Kiew own 75% | C | Y | Y | Y | N |
| Spanish Liberian Development Corp | ? | M | N | N | N | N |
| Spanish Liberian Logging Corp. | ? | M | N | N | N | N |
| Southeastern Logging Co | Sylvester Tay | C | N | N | Y | N |
| Suakoko Wood Corporation | Fabrizio Colombo, Ida Introzzi Colombo, and Edmondo Trombetta | C | Y | N | N | N |
| Sunrise Logging Company | Micheal Tay, D. Willie McGill, and Matthew Jerbor | C | Y | Y | Y | N |
| Tai-Kie Incorporated | Tai Gmarlue – 50%, Bankie Mathies – 40% and Wyndell Mangolie – 10%. | C | Y | Y | N | N |
| Timber Management Corp (TIMCO) | ? but apparently associated with OTC | ? | N | N | N | N |
| Togba Timber Corp (TTCO) | Nassir Charafeddine – 83%, Nansour Charafeddine – 17%. | C | N | N | N | N |
| Tropical Exploration | ? | ? | N | N | N | N |
| Tropical Lumber Corp | Lyles Industries, Inc. (USA) & Ghia Whor-Qwee Enterprises, Inc (Liberia), Thomas Woewiyu | C | Y | Y | N | N |
| Tutex Wood Management Corp | John Deah | M | Y | Y | N | N |
| United Logging Corp (ULC) | Robertha Fawez | C | N | N | N | N |
| Universal Forestry Corp | Robert H Brewer II – 49%, George Hage Jr – 50%, Violette Bright – 1%. | M | Y | N | N | N |
| UPA Import and Export Corp | Eric Paasewe, Sr. | M | N | Y | N | N |
| West Africa Resources Corp | ? | C | N | N | N | N |
| West Mark, Inc. | ? | ? | N | N | N | N |
| Westing Timber Company | ? | Co | Y | Y | N | N |
| Xoanon Liberia, Ltd. | ? GS Bhattal | ? | N | N | N | N |

(Not all companies are presented here because some failed to present any information to the Forestry Concession Review Committee.) Ownership, or at least point of contact, is presented; as are the types of contract (C = concession; Co = communal concession; M = management contract; S = salvage contract; T = tribal concession); and whether (Y = yes) or not (N = no) the company could produce, for at least one year of operations: 1) articles of incorporation; 2) business certificate; 3) ratified contract; and 4) a performance bond.

Appendix 3. Minimum tax arrears for logging companies that operated from 1999 to 2003

| Company | Assessed taxes (US\$) | Arrears (US\$) |
|------------------|--------------------------|-------------------|
| ATI | \$1,525,365 | \$917,557 |
| AWPC | not reported | \$58,311 |
| BIN | \$1,987,526 | \$1,902,169 |
| Carlton | \$653,608 | \$653,608 |
| Cavalla | \$2,596,216 | \$1,187,935 |
| Cestos | not reported | \$38,078 |
| Daba | \$990,118 | \$556,208 |
| EJ&J | not reported | \$39,289 |
| FAPCO | \$630,557 | \$618,483 |
| Forest Hills | \$192,963 | \$180,212 |
| Forum | \$447,716 | \$275,262 |
| Gamma | \$90,178 | \$67,869 |
| Iberic | \$346,679 | \$110,605 |
| Inland | \$1,245,841 | \$275,758 |
| LIAP | not reported | \$5,534 |
| LLWPC | \$1,838,465 | \$1,116,096 |
| LTPOC | not reported | \$12,503,986 |
| LWMC | \$1,389,571 | \$610,022 |
| Mabow | not reported | \$36,388 |
| MGC | \$5,509,119 | \$5,112,391 |
| MWPI | \$5,592,884 | \$5,289,950 |
| NELCO | \$173,374 | \$165,614 |
| OTC/RTC/Natura | not reported | \$28,738,845 |
| Togba | \$1,255,154 | \$940,453 |
| Tropical Logging | not reported | \$11,312 |
| Tutex | \$77,345 | \$23,835 |
| ULC | \$3,224,105 | \$1,975,659 |
| Xoanon | \$1,147,778 | \$809,995 |

For most of the 72 companies in Appendix 2 there was insufficient information to document arrears. Moreover, there is clear evidence from importing country reports that smuggling represented four times the volume as the reported trade, and thus avoided taxes are likely much greater than that reported here. (Source: Forestry Concession Review Committee).

Appendix 4. Information on forestry-related companies currently registered with the Ministry of Commerce and the FDA.

| Company name (M of Commerce) | P-Q? | Company name (FDA) | Owner | Year |
|---|------|--|----------|------|
| Universal Forestry Corp. | ~ | Universal Forestry Corp. | Liberian | 1986 |
| Intl Forestry & Mineral Corp. | X | Intl Forestry & Materials Corp. | Liberian | 1994 |
| C.S. (Lib.) Intl Investment Group Co. | X | C. S. Liberia International | Chinese | 1995 |
| Rad Forest Product Co., Ltd | X | RAD Forest Products Co. Ltd | Lebanese | 1997 |
| L.K. Love Business, Inc. | Y | L. K. Love Enterprise | Liberian | 1997 |
| Tropical Logging Co. | ~ | Tropical Logging Co. | Liberian | 1998 |
| Donwil Logging & Const. Corp. | | | Liberian | 1998 |
| Lib. Wood Mgmt Corp. | | | Liberian | 1998 |
| Liberia Logging & Mining Co. | | | Liberian | 1998 |
| Bengoma Corp. | Y | Bengoma Corp. | Liberian | 1999 |
| Siaka Nuah Trading Corp. | | | Liberian | 2001 |
| Goyah Timber & Mgmt, Inc. | X | Goyah Timber Management Inc. | Liberian | 2003 |
| Mandin Enterprises, Inc. | X | Mandin Enterprises Inc. | Liberian | 2003 |
| Regnais Intl, Inc. | | | Liberian | 2003 |
| International Venture, Inc. | X | International Venture Inc. | Liberian | 2004 |
| Malavasi Logging Co. | X | Malavasi | Liberian | 2004 |
| General Timber Corp. | | | Liberian | 2004 |
| Planning & Development Intl | ~ | Planning & Development Enterprise | Liberian | 2005 |
| Togba Timber Corp. | DB | Togba Timber Corp. | Lebanese | 2005 |
| Tutex Wood Mgmt Corp. | X | Tutex | Liberian | 2005 |
| Bargor & Bargor | Y | Bargor & Bargor | Liberian | 2006 |
| South-Eastern Trading Corp. | Y | Southeastern Trading Corp. | Liberian | 2006 |
| Tarpeh Timber Corp. Inc. | Y | Tarpeh Timber Co. | Liberian | 2006 |
| Boe & Quilla Agric. & Forestry Corp. | ~ | Boe & Acquilla Agric. Forestry Corp. | Liberian | 2006 |
| Frank Brook (Liberia), Inc. | ~ | Franbrook (Liberia) | Ghanaian | 2006 |
| Golden Power Ltd | | | Russian | 2006 |
| Progress Timber, Inc. | | | Liberian | 2006 |
| The Liberia Tree & Trading Co. Inc. | | | Liberian | 2006 |
| Alpha Logging & Wood Processing, Inc. | Y | Alpha Logging & Wood Processing Co. | Ghanaian | 2007 |
| Atlantic Resources Ltd | Y | Atlantic Resources Limited | Liberian | 2007 |
| B&V Timber Co. | Y | B&V Timber Co. | Liberian | 2007 |
| Binhai Forestry (Liberia Co.) Ltd | Y | Binhai Forestry Liberia Co. | Chinese | 2007 |
| China Resources Investment Lib. Ltd | Y | China Resources Liberia Ltd | Chinese | 2007 |
| Euro-Liberia Logging Co. | Y | Euro Liberia Logging Co. | Liberian | 2007 |
| Geblo Logging Inc. | Y | Geeblo Liberia Inc. | Liberian | 2007 |
| Grand Bassa Logging Co. (GBLC) | Y | Grand Bassa Logging Inc. | Liberian | 2007 |
| Hergda Import/Export Co. | Y | Hengda Import & Export Co. | SL | 2007 |
| Lone Star Global Trade & Investment | Y | Lone Start Global Trading & Investment | Liberian | 2007 |
| Precmin Logging & Wood Proc. Lib. Ltd | Y | Precmin Logging & Wood Processing | Liberian | 2007 |
| Quantum Resources, Inc. | Y | Quantum Resources | Liberian | 2007 |
| South East Resources | Y | Southeast Resources Inc. | Liberian | 2007 |
| Taakor Liberia Ltd | Y | Taakor Liberia Ltd | Lib/Am | 2007 |
| Timbertex, Inc. | Y | Timbertek | Gh/Guin | 2007 |
| Tropical Resources Entrepreneurial Entp | Y | Tropical Reserve Entrepreneur Entp | Liberian | 2007 |
| Unitimber Corp. | Y | Unitimber | Leb/Lib | 2007 |
| Yonah Agric. & Mineral Res. Corp. | Y | Yonah Agric. & Mineral Res. | Liberian | 2007 |
| B & Sons Transportation | X | B & Sons Logging Corp. | Liberian | 2007 |
| Echo Agric. Co. | X | EACO | Liberian | 2007 |
| G-4 West Africa Operations Inc | X | G4 WAO Inc. | ? | 2007 |
| Gaye Karrsiaty Timber Industry, Inc. | X | Gaye Karr Saity Corp. Inc. | Liberian | 2007 |
| Global Liberia Logging Corp. | X | Global Liberia Logging Corp. | Italian | 2007 |
| Harmony Tropical Wood, Inc. | X | Harmony Tropical Wood Corp. | Kor/Lib | 2007 |

| | | | | |
|---|---|---|----------|------|
| I am Logging Co. | X | IAM | Iv/Lib | 2007 |
| Keita Brothers Corp. | X | Keita Brothers Corp. | Liberian | 2007 |
| Liber Timber Inc. | X | Liberi Timber Inc. | Gh/Guin | 2007 |
| Liberia Trade & Timber Industry Inc. | X | Liberia Trade and Timber Industries Inc. | Liberian | 2007 |
| Liberia Veneers (LV) Inc. | X | Liberia Veneers Inc. | Liberian | 2007 |
| Platinum Forest Dev. Corp. | X | Platinum Forestry Development Corp. | ? | 2007 |
| Timber Incorp. | X | Timber Incorp. | Italian | 2007 |
| West Coast Corp. Ltd | X | West Coast Corp. | Serb/Lib | 2007 |
| China Liberia Logging Co. | | | Chin/Lib | 2007 |
| China-Liberia Kunlun Logging & Wood Prod. | | | Chinese | 2007 |
| Continental Logging | | | Liberian | 2007 |
| Equatorial Bio-Fuels (Lib.) Inc. | | | Chin/Lib | 2007 |
| Forest Timber Friend Corp. | | | Fr/ Lib | 2007 |
| Gahj Logging, Inc. | | | Liberian | 2007 |
| Gbarpolu Resources | | | Liberian | 2007 |
| HQ Trading Center | | | Liberian | 2007 |
| Jarba Group of Companies | | | Liberian | 2007 |
| Karza Logging Co. | | | Liberian | 2007 |
| Liberia Timber & Mining Corp. | | | Liberian | 2007 |
| Liberian National Resources Co. | | | American | 2007 |
| Mafato, Inc. | | | Liberian | 2007 |
| Oriental Trading Enterprise | | | Liberian | 2007 |
| Sanquin Timber Co. Inc | | | Liberian | 2007 |
| The Chief of MZ Bangura (Lib.) Ltd | | | Chinese | 2007 |
| The Liberia Logging & Wood Proc. Corp. | | | Leb/Lib | 2007 |
| The Modern Const. & Engineering Co. | | | Liberian | 2007 |
| Timber Industrial Processing Co. | | | Liberian | 2007 |
| Vintage Holding Ltd | | | Liberian | 2007 |
| Wash, Cox & Knight | | | Ital/Lib | 2007 |
| Zopan Incorp. | | | Liberian | 2007 |
| | Y | API Liberia Corp. | | |
| | Y | Bopolu Development Corp. | | |
| | Y | D. C. Wilson Incorporated | | |
| | Y | E. J & J Investment Liberia Ltd | | |
| | Y | ECO Timber | | |
| | Y | Edgail Incorporated | | |
| | Y | Global Wood Industries | | |
| | Y | International Consultant Capital | | |
| | Y | Kparblee Timber Corp. | | |
| | Y | Liberia Tree & Trading Inc. | | |
| | Y | Liberian Natural Resources | | |
| | Y | New Liberia Resources International, Inc. | | |
| | Y | Olam Liberia Ltd | | |
| | Y | Texas International Group. | | |
| | Y | West Wood Corp. | | |
| | ~ | Smile International Logging Co. | | |
| | X | Advance Timber and Development Corp. | | |
| | X | Ana Wood | | |
| | X | Comex International Trading Inc. | | |
| | X | Covalma Liberia Inc. | | |
| | X | F & F Global Industries Inc. | | |
| | X | FAPCO | | |

| | |
|---|---|
| X | Global Trading N. J. Liberia Inc. |
| X | Hope 2007 Initiative Project |
| X | KATCO |
| X | Liberia Initiative for Strategic Services |
| X | Mohaganet Industries Group of Co. |
| X | Muna Group of Companies |
| X | Nimley Equipment |
| X | Pavillion Resource Partner Inc. |
| X | Pearl International Inc. |
| X | Pimex Lumber Corp. |
| X | Timber Industries Processing Co. |
| X | Tropical Logging & Wood Co. |

Column 1) company name as registered with the Ministry of Commerce; 2) whether or not they are pre-qualified (P-Q?) to bid on logging contracts: yes (Y), pending (~), no (X), or to be debarred (DB); 3) name registered with the FDA; 4) nationality of owners; and 5) year of registry. Note that only 45% of the companies that submitted documents were pre-qualified by the FDA to bid, although an additional 7% are pending, awaiting further documentation. (Source: data in columns 1, 4 & 5 from Smith et al. 2007, columns 2 & 3 from FDA pre-qualification report.)

Appendix 5. National Forest Policy (NFP)

Activities: 8.2 Public administration

8.2.2. Improve transparency and accountability, by strengthening the monitoring, evaluation and reporting of all activities.

8.4 Legislation and law enforcement

8.4.3. Improve co-operation with neighboring countries to strengthen forest law enforcement with respect to illegal and unreported trade in forest and wildlife products (see also activity 7.1.5).

8.4.4. Develop and introduce a process for public consultation, adjudication of disputes (ombudsman) and public reporting of forest law compliance.

Appendix 6. National Forest Management Strategy (NFMS)

Nothing specifically mentioned regarding reporting.

Appendix 7. National Forestry Reform Law (NFRL)

Section 1.4 Indexing of Monetary Amounts to Account for Inflation

b. The Authority from time to time shall publish guidelines to account for inflation to maintain in real terms the value that the amounts represent. The Authority may use a domestic price index as set by the Central Bank of Liberia or an international price index, as appropriate.

Section 3.4 Annual Audit

a. The Authority shall conduct an annual audit of the activities occurring pursuant to each Forest Management Contract, Timber Sale Contract, single Forest Use Permit, and Private Use Permit to ensure that the Holder is in compliance with this Law, its Regulations, and the terms of the license.

b. As part of each audit, the Authority shall prepare a report containing:

- (i) The location and ownership of the land subject to the Forest Resources License;
- (ii) The volume and location of wood available for harvest under the Annual Coupe;
- (iii) The volumes and monetary values of the harvested Forest Resources, processed Forest Products, and exported Forest Products, in total and by species, produced under the Forest Resources License;
- (iv) The amounts of any fees and taxes assessed, and the amounts paid;
- (v) The nature and monetary value of benefits provided to local communities, in total and by community; and
- (vi) The charges of violations and the arrests, settlements, and convictions associated with Operations under the Forest Resources License and associated commerce in Forest Products; the penalties, if any, assessed or agreed to; and the penalties actually paid.

Section 4.5 Validation

a. Before committing an area identified in the National Forest Management Strategy to a proposed land use, the Authority shall validate the suitability of the area for the proposed land use.

b. For purposes of Subsection (a) of this Section, committing an area to a proposed land use means designating the area for commercial, conservation, or community use, or for a combination of permissible uses.

c. To validate the suitability of an area, the Authority shall establish and follow a standard process that includes collection and analysis of local Forestry, ecological, and socio-economic data and preparation of a written report on the suitability of the area for the proposed use.

d. The FDA management shall offer the public and the Forestry Management Advisory Committee the opportunity to comment on a full draft of the report before submitting it to the Board of Directors.

e. The Board of Directors may either approve the FDA management's report or return it to the management with instructions for revision or additional vetting under Subsection (d) of this Section.

f. If the report is approved by the Board of Directors, the Managing Director shall undertake the necessary steps to implement the recommendations contained in the report through use of one or more appropriate land management tools.

Section 5.2 Basic Qualifications

d. Every Government official prohibited from obtaining permission to conduct commercial forest Operations under Subsection (b) of this Section, whose salary equals or exceeds the base salary of a Regional Forest Officer, shall file an annual report with the Authority declaring for the previous calendar year any instance of the Person or the Person's spouse, parent, sibling, or child having traded, as principal or agent, in commercial quantities of Timber or other Forest Products, or holding any financial interest in any Forest Products, or in any contract for working any forest, whether in or outside the Republic.

Section 5.3 Forest Management Contracts

i. Every five years, beginning five years from the effective date of this Law, the Authority shall review the priority bidding procedure for Liberian bidders established under Subsection (g) of this Section and present to the Legislature a written report on the economic impacts of the priority bidding procedure on the Liberian Forestry sector.

Section 5.4 Timber Sale Contracts

h. Every five years, beginning five years from the effective date of this Law, the Authority shall review the preference for Liberian bidders established under Subsection (g) of this Section and present to the Legislature a written report on the economic impacts of this preference on the Liberian Forestry sector.

Section 5.8 Publication of Payments

Each Holder of a Forest Management Contract or a Timber Sale Contract shall, no later than on March 15 (for the months of July through December) and September 15 (for the months of January through June), ensure that a notice containing the following information is published in a newspaper of general circulation in Monrovia:

- a. The Holder's name;
- b. A brief description of the area covered by the Holder's Forest Resources License;
- c. A list of all payments and other considerations provided by the Holder to the Government under the Forest Resources License; and
- d. The date of each payment.

Section 6.1 Termination of Forest Resources Licenses

The Authority may terminate Forest Resources Licenses on any of the following grounds:

- a. Felling of trees before the Felling Effective Date.
- b. Felling of trees not covered by a valid Annual Harvesting Certificate.
- c. For Forest Management Contracts, failure to complete all Pre-Felling Operations within twelve months of the Contract Effective Date, and for Timber Sale Contracts, failure to complete all Pre-Felling Operations within 90 days of the date of signature by the Authority.
- d. Failure to satisfy, consistent with the terms of a Forest Resources License, any financial obligations to the Government (including payment of taxes, rents, or fees) or to local communities, except when such failure is due to Force Majeure, as the term is defined by Section 6.3 of this Law.
- e. For licenses granting exclusive use of Forest Resources in a particular area, abandonment of operations for a period of twelve months or more.
- f. Assignment to a third party of the whole or part of the license without the consent of the Authority.
- g. Knowing misrepresentation to the Government by the Holder of any facts material to the issuance or use of the license.
- h. Intentional extraction of any natural resource or Forest Product not authorized by the license or otherwise expressly permitted by the Government.
- i. Intentional misclassification or mislabeling of Forest Products for any purpose.
- j. Failure to comply with any provision of this Law or of any Regulation promulgated under this Law.
- k. Any material breach of a Forest Management Contract or Timber Sale Contract, or any failure to satisfy the conditions of a Forest Use Permit or Private Use Permit.
- l. Payment of a bribe, gratuity, facilitation money, kickback, or other form of compensation or benefit with the intent to secure or avoid Government action relating to Forest Resources.

Section 9.8 Management Plans

The Authority shall, as soon as practicable after the establishment of a National Forest, National Park, Nature Reserve, or Strict Nature Reserve, prepare and publish, and thereafter review and republish every five years, a comprehensive management plan for the Protected Area in accordance with internationally accepted standards.

Section 14.2 Forestry Fees

c. In establishing fees, the Authority shall:

(iv) Keep the public informed about the fees by publishing and making readily available a single schedule of all forest-related fees, in plain language, and updating that schedule promptly after any change to the fees.

Section 16.2 Scientific Data

a. As a condition of funding or granting permission for privately conducted inventories, surveys, and other research, the Authority shall require the researchers to provide the Authority with all data and reports from the research.

b. A researcher submitting data or reports under this Section may request that the Authority withhold the information from public release as confidential business information, and the Authority shall process the request under Section 18.15 of this Law.

Section 18.7 Declaration

The Authority may, by Regulation, establish rules requiring Persons to report the purchase, sale, conditioning, treatment, refining, transportation, import, or export of Timber and Timber Products.

Section 18.13 Reporting

Holders of Forest Resources Licenses shall submit to the Authority such reports as their contracts, permits, and any supporting Regulations may require.

Section 18.15 Public Access to Information

a. The Authority shall grant and facilitate free public access to read and to copy all documents and other information in its possession, including all audits, all Forest Resources License fee invoices and fee payment information, business and forest management plans, strategies, resolutions from the Board of Directors, public comments, reports, inventories, regulations, manuals, databases, contract maps, and contracts, with the following information redacted:

- (i) Information whose release is likely to promote illegal use of natural resources.
- (ii) Information whose release could threaten the continued existence of a sensitive environmental resource, such as an endangered species.
- (iii) Confidential business information that the Authority must protect under Subsections (b) through (d) of this Section.
- (iv) Information whose release is likely to interfere with law enforcement.
- (v) Information whose release is likely to interfere with the fair and competitive functioning of a procurement or concessions process.
- (vi) Information that the Authority is prohibited from releasing under provisions of other laws.
- (vii) Personnel files and information regarding employees and applicants for employment, except for vacancy announcements, organizational charts, personnel directories, and information on pay grades or compensation.
- (viii) Communications between the Government and its attorneys, the work product of Government attorneys, and communications aimed at the settlement of a dispute (but not including an agreement ending a dispute).

(ix) Information whose release is likely to compromise national security.

b. A Person submitting information to the Authority may accompany the information with a letter to the Authority identifying any part of the information that the Person considers to be confidential business information, explaining why the secrecy of the information is necessary to protect the commercial interests of the Person, and requesting that the Authority not release that information to the public. The Person submitting information bears the burden of supporting the request for secrecy.

c. The Authority shall not release to the public the specific information covered in a request under Subsection (b) of this Section unless at least one of the following exceptions applies:

- (i) The information is contained in a bid or a document required by law to be made public.
- (ii) The information concerns the amount and type of Timber a Person has harvested, the amount of forest-related taxes or fees and penalties or fines paid or owed to the Government, or the amount a Holder has spent or owes on community benefits.
- (iii) The Authority gives the Person a written finding explaining why the Authority finds that the Person has failed to demonstrate that keeping the information confidential is reasonably necessary to protect the commercial interests of the Person.
- (iv) The Authority gives the Person a written finding explaining why the Authority has concluded that, on balance, there is an overriding law enforcement, environmental protection, human rights, defense, or other national interest in making the information public.
- (v) A court compels the Authority to release the information.
- (vi) At least two years have passed since the submission of the information and the Authority finds that keeping the information confidential is no longer reasonably necessary to protect the commercial interests of the Person.

d. A Person may ask a court to review a written finding made under Subsection (c) of this Section, and the court may void the finding if it is unsupported in fact.

e. As far as practicable, the Authority shall maintain the documents described in Subsection (a) of this Section on the Internet and freely accessible to the public.

Section 18.16 Security Personnel

a. No Holder shall employ armed security personnel to work in, on, or around the Forest Land that is the subject of the Holder's Forest Resources License.

b. Any security personnel employed in, on, or around the Forest Land that is the subject of the Holder's Forest Resources License must satisfy each of the following requirements:

- (i) Be a citizen of Liberia.
- (ii) Have no conviction for an offense involving violence, threats of violence, or use of a deadly weapon.
- (iii) Be free of credible allegations of human rights violations, crimes against humanity, or war crimes.

c. A Holder employing security personnel in, on, or around the Forest Land that is the subject of the Holder's Forest Resources License shall ensure that these personnel receive appropriate training and supervision.

d. A Holder is strictly liable for any injury or damage that security personnel cause while acting within the scope of their duties.

e. The Authority shall evaluate compliance with the requirements of this Section and include this information in its annual report made under Section 20.11 of this Law.

Section 19.1 Power to Issue

The Authority may issue from time to time Regulations as well as standard agreements and procedural manuals and codes for the efficient implementation of this Law. The Authority may issue Regulations concerning any matter subject to this Law, including, without limitation, the following:

g. The health, safety, and welfare of individuals on Forest Lands, including the safety of commercial Operations and the reporting of accidents;

Section 19.2 Duty of Authority to Consult

a. The Authority shall publish Regulations proposed to be issued for at least 60 days prior to their effective date in order to allow for public comments on all such proposed Regulations. The Managing Director shall collect and summarize all comments, and refer them along with the proposed Regulations to the Board of Directors for its comments and advice not later than fourteen days before their effective date.

Section 20.4 Reporting of Offenses

Law enforcement officers, members of plant protection forces, private security officers, Forest Officers of the Authority, and private individuals shall promptly report to the Government offenses under this Law and the accompanying Regulations.

Section 20.6 False Representations

a. No Person shall:

(i) Forge documents or reports submitted to the Authority.

Section 20.11 Annual Report

a. Each year, the Authority shall submit to the Board and make available to the public an enforcement report listing:

(i) The names of all Persons identified by the Authority as violators under this Chapter in the past calendar year;

(ii) The date the Authority detected any violation by each Person;

(iii) A description of the nature of each violation;

(iv) All enforcement actions taken by the Government or any court against any Person in connection with each violation;

(v) The penalty assessed by the Government or any court against each Person for each violation; and

(vi) The penalty collected by the Government or any court for each violation.

b. The Authority shall also include in the report its evaluation, made under Section 18.18(e) of this Law, of Holders' compliance with security personnel requirements.

Appendix 8. FDA Forestry Regulations

Regulation No. 102-07 **Regulation on Forest Land Use Planning**

Section 22. Duties of the Forestry Development Authority

(c) Subject to the conditions established by Paragraphs (1) and (2) of this Subsection, the Authority shall report to the National Land Use Commission its progress in developing a National Forest Management Strategy and validating Forest Land Use Actions to implement the Strategy.

(1) The Authority shall make progress reports to the Commission at least once every three months.

Section 43. National and Regional Consultations

(a) Prior to adopting a National Forest Management Strategy, the Authority shall undertake national-level and regional-level consultations pursuant to this Section.

(b) The Authority shall conduct a national-level consultation by convening a public meeting to present and solicit comment on the proposed Strategy.

(c) Following the national-level consultation, the Authority shall conduct regional-level consultations by convening at least one public meeting for each relevant geographic region to present and solicit comment on the proposed Strategy as it pertains to that region. The Authority shall delineate geographic regions for purposes of this Subsection based on political boundaries, geographic boundaries, or as it may otherwise deem appropriate.

(d) After the national-level and regional-level consultations required by Subsections (b) and (c) of this Section are completed, the Authority shall convene a final national-level public meeting to report on all public comments received to date on the proposed Strategy and to accept any additional public comments.

Forestry Development Authority
Regulation No. 103-07
Regulation on Prequalification

Section 24. Procedure for Listing

- (a) Any Person, including the Authority, may petition the Authority to add Persons to the list of debarred Persons or the list of suspended Persons.
- (b) The Authority shall make a prompt and thorough investigation of the allegations in the petition.
- (c) The Authority shall notify the Persons being investigated either directly or, if the Authority cannot locate the Persons, through an advertisement in a newspaper of general circulation.
- (d) The Authority shall allow the Persons being investigated fair opportunity to present evidence in the investigation.
- (e) The Authority shall publish a draft summary of its findings from the investigation in an advertisement in a newspaper of general circulation.
- (f) In that advertisement, the Authority shall invite the public to submit additional evidence bearing on the listing.
- (g) No sooner than sixty days after publishing its draft summary, the Authority shall publish in a newspaper of general circulation a final summary, a decision on listing, and a statement of reasons.
- (h) Upon publishing its decision on listing, the Authority shall make any necessary additions to the list of debarred Persons or the list of suspended Persons.
- (i) The Authority shall inform the Public Procurement and Concessions Commission of any change that the Authority makes to the list of debarred Persons or the list of suspended Persons.

Sections 47. The List of Prequalified Persons

- (a) In January and July of each year, the Authority shall publish in two newspapers of national circulation a list of all Persons issued prequalification certificates during the previous three years.

Regulation No. 104-07
Regulation on Tender, Award, and Administration of
Forest Management Contracts, Timber Sale Contracts, and
Major Forest Use Permits

Section 76. Restrictions on Use of Information from Internal Audits and Third Party Audits

- (a) This Section applies to internal audits and third party audits that a Person arranges to verify the Person's compliance with forest-related contract and legal requirements or with forest certification standards.
- (b) If those audits bring to light evidence of unlawful activities, the records of the audits are not admissible in court as evidence supporting imposition of penalties so long as the Person audited and the audit meet all the following conditions:
- (1) The audit was a private effort conducted in the ordinary course of business—that is, no arm of the Government initiated or participated in the audit, and the audit was part of an ongoing program to assure quality control, environmental performance, or compliance with legal or certification requirements.
 - (2) The Person did not institute the program in bad faith to avoid prosecution or to give a false impression of the quality or lawfulness of the Person's actions.
 - (3) The unlawful activity occurred despite the Person's good faith effort to comply with the contract or the law.
 - (4) The Person reported the unlawful activity to the Authority promptly after becoming aware of it.
 - (5) The Person made the report as a matter of voluntary, good-faith cooperation with the Authority—that is, the report was not otherwise required by law and was not prompted by knowledge of a forthcoming or ongoing inspection, investigation, enforcement action, or lawsuit.
 - (6) The Person cooperated with the Authority in any investigation subsequent to the report.
 - (7) The Person took timely steps to halt the unlawful activity, repair or give compensation for any injury done by the unlawful activity, and prevent the unlawful activity from recurring.
 - (8) The Person does not have a history of repeated unlawful activity of this type.

Section 77. Changing Circumstances

- (a) During the duration of a FMC or TSC, the Holder shall continue to comply with the prequalification requirements set out in Schedule I of Authority Regulation No. 103-07, concerning prequalification.

- (b) In addition to direct non-compliance with the prequalification requirements, and non-compliance caused by a change in circumstance (including a change in management or ownership), if any individual violates a pledge made in support of prequalification, or if any sworn document in support of prequalification is inaccurate or incomplete, the Holder is out of compliance with the prequalification requirements.
- (c) If a Holder is out of compliance with the prequalification requirements, the Holder shall report the non-compliance to the Authority within five business days after the Holder discovers or should have reasonably discovered the non-compliance.
- (d) If the Holder is unable to come into compliance within 30 days after the Holder discovers or reasonably should have discovered the non-compliance, or if the Holder fails to report the non-compliance in a timely fashion, the Authority may suspend or terminate the license.

Regulation No. 105-07 **Regulation on Major Pre-Felling Operations under** **Forest Resources Licenses**

Section 32. Affected Communities; Representation by Community Forestry Development Committees

- (a) The Holder shall give notice of its intent to conduct negotiations with representatives of Affected Communities by:
- (1) Publication of a notice in a newspaper of general circulation in the area, if one exists; publication of a notice in a newspaper of general circulation in Monrovia; and announcement on national radio stations and community radio stations with coverage in the area; and
 - (2) Sending written notice to Persons on any forest management stakeholder list maintained under Authority Regulation No. 101-07, concerning public participation.
- (b) The Holder shall identify as an Affected Community each community—
- (1) Maintained on the list of Affected Communities identified by the Authority during the concession allocation process or the local validation process for the Forest Resources License; and
 - (2) Any other community—
 - (A) Located within the geographic area that will be logged under the Forest Resources License;
 - (B) Located adjacent to the geographic area that will be logged under the Forest Resources License;
 - (C) Whose members use Natural Resources located in the geographic area that will be logged under the Forest Resources License;
 - (D) Determined to be affected through the local validation process established by Part Six of Authority Regulation No. 102-07, concerning forest land use planning, with respect to the area that will be logged under the Forest Resources License; or
 - (E) That, for any other reason, will be affected by the Operations of the Holder.
- (c) The Holder shall maintain a list of Affected Communities for its Forest Resources License.
- (d) Any individual who believes that the Holder should have identified the individual's community may ask the Authority to review the decision of the Holder not to include the community.
- (1) Following receipt of a request under this Subsection, the Authority shall determine whether the community satisfies the definition of an Affected Community set forth in Section 1(a) of this Regulation.
 - (2) The Authority shall issue any determination made under this Subsection in writing and notify the Holder and the requesting individual of its determination.
- (e) For purposes of this Regulation, the Holder may negotiate and enter into social agreements for the benefit of Affected Communities only with a Community Forestry Development Committee that satisfies the requirements of Part Six of this Regulation, or with an interim representative selected under Subsection (f)(2) of this Regulation.
- (f) If the Holder determines that one or more Affected Communities is not represented by a Community Forestry Development Committee, the Holder shall report this determination to the Authority, which shall use its best efforts to ensure that all Affected Communities are brought under the representation of existing or new Community Forestry Development Committees.
- (1) The Authority may take steps to facilitate the prompt establishment of a new Community Forestry Development Committee to represent an unrepresented Affected Community.
 - (2) The Authority may, in coordination with civil society organizations, facilitate a process of participatory selection of an interim representative for an unrepresented Affected Community, until that Affected Community can be represented by a Community Forestry Development Committee.
- (g) The Holder shall maintain a list of Community Forestry Development Committees representing Affected Communities for its Forest Resources License.

(h) The Holder shall negotiate one or more social agreements with Community Forestry Development Committees representing the Affected Communities for the Holder's Forest Resources License.

(i) Community Forestry Development Committees may seek the assistance of experts, legal counsel, civil society organizations, or any other person to help them effectively represent Affected Communities in negotiating or administering a social agreement with the Holder.

Regulation No. 106-07 **Regulation on Benefit Sharing**

Section 24. Use of Amounts Allocated to Counties

The Authority shall make no disbursement to a County Forestry Development Fund under this Part unless the County meets all of the following requirements:

- (a) The County expends the funds contained in its County Forestry Development Fund only in support of services or activities in the public interest that benefit the residents of the County, subject to the requirements of Subsections (b), (c), and (d) of this Section.
- (b) The County matches any expenditure from the County Forestry Development Fund with a contribution of cash, in-kind services (such as labor), or property that is equal in value to the expenditure.
- (c) The County manages and accounts for receipts to and disbursements from the County Forestry Development Fund as part of the ordinary and established budgetary process for the County.
- (d) Annually, the County provides a detailed accounting to the Authority on its Fund, listing all receivables and disbursements. The Authority shall report to the public all information received from the Counties under this Subsection, as follows:
 - (1) The Authority shall run an advertisement in a newspaper of general circulation in Monrovia, and a radio announcement on a radio station with national coverage and on local community radio stations. The Authority shall run both the advertisement and the announcement for at least two days per week, for no fewer than two consecutive weeks.
 - (2) The Authority shall provide written notice to all persons on any forest management stakeholder list maintained pursuant to Authority Regulation No. 101-07, concerning public participation.
 - (3) The Authority shall provide written notice to all signatories to each County Forestry Development Fund.

PART FOUR: TRANSPARENCY

Section 41. Reporting

- (a) Annually, within sixty days after the end of the fiscal year, the Authority shall compile in writing and make available for public inspection a **report** containing the following information for the preceding year:
 - (1) The amount of money disbursed by the Government to each of the 15 Community Forestry Development Funds under this Regulation, and the date of each disbursement.
 - (2) The amount of money disbursed to the National Community Benefit Sharing Trust under this Regulation, and the date of each disbursement.
 - (3) The total amount of money disbursed by the Trust to Community Forestry Development Committees, and a breakdown of those disbursements by project, date, and Affected Community.
 - (4) A list of all complaints received from the public in connection with Community Forestry Development Funds, the National Community Benefit Sharing Trust, or any Community Forestry Development Committee.
- (b) If any person makes a reasonable claim to the Authority that the **report** contains an error, the Authority shall promptly investigate the claim and make necessary corrections to the **report** and any copies of the document in its possession.
- (c) The Authority shall make copies of the **report** available subject to the requirements of Section 41 of Authority Regulation No. 101-07, concerning public participation.

WHEREAS, the assessment and collection of fees must take place with full **disclosure**, through a transparent process that is subject to monitoring by civil society and the broader public; and

PART FIVE: TRANSPARENCY

Section 51. Disclosure

- (a) Every six months, the Authority shall compile in writing and make available for public inspection a **disclosure** document containing the following:
 - (1) The names of persons assessed fees during the previous six months under this Regulation, along with the amounts and dates of the fees for each person named and the basis for those fees, including identification of the species and volumes of Forest Resources or Forest Products involved and the Forest Resource License under which the Forest Resources were harvested;
 - (2) The names of persons assessed bid payments to the Government under Forest Management Contracts or Timber Sale Contracts during the previous six months, and the amounts and dates of the assessments for each person named; and
 - (3) The amounts of such fees and payments owed but unpaid, since the effective date of this Regulation, along with the name and amount in arrears of each person owing fees or payments.

(b) If any person makes a reasonable claim to the Authority that the disclosure document contains an error, the Authority shall promptly investigate the claim and make necessary corrections to the disclosure document and any copies of the document in its possession.

(c) The Authority shall make copies of the disclosure document, offer them for public review at the Authority's headquarters and electronically through the Internet, and offer paper copies for sale to the public at a cost not exceeding one United States dollar (US\$1) for every twenty pages of the document.

Regulation No. 108-07 **Regulation on Establishing a Chain of Custody System**

WHEREAS, a mandatory, nationwide Chain of Custody System must operate with full disclosure, through a transparent process that is subject to monitoring by civil society and the public

Section 23. Forms

(a) The Authority shall publish and from time to time revise standard forms and instructions for entry of information into the Chain of Custody database.

(b) The information collected for initial entry into the database must be sufficient to identify for each tracked item the place of harvest (including the stump), the person authorized to harvest, the Forest Resources License under which the harvest was made, the stem number on the stem map, the tree species, the volume of the item, and its unique identification mark.

(c) The Authority may provide for entry of data through paper forms or electronic forms.

(d) If the data entered into forms or reported to an authorized agent affects or reflects the amount of forest fees owed to the Government, the Authority shall require the person providing the data to swear to or affirm the accuracy of the data, under penalty of perjury.

(e) In consultation with the Forestry Management Advisory Committee and persons identified on any forest management stakeholder list maintained under Authority Regulation No. 101-07, concerning public participation, the Authority may from time to time issue or revise standard forms to implement any aspect of the Chain of Custody System.

Section 24. Identification—Assignment and Marking

(b) The Authority shall publish a document listing the current standard methods for assigning identification and for marking Logs, Timber, and Wood Products with this identification.

Section 29. Reconciliation of Reported Volumes

Every six months, the Authority shall use the Chain of Custody database to reconcile reported volumes of Logs, Timber, and Wood Products moving through the Chain of Custody System, as follows:

(a) By comparing volumes harvested (by species) with initial volumes of standing timber available for harvest in the annual coupe;

(b) By comparing volumes transported and stored (by species) with volumes harvested;

(c) By comparing volumes processed (by species) with volumes transported; and

(d) By comparing volumes sold and exported (by species) with volumes harvested, transported, and processed.

Section 42. Cooperation of Port and Customs Officials in Export

(a) Government officials in charge of ports and customs shall not allow bulk shipments of Logs, Timber, or Wood Products to be loaded on vehicles, vessels, or aircraft for export unless the officials verify all of the following:

(1) The Logs, Timber, or Wood Products are entered into the Chain of Custody System.

(2) The Chain of Custody database indicates that all stumpage fees, land rental fees, and forest product fees (including export fees) have been paid.

(3) The Chain of Custody database indicates that the Logs, Timber, or Wood Products have not already been exported.

(b) Government officials shall promptly and fully inform the Authority of the export of all Logs, Timber, and Wood Products covered under the Chain of Custody System.

(c) Government officials shall promptly notify the Authority of any irregularities in shipment that may suggest illegal activity or a problem with the Chain of Custody System or database.

(d) The Authority may issue standard forms to facilitate reporting under this Section.

(e) The requirements of this Section apply to all ports of entry in the Republic, including all border crossings (with Ivory Coast, Sierra Leone, and Guinea), seaports, and airports.

Regulation No. 109-07 **Regulation on Penalties**

Section 3. Annual Enforcement Report

(a) Annually, the Authority shall **publish** the enforcement **report** required by Section 20.11 of the National Forestry Reform Law of 2006.

(b) The Authority shall make the **report** freely available on the Internet and, upon request by any person, the Authority shall provide paper or electronic copies of the **report** at no charge.

PART THREE: REPORTING AND INVESTIGATION OF VIOLATIONS

Section 31. Violations of Forestry Laws and Regulations

(a) Authority staff shall promptly notify the Managing Director of:

(1) Any offense committed under Section 20.1(b) of the National Forestry Reform Law of 2006.

(2) Any violation of the Regulations, Codes, Manuals, or Guidelines issued by the Authority.

(3) Any other violation of the laws of the Government of Liberia as they relate to the forest sector.

(b) The Managing Director shall promptly investigate any offense or violation brought to his attention by Authority staff under Subsection (a) of this Section, or by any other person, and notify other Government agencies or ministries as necessary.

(c) The Managing Director shall promptly **report** all allegations of violations resulting in physical injury or significant economic harm to employees of contract Holders to the Ministry of Justice and the Ministry of Labor.

Appendix 9. Forest Management Contracts (FMCs)

B2.1 – Contract Area

The area of the CONTRACT AREA for this contract is as shown in Special Condition A1 and includes the forest land, as depicted on the metes and bounds and the attached planimetric CONTRACT AREA map(s). CONTRACTOR shall have the right to survey and harvest TIMBER within the confines of the forest land specified as the CONTRACT AREA. FOREST PRODUCTS, other than TIMBER, are not included in the contract.

In the event of a resurvey, any discrepancy in the metes and bounds and/or the CONTRACT AREA maps shall be promptly **reported** to AUTHORITY for appropriate action and adjustment.

B5.3 – Government Inspection

CONTRACTOR consents to the GOVERNMENT conducting reasonable inspections necessary to determine compliance with the contract conditions and all applicable laws. A Contract Administration Fee will be charged as provided in the Forest Taxes and Fees Regulation.

Any PERSON or PERSONS authorized by AUTHORITY or by any other GOVERNMENT authority shall be entitled at all reasonable times to enter into the premises or the CONTRACT AREA and offices of CONTRACTOR for inspection purposes and other official functions, such as:

(a) To inspect activities and operations under this contract for the purpose of ensuring full compliance with contract provisions.

(b) To examine office records relating to CONTRACTOR's activities and operations under this contract in order to determine the accuracy of reports rendered.

B5.5 – Reports

B5.51 – Records Maintenance and Inspection

CONTRACTOR shall keep all records necessary to demonstrate compliance with the contract during the duration of the contract and for 5 years after the contract terminates. CONTRACTOR shall maintain all original records and reports relating to its activities and operations under this contract, including all documents relating to financial and commercial transactions with non-AFFILIATES and AFFILIATES in its principal offices in Liberia. CONTRACTOR shall maintain copies (electronic or hard copy) of all records and reports related to operations outside of Liberia as an archive. The GOVERNMENT, through an authorized representative and during normal working hours, may inspect these records and reports. CONTRACTOR shall keep its business records and any other required records in the English language with financial information expressed in terms of United States dollars.

B5.52 – Fiscal Year Report

CONTRACTOR shall furnish AUTHORITY and the Ministry of Finance with a **report**, which shall include: identification of actual accomplishment and planned WORK required by the Sustained Forest Management and Business Plans. In addition, the **report** shall include the number and description of harvesting blocks which had operations ongoing, started, and completed during the year, including the production of such blocks with a full description of the kind and quality of TIMBER produced.

B5.53 – Other Reports

(a) CONTRACTOR shall keep CONTRACTING OFFICER fully informed on progress and results of analysis and development operations and activities, including:

(i) The results of any reconnaissance of the various sites or proposed operations and activities;

(ii) Information on the progress being made concerning the development of the Forest Management Plan, 5-Year Management Plan, and Environmental Impact Assessment; and

(iii) Other plans and information as to progress of operations on the CONTRACT AREA that CONTRACTING OFFICER may from time to time reasonably require.

(b) CONTRACTOR shall submit, pursuant to the Revenue and Finance Law, to the Ministry of Finance information and documents necessary to determine required payments for taxes on net income and FEES.

(c) CONTRACTOR shall submit all required documents to the AUTHORITY to determine FEES.

(d) CONTRACTOR shall also furnish the GOVERNMENT all other information of whatever kind that the GOVERNMENT may request to fully appraise CONTRACTOR's TIMBER harvesting and other activities.

B5.54 – Report Cost and Schedule

CONTRACTOR shall supply all required records, reports, surveys, plans, maps, charts, accounts, and information at no cost to the GOVERNMENT. Fiscal year reports shall be submitted within 90 days of the end of the year in question. Reports may be submitted in electronic format.

B5.55 – Report Confidentiality

The GOVERNMENT reserves the right to publish, or allow others to publish:

- (a) All tax bills, FEES assessed, services provided in lieu of taxes paid, and violations assessed and proof of payment thereof.
- (b) All records of volume and species of TIMBER harvested as monitored through the Chain of Custody system and final export of all volumes and species of TIMBER processed and unprocessed.
- (c) Forest Management Plans, Five-Year Management Plans, Environmental Impact Assessments, ANNUAL OPERATIONS PLANS, and metes and bounds descriptions of the annual logging operations area.

CONTRACTOR may identify records containing confidential business information and request that the GOVERNMENT not make public the confidential business information, and the GOVERNMENT shall honor that request if AUTHORITY finds that the information meets the requirements for protection. The GOVERNMENT, nevertheless, shall be entitled to make use of any information received from CONTRACTOR for the purpose of preparing and publishing aggregated returns and general reports on the extent of forestry operations in Liberia and for the purpose of any CLAIM or litigation between the GOVERNMENT and CONTRACTOR.

B6.34 – Protection Measures for Plants, Animals, and Cultural Resources

(a) Locations of areas needing special measures for the protection of plants, animals, and cultural resources shall be shown on the ANNUAL OPERATIONS PLAN maps and/or identified on the ground. Special protection measures needed to protect such areas are identified in Subsection C6.34.

(b) In addition to any special protection measures noted, CONTRACTOR has a general duty to protect all identified resources referenced in this Subsection from damage or removal during CONTRACTOR's operations. Discovery of additional areas, resources, or members of species needing special protection shall be promptly reported to the other party, and operations shall be delayed or interrupted at that location, under Section B8.6, if CONTRACTING OFFICER determines there is risk of damage to such areas, resources, or species from continued operations.

B8.8 – Periodic Review

CONTRACTOR's operations are subject to: (a) an annual compliance audit by the Forestry Policy Advisory Committee; (b) a forest management review by a qualified independent organization at intervals of not more than 5 years; and (c) regular and routine monitoring, under Section B5.3, undertaken by AUTHORITY staff and accredited third-party independent monitoring organizations.

The GOVERNMENT reserves the right to allow unscheduled third party and civil society monitoring of its contract operations. Monitoring organizations shall have access to all reports, financial records, management plans, and ANNUAL OPERATIONS PLANS to facilitate monitoring activities. The GOVERNMENT shall not extend access to any civil society monitoring organization until they agree, in writing, to not publish any proprietary information without written consent from CONTRACTOR.

Appendix 10. Timber Sale Contracts (TSCs)

as above (Appendix), except that the TSCs do not contain a Section B8.8 – Periodic Review, and;

B5.55 – Report Confidentiality

The GOVERNMENT reserves the right to publish, or allow others to publish:

- (c) ANNUAL OPERATIONS PLANS and metes and bounds descriptions of the annual logging operations area.