

Forest governance in Liberia

An NGO perspective

A report produced for FERN by Tom Lomax, *January 2008*



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Cover photo by SDI

Village assemblies are vital forums for clarifying ownership of forestland. This is the critical first step to ensuring the country's long-term stability, growth and development.

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List of abbreviations

| | |
|---------|--|
| AFLEG: | African Forest Law Enforcement and Governance |
| ALL: | Association of Liberian Loggers |
| EFI: | Environmental Foundation International |
| EC: | European Community |
| EU: | European Union |
| FDA: | Forestry Development Authority |
| FLEGT: | Forest Law Enforcement Governance and Trade |
| FLIWUL: | Forestry, Logging & Industrial Workers' Union of Liberia |
| FMAC: | Forestry Management Advisory Committee |
| FMC: | Forest Management Contracts |
| FUP: | Forest Use Permit |
| GC: | Governance Commission |
| GDP: | Gross Domestic Product |
| JIC: | Joint Implementation Committee |
| LTA: | Liberian Timber Association |
| NFRL: | National Forestry Reform Law |
| NGO: | Non-Governmental Organisation |
| NTFP: | Non-Timber Forest Product |
| TSC: | Timber Sale Contract |
| UN: | United Nations |
| VPA: | Voluntary Partnership Agreement |

County map of Liberia showing forest cover.



Summary

In 2003 Liberia emerged from 14 years of national and regional conflict that left around 270,000 people dead and many displaced. Presidential elections in November 2005 were won by Ellen Johnson-Sirleaf, Africa's first ever female president. It is well documented that the conflict and the regime of Charles Taylor was in part fuelled by uncontrolled exploitation of, and competition for, Liberia's resources – especially timber. This factor, along with associated corruption and revenue misappropriation, led to sanctions being imposed on Liberian timber exports by the UN in 2003. These were lifted in 2006 following a concession review, after which President Sirleaf's administration cancelled all concessions, put in place a moratorium on all logging activities, and passed a new forestry law. The timber trade and bad governance in Liberia have therefore been historically intertwined, hampering Liberia's development and perpetuating conflict.

Liberia's ecological heritage is centred on its forests which account for the best remaining areas of Upper Guinean forest in Africa.¹ The Liberian population's dependence on forest resources is impossible to overestimate. The vast majority of Liberia's domestic energy requirements are met by wood-fuel and charcoal.² This is as evident in the cooking fires and markets of the capital Monrovia as in rural areas. Non-timber forest products (NTFPs) in Liberia's subsistence dominated economy are hugely important, with bush-meat providing the majority of the rural population's protein.³ The forest also provides communities with fruits, nuts, traditional medicines and building materials.

In 2006 the Liberian legislature passed the National Forestry Reform Law (NFRL). Against the backdrop of a legal history that has gradually diverged from the social and traditional reality, the NFRL is an important first step in setting Liberian legal relations on a more positive footing. Despite its shortcomings, the NFRL places a legal requirement for a new law governing community forest rights, to be enacted before the end of 2007. This has injected fresh impetus to develop a legal framework that forms a fairer basis for sharing the many benefits that Liberia's forests have to offer.

Liberia is therefore at a critical juncture in its socio-political, economic and legal development. National expectations of the current administration are very high in terms of reducing poverty and improving infrastructure. This is in marked contrast to the government's administrative and institutional capacity which was left in tatters by the civil war. The risks of 'getting things wrong' in such a hiatus are evident, thus inspiring a wellspring of motivation in civil society and government to get things right.

Although accurate data on timber exports has been muddied by the conflict, Europe has traditionally been one of the biggest export markets for Liberian timber. Figures showing European imports amounting to half of all declared imports in 2003 are indicative of this

1 Verschuren, 1983; Greenpeace 2003.

2 UNDP, 2006; ITTO, 2005.

3 Brown, 2007b.

fact.⁴ Despite the increasing dominance of Asian and particularly Chinese markets, the enlarged European single market still has substantial leverage.

It is in this broad national and global context that the negotiations are to take place for a Voluntary Partnership Agreement (VPA) between the European Union and Liberia as part of the EU's Forest Law Enforcement, Governance and Trade (FLEGT) Action plan. The aim of a VPA is to provide a practical mechanism to ensure only legal timber products enter the EU via an agreed system for licensing timber exports from the producer countries. Through this mechanism, there is significant potential for the EU's power as a consumer to be used as a driving force to encourage legally sourced timber exports and good governance in respect of a controlled and regulated timber industry. In turn this creates a commercial environment shaped to better promote fairer distribution of trade benefits, sustainable development and conservation of Liberia's ecological heritage.

This report details the political, legal, and environmental situation in Liberia. At the core of a number of more substantive recommendations for a Liberian VPA, the report concludes that legislative and institutional reform is an essential prerequisite for a successful VPA, and indeed any formal commercial timber extraction. Before a licensing system can work effectively, the current land tenure situation of rural Liberians needs to be clarified, as is foreseen in the upcoming community rights law. Inter alia, such a law must provide for secure community tenure that complements customary ownership and administrative structures, thus ensuring good forest governance through a strengthened civil society and devolved forest management. In this context, the state's role could be constructively re-drawn to support this process by collecting and equitably distributing revenue, providing technical expertise, and regulating and monitoring forest management, commercial relations and protected areas.

In summary, this report makes the case for the practical ways by which a VPA should contribute to the process of ensuring Liberia's forests benefit the Liberian people, to the fullest and fairest extent possible.

4 Greenpeace, 2003.

1.

Liberia's forest and people

1.1 Forest ecology

Liberia's dense forest cover amounts to around 35.9% of the total land area, totalling to an area of about 3.4 million hectares.⁵ Another 23.6% of country's land area is composed of agriculture degraded forest, and mixed agricultural and forest areas.⁶ Liberian forests are characterised by high deciduous forests in the more mountainous areas, rainforest in the inland hills and plains, and evergreen coastal regions with areas of mangrove.⁷

Liberia is situated in the fragmented band of forest known as the 'Upper Guinean Forest'. It is one of the two most significant forest blocks in Africa, the other being the 'Congolese Forest'. The Upper Guinean Forest extends from Guinea at the North-Western extreme, down through Sierra Leone, Liberia, and the Ivory Coast and reaching Cameroon at its most Easterly extent.⁸ Liberia accounts for more than half of West Africa's remaining Upper Guinean tropical forest.⁹

Within the Guinean forest block, Liberia is also significant due to having large remaining contiguous areas of forest and high levels of endemic species. Liberia's forests contain approximately 225 timber species, 2,900 flowering plant species, 140 mammal species, 600 bird species, 75 reptile and amphibian species and over 1000 species of insect.¹⁰ Liberia is crucial for a number of well-known mammal varieties including the Pygmy Hippopotamus, forest elephant, Diana Monkey, Red Colobus Monkey, Jentink's Duiker and Western Chimpanzee.¹¹ The high degree of biodiversity in Liberia led the 1999 West African Conservation Priority-Setting Workshop to recognise Liberia as the top conservation priority in the region.

Liberia has two existing protected forest areas, the Sapo National Park and East Nimba Nature Reserve, amounting to 193,932 hectares or 3.4 percent of the nation's forest. A further 8 protected areas have been proposed which, if created, would bring a total 21 percent of Liberia's forests under the protected area network.¹²

The ecological integrity of Liberia's forests has been under threat from a number of sources. These include logging, settlement expansion, road construction, small-scale agricultural encroachment, large-scale plantation operations, unsustainable levels of hunting, and mining operations. Although much of the road-building and maintenance was done by the logging industry, its effect has been to facilitate access for the other environmental pressures such as hunting. It has been reported that as much as four fifths

5 Wiley, 2007a.

6 *Ibid.*

7 ITTO, 2005; Verschuren, 1983.

8 Samfu, 2002.

9 Wiley, 2007a.

10 *Ibid.*

11 Greenpeace, 2003; Samfu, 2002.

12 Wiley, 2007a.

of the forest is now within 3 kilometres of a road.¹³ Although there is a moratorium on commercial harvesting in place, informal chainsaw operations persist, providing mainly for the domestic market, although there is now evidence of at least one illegal shipment to Morocco in 2007.¹⁴

1.2 Forest communities

Around one third of Liberia's population live in forested areas and depend on forests for food (fruits, plants, nuts, meat and honey), housing materials (building poles and thatching), furniture materials such as rattan, traditional medicines, healthy watersheds for fish and clean water, and soil stabilisation.¹⁵ With an estimated three-quarters of the country reliant on bushmeat for their protein intake, and over 98 per cent of Liberians using wood-derived domestic fuels, forests play an important direct and indirect role in the day to day lives of most Liberian people.¹⁶

The forests are also essential to the cultural and spiritual lives of Liberian people. For example, the Poro and Sande traditional societies, into which many young Liberians are initiated, use isolated forest areas for ceremonial and training purposes.

There is no equivalent in Liberia to the Batwa and other 'pygmy' forest peoples living in Central Africa. The principal ethnic line in Liberia has traditionally been drawn between those descending from the settlers from American freed-slave populations and those descended from the indigenous inhabitants resident when those settlers arrived. Of the latter there are a number of tribal identities with differing languages and dialects.

Poverty is a huge problem in Liberia as it is elsewhere on the continent. The UN National Human Development Report for Liberia (2006) states that 76.2 per cent of the population live below the poverty line (living on less than \$US1 per day), with 52 per cent in extreme poverty (living on less than \$US0.50 per day). Average life expectancy is reported to be about 47 years old. Being removed from formal employment opportunities, the rural population will be at the lower end of such poverty indicators and all the more dependant for their survival on the natural capital provided by traditional forest resources.

13 ITTO, 2005.

14 FDA Letter to National Police Director, 8th May 2007.

15 Wiley, 2007b.

16 UNDP, 2006; ITTO, 2005.

2. Commercial forestry

The value of forests and the timber industry to the Liberian economy has increased throughout the twentieth century, peaking under the administration of President Samuel Doe (1980-1989).¹⁷ In addition to the forest concessions, mining concessions and agribusiness (such as the one million acre Firestone rubber plantation) are also a significant part of the Liberian economic landscape.

The timber industry in Liberia has been based overwhelmingly on the export of logs. A lack of capacity for producing processed timber products such as plywood and sawn timber has deprived Liberia of the value-added benefits of such products. Traditionally the industry has concentrated on a handful of primary species favoured by the European market. With the opening of large Asian markets there has been pressure on secondary species.¹⁸

Although disrupted, logging continued under the civil war (1989-2003). An estimated 2 percent of the total forest area was lost during the decade 1990-2000 as opposed to a continental average of 0.8 percent for the same period.¹⁹ Under the presidency of Charles Taylor (1997-2003) logging increased significantly, in an environment of corruption and revenue misappropriation most notably to fund Taylor-backed rebels in Sierra Leone. In 2002 the timber industry accounted for a fifth of the country's GDP and half the value of total exports.²⁰ At this time the forest industry employed around 7,000 people although many jobs were done by imported foreign labourers, leaving the domestic skill-base underused and underdeveloped.²¹ The influence of the industry on exacerbating regional instability led to the UN sanctions on timber and diamond exports in 2003.

Despite there being a number of taxes and fees in place during this period, widespread corruption and under-regulation meant that the industry was characterised by a lack of transparency and traceable chains of custody, unaccounted exports and the inevitable loss of valuable public revenue. Maladministration in the government itself was such that in 2001 the principal executive body responsible for overseeing forest management, the Forestry Development Authority (FDA), could account for only one fifth of the \$20 million in taxes that they assessed they should have received.²²

This political and economic picture of the Liberian timber industry belies the reality as experienced by ordinary Liberian communities at the time. As elsewhere on the continent in forest rich countries such as Ghana and Cameroon, industrial logging has provided few benefits to the local people. Under the Taylor regime, the unregulated commercial

17 Wiley, 2007a.

18 ITTO, 2005.

19 Wiley, 2007a.

20 *Ibid.*

21 Talking Drum Studio, 2005; Samfu, 2002; ITTO, 2005.

22 Wiley, 2007a.

context led to exploitative employment practices by some concessionaires, harassment and destruction of farms and settlements during logging activities, and even rape and murder. Other deleterious consequences of the industry on the social fabric of local communities were caused by prostitution, drug-abuse, and related sexual health problems associated with the presence of logging camps. Poor sanitation at such camps has led to the spread of disease from polluted rivers and streams.²³

A Forest Concession Review was carried out in 2004/2005 and the full extent of the abuses outlined above was highlighted by an NGO-driven public consultation process under the Review's auspices. The report by the Forestry Concession Review Committee (2005) found the total area held in forest concessions to be around twice the total area of forests in Liberia.²⁴ The Review analysed the logging companies operating in Liberia for compliance with minimum criteria requirements set by the Committee. These measured companies on a number of grounds such as possession of a legal contract, being a bona fide business entity, compliance with tax obligations and compliance with labour law. Of the seventy or so companies operating in Liberia not one was able to satisfy all the minimum requirements.²⁵ This led to cancellation of all concession contracts by President Sirleaf's administration in 2006.

The lack of benefits accruing to communities from commercial forestry juxtaposes markedly with the fact that much of the forest in Liberia has been under the customary ownership of communities for centuries. Although an outline of the legal context of forest ownership is detailed in chapter 3, suffice it to say that Liberian law accords very little security of tenure to local communities over forests that were traditionally used, managed and owned according to strict customary rules and administrative structures. A stronger legal footing would better empower community structures to hold government and the private sector to account in the management of forests. In support of this, the UN Security Panel of Experts on Liberia has recognised that without legal clarification in respect of land tenure and community rights, both security and investment will remain under threat.²⁶

In summary, although historically appearing positive on Liberia's economic balance sheet, commercial forestry in Liberia has perpetuated conflict, underwritten corrupt regimes, fuelled regional instability and stunted development. Despite the temptation for the government to encourage the premature commencement of commercial timber operations so that revenue can contribute to the economy and the public purse, a longer-term assessment would counsel improving governance and reforming land-relations, to help prevent the repeat of past mistakes and ensure a more equitable distribution of forest derived benefits.

23 Samfu, 2002.

24 UN Panel of Experts on Liberia, 2006b.

25 Wiley, 2007a.

26 UN Panel of Experts on Liberia, 2006b.

3. Forest Rights²⁷

3.1 Customary land tenure

Customary land tenure refers to the rights of indigenous communities to land ownership, use and access of indigenous communities as outlined by a related system of rules, customs and practices known as customary law. Customary law in Liberia is a dynamic system that has evolved over time, governing land relations within and between communities. Customary law therefore varies in its detail between ethnic groups, but in Liberia has been relatively uniform throughout the country due to the similar environmental and social conditions.

The American Colonization Societies²⁸, unlike the European colonial enterprises in Africa, were cognisant of the indigenous ownership of the land as governed by chiefs and kings. They did not simply view Liberia as empty land, free of encumbrance. Early Liberian statutory legislation was influenced by this viewpoint and developed by formalising and building on indigenous customary practices. For this reason, customary land tenure is more intact in Liberia than in other African countries despite the emergence of the modern independent Liberian state. Although encroachment by Americo-Liberians has taken place, only in the latter half of the twentieth century has Liberian statutory law begun to diverge markedly from customary law.

A forest village in Eastern Liberia, built by refugees returning from Ivory Coast in the 1990s.



Photo David Brown

²⁷ This section is indebted to Wiley, 2007a, particularly Chapter 3.

²⁸ The colonization of Liberia was orchestrated by US-supported Colonization Societies in order to provide freed slaves with somewhere to emigrate, and a country where slaves on illegal slave-ships caught by the US navy could be placed. Wiley, 2007a.

Customary land in Liberia can be said to constitute all rural land other than that which is private land as evidenced by deeds of ownership or long leasehold title. Private land in Liberia amounts to around 44.5 per cent of the total land area in Liberia. However, since around 90 per cent of forestland deeds are collectively owned (e.g. under Aborigine Land Deeds) large areas of private forestland will still be run according to customary law to some degree. Customary land tenure in one form or another is therefore the prevailing system governing relations between forest land and forest people in Liberia. Since most customary land is not formally deeded or registered, the majority of communities do not have the security of tenure enjoyed under statute by deeded landowners. The position of customary lands under Liberian statutory law is outlined in section 3.2.

Forest-based populations live in villages (referred to as towns). In most counties a number of towns will comprise a larger unit referred to as clans, with several clans making up a chiefdom. This is not entirely consistent across Liberia with some counties containing town groups collectively referred to directly as a chiefdom. Importantly however, in terms of structuring land relations, each unit is a discrete area with well defined and well known borders comprising of rivers, creeks and boundary trees. Within these units there is therefore a strong sense of territory, particularly at the town level which is the traditional focus of rural communities. Although demographic changes occur within these units, the units themselves are relatively stable.

Local idiosyncrasies notwithstanding, the basic structure of customary land tenure in Liberia can be characterised as collective ownership of the discrete units of community land described above. Family members have the right to use land and the products of the land. User rights are strictly organised according to rules developed by the community over time. Other general aspects of customary law are that: customary ownership is not subject to any higher title; customary land is used to the exclusion of people from other communities; and this land is not transferable or divisible (i.e. plots cannot be sold off or otherwise alienated from the community).

This description provides a broad picture of customary land tenure, however, in practice there have been instances (although limited to more urban areas) of wealthier members removing their plots from community ownership. In addition, there is common inequity in user rights within families (on the basis of age and gender), and between families (e.g. between the wealthy and the less wealthy). Broadly however, community land is genuinely collective and not for sale, with the phrase “it belongs to us and our forefathers and to those who follow us” being indicative of community sentiment.

As a dynamic system, customary land tenure responds to change. Such changes are important to bear in mind when considering the future development of Liberian land relations. Some key current changes in response in part to tenure insecurity include the following:

- a. a strong increase in the desire to formalise collective ownership;
 - b. active territory demarcation and enhanced limitation on outsider access with an increased perception of the land as being a community asset;
 - c. democratisation in decision-making processes relating to community lands particularly in response to the demands of young males;
-

- d. a greater awareness that previous government-issued forest, mining and rubber concessions were an interference with community property;
- e. a more guarded approach to the alienation of pieces of community land and a greater demand for consultation and consent.

In short, customary land tenure is alive and well in Liberia today. It is responding in various ways to the anxiety provoked by a lack of formal statutory recognition of its systems of land ownership, management and use. This problem was exemplified by the untrammelled resource exploitation during the civil conflict which provided few benefits to communities and caused tremendous damage.

3.2 Land law

The development of statutory law governing land ownership in Liberia is inchoate and ambiguous. It appears that one of the main causes of this is the fact that in the early development of the Liberian state, the legal treatment of the rural interior (the hinterland) was different to that of the coastal region (the littoral). The latter was populated by both freed slave immigrants and indigenous Liberian 'aborigines' and was eventually declared independent from the original Colonial Societies. The former remained the preserve of indigenous Liberians. Since statutory law originated with the immigrant settler community it concentrated on governing relations between the state, immigrants and aborigines in the littoral regions. The hinterland regions, which only later became part of what is now considered to be Liberia, were outside the immediate legal concern of the immigrant populations. The laws governing the hinterland therefore initially had the effect of allowing customary land tenure systems to continue uninterrupted, whereas the laws of the littoral viewed land bought from the 'natives' by the Colonial Societies as state land to which immigrant citizens were entitled.

Current legal uncertainty seems therefore to be nested in an incomplete consolidation of these two systems. The most significant casualty in this process has been the status of customary land rights. This was brought about when the Aborigines Law 1956 came into existence, appearing to replace the existing *Hinterlands Law (Revised Laws and Regulations of the Hinterland 1949)*. The former provided for 'right and title' to tribal lands, thus providing absolute ownership rights to indigenous Liberians. Although almost identical in its wording, the *Aborigines Law* made the fundamental change of providing tribes with mere rights of use and possession rather than ownership. The modern legal status of rural communities now appears to be that of landless tenants of the state, despite land being held on a customary basis by communities for centuries.

The protection of property rights is fundamental to the Liberian constitution, however, constitutional arguments against such a change in the law are undermined by the debate as to the extent of the current legal force of the *Hinterlands Law* and the *Aborigines Law*. Although it seems likely that the latter repealed the former, there is some confusion as to whether the latter has lapsed and/or whether the former retains some legal force in a reissued form as secondary legislation. The situation is confused even among members of Liberia's judiciary.



Thirty years of logging has brought little to rural Liberia by way of infrastructure.

Until this crucial change in the legal position in 1956, communities in the hinterland had been able to formalise collective ownership through Aborigine Land Grants. These provided communal ownership on the condition that the land could not then be sold or otherwise disposed of. Fourteen such grants have been submitted to the FDA purporting to lay claim to close to one million hectares of land (approximately one tenth of the total land area of Liberia). In contrast, as a result of the change in the law, communities hoping to formalise their entitlement had to purchase their land from the state through the procedure of Public Land Sale. This was beyond the means of most communities. Only around twenty communities have taken advantage of this process which by definition compels a community to acknowledge no prior proprietary right to the land.

The main legislation currently informing land ownership is the *Public Lands Law* and the *Property Law*. The *Public Lands Law* governs purchase and lease of public lands from the government. It describes tribal land as an encumbrance (a non-proprietary interest) on what is essentially public land. In this capacity, public land that is also tribal land cannot be bought from the government, while public land in general cannot be bought from the government without the consent of the Tribal Authority. However, the law does not require a person, such as a concessionaire wishing to lease public land, to first prove the land is unencumbered by tribal rights, a provision that has allowed governments to ignore community interests in the granting of forest concessions. Such a purchaser is required by the law to provide the tribal authority a sum of money ‘as token of his good intention to live peacefully with the tribesmen’, however the purchase price goes to the government.²⁹

The *Public Lands Law* therefore confirms the status of communities as being possessory occupiers of state-owned land. This has rendered the law anachronistic in many respects, for example by providing more favourable terms in the allotment of land to an immigrant with a declared intention to be a Liberian citizen, than to a born-and-bred Liberian.

The *Property Law* similarly treats customary rights as non-proprietary interests in public land. The provisions for land registration state that within a selected area of registration, land that is free of private land rights would be designated as *public* land.³⁰ If the land included a ‘Tribal Reserve’ or a ‘Communal Holding’ the land would still be designated public land, but would be recorded as subject to ‘Tribal Reserve’ or ‘Communal Holding’ as encumbrances and would then be protected from being registered by others. The law allows for persons who have occupied land for more than twenty years to apply to be registered as owners, however, its overall treatment of community interests indicates a lack of intention behind this provision to provide a process for securing community ownership.

In their current form these laws are antiquated and inadequate, providing a platform for governments such as of Charles Taylor’s to disregard community interests, despite the system of customary land tenure that has developed over many centuries. In turn this has been a catalyst for the many detrimental consequences of the unregulated exploitation of community resources as outlined in chapter 2. This has rendered Liberian communities

29 Public Lands Law, Section 30.

30 Registered Land Law, Section 8.52(d) of Chapter 8 of the Property Law.

victims of bad governance, forsaking their potential role as partners in fostering development and good governance. The implications of inadequate law are compounded by the legal uncertainty outlined above and the resulting legislative vacuum in respect of the statutory treatment of community land tenure.

3.3 Forest law, policy and strategy

The *Forest Act 1953*, among other things, provided for the creation of reserves, national parks and ‘Communal Forests.’ Provisions concerning the latter allowed for the protection of very small areas immediately adjacent to villages, however no such communal forests were established. The law paved the way for the creation of reserves and national parks which resulted in the declaration of eleven National Forests over the following decade. It has emerged recently that there is substantial overlap between forested areas annexed to create the permanent National Forest estate, and private deeded land. This has occurred without compensation, as would be required under the constitution for such expropriation, and remains a matter yet to be resolved.

The 1953 law was replaced in 1976 by *An Act Creating the Forestry Development Authority*. This provided for the institutional administration of Liberia’s forests by the Forestry Development Authority (FDA), run by a board and managing director. The FDA remains the government body responsible for Liberia’s forests.

Under the constitution, forest resources are not excluded from private ownership, in contrast to the position on mineral resources. Under the *Property Law* “land” is defined so as to include all things growing on the land.³¹ This would appear to protect forest resources located on forestlands held privately. Customary lands would appear to be more vulnerable, although the possession and user rights contained in the *Aborigines Act* should provide some protection. However, the *National Forestry Law 2000*, enacted under Taylor’s tenure, made the arguably unconstitutional step of dislocating forest resources from forest land, by stating that all forest resources in Liberia were the property of the Republic (apart from Communal Forests and artificially generated forests on private land). This right did not provide ownership of the forest land itself, but it allowed the government or those to whom it had sold utilisation permits to exploit forest resources regardless of the legal or customary landowners’ wishes. In return, compensation for disturbance and damage to property was to be given, but no compensation was provided for loss of the benefit and utility of the land.

The enactment of the *National Forestry Reform Law 2006* (NFRL) has not altered the legislative status of customary lands. Fundamentally, the law retains control of forests in the hands of government, subject to a raft of regulations to be produced by the FDA. By outlining the mechanisms and regulatory framework by which a variety of contracts for the use of Liberia’s forest land may be granted by the government, the established legislative position that the government is entitled to dispose of Liberia’s forestland as it sees fit is implicit in the NFRL. It therefore fails to recognise pre-existing customary

31 Chapter 8, Title 29, section 8.3.

interests in Liberia's forests, perpetuating instead the legislative paradigm that Liberia's forestland is public and de facto government land, free of the 'tribal' interests recognised in the *Hinterland* and *Aborigines* laws.

Furthermore, it continues the legal dislocation of forests and forest resources by defining the state as owner of all forest resources except for those on private land or in Communal Forests (s.2.1 and 1.3). Communal Forests are defined as areas set aside by law for use by communities on a non-commercial basis. This fails to provide real control to local communities over their traditional resource base, which is left unprotected unless made into Communal Forests. Even then, such forests cannot as such be used on a commercial basis, depriving communities of a potential source of much needed revenue for community infrastructure and development. So far only eleven such Communal Forests have been proposed, suggesting that Communal Forests will amount to a small fraction of Liberia's forested areas.³²

The NFRL outlines the FDA's primary statutory objective in exercising its powers under the law as, ensuring sustainable management and conservation of forests and sustainable development of the economy, with the participation of, and for the benefit of, all Liberians, thus contributing to poverty alleviation.³³ The broad emphasis of the substantive provisions of the law is however one of re-structuring the institutional, regulatory and fiscal basis of commercial forestry. There are substantial provisions on conservation related issues such as environmental protection, protected areas, wildlife conservation and trade, with a duty placed on the FDA to create a Protected Forest Areas Network covering an ambitious minimum of 30 per cent of Liberia's forested area.³⁴

The law outlines procedures for the provision of four principal commercial arrangements:

- Forest Management Contracts (FMCs): large contracts for management of forest areas between 50,000 and 400,000 ha (akin to the traditional concession);
- Timber Sale Contracts (TSCs): smaller contracts for management of 5000 ha of forest or less lasting for a basic term of no more than 3 years;
- Forest Use Permits (FUPs): aimed at non-timber forest uses such as tourism and the harvest of non-timber forest products;
- Private Use Permits: to regulate commercial activities on private land.

The consequences of the NFRL's provisions for overlapping land claims is unclear, despite the likelihood that many areas recognised as National Forest or National Park may have been created without existing private land rights having been properly extinguished. Moreover, when making further proposals for a national park or nature reserve, although a summary of the results of consultations with affected persons must be submitted by the FDA to the president under the NFRL, there is no duty to consult per se, and no duty to investigate or adjudicate competing land claims. These problems are of particular concern given that the Liberian government is still unclear as to what forest areas are under

32 Current proposals for Community Forests amount to only 1.2 per cent of Liberia's forest. Wiley (2007a).

33 NFRL 2006, Chapter 3, s. 3.1

34 *Ibid*, Chapter 9, s. 9.1

private ownership and that the process of collecting deeds and surveying entitlements is ongoing.

From the relevant provisions in the NFRL it is hard to predict exactly how competing land claims would be dealt with. The law clearly states that FMCs and TSCs (as outlined above) must not be granted in respect of private land,³⁵ and that permission for use of forest land will be ‘subject to the existing rights of other persons.’³⁶ However, the law also provides that where the government (via the FDA) has granted permission for use of forest resources, no land owner or occupant has a right to bar use, although they will be entitled to compensation.³⁷ These issues underline the fact that a clear idea of who owns what and the completion of any land reform is a necessary prerequisite to a workable forestry law.

The FDA’s mandate to create regulations is very broad. Not limited to producing a number of specific mandatory and discretionary regulations, it is empowered to ‘by Regulation control any activity involving Forest Land, Forest Resources, or Forest Products.’ Despite a number of useful regulatory provisions provided for in the law such as that requiring annual audits of forest contracts, the NFRL maintains a concentration of power over forest resources in the hands of the government. Forest-dependant communities without deeded entitlement will have no recourse to compensation when forest resources are removed. Furthermore, anyone interfering with the user rights obtained under licence will be punishable under Economic Sabotage provisions.

Of central importance in terms of community land rights is Section 10.1 headed ‘Community Empowerment’. In summary, this section places a duty on the FDA to:

1. use regulations to grant user and management rights to local communities, transfer control of forest resources to them and build their capacity for sustainable forest management. Such regulations aim to specify community rights, responsibilities of ownership and use of forest resources and aim to establish mechanisms for informed participation, access, and capacity building to ensure equitable participation and equitable benefit in sustainable management; and
2. present to the Legislature a community rights law in respect of forest lands.

There is no timeframe for the creation of the regulations in (1). There is therefore ample opportunity for the FDA to concentrate on regulations governing commercial activities to kick-start the industry, while leaving regulations relating to community rights and participation underdeveloped. Although the NFRL obliges the FDA to make regulations or otherwise institutionalise community participation in forest management, the suggested regulation on ‘recognition and protection of community land tenure rights’ is itself discretionary. Ultimately, there is no guarantee under the NFRL that such regulations or other measures will provide real control to communities over forest resources. Aside from a number of token references to equitable community benefit and participation, the broad thrust of the NFRL is not one that favours devolving meaningful power to communities.

35 *Ibid*, Chapter 5, Sections 5.3(b)(ii) and 5.4(b)(ii) respectively.

36 *Ibid*, Chapter 18, Section 18.11.

37 *Ibid*, Chapter 11, Section 11.3.

This is born out in the National Forest Policy and subsequent Draft National Forest Management Strategy (“the Strategy”). Both documents favour what is simplistically referred to as a three C’s approach which emphasises commercial, conservation and community uses. The outcome however in the Strategy is one that ascribes approximately 75 per cent of forested areas as being suitable for commercial use, 24 per cent for conservation, and around 1 per cent for community use. This appears indicative of an ingrained emphasis on commercial interests on the part of the FDA. The NFRL provides that the Strategy shall classify Liberia’s forest lands according to both (a) legal status; and (b) potential use. Fundamentally, the Strategy in its current form fails to accord with the statutory requirements of the NFRL by outlining (b), without considering (a), thus rendering its conclusions largely academic.

Despite this manifest failing it has been made clear that the final draft will not be substantially different. This is so despite the criticisms of national civil society groups which have been largely excluded from the drafting process. These criticisms have not received a welcome response from the FDA. These developments are worrying in that the FDA appears to be underestimating the primacy of fairly determining who owns what before outlining strategies for the use of forest land, while at the same time betraying an institutional aversion to the involvement of civil society in the elaboration of national forest strategy. It could be said in response that the Strategy is merely a first step in a long process of strategy development. However, especially in light of Liberia’s recent history of bad

A typical village assembly; these forums provide vital platforms for discussions on lands and forests.



Photo David Brown

governance, it is crucial that unfounded assumptions as to the content and direction of forest strategy, as well as the procedures by which such strategies are developed, do not crystallise bad habits as a result of poor precedent.

The substantive benefit-sharing provisions in the NFRL are: (1) that thirty per cent of land rental fees are given to communities entitled to benefit sharing under forest resources licenses; and (2) that alongside contracts in respect of FMCs and FUPs, there be an FDA approved social agreement between the contractor and local forest-dependant communities defining community benefits and access rights.³⁸ Failure to comply with the terms of the obligations created by such a social agreement can result in cancellation of the forest resource licence.³⁹

However, in the context of fiscal revenues, land rental fees are likely to be small in comparison to the more profitable stumpage fee. In addition, there is no indication given in the law as to how this financial benefit would be managed by the community for the benefit of the community. This leaves forest-based communities with an ambiguously administered financial stake in their traditional forest lands that is disproportionately small relative to the importance the forest plays in their day-to-day subsistence. Under the NFRL, the FDA's permission is sufficient to obtain a forest contract, with the only procedural safeguard being publication of the proposed sale with 60 days notice. The position of communities is therefore bleak given that concessions awarded under the law may remove land from community control and access for substantial periods of time.

In terms of social agreements, Draft Regulation 104 prevents the FDA from offering a use contract or permit unless a community representative consents to negotiate a social contract.⁴⁰ If this consent is not forthcoming, the FDA is merely required to then reconsider the terms of the contract before giving its approval. Communities therefore have no veto over logging on customary land and do not have the control over the fundamentals of such contracts (such as the rents due, or responsibilities and conduct of the concessionaire) as would befit their status as customary landowners. Unless communities have parity of bargaining power it is unrealistic to expect such agreements to be a sufficient safeguard in securing the benefits and participation that would be in the spirit of the NFRL's stated objectives. Fundamentally, such parity is not feasible without a law that properly recognises the communities' proprietary interests in customary lands. To a large degree the ability of Liberian law to put forest law and governance on a more equitable footing is therefore dependant on the development of a community rights law to this effect.

The picture painted under the NFRL is one where government and commercial interests are the principal actors, negotiating contracts for the use of state forest resources. Communities are mere beneficiaries with a minimal financial stake. This does little to change the structure of forest governance as developed over the last century. Ensuring good governance requires institutional reform on a far reaching basis not provided for by the NFRL and which devolves meaningful power and control to regional, local and, especially community based administrative bodies so as to provide the requisite checks and

38 *Ibid*, Chapter 14, Section 14.2(e)(ii), & Chapter 5, Section 5.4(b)(vi) and Section 5.6(d)(vi) respectively.

39 *Ibid*, Chapter 6, Section 6.1(d).

40 *Ibid*, Chapter 22, Section 22(j)

balances on government and business. The Forestry Management Advisory Committee (FMAC) created by the NFRL cannot fulfil such a checking role as it is mandated only to provide advice to the FDA. Moreover, its current composition is in danger of creating a pro-industry bias with three of the current ten representatives coming from industry backgrounds: the Association of Liberian Loggers (ALL), the Liberia Timber Association (LTA) and the Forestry, Logging & Industrial Workers' Union of Liberia (FLIWUL) and only one civil society representative (from the Liberian NGO, Environmental Foundation International (EFI)).

The inadequacies of the NFRL in terms of security of customary tenure, participation and consultation are manifest despite the many international treaties and protocols to which Liberia is signatory.⁴¹ Taking the Convention on Biological Diversity as an example, Article 10(c) obliges states as far as possible and appropriate to:

Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements.

Taken as a whole, the binding obligations based on international law and related jurisprudence guarantee the protection of ownership and control over customary lands with free, prior and informed consent in respect of developments on these lands.⁴² This is supported by the Liberian constitution which preserves the rights of its citizens to acquire, possess and protect property, and encourages the integration of traditional values into national progress and policy.⁴³

From this discussion of the existing legislative landscape in Liberia pertaining to forest management and forestland ownership rights, an overhaul of Liberian law particularly in respect of customary land tenure would be an essential pre-requisite to a fair and functional Liberian VPA. It is suggested that the proper structural foundations on which the substantive elements of a Liberian VPA could be built to ensure good governance, transparency, legality, participation and sustainable development, require legislation that centrally:

- provides security of tenure to communities over their customary lands;
- reforms the institutional landscape to provide a properly devolved system of forest management so as to guarantee a genuinely participatory forest governance structure from the community level up; and
- in doing so, restates the role of the FDA as technical advisor, regulator, monitor and intermediary in supporting community forest management.

Such reform would be entirely in keeping with emerging international trends and best practice.⁴⁴ There is international legal precedent in countries such as Tanzania for legislation which places communities in the driving seat for managing forest utilisation

41 List a few, or provide a complete list in an Annex.

42 FPP, 2001; FPP, 2006.

43 Constitution of the Republic of Liberia, January 1986. In particular, Articles 5, 11 and 22.

44 Wiley, 2007a.

and conservation. In a country lacking in infrastructure and administrative and human resources, community-based forest management would empower and build on vibrant customary structures, thereby providing a viable mechanism for the rural poor to share in economic development. This would address the injustices of previous laws that separated communities as well as trees from community forestlands, and would set the stage for a state-people partnership for development, in cooperation, rather than conflict.

Illegal hunting in Liberia is common, this may be directly attributed to locals being excluded from governance and management decision making.



Photo Tommy Garnett

4.

Towards a Liberian VPA

4.1 The VPA process in Liberia

The EU's 2003 Action Plan for Forest Law Enforcement, Governance and Trade (FLEGT) recognises the many negative environmental, social and economic impacts of illegal logging and aims to use the EU's consumer leverage to help combat illegal logging through cooperation with producer countries. The central practical tool used to achieve this is the Voluntary Partnership Agreement (VPA), a binding agreement between the EU and the producer country, setting out the necessary actions and commitments that both parties will take so as to ensure that only legal timber enters the European single market. In essence this consists of a licensing scheme whose terms are designed to guarantee legal timber that can be recognised as such at the port of entry into the EU. The FLEGT Action Plan also commits to provide the necessary support to improve governance and capacity building on which a workable VPA will depend. A Regulation providing the legal mandate for the negotiation of VPAs and enabling a FLEGT licensing scheme was enacted by the European Council in December 2005.⁴⁵

In December 2006, following informal discussions with the EU, the Government of Liberia made a formal expression of interest in a VPA via a letter to the European Commission Delegation in Liberia. A delegation of the European Commission visited Liberia for further discussions in respect of the FLEGT/VPA process with governmental agencies, civil society groups and the private sector in May 2007. A three day National Workshop on Forest Law Enforcement, Governance and Trade (FLEGT), Voluntary Partnership Agreements (VPA) and Forest Certification was subsequently convened in Monrovia in June 2007 with 115 participants from the full spectrum of Liberian stakeholders. The Resolution created by the workshop fully endorsed the Ministerial Declaration of the African Forest Law Enforcement and Governance (AFLEG) adopted in Yaoundé, Cameroon in 2003, in support of the European Union Forest Law Enforcement, Governance and Trade Action Plan (FLEGT), Voluntary Partnership Agreements, and Forest Certification. The Resolution also produced a number of action points for the Government of Liberia via the FDA which in summary consisted of:

- the creation of a multi-stakeholder Steering Committee on FLEGT and VPA to coordinate engagement with the European Commission, raise awareness of the FLEGT/VPA process, and engage in consultation and other preparations pursuant to discussions on a VPA, defining a role for civil society in this process;
- emphasising the need for independent and competent verification in chain of custody management; and
- the creation of a National Initiative on Forest Certification and appointment of a National Coordinator to coordinate engagement with the Forest Stewardship Council.

45 Council Regulation (EC) No 2173/2005.



Forest degradation is also being accelerated by illicit mining.

A multi-stakeholder National Steering Committee on FLEGT and VPA comprising of nineteen members has since been established with four representatives from civil society.

The next step will be to instigate formal negotiations between the Liberian government and the EU for the creation of a binding VPA. The VPA will provide a timetable for improving forest governance and putting into effect the licensing scheme. Central to the VPA are the mechanics of the Legality Assurance System which outlines the definition of legality to which standards of commercial timber must accord, supply chain control, verification of legality and the supply chain, the process of issuing FLEGT licenses, and independent monitoring of these systems by a third-party. The responsibility for overseeing the implementation of the Liberian VPA will rest on a Joint Implementation Committee (JIC) composed of representatives from both parties to the agreement. Although the VPA comes into force when officially agreed, the FLEGT licensing system will only commence when the Legality Assurance System is in place and functioning properly. Once this stage is reached it will be a requirement that all imports of timber (initially only logs and sawn-wood) from Liberia into the EU will need a FLEGT license.

In Liberia, a fully functional Legality Assurance System will depend on a firm foundation of good governance, institutional development and legislative reform. This in turn will require a great deal of support from donors for building the capacity of government and civil society, and development of enforcement and judicial structures. It is essential therefore to view the VPA as a process that will take time in a country such as Liberia,

whose society and infrastructure has only recently emerged from years of civil conflict. However, the benefits to Liberia's citizens, environment and economy, as detailed in section 4.3, would be profound and long-term.

4.2 Recommendations for a Liberian VPA

Although the recommendations contained in this section build on broad principles of good governance in forest management which are of general application, they are necessarily tailored to the unique economic, social and legal circumstances in Liberia today, so as to maximise the benefits of a VPA process to Liberia. To this end they necessarily include the essential preconditions for a workable VPA, procedural requirements for these preconditions as well as for the development of a Liberian VPA, and more substantive recommendations for the Liberian VPA itself.

The broad objectives of a successful VPA process were articulated by the Council of the European Union which concluded inter alia that the process of negotiating and implementing a VPA should:

- strengthen land tenure and access rights especially for marginalised, rural communities and indigenous peoples;
- strengthen effective participation by all stakeholders, notably of non-state actors and indigenous peoples, in policy-making and implementation;
- increase transparency in association with forest exploitation operations, including the introduction of independent monitoring; and
- reduce corruption in association with the award of forest concessions and the harvesting and trade in timber.⁴⁶

At the root of a Liberian VPA and the subsequent Legality Assurance System is a definition of legality that ensures good governance, and provides long-term control to Liberian communities as the natural custodians of Liberia's forests. It is important also that Liberia's legal and institutional framework accords with Liberian constitutional principles and socio-cultural realities, while at the same time being in line with international law and best practice. This paper makes the following recommendations for a credible and viable VPA:

Consultation and participation

- Government agencies, such as the FDA should ensure the meaningful participation of Liberian civil society in the discussions and negotiations for the VPA for example in the workings and composition of any Steering Committee set up to coordinate these negotiations. This process should aim to maximise the consultation of civil society and the involvement of community representatives. This has the dual benefit of providing an agreement over which civil society has a sense of ownership and responsibility, as well as raising awareness of the VPA process itself.

46 Council of the European Union Conclusion on Forest Law Enforcement, Governance and Trade (13 October 2003).

- National civil society should be given a pivotal role in monitoring and overseeing the implementation of the VPA itself and the Legality Assurance System it creates.
- National civil society consultation and participation needs to be institutionalised in the development of definitions of legality, as well as in other areas of law reform (in particular in developing legislative recognition of established customary law). This should also be the case in relevant policy and strategy development. An important first step would be greater proportionate involvement of civil society in the composition of the Forest Management Advisory Committee (FMAC) so as to remove any industry bias.
- It would also be worth considering strengthening the powers of oversight of FMAC. The FDA as directed by its Board is susceptible to political forces. A more politically balanced FMAC with robust powers to ensure that its advice is heeded or good reasons are given for not doing so, would be a useful check on the executive.

Legality and law reform

- In view of the problems caused by the current state of Liberian forestry law, putting forest ownership and management on a fairer statutory footing is an essential precondition for a successful VPA. A central component for law reform would be formalising security of tenure for communities through statutory recognition of collective right and title over customary forestlands, and registering these entitlements in accordance with the accepted boundaries of customary lands.
- In addition, the legal separation in the ownership of land from the ownership of trees on that land should be removed.
- Protected area status should not be dependent on land being state-owned. Legal mechanisms should allow for protected areas to be owned and managed by communities.
- Labour laws and their enforcement mechanisms should be reviewed to ensure that they properly safeguard the interests of workers employed in the forest industry.
- Fiscal measures should be structured to provide communities with control over a fair share of forest related revenue such as the valuable stumpage fee.
- To avoid laundering of timber and timber products using Liberia's FLEGT licenses and to protect the national industry, legislative provisions should be enacted to prevent illegal timber imports from other producer countries (e.g. from neighbouring countries).
- To encourage legal trade in respect of the whole Liberian timber industry, the VPA should as far as is practicable, place requirements of legality on all timber exports regardless of the country of import.
- Liberian law reform needs to accord with international legal provisions to which Liberia is signatory. In particular, the right to free, prior and informed consent for communities in the management and use of forest resources should be guaranteed in national forest management and enshrined and enforced in domestic law, policy and strategy.

Institutional development

- Devolved community-based land use planning and management should be facilitated.
 - Democratic institutional standards and procedures should be encouraged in respect of
-

community forest management committees to ensure accountability, transparency and the participation of social groups at risk of exclusion from decision-making structures such as women.

- The FDA's role as facilitator, regulator, monitor, technical advisor, and intermediary in community forest management, and especially in the negotiation of contracts between communities and commercial enterprises, should be developed once a modern community-driven forest management system has been built.
- A fair, transparent and independent system of mediation and arbitration for resolving disputes between conflicting claims of ownership should be developed so that the question as to who owns what can be fully established before commercial activities take place.

Capacity building

- Governmental capacity needs to be developed so that the administrative and infrastructure challenges required by a VPA can be met by the government and the agencies responsible for implementing the VPA. This would include capacity building for law enforcement agencies and the judiciary.
- The capacity of community structures also needs improving, with the assistance of the FDA, to ensure that forest management practices accord with the requirements of the VPA. This should be linked with the broader process of reforming local government, thereby improving community and local governance, as well as ensuring that informed decisions in respect of land-use planning are made to guarantee sustainable use of the forest resource.
- The capacity of Liberian civil society also needs building in terms of both human resources and infrastructure so that it can meaningfully participate in the preliminary discussions and negotiations for the VPA, and fulfill any role as monitor of the implementation of the VPA and its Legality Assurance System. The role of the independent monitor should be developed with capacity building of civil society groups as a key element.
- The EU, other donors, and foreign NGOs will need to provide much needed financial and non-financial assistance to build capacity in all these areas. As regards civil society capacity building, although short- and long-term funding will be needed, measures should also be taken to encourage the capacity of civil society groups to fundraise and manage their finances so as to sustain their engagement with the VPA in the longer-term.

Flexibility, timing and further certification

- To ensure that the potential scope of the VPA is as wide as possible, the VPA should contain mechanisms that will allow the VPA to be extended to other forest uses, to avoid it being limited in its application to just logs and sawn-wood and to encourage a modern multi-use approach to forest management. These uses could range from more processed timber products such as wood pulp to other uses such as NTFPs and avoided deforestation.
 - The timetable for action under the VPA must be realistic. Building the necessary capacity and infrastructure is going to take time. The aim should be to avoid the mistakes of the past, when resources have produced short-term economic growth without benefiting the country's longer-term development.
-

- Built into the VPA should be provisions that will encourage FLEG licensing to be a catalyst for considering sustainable certification schemes such as that run by the Forest Stewardship Council.

As outlined above, the NFRL 2006 provides for the enactment of a Community Rights Law. This provides an invaluable opportunity by which many of these much needed legal safeguards and institutional innovations can be instigated. The ongoing work of the Governance Commission (GC) also provides a forum within which such developments could be considered.

4.3 Benefits and pitfalls of a Liberian VPA process

A successful VPA process has the capacity to provide a range of benefits whose influence would not be restricted to those involved directly in the forestry industry. These would include the following:

- Improved governance resulting from institutional reform, a devolved forest management structure, and a more active civil society.
- A more equitable and secure basis for community forest tenure, securing meaningful control over customary resources for rural communities with the associated financial and infrastructure benefits.
- Decreasing the likelihood of timber resources perpetuating or fuelling conflict, and improving the prospects for stability, investment and economic growth.
- A system that will foster commercial incentives and governmental practices that will encourage compliance with principles of human rights and environmental protection.
- A system where the consumer properly shares responsibility for ensuring legality and good governance. This also creates consumer confidence that forest products sourced in Liberia are legal and contributing to development rather than perpetuating corrupt practices for the benefit of an elite few.
- The potential value added for Liberian forest products, especially at a time of market growth for fair trade products in the European market.

The converse pitfalls are many should the VPA be inadequate and fail to bring with it the necessary legal and institutional reform. Liberia is a country in great need of visible progress to galvanise faith in the new government of President Sirleaf and the democratic process. The temptation for Liberia to cash in on its national heritage in an attempt to encourage economic growth to fill the public purse and improve infrastructure is obvious. However, the lessons of the past and other countries are that such courses of action fail to live up to even short-term expectations, and are at the expense of instituting the necessary measures to ensure long-term development. In its recovery from fourteen years of civil conflict, and after decades of bad governance, corruption and overly liberalised trade without meaningful development, this is a future that Liberia can ill-afford.



Photo Iola Leal Risco

Refugee camp in Liberia, October 2006. The civil war in Liberia, in which more than a quarter of a million people died and during which some 1.3 million people were displaced, is a blunt example of conflicts that have been funded by looting of environmental resources.



Photo Saskia Ozinga

Liberia is home to the world's largest rubber plantation. Firestone secured a one million acre concession in 1926 with a 99 year lease.

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