

Introduction

This brief highlights the case of International Consultant Capital (ICC), the holder of FMC Area K in River Cess County. This case is not unique, although there are some peculiarities; rather it is used to illustrate the failings of the major logging companies operating in Liberia. Since Forest Management Contracts (FMCs) were allocated in 2008 and 2009 there have been several concerns including the capacity of concessionaires to manage their concessions and to meet their financial and social obligations. The Civil-Society Independent Forest Monitors (CS-IFM) outlined a number of these issues in the Social Audit conducted in 2013.¹

Due to its limited financial capacity ICC was unable to commence logging activities in the FMC Area K concession when it signed the contract with the Liberian government in September 2009. After almost 5 years of inactivity, the company sub-contracted Forest Venture Inc. (hereafter, Forest Venture) to log the concession. Forest Venture was involved in illegal logging under Private Use Permits (PUPs) that have been cancelled. Therefore, allowing Forest Venture to log in FMC Area K has implications for the rule of law in the logging industry specifically and forest governance broadly.

Background

The ICC was awarded 25-year concession for FMC Area K in September 2009 and printed into handbills on October 1, 2009. The Concession Area includes forest in Grand Gedeh, Nimba and Rivercess Counties and covers an area of 266,190 hectares.² The contract is expected to expire in September 2034.

The ICC won the bid due to financial backing from Sealord and Liberia Wood Industries (LWI). The financial due-diligence commissioned by the Government of Liberia

footnotes

- 1 CCS – IFM, NGO Coalition for Liberia, Liberia Social Audit: Assessing the forestry sector. Community benefit sharing and participation in forest governance, 2013. Available from: [http://loggingoff.info/sites/loggingoff.info/files/CS-IFM\(2013\)%20LiberiaSocialAudit.pdf](http://loggingoff.info/sites/loggingoff.info/files/CS-IFM(2013)%20LiberiaSocialAudit.pdf)
- 2 An Act to Ratify the Forest Management Contract Area 'K' in Nimba, Grand Gedeh and Rivercess Counties Between the Republic of Liberia, Represented by the Forestry Development Authority, and International Consulting Capital, October 1, 2009. Available from: <http://www.leiti.org/lr/uploads/2/1/5/6/21569928/ic122a.pdf>
- 3 Final Financial Due Diligence Report on FDA Bidders, 29 June 2009; p. 88-89.
- 4 Sustainable Development Institute, ECHO: Environment and Development Newsletter, Volume 3 No. 1, August 2009.
- 5 Global Witness, Failing to Deliver: A memorandum on systematic breaches of Liberia's forestry law, May 2010. SEE annex I of Inspection Panel Request. Available at: http://sitesources.worldbank.org/EXTINspeCTIONPANEL/Resources/LIB_Attachment_to_Request.pdf
- 6 The Special Independent Investigation Body, SIIB Report on the Issuance of Private Use Permits (PUP), December 19, 2012, p. XI. 8-9. Available from: <http://www.cental.org/SIIB%20Report%20on%20PUPs.pdf>
- 7 SGS, Chain of Custody Financial Update, June 17, 2014.
- 8 International Procurement Agency, Final Legal Due Diligence Report on FDA Bidders, 29th June 2009, p.15.
- 9 International Procurement Agency, Final Legal Due Diligence Report on FDA Bidders, 29th June 2009, p.16.
- 10 International Procurement Agency, Final Legal Due Diligence Report on FDA Bidders, 29th June 2009, p.14.
- 11 ICC Board Resolution Executed on 17th September 2009.

report raised concerns that there was no evidence of a binding agreement between ICC and Sealord, ICC and the LWI.³ The financial backer also provided information that was unverified during the due-diligence process. Sustainable Development Institute (SDI)⁴ and Global Witness⁵ re-echoed these concerns in various reports. SDI and Global Witness feared that the company would be unable to meet its financial obligations due to the insecure nature of its finances. The government ignored calls not to grant this concession and instead awarded the concession.

These concerns appear to have materialised, as although this concession was awarded to ICC in September 2009, the company failed to commence full scale logging activities and to pay its taxes due to a lack of financial capacity. In early 2014 and after persistent warnings from the FDA that the concession would be cancelled if ICC failed to commence logging activities, ICC entered into an agreement with Forest Venture for them to log the concession on ICC's behalf.

The CS-IFM made series of field visits in April and May 2014 to FMC Area K in Rivercess County to investigate reports of logging activities in the concessions. The CS-IFM team encountered Forest Venture extracting logs, scaling and transporting them to the Buchanan port. This was an immediate concern because the Special Independent Investigating Body (SIIB) when investigating the PUPs found that Forest Venture had acted fraudulently in obtaining PUPs and recommended that they be barred from logging for "*orchestrating fraudulent activities in Liberia's forest sector*".⁶

1. ICC does not possess the financial capabilities to operate FMC Area K

As at June 2014 ICC was in arrears totalling over \$8 million United States Dollars including Land Rental Fees. This was the highest amount of arrears of any logging company at the time.⁷ This is no surprise because prior to acquiring the concession there were already indicators that ICC would be unable to operate the concession, including the absence of a binding agreement with its financial backer⁸ and the financial backers provided unverifiable information regarding the status of their finances.⁹ Also, ICC transferred 92.5 per cent of its shares to Liberian Wood Industry, Inc. on February 18, 2009.¹⁰ This transfer took place before the bid but after ICC had received its pre-qualification certificate. An ICC Board Resolution executed on 17th February 2009 certified by the Notary Public on September 17th 2009 confirms this transfer.¹¹ Prior to this transfer ICC then majority shareholder Mulbah Willie owned 100% of ICC shares. As a result of this significant

Forestry Stakeholders viewing the road cut during a road rehabilitation activity by Forest Ventures. © SDI



change the company's pre-qualification certificate appears to have been invalid at the time of the bid. FDA Regulation 103-07 provides that a prequalification certificate is valid if "the facts that the bidder stated in the prequalification application have not materially changed."¹²

Questions were also raised in the due-diligence report about the relationship between ICC and another logging company Geblo Logging that won the bid for FMC Area I. The two companies were considered linked via their relationship with Liberia Wood Industries, the major shareholder of ICC at the time. Geblo Logging at the time also owned shares in Liberia Wood Industries. According to the Liberia Extractive Industries Transparency Initiative (LEITI) updated company database Mr. MacDonald Wantoe is the CEO and President of both Geblo Logging and ICC.¹³ Finally, because records presented during the due diligence indicated that Liberia Wood Industries owned the ICC equipment, there were questions whether these were the same equipment Geblo Logging claimed to have; both companies had to prove that they had capacity to operate the concession – a major indicator being access to equipment.

2. Forest Venture and ICC agreement

As indicated earlier, after warnings from the FDA that the concession agreement for FMC Area K would be cancelled because of ICC's inability to operate the concession, in February 2014 ICC contracted with Forest Venture to log the concession.¹⁴ The FDA confirmed that it is aware of and authorized Forest Venture to log the concession based on its agreement with ICC. The FDA provided copies of its letter acknowledging the partnership between ICC and Forest Venture, and the partnership agreement itself.

Regulation 104-07, Section 71(a) of the FDA Ten Core Regulations provides for the rights of company to subcontract a third party company to operate in its concession. However, unless the rights and responsibilities for the concession are actually transferred to a different company, the responsibility for all the associated financial obligations remains with the original concession holder. This means that ICC remains responsible for all the financial, social and all other obligations related to the management of FMC Area K.

Therefore, even though ICC has contracted with Forest Venture to log the concession, ICC's failure to meet its financial obligations as agreed in the concession agreement is ground for termination. The FDA is also under legal obligation to place ICC on a list of suspended Persons in line with FDA Regulation 103 - 07. The regulation states, "*The Authority shall place on the list of suspended Persons those who have defaulted on their financial obligations*

related to forest use".¹⁵ The regulation's definition of Persons includes companies and joint ventures. Finally, under the Voluntary Partnership Agreement with the EU, harvesting and exporting timber from Liberia without paying all the required taxes renders the timber illegal.¹⁶

3. Forest Venture role in PUP

The SIIB found that Forest Venture had engaged in fraudulent activities in acquiring and operating PUPs. The SIIB recommended that Forest Venture "*be permanently barred from engaging in any commercial forestry activities*"¹⁷ for these fraudulent and illegal activities. The SIIB also recommended that the Ministry of Justice further investigate and prosecute Forest Venture.¹⁸ To the contrary, Forest Venture has neither been barred nor brought before a court of law. This has allowed Forest Ventures to continue its logging operations in FMC Area K.

FDA Regulation No. 103-07 provides that to achieve sustainable commercial development of the forest, Liberia must ensure that forest operators "*possess integrity of character and respect for law*". The regulation provides that any Person "*may petition the Authority to add Persons to the list of debarred Persons or the list of suspended Persons*".¹⁹ In the case of Forest Venture, the SIIB recommended debarment and the FDA is under legal obligation to "*make a prompt and thorough investigation of the allegations in the petition*"²⁰ and publish its findings. To date, there is no evidence that the FDA has complied with this legal provision.

The full text of the Regulation 103-07 Section 24 is transcribed below to further illustrate this case.

Table 1: FDA Regulation 103-07: Section 24. Procedure for Listing

- Any Person, including the Authority, may petition the Authority to add Persons to the list of debarred Persons or the list of suspended Persons.
- The Authority shall make a prompt and thorough investigation of the allegations in the petition.
- 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.

footnotes

¹² FDA Regulation 103-07, Section 46(b)(4). Available from: <http://www.fao.org/forestry/16268-05ce3122d08147af911cd156ba603cf61.pdf>

¹³ Liberia Extractive Industries Transparency Initiative, Updated Company Data Base. Available from: <http://www.leiti.org.lk/companies.html>. Accessed: November 14, 2014.

¹⁴ CS-IFM Team Interview with ICC Production Manager, April 25, 2014.

¹⁵ FDA Regulation No. 103-07 on Bidder Qualification, Section 23(b)

¹⁶ EU and Government of Liberia, Voluntary Partnership Agreement, 2013. Principle 9 of the Legality Verification under the VPA, Indicator 9.1

Excerpts from a copy of meeting minutes between ICC and the Community on January 4, 2014. © SDI

Forest Venture logging trailer transporting logs to the ICC/Forest Venture Log Pond in Rivercess County. © SDI

Names	Town	Positions
Samuel Gbardeh	Zoryea	Chairman (CPC)
Johnson Yalaby	To-Gweah	Youth Speaker
Jackson Johnny	"	" Sec. Works
Johnson Bushah	Budin	& Debarred
James S. Fornah	Pagets Town	" "
John Henry	" "	Senior Elder "
Doris P. Wedjeh	" "	Youth rate (ATSIW)
Victor Obwoglo	" "	Chair Governor
Cesar F. Tchuef	" "	Youth
Ahmed Bokai	Sarba	Chair E.L.T. Forum



- The Authority shall allow the Persons being investigated fair opportunity to present evidence in the investigation.
- The Authority shall publish a draft summary of its findings from the investigation in an advertisement in a newspaper of general circulation.
- In that advertisement, the Authority shall invite the public to submit additional evidence bearing on the listing.
- No sooner than 60 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.
- 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.
- 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.



Community members erecting a road block along the Forest Venture/ICC logging highway in Rivercess County. © SDI

4. Responsibilities for community benefits

Regulation 104-07 requires that, unless the right of the concession has been transferred, the original concession holder must fulfil all responsibilities of the concession including the implementation of the Social Agreement.²¹ The community is unaware of the details of the partnership agreement between ICC and Forest Venture. As a result, there is confusion regarding who is responsible for meeting the obligations under the Social Agreement. Other issues included:

- The CFDC does not have a copy of the agreement between ICC and Forest Venture.
- The company attempted to enter the community's sacred forest (used for the traditional bush schools) even though they agreed in the Social Agreement that such areas were out of bounds for the company. Community members protested and physically prevented the company's road builders from bulldozing a logging road through the area.
- The company treats community members they hired poorly. There is no housing or medical facility for workers and their family as agreed in the Social Agreement.
- The ICC has not reconditioned or opened feeder roads to connect affected communities as agreed in the Social Agreement.

According to the CFDC, they lodged complaints with the FDA regarding these issues. The FDA in a letter addressed to the CS-IFM team denied receiving a formal complaint from the CFDC.²² When the FDA and the company failed to address their concerns, community members created a roadblock to prevent Forest Venture and ICC from entering the concession. On April 2, 2014, the ICC, in a meeting with community representatives including the Chairlady, Youth Leaders, Elders, the CFDC and FDA in Zoryea Town, confirmed that it is responsible for delivering the community's benefits under the Social Agreement. A representative of Forest Venture also participated in this meeting.²³ However, follow up investigations found that ICC is still not meeting its obligations as enshrined in the Social Agreement fully.

footnotes

²¹ SIIB Report (2012), Special Independent Investigating Body Report on the Issuance of Private Use Permits (PUPs), Page xi

²² ibid

²³ FDA Regulation No. 103-07 on Bidder Qualification, Section 24(a)

²⁴ FDA Regulation No. 103-07 on Bidder Qualification, Section 24(b)

²⁵ FDA Regulation 104-07 on Tender, Award, and Administration of Forest Management Contracts, Timber Sale Contracts, and Major Forest Use Permits, Section 71(a) to (f). Available from: <http://www.fao.org/forestry/16268-05ce3122d08147af911cd156ba603cf61.pdf>

²⁶ FDA Letter Addressed to the CS-IFM, dated July 30, 2014.

²⁷ The CS – IFM Team attended this meeting as observers.

Conclusions

Since ICC was awarded the concession in 2009, the company has failed to operate the concession. The company now owes about \$8 million in Land Rental Fees to the government of Liberia. The affected communities are entitled to 30 per cent of this amount. The company's failure to pay the Land Rental Fees and to meet its obligations established in the Social Agreement deprives the affected communities of their rightful benefits from logging in their area. This violates the forestry laws and regulations and the terms of the contract.

Due to its inability to operate the concession, ICC has hired Forest Venture to operate the concession on its behalf; although the company previous Private Use Permits were cancelled because they were acquired illegally. The SIIB report recommended that Forest Venture be permanently barred from operating in the forestry sector for it's fraudulent activities regarding Private Use Permits. The failure of the Government of Liberia to prosecute the company and its executives that were linked to these fraudulent activities demonstrates a lack of commitment to upholding the rule of law in the sector. This is not only bad for the image of the logging sector it has wider implications for forest governance and community rights, as have been detailed in this brief.

The affected communities are dissatisfied that ICC is failing to deliver on its responsibilities established in the Social Agreement. This situation is fuelling tension between the community and ICC and has already led to a standoff when the community blocked the roads to the company's operation areas. The failure of the FDA to address these concerns paved the way for these confrontations between the affected communities on the one hand, and ICC and Forest Venture on the other.

Recommendations

To demonstrate its commitments to the rule of law in the forestry sector, and to purge the sector of illegal operators, the FDA should:

- Enforce the law regarding taxes and other fiscal obligations of concession holders. This should include cancelling the ICC contract given its inability to pay its taxes in compliance with the law, and placing the ICC on the List of Suspended Persons as required by law.
- Promptly act on the recommendations of the SIIB by investigating Forest Venture, making public the preliminary findings, soliciting additional evidence from the public, and finalizing and publishing the final report of its investigation.

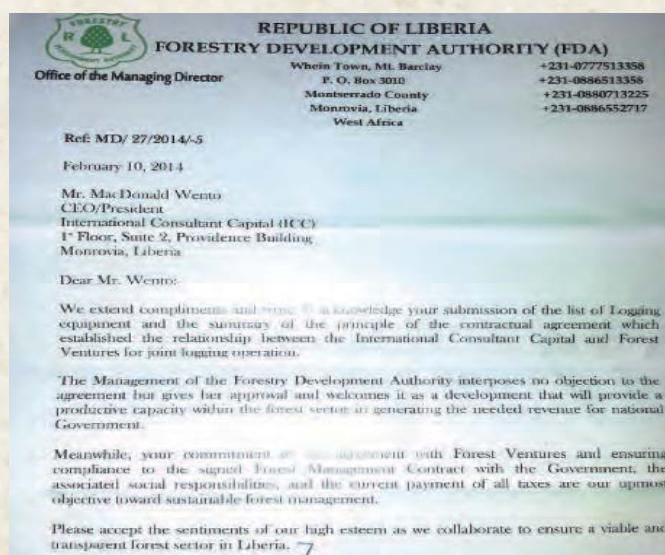
Copy of the letter of acknowledgement from FDA to ICC obtained from the FMC K CFDC Chairman. © SDI

- Compel the ICC to fulfil its obligations under the Social Agreement that they signed with the affected communities through their CFDC. Since the Social Agreement was signed on March 21st 2010 the company has failed to fulfil its obligations to the affected communities.
- Investigate the other concerns being raised by the CFDC and community members in a transparent manner, and make its findings available to the public. This will send a message to concession holders that disregard for communities rights will no longer be tolerated in the sector.

The Government of Liberia for its part should investigate and prosecute Forest Venture for engaging in the fraudulent and illegal activities outlined in the SIIB's report. The government should also prosecute other companies and individuals that were found to have engaged in illegal activities related to Private Use Permits and penalized them in accordance with the law.

The European Union should request the government to act on existing cases of illegal logging operations. Given that there is already an abundance of evidence of illegal logging under different agreements, the EU should request actions on these instances as the parties scale up implementation of the Voluntary Partnership Agreement.

Both the European Union and Government of Liberia should fast track the recruitment process for the Independent Auditor provided for in the VPA. Recruiting and deploying the Independent Auditor now will strengthen efforts to restore rule of law and to identify illegal operators. This is crucial to re-establishing rule of law in the logging sector and securing public confidence that the VPA will make a difference in forest governance.



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