



INVESTMENT IN THE LIBERIAN FOREST SECTOR

A ROAD MAP TO LEGAL FOREST OPERATIONS IN LIBERIA



JOHN WOODS
ARTHUR G. BLUNDELL
ROBERT SIMPSON

ABOUT THE AUTHORS

John Woods is Managing Director of the Forestry Development Authority of Liberia.

Arthur G. Blundell, PhD, is the former Chair of the Panel of Experts on Liberia, UN Security Council Sanctions Committee on Liberia.

Robert Simpson is a Long-Term Technical Advisor at the U.S. Forest Service Office of International Programs.

ABOUT FOREST TRENDS

Forest Trends (<http://www.forest-trends.org>) is a non-profit organization that advances sustainable forestry and forestry's contribution to community livelihoods worldwide. It aims to expand the focus of forestry beyond timber, and promotes markets for ecosystem services provided by forests such as watershed protection, biodiversity and carbon storage. Forest Trends analyzes strategic market and policy issues, catalyzes connections between forward-looking producers, communities and investors, and develops new financial tools to help markets work for conservation and people. It was created in 1999 by an international group of leaders from forest industry, environmental NGOs and investment institutions.

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FROM THE PRESIDENT OF FOREST TRENDS

Forest Trends' seeks to promote sustainable forest management and enhance the livelihoods of the communities living in and around those forests. This report is indeed a tool for advancing those goals in Liberia, and we are glad to take part in the reform process for the good of Liberia's forests and people.

A handwritten signature in black ink, appearing to read "M. B. Jenkins". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Michael Jenkins, President, Forest Trends

FROM THE MANAGING DIRECTOR OF LIBERIA'S FORESTRY DEVELOPMENT AUTHORITY



Early in 2008, industrial logging will restart in Liberia. As Managing Director of the Forestry Development Authority (FDA), I am pleased to see the progress that has been made to institute the reforms needed to ensure that logging no longer contributes to conflict in Liberia, and in fact contributes to the sustainable management of the country's natural resources. In this new era of hope in Liberia, the FDA will insist that investors honor the new laws and regulations that have been developed from this reform so that together we can help play a positive role in the redevelopment of a country that has suffered too long from war.

We have produced this briefing document to explain why the reforms were necessary and how logging will be conducted under our new law and regulations that govern the management of Liberia's forests. We are pleased with the progress that has been made since 2006 when the Government of Liberia passed a reformed Forestry Law that forms the backbone of a new legal framework for logging. Since then, the FDA has adopted new international standards of logging to increase accountability and transparency in the sector, including requirements for chain of custody timber tracking, and forest management plans.

All new forest management will be developed based the recently approved National Forest Management Strategy and the Liberian Forestry Policy, which call for the FDA to manage for the benefit of communities, conservation and commercial forestry (the "three Cs"). The FDA is working to maintain forest cover, maintain the structural and biological integrity of our forest systems and restoring forests previously over harvested, with a priority that the Liberian people reap the benefits from their natural recourses.

We welcome all investors to work with the FDA and other stakeholders in Liberia to create a healthy and vibrant forest sector which contributes to the sustainable development of the country. Please contact the FDA if you have any further questions (www.fda.gov.lr).

John Woods

Managing Director, Forestry Development Authority of Liberia

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CHAPTER 1: BACKGROUND

PAST ABUSE OF FOREST RESOURCES IN LIBERIA

West Africa is blessed with some of the richest tropical rain forest in the world. Home to rare and endangered wildlife, like chimpanzees and the endemic pygmy hippopotamus, the area is one of only 34 biodiversity hotspots worldwide.¹ Liberia has a special status within West Africa—almost half of all the forest that remains in the hotspot is found in Liberia (see map).

This forest is also the base of Liberia's timber industry. In the 1980s, the industry expanded unsustainably—producing almost three million cubic meters (m³) a year. But the industry stagnated during the civil war of the 1990s. Once Charles Taylor gained power in 1997, a resurgence in harvesting began, and timber became an important source of revenue for his government. By 2002, one million m³ was exported; almost 60% to China and 28% to the European Union — although the exact amount is unknown because reporting was so poor. Most of the logging was pre-financed by buyers, as capital is extremely scarce for loggers in Liberia.

In 2003, as civil war raged in Liberia, the U.N. Security Council sanctioned timber exports because the revenue from logging was financing the purchase of weapons used in the war and therefore fueling the regional conflict. For example, the largest company, the Oriental Timber Corporation (OTC) based in Indonesia, paid US\$1.5 million to known arms dealers. In addition, OTC paid millions into Charles Taylor's personal bank account; all for which they received tax credit. In other cases arms were traded directly for logging rights. The Taylor regime also made logging companies pay his soldiers for protection, and these soldiers then committed crimes against humanity. In one case, General Sumo, who was paid by the Maryland Wood Processing Industry, used his militia to massacre more than two hundred people in the village of Youghbor.

Unable to operate in the midst of the growing war and fearing looting of their equipment, the remaining logging companies fled Liberia in 2003 and the U.N. sanctions prevented their return once the war ended.

Figure 1: Map of West Africa's Forests



Source: Fauna & Flora International/Conservation International.

¹ Globally, hotspots represent the 34 areas with 75% of the planet's most threatened mammals, birds, and amphibians, while covering just 2.3% of the Earth's surface.

2004: THE RE-OPENING OF THE LIBERIAN FOREST SECTOR

When the war ended in 2003, the UN Security Council began to work with the Government of Liberia on forest sector reforms that would ensure that logging would no longer fuel conflict in Liberia or in the neighboring countries. The Security Council insisted on these reforms before the timber sanctions could be lifted. The first action was to review the conduct of logging companies during the Taylor period.

Review of Logging Concessions

In 2004, the Government of Liberia, assisted by the international community—especially the US Forest Service and the World Bank—examined all 70 companies that claimed the right to log in Liberia. The first finding was that for the last 20 years, previous administrations had granted overlapping concession areas, producing contracts for a total area 2.5 times greater than the area of forest. Contracts were used as a form of patronage to reward cronies, with no respect for previous ownership.

With multiple owners claiming rights to the same area of forest, a more thorough review of legal ownership was conducted. The legal right, as defined in law and contract, is a company that had:

- a business license;
- articles of incorporation;
- a valid contract signed by all appropriate parties;
- posted a performance bond; and until 2000,
- legislative ratification.

When the review committee examined each of the companies that had been logging between 1979 and 2003, not one company could meet these simple legal criteria for even one year. Thus, despite the overlapping claims, not a single company actually had the *legal* right to log. In 2006, the first Executive Order of the new government established that all of these alleged contracts were null and void, and therefore, they would not stand in the way of allocating new, legal contracts.

In addition to the lack of legality, the concession review found that the 70 logging companies had violated many environmental, labor, and forestry laws and regulations. Furthermore, they were US\$64 million in tax arrears. The bottom line was that the Taylor regime had been complicit with the logging companies in defrauding the people of Liberia, as well as fueling civil war. This reality required massive reform.

Forest Sector Reform and Lifting of the UN Sanctions

Following the recommendations of the concession review, the new government began reforming the timber sector. The Liberia Forest Initiative—a consortium of national and international agencies (www.fao.org/forestry/site/lfi)—provided technical assistance to this effort. Shortly thereafter, the FDA itself was reformed to become more efficient: staff was cut in half, salaries dramatically increased, and the remaining positions given clearly defined tasks. In June 2006, the Security Council acknowledged the reforms of the new government and lifted the sanctions on timber. Once new logging contracts are awarded in 2008, exports will be allowed to resume.

CHAPTER 2: GUIDELINES FOR NEW FOREST OPERATIONS IN LIBERIA

In September 2006, the Government of Liberia passed a reformed forestry law that codified many of the reforms (www.unep.org/dec/docs/Liberian%20forestry%20law.pdf). The FDA has made the conditions for engagement in the forest sector high because the stakes for West Africa are high. As mentioned above, logging played a major role during Liberia's 14 years of brutal war, a war that spread to surrounding countries, destabilizing the entire region. Although Liberia is currently at peace, research has shown that half of all countries recovering from civil war return to war within a decade, often because natural resources are exploited to fund conflict. The Government of Liberia does not intend to allow logging to play that role in civil unrest again.

REQUIREMENTS UNDER THE NEW LAWS

In sum and further detailed below, under the new Forestry and the recently approved National Forest Management Strategy (www.loggingoff.info/media/articles/article_526.pdf) and Liberian Forestry Policy, the FDA must now base management decisions on scientific principles and in consultation with local communities. Once areas suitable for logging are identified, the FDA must award the harvesting contracts through competitive bidding. This process will provide legal certainty. Any future concession review will recognize the sanctity of these legal contracts.

Verification of Legality

The new laws require the larger logging companies to have a plan to achieve international accepted standards for certification, such as that of the Forest Stewardship Council (www.fsc.org) or Gabon's Forest Certification Scheme (www.pefc.org), to ensure that their operations are sustainable—environmentally, socially, and economically. More immediately, the FDA has asked the European Union (EU) to reinforce the reforms by ensuring that only Liberian timber that can be verified as complying with all the new Liberian laws be imported into the EU. The EU would achieve this by requiring that all shipments be accompanied by a license issued by the FDA declaring that the timber is legal. Any unlicensed timber from Liberia would be excluded from entry into the EU. This licensing scheme would be codified under a Voluntary Partnership Agreement (VPA) with Liberia (www.ec.europa.eu/environment/forests/flegt.htm).

Land Use Planning

One of the biggest challenges facing the FDA is to manage the forests to ensure that community, conservation and commercial interests are all met. Liberians are dependent on forests for their lives and livelihoods. For example, most people rely on charcoal for their cooking fuel. Liberia is also a leader in agroforestry; it has the largest rubber plantation in the world. Furthermore, climate change has focused the world's attention on the remaining tropical rain forests as an important reservoir of carbon. These demands overlap with logging for the use of Liberia's forests.

The FDA has tried to resolve this conflict through scientific planning that accounts for the relative value of specific areas to alternative uses. This planning effort has identified areas good for logging, but that are unlikely to have conflicting claims from local communities. The government is developing a community forestry law that will clarify the management rights of these communities to have their own logging operations. Although the communities will manage their forests, they will still be responsible for complying with all the regulations, just like loggers elsewhere.

Types of Logging Contracts

The National Forestry Strategy contains two distinct types of logging contracts meant to achieve different objectives:

- 1) Forest Management Contracts (FMC): long-term contracts for large areas of up to 400,000 hectares. Small FMCs (50,000-100,000 hectares) are reserved for majority-owned (51%) Liberian companies – although they represent an opportunity for joint ventures between domestic and foreign partners. There are no restrictions on company ownership for larger FMCs; and,
- 2) Timber Sale Contracts (TSC): short-term (less than 3 years) contracts for smaller areas (less than 5,000 hectares) TSCs are focused on areas that will likely be cleared for plantations or farming, and as such, the management requirements for harvesting the timber is less onerous. Thus, TSCs require less planning and can be awarded more easily than FMCs. TSCs are also reserved for majority-owned Liberian companies.

Competitive Bidding

All contracts—both FMCs and TSCs—awarded by the GoL must be awarded on the basis of competitive bidding. The Public Procurement and Concessions Act (PPCA, www.mofliberia.org/procurement.pdf) is designed so that the process is fair and open to the public.

Pre-qualification: All companies wishing to bid on a contract must be pre-qualified in compliance with the PPCA and FDA Regulation 103-07 (www.fda.gov.lr/doc/FDA%20TEN%20CORE%20REGULATIONS_1.pdf).

Firstly, companies must not be suspended or debarred from bidding, for example, because of tax arrears or criminal convictions. Secondly, the company must demonstrate that it is incorporated; involved with logging; has a main office in Monrovia; the officers/directors have not been penalized for violating corporate- or forestry-laws, and have not declared bankruptcy; and that the company is in good standing in payment of taxes, social security, forest- and trade-fees.

If the company was involved with logging prior to 2006, then individuals with a significant interest must file a sworn statement with the Liberian Truth and Reconciliation Commission describing their involvement in the sector and they must cooperate with the government in recouping funds lost due to illegal activity. If the individual fails to cooperate, contracts may be canceled.

In addition to these criteria, pre-qualification includes an assessment of the bidder's business plan to determine whether the applicant has the capability to carry out the proposed operations. If the FMC is larger than 250,000 hectares, then the bidder must also demonstrate experience implementing sustainable forest management as recognized by an international certification system, or retain employees with such expertise.

Bidding: Pre-qualified companies are then entitled to bid on logging contracts according to the procedures outlined in FDA Regulation 104-07 and in the bid document.

For each contract area the FDA will publish a bid document that outlines the timber volumes, by species, based on inventory data, and the deadline for bid submissions. Interested parties are permitted to enter and inspect the contract area offered. Bids are based on what companies are willing to pay for an annual land rental for the contract area. (Forestry fees, including an additional stumpage and export fee, are outlined in FDA Regulation 107-07.)

Before the deadline, companies must submit to the FDA their bid submission form in a signed, notarized, and sealed envelope together with a bond worth 1/6th of the minimum annual land rental (\$2.50 per hectare per year for FMCs, \$1.25 for TSCs). If the bid is unsuccessful, the bond is returned. (Anyone found interfering with an open and fair competition—through bid rigging or price fixing, for example—is thereafter permanently prohibited from winning a contract.)

Prior to bid evaluation, an independent evaluator contracted by the FDA will determine a reserve bid, based on the contract's net timber value. The reserve bid is kept confidential until the opening of all sealed envelopes on the bid evaluation day.

The company willing to pay the highest amount for the land rental—provided it exceeds the reserve—is awarded the contract. In the event of a tie, the highest bidders will resubmit bids until one exceeds all the others. The FDA will then verify that the winner meets all the eligibility requirements, and the FDA will ask the Public Procurement and Concessions Commission to provide a letter of no objection.

For FMCs of 100,000 hectares or more, where competition is open to international companies, bids may be adjusted using a Margin of Preference for domestic bidders. The PPCA (Section 58(3)f*i*) requires bidders to be informed of the criteria in the bid document (Note: that 'domestic business' means a private sector entity or firm incorporated under the laws of the Republic of Liberia and operating in Liberia.)

Requirements of Successful Bidders

Formal Authorization: All FMCs must be signed by the President of Liberia and ratified by the Legislature, whereas TSCs need only be signed by the FDA. In order to deter speculation, the FDA must give their written approval before a company can transfer or assign a contract to another company, and the proposed company would have to meet all the same qualification criteria.

Performance Bonds: The operator must then post a performance bond worth a minimum of US\$25,000 (for TSCs), US\$150,000 (for small FMCs), US\$250,000 (for large FMCs), or half of the expected government revenue (excluding land rent) for the first year, or a maximum of US\$1 million.

Labor Requirements: The operator must give hiring preference to citizens from countries of the Economic Community of West African States (ECOWAS), and must not hire any unskilled labor from outside of ECOWAS. Security personnel must be vetted to exclude convicted violent offenders and those with credible allegations of human rights violations, crimes against humanity, or war crimes (Section 18.16 of the Forestry Law).

The operator must meet all Liberian labor laws and internationally recognized standards for worker safety.

Environmental Impact Assessment & Social Agreements: Prior to logging, the operator must comply with the pre-felling requirements under FDA Regulation 105-07. These include an environmental impact assessment (EIA) approved by the Liberian Environmental Protection Agency, and a signed social agreement with local communities that will be affected by the logging. The social agreement, as negotiated by the company and the community, 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 harvested.

Forest Management Planning: For FMCs, a forest management plan approved by the FDA must also be prepared prior to logging. The plan must include an annual operations plan and less detailed plans for each 5-year period of harvesting activities that eventually cover the entire contract area. The annual operations plan includes major activities such as road construction, as well as detailed projections of harvest volumes based on individual stand maps. Within two years, the operator must meet the requirements for processing facilities as specified in the bid document.

For TSCs, forest management plans are unnecessary, but the operator must still file annual operations plans. Likewise, they must comply with all environmental and forestry laws, in accordance with generally accepted silvicultural practices as outlined in the Forest Management Guidelines and Code of Forest Harvesting Practices, for example.

Audits & Chain-of-custody: All operators are subject to annual compliance audits and they must provide timely information, under Section 18.13 of the Forestry Law, so that each year the FDA can publish, under Section 3.4: 1) the volume available for harvest for each contract; 2) the volumes and monetary values of the harvested, processed, and exported forest products by species; 3) the fees and taxes assessed and paid; 4) nature and monetary value of benefits provided to each community; and 5) violations and penalties assessed and actually paid. Under Section 5.8, the company itself must publish twice a year all payments it makes to the government.

This reporting is facilitated by the chain-of-custody system through which all timber must be tracked (Section 13.5), and which requires accurate records from maps of harvest-trees to transport waybills to export permits (FDA Regulation 108-07). The system is run independently by SGS Group—a Swiss inspection company.

Public information: Under Section 18.15, the public has complete access to any information, provided it is not confidential business information, as narrowly defined, or will interfere with law enforcement or national security. This freedom extends to monitoring and oversight, citizens suits and civil enforcement (Section 20.10).

RESOURCES AND CONTACTS

The FDA has professional foresters that can provide further detailed information on contract bidding and management procedures. The regulations and other documents referred to in this briefing are freely available from the National Authorized Contracts Officer at the FDA: Mr. Alfred Kotio. His office is at FDA headquarters, Kappa House, Lonestar Compound, Monrovia, Liberia. His email is: al_kotio_fda@yahoo.com

Documents can also be found online at:

The FDA's website www.fda.gov.lr

National Forestry Reform Law 2006 www.unep.org/dec/docs/Liberian%20forestry%20law.pdf

Public Procurement and Concessions Act PPCA www.mofliberia.org/procurement.pdf

FDA Regulations www.fda.gov.lr/doc/FDA%20TEN%20CORE%20REGULATIONS_1.pdf

The Liberia Forest Initiative can also provide impartial assistance. At present, Decontee King is the representative. Her office is also in the FDA headquarters, and her email address is: deconteeeking@yahoo.com.

The U.S. Forest Service provides technical assistance to the FDA and other stakeholders. At present, Robert Simpson and Daniel Whyner are the in-country representatives, and their office is with USAID, at the U.S. Embassy in Monrovia, and available on e-mail at: bsimpson@usaid.gov and dwhyner@usaid.gov.