

# THE LIBERIA FOREST CONCESSION REVIEW: LESSONS FOR RESOURCE MANAGEMENT AND RESTORATION OF THE RULE OF LAW

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### Introduction

Illegal trade in 'conflict timber' as well as in 'blood diamonds' played a primary role in perpetuating lawlessness in Liberia and fueling conflict in West Africa. A recently completed review of all timber harvesting concessions – unprecedented in its comprehensiveness and its explicit links to reform – represents a critical step toward reconstitution of the rule of law and the lifting of the timber embargo imposed by the United Nations Security Council (GOL 2006:1-3). The review was conducted by a joint Liberian and international Forest Concession Review Committee (FCRC) appointed by the Liberian government. It recommended the voiding of all existing forest concessions, the implementation of a set of specified forest sector reform measures under the supervision of a similarly constituted successor Forest Reform Monitoring Committee, and a suspension of new concession grants until the reforms were instituted (FCRC 2005:38-40). The newly elected administration of Ellen Johnson Sirleaf adopted the recommendations in their entirety by executive order in one of its first official acts (GOL 2006).

### Six Lessons

This first-hand report on the Liberia Forest Concession Review, Phase III (Review), highlights six elements of the review that may prove particularly adaptable to other concession reviews and natural resource and law reform initiatives, especially in destabilised societies and failed states.

*1) Ground the review on a well-elaborated and consistently applied methodology*

**Structure and process:** The Technical Secretariat intensively focused its initial work on refining and formalising the structure and process of the review. The review's basic methodology had been developed by translating the government's terms of reference for the concession review into a matrix generally listing decision criteria based on legal requirements and the acceptable means of verification for each criterion. The Technical Secretariat developed 'individual company data sheets' to record systematically and uniformly the results of the review for each individual concession (FCRC 2005:4-5,10-25, Appendix 2, Exhibit A). The emphasis on rationalising and systematising the review prior to examining the behaviour of any concession holder prolonged the review despite enormous political pressure to conduct it precipitously,<sup>2</sup> but proved critical to making its conduct and results definitive, free from political interference and unimpeachable: to date, no legal challenges have been filed.

**Application by the Technical Secretariat:** The methodology summarised above made it possible to conduct the review as a disinterested data collection and collation exercise rather than as one based on subjective judgment. The Technical Secretariat was a five-person interdisciplinary body composed of a forester and an environmental lawyer from Liberia and their international counterparts

and a representative from the forest agency to facilitate access to official records (FCRC 2005: Appendix 1, Exhibit C).

*2) Structure the review process to mirror and reinforce its fundamental goal of restoring the rule of law*

**Rule of law and the review process:** The review was by its literal terms directed at timber harvesting concessions in the context of reforming Liberia's forest sector. In its essence, however, the review was structured from the beginning to mirror and reinforce the fundamental goal of restoring the rule of law in war-torn Liberia, where a culture of pervasive illegality and corruption had reigned. The review was conducted in a transparent manner, with its methodology widely publicised and the entire process structured to comport with sound legal and administrative process. The burden of proof was explicitly placed on each concession holder to document compliance through verified data submissions (FCRC 2005:5-6). The review went beyond due process (which technically requires that parties affected have the right to challenge decisions by adjudicatory process) by scheduling individual meetings to allow participating concession holders to make their best case to the Technical Secretariat.

**Force majeure and normalised business practices:** As expected given the prolonged upheavals Liberia has suffered, the review revealed a general lack of organised documentation. Virtually every concession holder invoked *force majeure* – the 'Act of God' defence – to explain the almost complete lack of compliance with record keeping, reporting and operational standards. Liberia technically had a continuity of government, however, so legal requirements were always in force. Even though the review was prepared to give the concession holders some latitude under the prevailing circumstances of disarray, not a single concession holder could provide evidence that it had ever invoked *force majeure* even in the form of after-the-fact file

notes or correspondence. Establishment of normal business practices thus became another outcome of the review.

**Categorisation of compliance:** It became clear early in the review that no concession could come close to meeting all requirements specified in legislation, regulations and in its concession document. To avoid rigid absolutism while still following the rule of law, the review devised a progressive three-part test conditioned on compliance with criteria in three main categories: minimum standards; threshold behaviour (corrupt, criminal and quasi-military activity); and additional requirements (financial, labour and community development obligations). If a concession holder passed the first two tests, it would also have to demonstrate 'cumulative' (not complete) compliance under the third category. Twenty-three concession holders out of a total of 70 who failed to submit any data in effect eliminated themselves and were automatically disqualified from further consideration (FCRC 2005:7-9).

The review found that not a single concession holder could meet the minimum standards: few had even a current business licence and many concessions had expired. In addition to pervasively routine non-compliance, the review confirmed the spectacular illegality associated with 'conflict timber': half of the 70 existing concessions were demonstrably associated with generating and channeling illicit funds to warlords and criminals to support civil disturbance, insurrection, usurpation of property and corrupt business practices. Even though it was a moot point, the review also evaluated the concessions under the 'cumulative' criteria for the record and found that instances of compliance in that category were rare and exceptional (FCRC 2005:7-9, Diagram 1:10).

**Forensic accounting:** As noted, financial accounting conducted by an international/local team was incorporated in the review from the beginning and was designated

'forensic' because of its investigative nature. The data reconstructed by the financial review revealed massive non-compliance with fee, tax and performance bond and capital spending requirements. The aggressive attempts by a few of those associated with the former Charles Taylor regime to obstruct the financial review's access to bank records required resort to compulsory legal process (writ of search and seizure) and exemplified residual lawlessness in Liberia (FCRC 2005:5-7, 36, Appendix 1, Exhibit G).

*3) Conduct democratised outreach to enliven civil society and build informed constituencies of support*

The outreach component included but went beyond a conventional multi-media public awareness campaign. Local outreach experts held focus group discussions and town hall meetings nationwide to elicit comments about concession holder conduct toward the local population, links to civil instability, compliance with community development obligations and steps to move forward with effective forest reform to avoid the mistakes of the past. This intensive field outreach had the broader purpose and effect of laying the foundation of public participation necessary for the long-term effectiveness of the review's reform recommendations (FCRC 2005:5,6).

*4) Use the review process to create an historical record and provide definitive documentation of illegality and mismanagement*

The review composed a compelling and at times dramatic picture of the pervasive deficiencies of the past forest concession granting process in Liberia and the compounding effects of prolonged civil disturbance and lawlessness. The forensic accounting exercise found over 64 million US dollars in tax arrears accumulated by the concession holders. The review's composite mapping of the boundaries of each concession revealed a jumble of multiple areal overlays, with a total acreage of over two and a half times the surface

forested area of Liberia allotted to forest concessions. (FCRC 2005:34-35,36.) While the review judged each concession deficient on its own merits, the irremediably chaotic picture presented also argued for the blanket cancellation of concessions. The individual and community testimony elicited during the public outreach part of the review added a first-hand credibility and immediacy to the historical record. The findings of irregular and illegal conduct by the concession holders informed the review's reform recommendations, designed to prevent repetition of such behaviour (see Lesson Six).

*5) Put a 'squeeze' on the national government through coordinated international and domestic pressure for reform*

The success of the review depended upon a coordinated 'top down/bottom up' dynamic of internationalised cooperation designed to squeeze the national government to accomplish reform through positive and negative incentives. The imposition and renewal of the UN Security Council's sanctions on Liberia timber was the underlying force that convinced the Liberian government to conduct a credible concession review after two false starts. The UN Sanctions Panel,<sup>3</sup> in turn, endorsed the Liberian government's adoption and implementation of the concession review's recommendations as a key factor in determining whether and how long sanctions should remain in force.

The international community provided positive incentives through the Liberia Forest Initiative (LFI), which represents a multilateral forest sector reform initiative carried out by a host of institutions and organisations, including the United States government, the World Bank, the European Union and Conservation International. The prospect of LFI's continued facilitation of staff and administrative funding provided not only a concrete incentive to reform but also the realistic expectation that reform could be accomplished (McAlpine *et al* 2006:85-89).

The LFI also worked reciprocally with civil society in the review process. Liberian civil society organisations precipitated the review when their representatives refused to concur in the results of the second, in-house review and called for international participation in a third broadened and transparent review. The composition of the FCRC itself reflected the 'top down/bottom up' dynamic: 10 of the 18 members represented agencies of the government that mandated the review; three seats were occupied by Liberian civil society, two seats were occupied by the UN Mission in Liberia and three by LFI partners.

*6) Link the concession review to legal and institutional reform*

The review needed to muster the lessons learned in its detailed case-by-case evaluation of each existing concession to prevent the recrudescence of the circumstances that occasioned it in the first place – overwhelming government corruption, lawlessness and civil strife. Key recommendations included implementing systems for transparent competitive bidding and a 'cradle to grave' chain of custody for commercial timber, and a comprehensive land use planning process to rationalise the forest concession allocation process.

To avoid a rush to obtain new or replacement concessions, the review recommended that the government should not grant any concessions until it had instituted a specified set of legal and institutional reform measures. The general failure to meet financial obligations and the usurpative behaviour characteristic of half of the concessions led to recommendations to institute suspension and debarment lists and to investigate past misbehaviour (FCRC 2005:38-40).

**Conclusion**

The Security Council lifted the timber sanctions based on the completion of the review and conditioned on passage of the forest sector reform legislation.<sup>4</sup> That

conditionality, combined with the suspension of forest concession grants and institution of the Forest Reform Monitoring Committee by the government, provides a realistic hope that this review will constitute the foundational beginning of sustainable forest management in Liberia and the permanent elimination of 'conflict timber' there. Beyond forest sector reform, the historical record of mismanagement, human rights abuses and financial irregularities catalogued in the review process should contribute to the ongoing efforts to restore stability based on the rule of law through the Truth and Reconciliation Commission<sup>5</sup> and through financial reform initiatives.<sup>6</sup>

The structure and methodology of the forest concession review have already been used as the model for the review of other natural resource concessions in Liberia<sup>7</sup> – and could be used as a precedent for other restabilising countries. The mimesis of the rule of law incorporated in the review has helped to demonstrate the kinds of legal and administrative requirements and transparent procedures increasingly demanded by advocates in Liberia and other countries as necessary to secure a law-based society. The review involved the UN (timber sanctions), the multilateral Liberia Forest Initiative and Liberian civil society, all working in cooperation with the Liberian government and offering a coordinated bundle of positive and negative incentives. Ultimately, the dynamics of the review provide a model of internationalised action adaptable to the reform of other sectors and the elimination of sources of conflict.

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## Endnotes

<sup>1</sup> The opinions expressed by the authors do not necessarily reflect the views of their organisations.

<sup>2</sup> The original government mandate was to complete the review in an unrealistic period of 30 days; despite its high priority and the resources devoted to it, the review took 22 months.

<sup>3</sup> S/2005/745; available at <http://daccessdds.un.org/doc/UNDOC/GEN/N05/617/93/PDF/>

N0561793.pdf?OpenElement

<sup>4</sup> S/Res/1689 (June 20, 2006).

<sup>5</sup> One of the civil society representatives on the Forest Concession Review Committee, Jerome Verdier, has been appointed chairman of the Truth and Reconciliation Commission.

<sup>6</sup> 'Governance and Economic Management Assistance Programme (GEMAP)'; available at <http://web.worldbank.org/wbsit/external/countries/africaext/liberiaextn/0,,contentmdk:20758495~menuPK:2024738~pagePK:141137~piPK:141127~theSitePK:356194,00.html>

<sup>7</sup> GEMAP.

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