

## **NMSMC Consolidated Comments on the Concession Review Draft Report**

Presented to: NMSMC

Date : December 11, 2019

### **General Observation**

1. The entire report heavily relies on the VPA legality matrix as the basis (Law) for reporting violations within the context of the forest concession review. The report should also have cited the necessarily provisions in the Liberian Laws that are applicable to the Concession review to also tie in the VPA as the laws for holding concessions in violation since this was a national review. (NGO Coalition)

SOFRECO: The ToRs – technical proposal validated during the contract negotiation was based on the VPA legality matrix only as it summarizes the Liberian Law applicable to forestry (See 2.2.4 “Development of concessions review checklist p.41).

Meanwhile a table showing the law and the related sanction can be provided in an additional seven days work for the legality expert (see excel file).

2. The report is too technical especially for readers not involved in forestry. The report should have a section with definition of key terms within the context of this report so that those who do not understand certain forestry term are clear about its meaning within the context of this report. (NGO Coalition)

SOFRECO: OK, this could be done in an additional 1 day work for the legality expert (see excel file).

3. The Report generally stated that none of the companies complied (TSCs, FMCs, or CFMAs) in line with various VPA principles, but it did not state which laws beside VPA principles that the companies were not in compliance with. The Report needs to clearly state the content of the various principles (principle 1, 2, 3 States) and indicator rather than providing the numbers in cited instants so that there is consistency in understanding the various principles and indicators. It also needs to be clear as to whether the companies were incompliance or not with relevant State law on forestry concession. (NGO Coalition)

SOFRECO: This analysis is provided in the full document of the legality review (See Chapter 6 “Legality review per contract”). No new action proposed.

4. The findings, according to the Consultant, were primarily based on desktop review and interview with stakeholders. Considering that this does have budgetary implications, the FDA is concerned

about the consultants not executing its task (ex. Field visits) in line with its Proposals. Also, the Consultant dedicated responsibilities to staff for functions outside the scope of their professional qualification (page 19). A consensus-building expert conducted the legal review.

SOFRECO: As per the technical proposal (section 2.3.2), the field review was supposed to verify the correct implementation of the companies' management documents (FMP, AOP, EIA, etc.) if these were existing and valid.

If a regulatory document (i.e. forest management plan, environmental impact assessment) cannot be presented at the FDA and / or the company, **it will then be considered as not available**. As such, its implementation will not be verified in the field.

As explained in the legality review, none of these documents were valid when existing. Indeed, **it is not possible to verify the implementation of a document when a document doesn't exist**. Nevertheless, the consultants realized several field visits to have a better understanding of the local situation:

- **ICC sawmill in Buchanan (06/08/2020);**
- **FDA regional office and port of Buchanan (06/08/2020);**
- **Alpha Logging camp site and operations site (11 and 12/08/2020)**

Two legality experts were contracted to conduct the legality review. They were supported by the consensus building expert who also has a legal background and has provided legality services for the forestry (i.e. SGS LVD).

Regular communications were held on both subjects with the FDA, such as:

- Replacement of expert:
  - o Letter of Sofreco to FDA on the 07/08/2020;
  - o Remind email on the 09/08/2020 with a reply from FDA on the 26/08/2020;
  - o Clarification email from Sofreco on the 02/09/2020, without reply from FDA.
- Suspension of field visits:
  - o Email sent from J. Laporte to P. Joekolo on the 08/08/2020;
  - o Email sent from J. Laporte to P. Joekolo on the 13/08/2020.

5. The Consultant asserted that it did not have access ("**not allowed**") to the **NMSMC** and that the NMSMC failed to cooperate with it in setting up a Technical Working Group (TWG) to work with the Consultant. However, it stated that it attended one of the NMSMC.

**Comment:** The FDA introduced the Consultant to the NMSMC; the Consultant attended one of the NMSMC meeting (July 31, 2019) and had the opportunity to interact with the NMSMC. The Consultant did not request or inquire about the TWG establishment but opted to proceed with a review and lay blame on the NMSMC.

SOFRECO: During the inception mission, the consultants were indeed introduced to the NMSMC but were requested by the FDA not to interfere in the meeting.

During the review mission, the consultants were in the FDA building during the NMSMC meeting but were not allowed to enter the meeting.

Besides, the ToRs and the technical proposal foresaw the implementation of a Technical Working Group within the NCMC to guide and supervise the consultants. This TWG has never been implemented.

Nevertheless, the consultants met individually with most of the stakeholders of the NMSMC.

## Specific Comments

1. **Reference to 4.1.1** The report indicated that the various laws (CRL/NFRL) were streamline along the VPA. The report needs to be clear as to whether the Laws are streamline along the VPA process or the VPA process streamline along the various laws within the forestry sector as should be the other way around not as reported (NGO Coalition)

SOFRECO: This clarification will be made in the revised report. The VPA matrix was streamlined in relation to the relevant laws governing the forestry sector. Therefore verifiers/indicators that were repetitive were consolidated and verifiers/indicators that were made obsolete due to changes within the national legal framework were removed to create the review checklist (see section 4.1.2 "Rationalization of the Legality Matrix" in the review report).

2. **Reference to 4.1.2** The report stated that certain criteria were redundant. The report needs to be clear as to which criteria were made redundant and what the reason for such redundancy was. (NGO Coalition)

SOFRECO: The analysis of the legality matrix is presented at section 4.1 of the review report ("Adaptation of the legality matrix"). The presentation of all redundant criteria could be explained in 2 days work by the legality expert.

As an example, the following documents (used as criteria) are requested several times amongst the legality matrix:

- Tax clearance;
- FMC Contract;
- EPA inspection report (requested 4 times);
- FDA annual compliance audit report (requested 4 times);
- Ministry of Labour Inspection report (requested 6 times).

3. **Reference 4.2.1** The report stated that all 4 CFMAs assessed did not have the relevant documents; articles of incorporation, Business registration and other which are very vital to the operation of any Authorized Forest Community in Liberia. The report needs to state whether the consultant reached out to CFMBs and NUCFMBs as well as companies both in Monrovia and on

the field and was denied access to these documents. Email and letters substantiating their claims should also be annexed in this report. (NGO Coalition)

SOFRECO: This work was conducted on the same basis as per the FMCs and TSCs. Collection of information initially made on LiberTrace (**as per the technical proposal**), then meetings held with companies and FDA.

- 4. Reference Table 12** - The report needs to clarify what N/A represent in the context of this report and clarify the grading system what each letter A-C represent in the scoring process.

SOFRECO: See explanations at Section 3.3 for A-C scoring system. N/A means Non-Applicable.

- 5. Reference Table 14** - 3.3.2 the report stated that the consultant was unable to get the list of CFDCs and CFMBs assessed. The report needs to clearly say who and when it reached out for the listing and reasons provided for not accessing the listing. What further measure(s) was instituted and documented? (NGO Coalition)

SOFRECO: Further clarification needed. Table 14 "Compiled results against principle 3", indicator 3.3.2 shows that 4/4 assessed CFMAs provided the necessary documents.

- 6. Reference Page 48.** The report stated that **FDA verified cash given out to communities by companies in the field.** The report needs to cite example of said process (names and instance) and at what level of authority did the FDA verified cash transfer between the communities and the companies. (e.g. senior, junior, middle staff). (NGO Coalition)

SOFRECO: This was recorded during the meetings held with the companies and the FDA. We have not asked for names as it doesn't meet the requirements of the VPA stating that it shall be done by bank transfer instead of cash.

- 7. Reference Pages 14 & 25,** the scope of work as in the TOR called for the **visitation of 5 FMCs, 2TSCs and 4 CFMAs.** However, page 14 of the report stated that the consultant managed visit only 1FMC and a sawmill. The consultant we believed is aware of the situation in Liberia during the raining season and bad road network. The consultant further wrote an email and verbally informed the FDA rather than having a one on one discussion for the cancellation of field visits. The report needs to state whether the email and verbal communication to the FDA was responded to or approved by the FDA to cancel the field trips. (NGO Coalition)

SOFRECO: See reply for question 4 regarding field visits. This was discussed several times verbally and by email with our FDA counterparts during the mission. A final email was sent on the 13/08/2019 to Mr. Joekolo to inform him that no other field visits would be conducted due to the rainy season. No reply was given to this email.

8. The report provided many long-term recommendations for mitigating the situation, but it did not provide any short-term solution or remediation for breach and violations or noncompliance by companies. The report should provide a short-term recommendation for immediate actions and mitigation or penalty as enshrine in relevant laws of the sector E.g. Norway agreement calls for non-performance-based agreement to be canceled. The report needs to provide long term sustainable action that would ensure enforcement, compliance, accountability, legality and transparency in the sector with punitive measure against breach of the laws and non-compliance. The report should clearly state what action in line with the relevant laws should be taken against companies who are in non-compliance or violation as cited within this report. (NGO Coalition).

SOFRECO: See reply for question 1 (additional table law regarding sanction).

A. Relative to Legal Existence and Eligibility (FDA Comments):

- i. FMC: The Consultant reviewed three FMCs for award processes, five for implementation and enforcement, and one was considered "terminated."

**Comments:** The FDA has terminated no FMC. FDA does not have the authority to terminate an FMCs except as provided by Law (provisions within the contracts or other laws). The Consultant mentioned that four of the five FMCs were compliant with the ownership declaration requirement but said that only two of the five provided shareholders listing. We are concern about how practical this conclusion is because the declaration of the four companies provides an information source for determining shareholder's list.

The Consultant conclusion could not support its findings on the eligibility of these companies. The team determined that all five companies reviewed had articles of incorporation and business certificates, declared their ownership. Only two had a shareholder lists/beneficial ownership, with one declaring the lack of prohibited persons.

SOFRECO: EJ &J's status will be updated in the revised report.

The review team found that the declarations did not include all necessary information in all instances (e.g. stakeholder listings and beneficial ownership). The pre-qualification requirements for the award of forest licenses found in FDA Regulation 103-07 requires companies to provide information to FDA of all significant individuals which includes

1. All members of the board of the corporation.  
All holders of offices created in the corporate bylaws.

2. All individuals who have effective control over at least ten percent of the voting stock of the corporation, either through direct ownership or through direct or indirect control of the voting of other stockholders.
3. All individuals authorized to withdraw funds or sign checks on the corporate bank accounts.
4. All individuals authorized to transfer ownership of corporate assets worth more than US \$10,000, including individuals authorized to pledge those assets as security.
5. All individuals presently entitled to receive, directly or indirectly, more than US \$10,000 per year from the corporation in interest payments, and all individuals to which the corporation owes, directly or indirectly, more than US \$100,000 in principal.
6. All individuals who have received in the last two years, or can reasonably be expected to receive in the coming two years, more than US \$25,000 from the corporation from sources other than current employment or sale of goods or services at fair market value.

The provision of this information allows FDA to carry-out its due diligence assessments under Regulation 103-07 ensuring that the contract holder is not barred from applying for forest licenses.

- ii. TSC: The two TSC reviewed were **compliant with all other requirements except that the two companies did not declare their ownership**. However, they had a complete shareholder listing, which is by default an ownership declaration, and one company had a notarized declaration that prohibited persons were not shareholders/owners.  
**Comment:** The FDA recognizes the gap in information and considers corrective measures.
- iii. CFMA: The community forest legal framework does not support the requirements used to measure the legal existence of Community Forests. For example, Community Assembly (CA) and Executive Committee (EC) are not initiators of community forest establishment. The Community established the CA and EC after the application for Community Forest Status. Each of the community forest reviewed has a community forest application by an interested party or persons/group from the Community. The legal framework does not include a requirement for an approved application from the CFMB because the CFMB is not in existence at the time of the application. Also, all community forest has a Community Forest Management Agreement (CFMA), and no community forest is allowed forest management rights without first signing a CFMA. All CFMAs are presented to the FDA Community Forest Department and filed. There is also no MOU or social agreement requirement(independent) under medium and small CFMAs. The Third-Party Agreement suffices when communities are not self-managing. As part of that Agreement, the Community and their third-party agent

memorialize all their contractual obligations, be it social, financial, or general operational.

**Comments:** The review framework deployed is not in sync with the community forestry legal framework. Therefore, its conclusions do not provide a clear assessment of the legal existence of community forests.

SOFRECO: The review was completed based on the VPA framework as per the technical proposal. **Principles 1 and 2, focused legal existence/recognition and forest allocation respectively were not applied to CFMAs as the criterion as the related indicators and verifiers were not supported by CRL or CRL Regulations.** Therefore, an assessment of legal existence of CFMAs was not conducted.

This separate assessment, outside of the VPA framework can be conducted within an additional five days (see excel file).

#### **9. Relative to Forest Allocation (FDA Comments)**

- a. **FMC/ TSCs:** FDA has stated the unfortunate situation of managing its records during its relocation from Monrovia to its permanent headquarter in Paynesville. While this may result in a wrong conclusion that companies did not meet the allocation requirements, it is safe to say that the **PCC provided letters of no obligation for each FMCs.** Those FMCs were all enacted into Law by the Liberian Legislature.

#### **10. Relative to Social Obligations (FDA Comments)**

- a. **FMCs/TSCs:** CFDCs establishment is automatic and based on the existence of a concession(s) in an area. All government holdings/contracts have CFDCs. All the FMCs/TSCs have CFDC, and the signing of a social agreement is a condition precedent for any concession commencing its felling operations. There is also a national union of CFDCs that is recognized by the authority. Issues raised with formal payment mechanism and increase transparency is valid and attracts our attention.
- b. Relative to CFMAs, third party contracts and not necessarily social agreements are negotiated and agreed by the communities and their partner. It is essential to note the different rights issues associated with TSC/FMC and CFMA. TSC/FMC communities are project-affected communities, while CFMA communities are owners. Social Agreement is a stand-alone document in the legal framework for TSC/FMC and is not a stand-alone requirement for CFMAs since they are owners.

**Comments:** The **Consultant assessment of TSCs/FMCs and CFMAs social obligations using the same standards has no support in the legal framework for managing community forests. The assessment does not support the Consultant conclusion that no CFMA is compliant with social responsibility.** Its assessment found that third party operators

Mandra and Blooming Green are compliant with all the requirements and that although Akewa and Sing Africa were not fully releasing funds, there was overall compliance

SOFRECO: Indeed, the consultant states that none of the CFMAs was “fully” compliant

#### 11. Relative to Forest Management (FDA comments)

- a. FMCs: The report identifies that only two concessions (FMC) have developed an SFMP, although those plans are not compliant with the Forest Management Planning Guidelines. We acknowledge that most companies have not developed an SFMP after the initial four years of operation but have continued to operate based on five-year plans. These plans provide a harvesting framework. However, **to enhance forest management, all forest harvesting must be supported or informed by an SFMP.**
- b. TSCs/CFMA: It is essential to note that the SFMP requirement, as spelled out in the Guideline on forest management planning, does not apply to community forest and TSC. The Government/FDA award TSCs license on land that should be in transition to other land uses, including agriculture. The review, however, mentioned that three of the four CFMAs had management plans but did not meet the "official requirements." While the reviewer adopted its "official requirements" for this review, the FDA is developing guidelines for Community Forestry because the peculiarities of the CFMA, makes it different from those of the CFMA.

**Comment:** The FDA is currently developing a guideline for Community Forestry. The FDA acknowledges the lack of SFMP for many FMCs and stresses the need to move on from planning for every five years, as is currently the case to a long-term planning requirement of the SFMP

#### 12. Relative to Timber Transportation and traceability (FDA Comments)

- a. The Consultant was unable to assess transportation and traceability because no company was operating during its mission. However, it concluded that no FMCs, TSCs, and CFMA in compliance because they did not make timely felling declarations. This analysis is faulty, and the team's assessment must have supported its conclusions.

SOFRECO: These conclusions were made based on the information verified on LiberTrace (Timber traceability database) and meetings with SGS and FDA. A significant amount of declarations have been also checked by SOFRECO to issue this statement.

#### 13. Relative to compliance with LEITI Recommendations (FDA Comments)

FDA implemented the recommendations on not including private property in government concessions and the procurement process for TSCs because it has not awarded any FMCs/TSCs



since 2012. Consultant needs to correct its conclusion that FDA did not implement this LEIT recommendation.

SOFRECO: As no new FMCs/TSCs were awarded since 2012, these conclusions refer to contracts awarded before this date. There have been no amendments to these forest contracts to exclude the relevant private property.

#### 14. Relative to the Consultant's General Recommendations

- i. The Consultant was to utilize two processes in conducting the Concession review. **Review Concession Agreements or forest resource licenses and Correcting illegalities identified by instituting joint collective dispute resolution mechanism or the termination of contracts in gross violation.** Despite the lapses identified in the Consultant report, its recommendations provide an excellent framework for achieving this, except that the process should not create additional bureaucracy as recommended in 7.1.3.
- ii. **The recommendations on strengthening the legal and regulatory framework should acknowledge the statement of transparency that the Government of Liberia has sent by its commission of this review.** Additionally, the TOR **tasked the Consultant with designing and implementing a dispute resolution process for noncompliant issues.** The Consultant should implement this as part of 7.3 4 (We recommend that the government of Liberia, re-states its commitment to sustainable forestry by developing and implementing an action plan for the resolution of non-compliance issues outlined within this report).

**15. (VPASU 2)** The report did not seem to sufficiently respond to the review of legality of the concession allocation process called for in the TOR's expected outcomes. The use of the VPA Legality Matrix (LM) to assess the present situation may not be enough given the need to update the LM to incorporate CMFAs, new laws and regulations among others. The VPA process has recognized this situation and is in the process of updating the LM. Regarding LM Principle 1 (Legal Existence), the report states that the "legal existence/ recognition and eligibility of contractors could not be assessed". The review team recognizes not having enough access to information, which weakens the overall review process. To strengthen the report, findings may need to be specified by contractor indicating information not found by the team so that contractors and GoL can respond accordingly. Regarding Principle 2 (Forest Allocation), the report states that most documents to be shared by FDA could not be found. **Again, the report needs to reflect what documents are missing for the contractors and GoL to respond.** The concession review seems to be pending to render its opinion if the award process is legally consistent in reference to legal framework and the PPCA, if competition requirements were met, if documents were completed by the awardees and what documents are still pending by the GoL. It may be necessary to specify the legality of the concession awards on a case by case to

address them accordingly since each contract is different.

SOFRECO: See available (“A” and “B” classification) and non-available (“C” classification) documents per company in the exhaustive report (See chapter 6 “Legality review per contract”).

**16. (VPASU 2)** The review report confirmed what is already known to most key private sector, civil society and Government stakeholders, adding little information that could be used for completing the legal review of the allocation process

**17. (VPASU 2)** The TORs do not call for a review of the Legality Matrix (LM). The review team seems to have ignored how the VPA process works in Liberia and what has been already agreed upon by stakeholders to update the LM to incorporate already known needed changes (e.g. CFMAs, new laws and regulations). The recommendations provided by the team to update the LM may need to be formally channeled through the VPA process to be considered.

SOFRECO: See section 7.2 of the Review report “Recommendations for strengthening the Legal and Regulatory Framework”

**18. (VPASU 2)** The VPA process has identified a list of documents that cannot be found through the concession allocation process. The report does not reflect on additional missing documents or processes not being followed to provide recommendations for the GoL to follow up. The report does not discuss if the existing framework for the award process is legally sound or if adjustments are needed to the existing legal framework to allow for improving transparency, competition, others needed to strengthen future awards.

SOFRECO: Recommendations on improving transparency and competition will be included in the final report.

**19. (VPASU 2)** Regarding LM Principle 3, Social Obligations, **the team findings did not indicate the progress made to establish a functioning National Benefit Sharing Trust that has received since 2015 over US\$2.3 million** from the GoL on behalf of affected forestry communities. Moreover, **the report does not clearly differentiate between the cubic meter fees being paid directly by contractors, and payments for land rental fees** paid to first the GoL and then to the NBST on behalf of the affected communities organized under 23 Community Forest Development Committees (CFDC). **Additional benefits being captured through the Social Agreements between FMC and TSC are not referred to (roads, clinics, schools, wells, employment, other).** Moreover, the report does not specify that there are **two types of social benefits: one received by CFDC through Social Agreements, and another type is received by CFMA from Third Party Operators through using Commercial Use Contracts.** Liberia has made significant inroads

respecting social benefits as compared to other African countries. Social benefit costs are a significant expense incurred by FMCs, TSC and CMFA's Third Party Operators and this is not sufficiently discussed in the report as part of the positive contributions by the concessionaires.

SOFRECO: This clarification will be included in the final report.

- 20. (VPASU 2)** The report does not make references to reviews and reports that have been conducted on LiberTrace, and what additional elements need considering to continuously improve the COC System. The conclusion that LiberTrace is a repository of documents that is “globally empty” needs to be clearly documented since this conclusion is inconsistent with other reports indicating that LiberTrace is the main repository of documents in FDA backing up the traceability and export process. Moreover, the conclusion asserting that “export licenses issued through the system (LiberTrace) are used to whitewash the wood exports from Liberia” needs to be clearly documented in the report for the GoL to verify and respond accordingly.

SOFRECO: more info will be provided in the final reports.

- 21. (VPASU 2)** The **issue of arrears and agreements reached between LRA and concession holders** is not sufficiently discussed to clarify what debt proportion has or not been negotiated for future payment.

SOFRECO: this is not sufficiently discussed as the **documents formalizing these negotiations are inexistent and / or were not provided** (several emails and meetings held with the LRA).

- 22. (VPASU 2)** The report does not discuss which of the 7 FMCs may or not complete the 25-year concession contract based on their balance of commercial forests and apparent financial situation. **There is a significant risk for the GoL that part of these concessions could be abandoned short of the 25-year contract due to insufficient commercial forest resources and or financial incapacity to implement the concession contract.** The review does not consider existing conditions that from the 7 FMCs, two (2) concessions (LTTC and AJ&J) have practically exhausted their commercial forests. **Three (3) concessions (ICC, Alpha, Atlantic) may have about 10 more years of commercial forest left. Two (2) concessions (Giblo and Euro Logging) seem to have enough commercial forests to complete the 25-year concession contract.** All these time resources are estimates by the author but **the concept of baseline forest resources to project how long and if the concession contracts can be fulfilled is not discussed in the report.**

SOFRECO: The consultant was not there to assess whether there was still potential forest resource or not but to assess the legality compliance of the companies. In any case, and even if there is no forest resource left, there is a need for legality compliance and for sound forest management.

**23. (VPASU 2)** The report does not discuss the significant differences in the allocation process between CFMAs and FMCs but rather review all concessions almost under the same framework, this despite that each have different allocation processes and laws. The Legality Matrix is still to include CFMAs, hence being insufficient to conduct a deep review through it.

SOFRECO: The assessment was conducted using the indicators and verifiers specific to each type of forest contract. The VPA framework needs to be updated to include developments in community forestry.

**24. (VPASU 2)** The difference between the length of 15-year contract for the CFMAs as base for 15-year cycle as oppose to the required 25-year cycle for commercial forestry under sustainability principles, need to be fully discussed to prevent awarding CFMAs who can become a backdoor to unsustainable logging. The shorter cycle could also make forests managed under CFMAs into conversion forests in violation of the forestry law NFRL of 2006. The risk of not achieving sustainable harvesting seems higher for CFMAs than FMCs. In Ghana, with similar forests to Liberia, a 40-year harvesting cycle is being used. These considerations may be significant in review of CFMA concessions.

**25. (VPASU 2)** Also not discussed if it is financially viable to award CFMAs that contain less than 10,000 hectares of commercial forests, and this being the case, if the award process merits a review under the existing regulations. Also not discussed is the potential land conflicts when the Land Rights Act of 2017 is implemented in reference to the Community Rights Law of 2009

SOFRECO: Agreed, although this is not part of the ToRs / proposal to review the legality of forest concession.