REPUBLIC OF LIBERIA

EUROPEAN UNION

# FOURTH AUDIT REPORT

## VOLUME 1: MAIN REPORT INCLUDING APPENDIX TO THE MAIN REPORT

Efficiency of the FLEGT licensing scheme and effectiveness of the Legality Assurance System assessed through the services of an Independent Auditor

Service contract N° 2016/382-141
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# ACRONYMS AND ABBREVIATIONS

**Date format:** Except where otherwise specified, all abbreviated dates in this report shall have, and be understood as having the following format "dd.mm.yyyy" (for day, month, and year).

| | |
|---|---|
| **A1R** | Audit 1 report |
| **A2R** | Audit 2 report |
| **A3R** | Audit 3 report |
| **A4R** | Audit 4 report |
| **B/L** | Bill of Lading |
| **BOT** | Build, Operate and Transfer |
| **C&Rs** | Conclusions and recommendations |
| **CAR** | Corrective action request |
| **CFD** | Commercial Forestry Department |
| **CFHP** | Code of Forest Harvesting Practices |
| **CFMA** | Community Forest Management Agreement |
| **Ch./Chap.** | Chapter |
| **COC** | Chain of Custody |
| **COCIS** | Chain-of-Custody Information System |
| **COCS** | Chain-of-Custody System |
| **CSOs** | Civil Society Organizations |
| **CyFD** | Community Forestry Department |
| **DBH** | Diameter (measured) at Breast Height |

| | |
|---|---|
| **DCL** | Diameter Cutting Limit |
| **DFID** | (UK) Department for International Development |
| **DMDO** | Deputy Managing Director of Operations |
| **DSA** | Daily Subsistence Allowance (a.k.a. *per diem*) |
| **EFI** | European Forest Institute, FLEGT Facility |
| **EP** | Export permit |
| **EPA** | Environmental Protection Agency |
| **ESP** | External Service Provider |
| **EU** | European Union |
| **EUD** | European Union Delegation |
| **EUTR** | EU Timber Regulation |
| **FDA** | Forestry Development Authority |
| **FLEGT** | Forest Law Enforcement Governance and Trade |
| **FMAC** | Forest Management Advisory Committee |
| **FMC** | Forest Management Contract |
| **FMPGs** | Forest Management Planning Guidelines |
| **FoIA** | Freedom of Information Act 2010 |
| **FP** | Forward Planner |
| **FSC** | Forest Stewardship Council |
| **GoL** | Government of Liberia |
| **IA** | Independent Auditor |
| **IAWG** | Independent Audit Working Group (JIC's WG on the Independent Audit) |
| **IR** | Inception report |
| **IT** | Information Technology |
| **JIC** | Joint Implementation Committee |
| **KE1** | Key expert 1 |
| **LAS** | Legality Assurance System |
| **LED** | Law Enforcement Division |
| **LEITI** | Liberia Extractive Industries Transparency Initiatives |
| **LFSP** | Liberia Forest Sector Project |
| **LIC** | Liberian Implementation Committee |
| **LLD** | Liberia Licensing Department |
| **LM** | Legality matrix |
| **LRA** | Liberian Revenue Authority |

| | |
|---|---|
| **LVD** | Legality Verification Department |
| **MACs** | Ministries, Agencies and Commissions |
| **MOF / MFDP** | Ministry of Finance / Ministry of Finance & Development Planning |
| **MOJ** | Ministry of Justice |
| **MOL** | Ministry of Labor |
| **MoU** | Memorandum of Understanding |
| **MS** | Microsoft |
| **NAD** | National Authorizing Division |
| **NAO** | National Authorizing Office |
| **NBSTB** | National Benefit Sharing Trust Board |
| **NC** | Non-conformity |
| **NFRL** | National Forest Reform Law |
| **NKE1** | Non-key expert 1 |
| **NMSMC** | National Multi-Stakeholder Monitoring Committee |
| **O&M** | Organization and Methodology |
| **PAD** | Public Affairs Division |
| **PUP** | Private Use Permit |
| **QMS** | Quality Management System |
| **SFMP** | Strategic Forest Management Plan |
| **SGS** | Société Générale de Surveillance |
| **SoA** | Schedule of Activities |
| **SOP** | Standard Operating Procedure |
| **SSH** | Short-shipped |
| **TBC** | To be confirmed / To be continued |
| **TL** | Team leader |
| **ToR** | Terms of reference |
| **TSC** | Timber Sale Contract |
| **UK** | United Kingdom |
| **VPA** | Voluntary Partnership Agreement |
| **VPASU** | VPA Support Unit |

# 1 EXECUTIVE SUMMARY

## 1.1 Introduction to this Audit 4 report

This '**Fourth Preliminary audit report'** concludes the fourth audit ("Audit 4") that was completed between October and December 2019 by the appointed **Independent auditor** (IA), including a mission in Liberia from October 21st to November 8th 2019. The objective of the Independent audit is to assess the **effectiveness of the timber Legality Assurance System (LAS)** that is being implemented in Liberia under the EU-Liberia FLEGT Voluntary Partnership Agreement (VPA) signed in 2011, reporting to the Joint Implementation Committee (JIC) of the VPA. Five main audits of this nature will be completed in total within the 3 years of the IA's mandate in Liberia, with a view to have covered most of the entire scope of the LAS by the end of the initial IA mandate.

**Current approach to the design of the audit reports**

Each new audit builds upon, and follows on from the previous one. Thus, the results of each audit should not be interpreted in isolation; they are rather meant to be reused, refined, completed and updated through the next audits.

All audit reports so far have therefore been constructed as standalone reports, with most relevant material references from the previous reports carried over to the new report. This has been thought to avoid that readers have to constantly go back to separate, previous reports for background information.

The reader can, however, find references that enable him/her to navigate through the report and find increasing levels of detail.

The IA intends to keep this approach until the Baseline review of VPA requirements has been completed, at which stage the VPA Legality matrix will likely have provided a relevant structure for the referencing of issues and the methodology will become more focused on risk-based assessments of LAS efficiency.

**New structure for this Audit 4 report (A4R)**

The downside of the above approach had been an increasingly thick report that kept growing from further additions from each new audit.

Hence the decision, as validated with the JIC's Working Group on the Independent Audit (IAWG) (21.10.19 meeting), to concentrate on the results from the Audit 4 and split the report into:

- This **Volume 1** of the Audit 4 report (A4R, Vol.1), or "Main report", for all new and updated analyses and findings from the Audit 4; and
- The **Volume 2** of this Audit 4 report (A4R, Vol.2), for reminders of all reviews already completed in previous audit reports (Audit 1 to 3 reports) of the IA, and only slightly updated or followed-up on during the Audit 4 but without significant changes to previous Conclusions & Recommendations (C&Rs).

For the IAWG:

- This would allow FDA to work separately on previously reported issues, while keeping only new C&Rs in the new report, and keeping all Issues and Risks in the IA Progress DB;
- The scope of the main report would also include a 'Review of corrective actions implemented by GoL' (as per IAWG Final Matrix, classified by Main C&R in the Audit 3 report) for follow-up during Audit 4. The IA indeed kept such review in the Volume 1 where it affected the IA's findings and C&Rs.

Based on that split, and on the IAWG's comments for Audit 4 (received on 11.10.19), several sections from the previous report structure (as per their reference in the Audit 3 report) would now be included in the separate Volume 2 of this Audit 4 report:

- 'Key recommendations from Audits 1 to 3 combined' (1.3)
- 'Reminder of Audit 1 to 3 focus and results' (1.4)
- 'Contractual framework for this audit' (i.e. the entire Section 2)
- Audit preparation (i.e. the entire Section 4), and
- 'Baseline review of VPA text' (5.1)

However, the IA has been of the view that:

- The 'General conclusions from Audit 4' (1.2) is a key part of the report which the IA considers needed to stay in this main report (A4R Vol. 1);
- Because of the many cross-references between the different sections, the numbers of the main sections (Level 1 headings and more) needed to be kept mostly unchanged.

As a result, the structure of this Volume 1 of the Audit 4 report now includes:

- This EXECUTIVE SUMMARY in Chap.1, with this 'Introduction to the report' followed by the GENERAL CONCLUSION from this Audit 4;
- In Chap.3, the IA's MAIN CONCLUSIONS AND RECOMMENDATIONS (C&Rs) to the Joint Implementation Committee (JIC), new or revised, from the Audit 4;
- In Chap.5, some parts of the IMPLEMENTATION phase of the audit cycle;
- In Chap.6, the AUDIT EVIDENCE & FINDINGS relative to new or on-going reviews, i.e. that were collected, or followed-up on from previously reported issues, during this audit, and new issues from reports or complaints;
- In Chap. 7, the archive of all PREVIOUS REVIEWS COMPLETED already in previous reports of the IA, but that were however significantly revised during

the Audit 4; and also, a copy of the entire tracking database of the key risks & issues registered so far by the IA (Chap. 7.2 - 'Progress and risks & issues tracking' Database [IA Progress DB]);

- Finally, an APPENDIX (Chap. 8), that contains the bulk of ANNEXES i.e. supplementary information to the report.

**Response to an IAWG comment (11.10.19) for Audit 4, on the Audit Report:**

The IA made sure to take the following comment into account in this report: "*The audit report should provide a complete, accurate, concise and clear record of the audit pursuant to ISO 17021-1 standards and should include the following:*

- *Audit objectives*
- *Audit scope particularly identification of the organization (the GoL institutions in the VPA) and the function of the process to be audited*
- *Identification of the audit team and the GoL institutions' staff that participated in the audit*
- *Dates and locations of the audit activities*
- *Audit criteria*
- *Audit findings and related evidence*
- *Audit conclusions*
- *A statement to the degree to which the audit criteria have been fulfilled*
- *Any unresolved diverging opinions between the audit team and GoL institutions*
- *There is always a risk that the sampling is not representative – some rationale behind the sampling approach taken would be useful.*"

**Taking all FDA/IAWG comments into account**

More generally, details of the review of FDA/IAWG responses as per the 'FINAL MATRIX OF THE VPA LEGALITY ASSURANCE SYSTEM_08152019.pdf' (as submitted to the IA on 28.08.2019 as part of the 'IAWG Final Response to A3') have been presented where each relevant issue is discussed in detail.

Regarding the 'IAWG comments on the Audit 3 report, sent to the IA on 07.05.2019, both the IAWG comment and the IA response were inserted in the relevant section of the Audit 3/4 reports for consideration.

Previous comments ("other technical comments and responses from FDA on specific issues raised in the A3R") sent to the IA on 07.05.2019 (as per Paragraph 3.3 of the IAWG comments on the Audit 3 report) were later superseded by the "final response".

The NAO letter of 07.05.2019 to the IA also contained a Section 3. 'COMMENTS ON AUDIT 3 FINDINGS/CONCLUSIONS' to which the IA responded on 13.09.2019 ('3rd set of responses').

All FDA/IAWG comments on the Audit 3 Report received previously on 05.05.2019 through the NAO and the IA's responses were incorporated into this Audit 4 report[1].

**Focus of Audit 4**

The main points of focus for this Audit 4 have been:

[1] In A3R Chapters 3.2, 6.1.9.1, 6.4.11, 7.3.7.3, 7.3.11.3 and 7.3.15 for further integration.

- As agreed with the IAWG, the high risks, particularly on those components of the LAS related to the export permit process and the risks and opportunities for GoL agencies for the eventual issuance of FLEGT licenses;
- To follow up from previously raised issues, where clarification or further research was needed or new developments occurred, including a review of corrective actions implemented by GoL (based on the 'IAWG Final Matrix', classified by Main C&Rs in the Audit 3 report);
- To otherwise continue exploring the effective and efficient LAS implementation by the responsible MACs; and
- Time permitting, to continue the Baseline review into VPA annexes.

**Methods used for this Audit 4**

Like for the first three audits of their kind in Liberia, the IA combined different types of activities:

1. Very limited inputs, this time, to an on-going '**Baseline review'** of the legislative, institutional and operative frameworks that are being implemented in Liberia in relation with the LAS (a top-down review of the VPA commitments and their level of implementation[2]);

2. **Field audits** of the effectiveness of elements of the LAS, as observed on the ground;

3. A review of the **'Current issuance of Export permits'**, a process that prefigures the future issuance of 'FLEGT Licenses' (once the VPA will be declared operational) and captures the current state of verification of timber exports from Liberia against legal requirements, from forest to port;

4. A '**Follow-up on previously reported issues'** (from, and since the previous audits); and

5. A review of new issues from **new reports or complaints that reached the IA.**

All these activities resumed and continued on, from where the Audit 3 had left off, having regard to the agreed focus. The **preliminary findings** from the Audits 1 to 3 were **followed upon** where necessary, and new findings added from this Audit 4.

**Institutional setting of the Liberia LAS**

The Independent audit takes into account the institutional set-up being implemented in the framework of the VPA, for verification of the legality of timber produced in Liberia, and for licensing of timber exported to the EU, as the below diagram describes (Figure 1).

In addition, the structure of the complete LAS includes the Independent Audit component. The next diagram below (Figure 2) puts the scope and activities of Independent auditing (referred to as "Independent monitoring" in this diagram) more into context. It shows the different levels of intervention of the Independent auditor within the FLEGT LAS.

[2] Down to the VPA Annex II, Section 8 and into its Appendix A, including Sections 1, 2, 4, and 5.

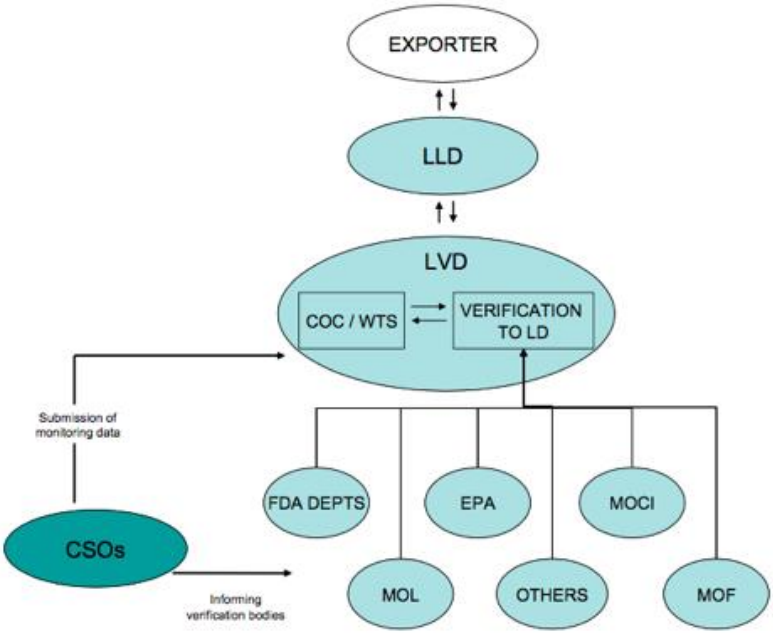


***Figure 1: Institutional set-up for verification and licensing*** *(source: Liberia VPA)*

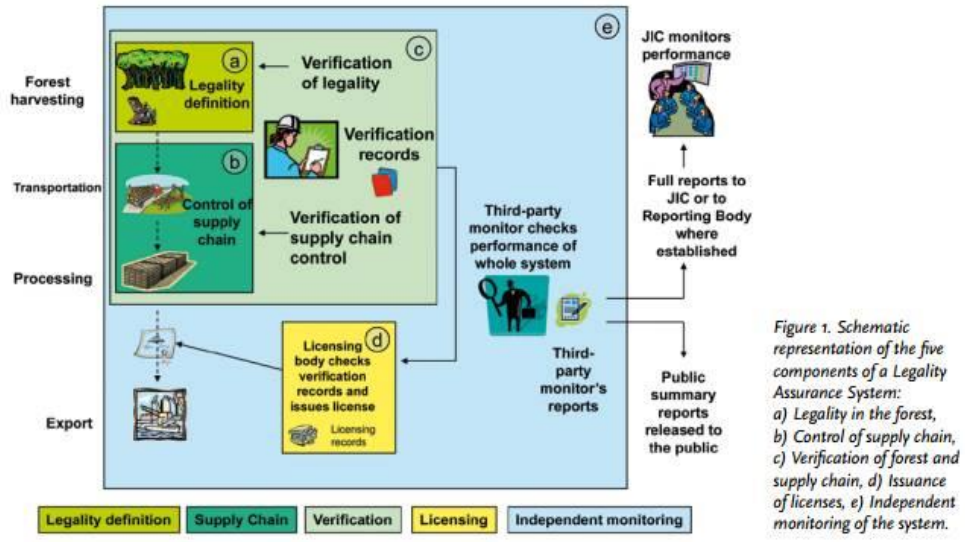


***Figure 2: The five components of a Legality Assurance System***
*(Source: FLEGT Briefing notes 7: Guidelines for independent monitoring, EU, Series 2007)*

**Coverage of the Liberia LAS by the Independent Audit, to date**

The table below draws up a more detailed mapping of the LAS and shows what the Independent Audit has so far covered, what it is now looking into, and yet unexplored territories of the LAS.

***Table 1: Coverage of the Liberia LAS by the Independent Audit, to date***

| *Audit no.* | *A1* | *A2* | *A3* | *A4* | *A5* |
|---|---|---|---|---|---|
| Baseline review of the VPA – Main body, 31 Articles | √ | | | | |
| Baseline review of the VPA – Annex I | √ | | | | |
| Baseline review of the VPA – Annex II, 1-4 | - | √ | | | |
| Baseline review of the VPA – Annex II, 5-8 | - | - | √ | | |
| Baseline review of the VPA – Annex II, App. A1,2,4,5 | - | - | √ | | |
| Baseline review of the VPA – Annex II, App. A3,B | - | - | - | | |
| Baseline review of the VPA – Annexes/ Ann. III-X | - | - | - | | |
| Audit of FDA Departments: Commercial Forestry Dept. | √ | √ | √ | √ | |
| Audit of FDA Departments: Legality Verification Dept. | √ | √ | √ | √ | |
| Audit of FDA's COCIS (LiberTrace) | √ | √ | √ | √ | |
| Audit of FDA Departments: Law Enforcement Division | √ | - | √ | √ | |
| Audit of FDA Departments: Public Affairs Division | √ | - | √ | √ | |
| Audit of FDA Departments: Community Forestry Dept. | - | - | √ | - | |
| Audit of FDA Departments: Finance Division | - | - | √ | - | |
| Audit of other MACs: Environmental Protection Agency | - | - | √ | - | |
| Audit of other GoL MACs: Ministry of Labor | - | - | √ | - | |
| Audit of other GoL MACs: Ministry of Finance & DP | - | - | √ | - | |
| Field audit of FMCs | √ | - | - | - | |
| Field audit of TSCs | - | - | - | √ | |
| Field audit of CFMAs | - | √ | - | √ | |
| Review of the issuance of Export permits | √ | √ | √ | √ | |

## 1.2 General conclusion from Audit 4

The **focus** of the 4th main audit conducted by SOFRECO, as part its current mandate as Independent Auditor (IA) for the EU-Liberia VPA, was agreed in advance with the JIC's Working Group on the IA (IAWG). This also included (ii) **responding to comments** from FDA/IAWG to the IA's Audit 3 report and (iii) splitting the audit report in **two separate volumes** (new Audit 4 findings and

updates in this Volume 1, vs. background material and useful archives from the previous audits compiled in the Volume 2, both with the same thematic structure).

There are **different ways to navigate through this main report (Vol.1)**, to see a panorama of all the topics reviewed and issues raised, and/or to pick up a particular topic or issue:

- From this General conclusion (Summary table below), or from the Table of contents, go to the Main Conclusions & Recommendations (Chapter 3);
- From the Main Conclusions & Recommendations, use the references to relevant detailed sections in the report (Vol.1/Vol.2). References to related 'Risks & Issues' registered by the IA are also provided;
- Or, from the cross-referenced Summary table below, or from the Table of contents, go to Chap. 7.2 and see all the issues and risks raised by the IA in a single table (**'**Risks & Issues tracking' Database), which also provides references to the related sections back into the reports;
- Chap. 7.1 in the Vol.2 provides a listing of the relevant VPA requirements being systematically reviewed. The IA keeps the details of the review for internal use.

What is the "**big picture**" that comes out from this Audit #4?

By now, since its inception in March 2017, the Independent audit has already covered a fairly **comprehensive scope** of the Liberia LAS. The "big picture" can be figured out from the list of issues.

Clearly, the list of **new and unresolved "previous" issues keeps growing** as the IA explores new scope. The IA is also attentive to feedback received on previous IA reports, from the JIC (in JIC Aide-memoires or through the IAWG) or from follow-up with auditees. The fact is, there are very few cases where information of **corrective measures** provided to the IA has led the IA to close or downgrade a risk or an issue.

The situation is looking more uncertain than before where SGS has (totally or partially) handed over systems, procedures, trained staff, equipment and functions to the FDA/LVD. Whether this is due to persisting weaknesses of the receiving institution or to constraints and limitations on the part of SGS, there is some incompleteness in the **handover process** that needs to be properly addressed.

Vis-à-vis maintaining the Chain-of-Custody System (COCS)' integrity and monitoring Export Permit issuance, SGS has not always been in a position to play a fully independent third-party role, however the situation is at risk of further deteriorating with the withdrawal of SGS.

The **Traceability** and **Fiscality** pillars are well supported by a robust CoC Information System (COCIS) called **LiberTrace**, on the (critical) condition that it continues to be carefully managed, supported and maintained. It is the **Legality** verification pillar - both in documents and in the field – that remains the weak point of the LAS.

As a result, the **compliance and enforcement gaps** towards the minimum requirements ("**Current regime**") for the issuance of Export Permits, as previously or newly observed, remain significant. Other **transparency, communication and accountability deficits** tend to dissimulate the real situation. And the way further

ahead, to reach *full* compliance with all the requirements of the VPA **Legality Matrix** for FLEGT Licensing, still looks very steep, if at all achievable. The IA has recommended consideration for **more realistic targets** and careful stepwise **enforcement plans** to close the gaps.

"**Low-hanging fruits**" for progress certainly include (i) clearer definitions and assignments of roles and responsibilities for the different FDA operational departments and other MACs involved in implementing all LM Verifiers; with (ii) accurate procedures and work instructions, checklists and report templates as necessary to work from and facilitate (internal/ external) monitoring and evaluation; and with (iii) proper training and adequate resources.

But important **structural adaptations** of the LAS verification and institutional framework are also recommended.

Following the handover and the end of the capacity-building program implemented by SGS, it will be critically important that the long-term technical assistance program (VPA-SU 2) provides **comprehensive support** over the scope of the LAS.

Investigations are still ongoing following the new field audits. However, **containerized exports** are raising new issues: no relevant SOPs for inspection by LVD, manual records vulnerable to errors and forging, and many of them not available in LiberTrace, no further checks before shipment, no reconciliation meeting with other MACs, no possible reconciliation with other documents, many necessary evolutions of LiberTrace, unclear control of "shortships", low security level regarding the inspection process, integrity of the COCS, and integrity of the decision-making chain leading to EP issuance, etc. Many anomalies were also found during the field audit of the **TSC A2 area**, raising questions about the massive illegal operation and likely possibilities to circumvent the COCS. It has also been asked whether the **Liberian Revenue Authority** (LRA) could not do more to monitor the payment of all forestry fees and manage late payments.

The IA submits its reports to the JIC. The JIC, through the IAWG and the JIC meetings, shares the results with the key VPA implementing partners and stakeholders. It is then up to each concerned entity or unit to proactively take ownership of issues raised and to propose corrective actions. But the issues raised are multiple and diverse and cannot be addressed by anyone entity alone. The IA also recommends some division of the workload of following-up from the IA's report between different groups. The IA may not be involved in the design and implementation of the corrective actions. It cannot be expected from the IA to prioritize issues, prepare action plans, assign responsibilities or set deadlines.

The next, **fifth and last Independent audit of the Liberia LAS** under the current contract is now due in Liberia towards the end of 2020, subject to the formal extension of the SOFRECO Contract. The same methods will again be used, and activities will resume from where the fourth audit left off, with an attempt to have covered most of the scope of the LAS, and while the detailed scope and schedule will again be discussed with the IAWG.

**Summary table**

The following table cross-references the main **Conclusions & Recommendations** (C&Rs) presented in Chap. 3, with the main (high and medium) **Risks and Issues** compiled in the IA Progress DB presented in Chap. 7.2, **by area of the LAS**:

***Table 2: Main Conclusions & Recommendations and Risks & Issues, by area of the LAS***

| *Area of the VPA/LAS* | *Main C&R* | *Risk/Issue* | *Ref.* |
|---|---|---|---|
| **LAS implementation framework** | | | |
| Legal and regulatory framework | 3.1 | Revised LVD Procedures not formally approved | HII 11 |
| Legal and regulatory framework | 3.1 | Slow development of new regulations | HII 13 |
| Legal and regulatory framework | 3.1 | FIDERA law risks affecting public revenue, contract compliance | HR 1 |
| Legal and regulatory framework | 3.1 | Forest governance challenges from the Land Rights and Local Government Acts | MR 4, MR 5 |
| Current relevance of the Legality matrix | 3.1, 3.3 | Legality matrix needs to be updated and reviewed | HII 2 |
| Minimum cutting diameters | 3.2 | Administrative DCLs missing in regulations; Management Guidelines risk not being applied | HII 33 |
| Participatory forest governance in Liberia | 3.4 | Forest Management Advisory Committee currently weak | HII 12 |
| Institutional setting for VPA implementation | 3.5 | Conflicts of interest b/w key roles of LVD/LLD and within FDA | HII 8 |
| LAS Verification Framework | 3.5 | Confusion regarding different levels in the LAS Verification Framework | MII 18 |
| LAS Verification Framework | 3.5 | Level 2 roles entrusted to LVD (otherwise a Level 3 function) creating issues | MII 19 |
| Operator's compliance with Legality matrix requirements | 3.6 | Current log exports would not allow FLEGT Licenses issued | HII 4 |
| Management of non-conformances under the VPA | 3.7 | Full compliance with all LM requirements not a feasible 'SMART' goal | HR 3 |
| Timber products subjected to the LAS | 3.30 | Timber products in VPA Ann. I not currently in the COCS | HII 31 |
| **Implementation of the role of Government** | | | |
| Financing of the FDA | 3.8 | Inability of FDA and key depts. to operate as per the LM, due to lack and late release of funds | HII 29 |
| FDA approval of pre-felling requirements | 3.9 | Annual Operation Plan (AOP) approved after felling took place | HII 1 |
| | 3.9 | CFMA management plan approved based on a 15-year cutting cycle | HII 17 |
| | 3.9 | Lack of: AOP report template and of procedures for approval | MII 8 |
| | 3.9 | Lack of: Compartment report template, approval procedures | MII 9 |
| | 3.9 | Regulatory steps before being allowed to harvest not followed | HII 7 |
| | 3.9 | Concession reviews may find contracts non-compliant | HR 5 |
| Field inspections of post-felling requirements (CFD) | 3.10 | CFD not fulfilling day-to-day control responsibilities | HII 6 |

| | | | |
|---|---|---|---|
| | 3.10 | Financial and other obligations from Social Agreement not met | HII 9 |
| | 3.10 | Minimum diameters not correctly enforced | HII 33 |
| | 3.10 | Field staff lacking resources, independence, support | HR 4 |
| CFD Environmental Impact Assessment Division (EIAD) | 3.11 | Unclear responsibilities vs. EPA, possible overlaps and loopholes | HII 26 |
| | 3.11 | Lack of: procedures, checklists, templates, training, resources | MII 10 |
| | 3.11 | Lack of: clear allocation in LM and of procedures for CFD/ EIAD? *wrt* water courses | MII 11 |
| Community Forestry Department (CyFD) of FDA | 3.12 | No procedures for prior informed consent to FMCs and TSCs | HII 27 |
| | 3.12 | Insufficient budget to operate; other issues contingent | HII 28 |
| | 3.12 | Unclear which FDA Dept. enforces social obligations: CyFD or CFD | MII 12 |
| Law Enforcement Division (LED) of FDA | 3.13 | Unclear definition of roles; very limited participation in law enforcement; few ACARs, inconsistently prepared | HII 21 |
| | 3.13 | Unclear assignment of roles and ineffective implementation; enforcement chain dysfunctional | HII 22 |
| Public Affairs Division (PAD) of FDA | 3.14 | FDA website not fulfilling its key communication role in support of LAS, NBSTB implementation | HII 24 |
| Environmental Protection Agency (EPA) | 3.15 | Unclear roles under P5; lack of resources, procedures, training | HII 36 |
| Ministry of Labor (MoL) | 3.16 | Lack of: resources, procedures, training to operate under P8 | HII 37 |
| Manual of CoC procedures for LVD staffs | 3.17 | Problems relative to accuracy &/or level of implementation in the field | HII 15 |
| | 3.17 | Confusing SOP numbering (vs. Chapters, Operators, old set) | MII 16 |
| Documentation used by the Auditing section of LVD | 3.18 | Documentation and training of LVD audit team needs updating | MII 2 |
| LVD auditor training & qualifications | 3.19 | Gaps in procedures in respect of training & qualifications and in related records | HII 16 |
| LVD auditing against the CFHP Checklist | 3.20 | LVD audit team not conducting enough field audits | HII 20 |
| Functionality of COCIS software (LiberTrace) | 3.21 | Functionality issues with the auditing section in LiberTrace | MII 3 |
| CoC inspections by the LVD | 3.22 | CoC data quality issues in case of copy-paste of operators' data | MR 6 |
| Data management by LVD in Libertrace | 3.23 | Information missing, status not accurately qualified | MII 4 |
| | 3.23 | Felling only declared upon export: COCS only retrospective, stumpage delayed; abandoned logs possibly not declared | MII 14 |
| | 3.23 | Late supply of documents by Operators before loading | MII 15 |

| | | | |
|---|---|---|---|
| | 3.23 | Risk of logs circulating, and processed or smuggled out undeclared | HR 6 |
| Data sharing with CSOs / communities | 3.24 | LiberTrace not supporting Benefit sharing with communities | HII 30 |
| | 3.24 | CSOs not providing monitoring data on operators' compliance | MII 13 |
| Review of current Export Permit issuance | 3.25 | Inconsistent enforcement of LM requirements for Export Permit | HII 3 |
| | 3.25 | Log exports are receiving EPs; but do not comply with requirements | HII 18 |
| | 3.25 | Missing concession documents against legal requirements for export | HII 25 |
| | 3.25 | Export permits being issued outside LiberTrace; no register | HII 32 |
| Enforcement of Legality matrix requirements | 3.26 | Inconsistent enforcement of LM requirements for export and else | HII 3 |
| Efficiency of border control | 3.27 | Risk of illegal loading of ships ashore e.g. Harper (potential transshipment at sea) | MR 2 |
| | 3.27 | Risk of smuggling through unmanned border-crossings | MR 3 |
| Reporting, enforcement, and publication | 3.28 | Few sanctions being imposed for illegalities; none published | HII 5 |
| **Communication and transparency** | 3.29 | Liberia suspended from EITI, unable to implement LM Indicators 11.2-3 | HII 34 |
| | 3.29 | No JIC Annual reports 2015 - 2019; LVD monthly reports no longer published | MII 5 |
| **Continued external support to LAS implementation** | 3.1 | Question now is whether VPA-SU2 covers the entire LM scope | HII 14 |
| | 3.31 | Uncertain status of handover from SGS to GoL/FDA/LVD | HR 8 |
| **Implementation of the Independent Audit of the Liberia LAS** | 3.32 | Failure by VPA implementation partners to respond to IA's information requests | HII 19 |
| | 3.32 | IA untruthfully quoted and without clear references | HII 35 |

## 1.3 Reminder of Audit 1 to 3 focus and results

As agreed with the IAWG, this section derived from the previous report structure has now been tentatively moved to the separate Volume 2 of this Audit 4 report.

## 1.4 Key recommendations from Audits 1 to 3, combined

As agreed with the IAWG, this section derived from the previous report structure has now been tentatively moved to the separate Volume 2 of this Audit 4 report.

# 2 CONTRACTUAL FRAMEWORK FOR THIS AUDIT REPORT

This section from the previous report structure can now be found in the separate Volume 2 of this Audit 4 report.

# 3 MAIN CONCLUSIONS AND RECOMMENDATIONS FROM AUDIT 4 (AND FOLLOW-UP ON AUDIT 3)

The main conclusions and recommendations (C&Rs) from Audit 4 in this chapter are either new C&Rs, or existing C&Rs that have been updated from the previous audit report. In any case, all these C&Rs are consistent with the 'Progress and risks & issues tracking' Database [IA Progress DB] provided as Section 7.2 to this report.

New C&Rs were summarized from Chapters 6.1 to 6.3 (new and on-going reviews) and 6.5 (new issues from reports or complaints), while existing C&Rs were updated from previous reviews followed-up on in 6.4 and in Chap. 7.3 to 7.5 in the previous Audit 3 report.

Each heading refers to an element of the LAS that the IA has reviewed to assess the efficiency of its implementation. The IA has opted for headings that do not contain or describe: the IA's work, the finding (risk or issue) itself, the conclusion, or a recommendation. These main C&Rs will be increasingly presented in a sequential order that reflect the structure of the LAS.

## 3.1 Legal and regulatory framework relative to LAS implementation

Reference in this audit report, Vol.1: 6.4.1.1 for HII 13), 7.3.5.3 (for HR 1); in Vol.2: 7.3.7 (for HII 2), 7.3.6.8 (for HII 11), 7.3.11.1 (for HII 14).

***Main conclusions***

The Legality Assurance System (LAS) of the VPA, with its current Legality definition (LD) being a transposition of Liberian law as of 2011, provided the bases of a legal and regulatory framework for verification of legality.

Since the VPA was signed, a range of procedures, guidelines, guidance and checklists have been developed to support practical implementation of the LAS and promote effective enforcement of forest law in Liberia.

Progress is also being made to complement existing legislation with new laws and regulations, especially with regards to community forestry and conservation.

Yet, **imperfections in Liberia's laws and regulations** still remain to date, and some **regulations are still missing**. What's more, amendments and **new requirements from new regulations enforced after 2011 are not yet transposed into the Legality Definition of the VPA**: the IA understands this has been the case for CFMAs (Community Rights Regulations) and Confiscated Timber (both now adopted in 2017). This links to the ISSUE referenced HII 2 in the IA Progress DB ('Legality matrix needs to be updated and reviewed').

The IA is now aware of progress being made regarding CFMAs: new 'Committee on the Inclusion of the CFMAs into the VPA's Legality Matrix' formed by the 7th JIC, to make sure that relevant regulations and guidelines (including the 'Nine steps Handbook') are coherent with the new Liberia Land Rights Act and are comprehensive (in the case of the draft Compliance Procedures'). A template for Commercial Use Contracts (CUC) was also being reviewed by the FDA. Meanwhile, the JIC made it clear that commercial timber from CFMAs should still comply with the applicable laws, which includes entering the COCS. (See 6.1.1.10)

Provisions exist in the VPA to **update the Legality Definition and** its annex, **the Legality matrix (LM)** that consists in a set of Principles, Indicators, Verifiers, and Verification Guidance endorsed by the stakeholders in 2011. The JIC as a body may lawfully amend all annexes of the VPA.

All these reasons call for an update the LM. There is an urgent need for it that is inherent to the definition of the LM and the way it was developed.

For these and other reasons, the need to not only *update* but to also *review* the Legality matrix, along with its underlying regulations and institutional arrangements, is a broader conclusion that the IA is drawing separately in a next section.

A number of other risks and issues have however been registered in the IA's 'Progress, risks & issues tracking' Database (IA Progress DB) in relation to:

- The **slow development of new regulations** hampering their application to the LAS, even if some recent progress has been registered, despite the expectation that Liberia would have finalized necessary law reforms by 2013 (and updated the Legality definition of the VPA to reflect these amendments), even if some recent progress has been registered (HII 13) (See 6.4.1.1, 6.4.1.2);
- Likely **loopholes in the LAS implementation process** because of the division of scope between the respective work plans of the two main external support service providers, SGS (LVD) and DAI (VPASU) up to September 2018 (HII 14), a situation that may be evolving with the next tranche VPASU-2 in place since May 2019 (again with DAI);
- The **revised LVD Procedures not being formally approved** as legally binding on forest stakeholders on the basis of public consultation and FDA Board approval of any updated version (HII 11);

- **Enactment of the new law** (the 'Forest Industrial Development & Employment Regime Act' - FIDERA) in October 2017 by which the Government of Liberia deferred the payment of outstanding bid premium owed by holders of forest management contracts. The passing of the law raised questions about enforcement of fiscal provision of the NFRL, contract compliance, and community rights to such taxes. Public forest revenue risked being written off as a result. What's more, the law was passed without consultations, with civil society, communities and even the FDA, which was also regarded as a serious flaw in the development process of new legislation (HR 1).

  Update from the 6th JIC (June 2018): The FDA, together with other government institutions, was committed to enquiring about its origin and to revisiting it based on proper stakeholder consultations. Logging companies are still paying Area Fees' arrears through a payment arrangement with LRA and FDA.

  Update from the 7th JIC (Feb. 2019): The FIDERA expires in October 2020. FDA and LRA agreed that there is a need to review the Act and decide whether there is a need for a repeal or an amendment. (See 7.3.5.3, Vol.2)

The also new Land Rights and Local Government Acts (See 7.3.5.10, Vol.2) created new potential uncertainties or risks for efficient LAS implementation:

- Under the new Land Rights Act, land is now presumed to be customary, no longer Government land. Only CFMA can be awarded over community land. The communities are primarily responsible for community forest management and for passing commercial use contracts with logging operators.
- *Existing forest concessions* located on newly recognized customary land will remain valid, but there is likely not to be any more Government land that would have sufficient timber for allocating *new concessions* (FMCs, TSCs).
- The impact on the management of forestland and resources in Liberia is likely to be significant, in comparison with the concession model, in terms of capacity (to manage the forests), areas and volumes (much smaller), duration (reduced cutting cycles already observed) and requirements (management plans possibly simplified).
- The governance challenge created by CFMAs is publicly recognized by the VPA partners, that something similar to the previous PUP scandal could happen again if CFMAs are not properly regulated and monitored and logging companies can benefit from lower regulation and taxation.
- The coupling with the Local Government Act could imply further governance challenges: local governments will now collect the fees from issuing annual business licenses and permits, including for chainsaw milling, and the central government shall transfer to county governments the annual contributions from concessions, which should imply fewer resources for the national budget. It also creates uncertainty about the appropriate local use of these government revenues.

**is this happening?**

***Main recommendations for consideration by the JIC:***

- Maintain or increase efforts to finalize the necessary law reforms to support the VPA implementation process;

- Address any remaining loopholes in the coverage of the LAS implementation process by external support service providers;
- Ensure updated versions of the LVD Procedures are officially approved as binding on private operators;
- Consider reviewing and, if necessary, challenging the 'Forest Industrial Development & Employment Regime Act' law to reduce its potentially negative impacts, before it expires in October 2020, and not renewing it anyway;
- Share an impact assessment of the two new laws (Land Rights and Local Government Acts) with the stakeholders and assess the need to design an adaptation plan to minimize any negative impacts.

Associated **ISSUES** in the IA Progress Database: ref. **HII 2, HII 11, HII 13, HII 14**.

Associated **RISK** in the IA Progress Database: ref. **HR 1**.

## 3.2 Minimum cutting diameters

References in this audit report, Vol.1: 7.3.5.9 (for HII 33); in Vol.2: 7.3.6.9 (MR 1).

***Main conclusions***

The revised CFHP (May 2017) does not regulate minimum cutting diameters anymore as in the previous version of 2007. It had been agreed that an instruction would be adopted as a separate document. This void leads to a risk that cutting diameters are reduced on an *ad-hoc* basis.

Since then, the requirement has been addressed as part of the new individual forest contracts, and the FDA in several known occasions applied the general 60cm rule to *all* species (whereas some species should have a higher minimum cutting diameter, as in the old CFHP). It could be wrong to consider that these FMCs and other agreements are not violating the provision in the old Code just because the latter is no longer in force.

In fact, the Guidelines for Forest Management Planning (2009) should have been used to guide what is written in the contracts. These Guidelines define the Diameter[3] Cutting limit (DCL) and refer to the CFHP about existing DCLs; they further provide a clear methodology to be applied by the FDA during the preparation of the SFMP (Strategic Forest Management Plan) for adjusting administrative DCLs, a process that leads to decreasing or increasing the DCL of some species.

The FDA may now want to consider issuing a new regulation of general application that will meet what has become a stakeholders' consensus (or amending the Code).

However, no FDA regulation could lawfully amend or annul a forest contract, since FMC agreements take pre-eminence over any FDA regulation, guideline or a code (because they have the status of law and are ratified by the lawmakers). Therefore:

- Any new regulation issued by the FDA that is not directly contrary to an existing FMC will prevail and be binding on all holders of contracts that did not contain any specific provision;

[3] DBH: Diameter at Breast Height

- Otherwise, the FDA could engage forest contract holders having such provision to agree to amend the contract accordingly and require legislative ratification of such amendment;
- The new regulation will apply to new FMCs to be contracted; it will also be binding on all holders of existing and new TSCs and CFMAs contracts (which are not subject to full ratification[4]).

Associated **ISSUE** in the IA Progress Database: ref. **HII 33**
(re-qualified from the former **RISK** ref. **MR 1**).

As the IA found during Audit 4, the minimum administrative DCLs are still in force, as now implemented in LiberTrace and, as the FDA claims*, as newly reinforced through instructions to the logging operators and added inspection capacity.
* FDA must provide the IA with tangible evidence of these claims, for future attention.

However, FDA comments to the IA[5] suggest that FDA is relying only on the contract holders to develop their SFMP and to adjust the administrative DCLs. If that is confirmed, it means the FDA would not be fulfilling its role, as defined in the FMPGs, to apply the provided methodology.

So, while minimum diameters are now enforced in LiberTrace, assumedly in accordance with the DCL values in the "Old Code", it is likely that neither the contract holders nor the FDA are currently applying the methodology provided for in the FMPGs.

***Main recommendations***

JIC to consider that the minimum cutting diameters are still in force, even though they have not been included in the revised CFHP (Code of Forest Harvesting Practices, May 2017). This is because the Code (Section 4) still provides for the need to comply with the Forest Management Planning Guidelines of 2009 (FMPGs), which define the DBH Cutting limit (DCL) and refer to the DCLs in the CFHP (2007) and also provide a methodology for the FDA to apply during the preparation of the SFMP (Strategic Forest Management Plan) for *adjusting administrative DCLs*, in a consultation process that may lead to *keeping, decreasing, or increasing the DCL* of some species.

FDA to (i) ensure DCLs are correctly implemented in LiberTrace (FMCS, TSCs, CFMAs); (ii) enforce that FMC holders submit their strategic plan.

Further, FDA must provide the IA with tangible evidence for some of the claims it made that it is enforcing the DCLs i.e. instructions to logging operators, added inspectors.

It is FDA's role and legal obligation to apply the scientific methodology provided in the FMPGs, for adjusting the administrative DCLs through a consultation process during the preparation of the SFMP.

The FDA also still needs to clarify how it intends to review and regulate the DCLs that do not formally exist in any current law or regulation.

JIC to consider supporting any FDA's effort to re-issue a regulation on minimum cutting diameters of general application for new forest contracts.

[4] CFMAs above 50,000 hectares are also subject to legislative ratification and presidential approval.
[5] FDA/IAWG response to the Main C&R in the Audit 3 report

A review of existing forest contracts will be needed to look at whether there was a provision that was specific in each contract relative to the cutting diameters:

- For existing FMCs that do not have such provisions, the FDA can proceed to issue a new regulation (which will prevail as not directly contrary to the FMC);
- If an existing FMC has such a provision, the FDA can engage the FMC holder to amend the contract accordingly (which will require legislative ratification);
- For other existing forest contracts that are not subject to full ratification (TSCs, CFMAs below 50,000 ha), an FDA regulation can lawfully amend or annul the existing forest contract.

In view of the above, the ISSUE **HII 33** in the IA Progress Database was slightly revised.

## 3.3 Current relevance of the Legality matrix

Reference in this audit report, Vol.2: 7.3.7 (for HII 2), 7.3.17.2.

***Main conclusion:*** The legal requirements currently captured in the Legality matrix are not all relevant and enforceable as such, while other requirements are missing. However, the Legality matrix, with the inspection and auditing checklists derived from it, is the main tool that will be used, under the VPA, and is already being used to a large extent, for legality verification of exports from Liberia. Therefore, the Legality matrix needs to be revised to reflect up-to-date legislation. Until it is revised, it is unlikely that a FLEGT License will ever be issued on the basis of full compliance with the existing Legality Matrix in Liberia.

The Legality Matrix also fails, in many cases, to clearly allocate a particular task to a specific FDA department or other government body, which makes the description and assignment of roles and responsibilities difficult to understand and the related effectiveness difficult to assess. The IA is broadly observing the same lack of clarity regarding roles and responsibilities when auditing each department, which is where the effort probably has to start.

Associated **ISSUE** in the IA Progress Database: ref. **HII 2** (revised).

***Main recommendation:*** The JIC may find it necessary to initiate consultations for the revision of the LM of the VPA along with the review of its underlying regulations and institutional arrangements, as part of the process described in 7.3.13.

The GOL recognized[6] that the LM needed to be updated and claimed that the first draft of the Revised LM had been completed and would be reviewed before the 8th JIC. However, the LM is only being updated for CFMAs.

## 3.4 Participatory forest governance in Liberia

References in this audit report, Vol.1: 7.3.1.10 (for VPA Art. 16,1, HII 12).

***Main conclusion:*** The multi-stakeholder governance of, or involvement in, the VPA implementation and monitoring processes, as requested by the VPA, is now considered complete with the Forest Management Advisory Committee (FMAC) duly established to play its independent advisory role to the FDA, and operational.

[6] FDA/IAWG response to the Main C&Rs in the Audit 3 report

However, the FMAC is currently weak, showing only rare interventions and limited inputs.

***Main recommendation:*** The FMAC may need to be supported to play its role more effectively and visibly as another needed layer of public participation in sustainable forest governance.

Associated **ISSUE** in the IA Progress Database: ref. **HII 12** (revised).

## 3.5 Institutional setting for VPA implementation (LAS Verification Framework)

References in this audit report, Vol.1: 6.1.7.3 (for MII 18/19), 6.2.4.2 (for HII 21 and 22), 7.3.1.10 and 7.3.7.3 (for HII 8).

### *Main conclusions*

The capacity of the LAS to "ensure that timber of illegal or unknown origin does not enter the supply chain" (VPA Art. 8,1e) is undermined by conflicts of interests (CoI) that were at least partly introduced by the VPA:

- From and between the multiple roles of the LVD: (i) COCIS management, (ii) CoC inspections, (iii) audits on the forest sector control being exercised by other government bodies (FDA Comm. Dept., EPA, MoL) and *by the same LVD* (for CoC inspections*), and (iv) approval of Export permit requests based on broad legal compliance;

  * This is being exacerbated due to that LVD auditors are sometimes being used as LVD CoC inspectors to physically *assist with* the checking of export permit requirements and recommendation of export permits for issuance

- Between the Auditing section of the LVD and the remainder of the FDA, particularly the Commercial and Community Forestry Departments and the Law Enforcement Division, due to the concentration of roles at the same level of reporting (DMDO, then MD) making it challenging to maintain impartiality;

- Due to the lack of formal independence of SGS, the External Service Provider that built and handed over the capacity of the LVD and is still currently monitoring the issuance of Export permits, from the management of the FDA. The issue also potentially extends to the future Liberia Licensing Department (LLD).

The lack of a clear allocation of roles and responsibilities between the different government departments creates overlaps and conflicts that result in some mutual neutralization, further undermining their efficiency. The situation is exacerbated the lack of resources and support to field staff.

There has actually been significant confusion so far in LAS documentation regarding the different levels in the LAS Verification Framework. For example: Level 2 roles entrusted to LVD (otherwise a Level 3 function) are creating issues; the role and corresponding level of control exercised by LED has been totally occulted (linking to Main C&R 3.13). The IA suggested new definitions for five levels in the LAS verification framework (See 6.1.7.3).

Conflicts of interests can only fuel rampant corruption, which is said to be widespread in the Liberian forest sector. The absence of a supervisory body or

multi-stakeholder committee undermines transparency and accountability in the management of the FDA as an institution.

The FDA/IAWG response (to the C&R in the Audit 3 report) did not address the key CoI issues raise by the IA for LVD (and within the FDA). The FDA requested the VPASU-2 to review the functions of CFD, LVD and LLD, and make recommendations on this issue. The IA was informed that this effort was not yet completed.

***Main recommendations***

a) CoC inspections should be transferred from LVD to the Commercial Forestry Department of the FDA (CFD). As such CFD should be a regular user of LiberTrace and should benefit from the same funding mechanism as LVD for the CoC inspections.

b) The LVD Technical manager should report directly to the MD of the FDA who will be responsible for ensuring that LVD findings are effectively and objectively addressed.

c) Until the LLD is created, the final review and formal issuance of the Export Permits should be moved out from CFD and to a place above LVD in the FDA organogram or outside the FDA.

d) Strengthen the role of the NMSMC (See 7.3.1.10) to increase transparency and accountability in forest governance as exercised by the FDA; or establish a Board with representatives from key (GoL and other) institutions to review all FDA Management and Board approvals related to or affecting law enforcement.

e) Consider implementing a more logical definition of five levels in the LAS verification framework (as provided in 6.1.7.3).

f) Consider **mitigating the risks of conflicts of interests** in future by **separating out the** three following **roles** in the institutional setting for VPA implementation:

   1. **Monitoring and verification** at Level 2 of government control (traceability and legality data management in COCIS, and field inspections of forest management and CoC requirements), reporting to the DMDO;

   2. **Level 3 Auditing, of the Level 2 forest sector control checks** conducted by all government bodies responsible for verification, and **recommendation** for Export permit (or FLEGT license) issuance based on overall compliance (incl. related COCIS management for Legality and Fiscality and for approval of EP issuance), reporting to the MD; and

   3. **Final approval and formal issuance of Export permits** (or FLEGT licenses) based on an **independent** decision to follow, or not, the recommendation issued under 2 above.

Further alternative options for consideration by the JIC for their respective merits:

- Assign the first role (Level 2 Monitoring and verification), as part of a merger of the current CFD and the current LVD COC inspection and data management sections, to a broader CFD[7].

[7] Possibly renamed "LVD", the name being in fact appropriate to concentrate all Level 2 control.

- Move the second role (current LVD Level 3 auditing/LV) and the associated resources out of the FDA, to another government department, such as the Ministry of Finance under the LRA for example, to give it the autonomy that it requires to fulfill its defined role in the VPA. This would imply building forestry expertise within the hosting entity where it does not currently exist.
- Keep the third role (licensing) assigned to the future LLD within the FDA (with the obligation to follow the decision of the auditing body) or rather merge it with the auditing unit (currently LVD) outside the FDA[8], under the LRA for example.

Associated **ISSUE** in the IA Progress Database: ref. **HII 8** (revised), **MII 18** and **19, HII 21 and 22**.

## 3.6 Operator's compliance with Legality matrix requirements, assessed against the SD-01 and CFHP audit checklists

References in this audit report, Vol.2: 7.5.3.1 (for HII 4).

***Main conclusion:*** The levels of non-compliance that were found during Audit 1 relating to the Legality matrix and the CFHP clearly showed that log exports from Region 3 of FDA (and likely all FDA Regions of Liberia) would not allow FLEGT Licenses to be issued.

***Main recommendations***

Consider the need to adopt and implement a plan to raise compliance levels (through stepwise enforcement of the requirements), from A. the "Current regime" requirements for export permit, to B. VPA/LM requirements to allow FLEGT Licenses to be issued, with a view to completing this process before the VPA can be declared operational.

There is a need to first identify the gaps from the "Current regime" requirements for export permit to VPA/LM requirements.

The FDA/IAWG response (to the Main C&R in the Audit 3 report) missed the point (plan needed to raise EP requirements from "Current regime" to VPA/LM).

Associated **ISSUE** in the IA Progress Database: ref. **HII 4** (revised).

## 3.7 VPA management of non-conformances

References in this audit report, Vol.2: 7.3.13 (for HII 3).

***Main conclusions:***

*Full* compliance with each and every requirement of the Legality matrix is not a "SMART goal": it is Simple (if not simplistic), possibly Measurable, but neither Accessible, nor Realistic, nor Timed; and as such it can never be met.

Insisting on full compliance with *all* LM requirements at *all* Principle/ Indicator/Verifier levels - as is currently a condition for licensing, according to several VPA annexes - may even be counter-productive: it has been found that it

[8] Possibly into a broader "LLD", the name in fact being appropriate to concentrate auditing and licensing.

risks prompting the circumvention of some requirements in LAS implementation or compliance, or blocking the system, and/or fueling corruption.

From a VPA implementation viewpoint, a document ("**system response procedures")** setting out the implications of non-conformances regarding companies' operations or products, including on the ground, and for the issuance of FLEGT Licenses, whether blocking for it or not etc. could prove very useful.

The provision in Article 6.3 of the VPA Annex II (in 6, Failure to comply with the LAS) in fact suggests that additional guidance (on how to handle breaches and to impose sanctions for non-compliance) is needed for the FLEGT licensing system to become operational. However, that article does not yet depart from the "full compliance" requirement (as per Art. 6.1) and may therefore only suggest that "*existing legal procedures and sanctions [that] apply for handling failures*" (as per Art. 6.2) may not be sufficient or adequate.

But if it is judged that 100% compliance does not exist in reality, and can therefore not be taken as a realistic and workable requisite, then appropriate (gradual, deferred) responses must exist for non-key requirements to avoid blocking the system totally. This might *de facto* lead to defining key minimum requirements for FLEGT licensing. Like for the Export permits, some requirements could be covered by general statements of regulatory compliance to be issued by the relevant bodies for the corresponding administrative obligations.

The **Enforcement handbook (**VPASU, 2017), for use by forest rangers and other officers of the FDA involved with enforcing the forest laws of Liberia (See 6.4.1.2), seems to at least partly meet the need for the above-mentioned document.

***Main recommendations:***

**But what are the minimum requirements?**

1) Consider the need to waive 'full compliance with all the requirements of the Legality matrix' as a condition for FLEGT licensing, by amending the relevant VPA annexes (including Annex II, Art. 6.1: "*FLEGT licenses will not be issued unless all requirements of the LAS have been complied with*"); and

2) Implement the provision in Annex II (6, Failure to comply with the LAS; Art. 6.3: "*Detailed guidance on how to handle breaches and to impose sanctions for non-compliance [to] be developed before the FLEGT licensing system becomes operational*"), suggesting that the "*existing legal procedures and sanctions*" [that] "*apply for handling failures*" (as per Art. 6.2) might not be sufficient or adequate, which may include approving and implementing the Enforcement Handbook (currently a draft released on 31st August 2017).

Associated **RISK** in the IA Progress Database: ref. **HR 3** (revised).

## 3.8 Implementation of the role of Government, financing of the Liberian Forestry Development Authority (FDA) as a whole

This section has not been significantly changed as a result of the Audit 4. It can now be found in the Volume 2 of this audit report.

## 3.9 Implementation of the role of Government, FDA approval of pre-felling requirements

**Case 1: Management plan**

References in this audit report, in Vol.2: 7.4.3.1 (for HII 17)

***Conclusion:*** FDA Commercial Forestry Dept. approved a CFMA management plan based on a 15-year cutting cycle in contradiction with Liberian Law and sustainable forest management planning guidelines.

***Recommendation:*** Reconsider approval of CFMA management plan(s) on such unlawful and unsustainable basis.

In the FDA/IAWG response to the C&R in the Audit 3 report, FDA recognized confusion between the length of the cutting cycle (25 years) vs. the CFMA contract term (15 years). FDA says to be working with MoJ to standardize the cutting cycle for all commercial operations (with the FMC's 25-year cutting cycle).

Associated **ISSUE** in the IA Progress Database: ref. **HII 17**.

**Case 2: AOP**

References in this audit report, in Vol.2: 7.4.3.2 (for HII 1)

***Conclusion:*** The dates of both 1) the submission of the AOP (30.10.2017) by the CFMA and 2) the approval of the AOP (17.12.2017) by the FDA are posterior to both the beginning date of the Annual Coupe (05.09.2017) and the end date of the felling (07.10.2017).

***Recommendation:*** Do not allow felling to take place before approval of AOP/Annual coupe.

In the FDA/IAWG response to the C&R in the Audit 3 report, FDA recognized that there have been incidences of this happening. FDA also stated the Government is taking corrective action to ensure this does not happen, and that Forest Management Guidelines are being followed, subject to additional training.

Associated **ISSUE** in the IA Progress Database: ref. **HII 1** (remains in place whilst corrective action is being monitored).

**AOP template, approval procedures**

References in this audit report, Vol.1: 6.2.1.3 (for MII 8)

Following the FDA/IAWG response to the C&R in the Audit 3 report, and as part of Audit 4, the IA has been waiting for further evidence to be provided by CFD.

IA still needs to review and confirm the existence of: (i) "*procedures in the FMGs incl. for approval of AOP (and 5-year FM plan)*"; and (ii) "*a template, based on new CyFM guidelines, for CyFD to review and approve CFMAs*" (presumably the new community forest management guidelines reportedly launched at the end of October 2019).

***Conclusion:*** However, the IA confirms that, so far, no AOP report template exists for operators to follow, and no approved procedures and checklist exist for approval of AOP by CFD.

***Recommendation:*** AOP report template and approval procedures and checklist to be developed and implemented.

Associated **ISSUE** in the IA Progress Database: ref. **MII 8** (updated).

**Template and approval procedures for Compartment plan and annual blocks**

References in this audit report, Vol.1: 6.2.1.3 (for MII 9)

IA review of FDA/IAWG response to the C&R in the Audit 3 report:

- No approved FDA procedures and checklist exist for approval of Compartment plan by FDA (i.e. to ensure that the plan is signed off as FMGs stipulate and the VPA/LM therefore also requires).
- No procedures and audit checklist and report exist for completing the Annual compliance audit covering Compartment planning and Annual coupe review.
- The intended corrective measure for FDA Management to develop a compartment harvesting report template *after 5 years* is noted.

**I'm not sure what this means... Was the FDA supposed to develop a template & they haven't?**

***Recommendation:*** Recommendation: Template and approval procedures to be developed and implemented for Compartment plan and annual blocks.

Associated **ISSUE** in the IA Progress Database: ref. **MII 9**.

**New from Audit 3, concession reviews**

References in this audit report, Vol.2: 6.4.9 (for HR 5)

Reviews (the Presidential Review, the complementary review of forest concessions under the Liberia Forest Sector Project) are ongoing, of all existing agreements, contracts and concessions signed by and between the Liberian Government and private sector firms.

IA review of FDA/IAWG response to the C&R in the Audit 3 report (in 6.4.9, Vol.2): the IA accepts the statement that there is no intention to invalidate concessions but only to look at contract implementation, which may however include termination of the contract for non-compliance.

Associated **RISK** in the IA Progress Database: ref. **HR 5** (revised).

***Main conclusions for this section***

Lack of templates and of approved procedures for approval.

Operators not following the correct steps described in the management guidelines to prepare a long-term (25 year) management plan; not currently preparing appropriate 5-year compartment plans; not currently completing all block surveys in the year prior to the new logging season; not currently doing block planning as required in the Liberia CFHP; annual harvesting plans thus incomplete, if available.

Cases have existed of illegitimate approvals of pre-felling requirements (management plan on a 15-year cutting cycle basis, AOP after felling took place, Annual Harvesting Certificates without evidence of fully completed block enumerations for the whole next logging season) by the FDA Commercial Forestry Dept. There is a risk of disruption of the logging sector in Liberia from the ongoing concession reviews, if the continuation of existing contracts is challenged. FDA recognized some issues and claimed that it is implementing mitigation measures.

***Main recommendations***

Templates and approval procedures to be developed and implemented, and audited (both internally and independently) to avoid illegitimate approvals of pre-felling requirements.

## 3.10 Implementation of the role of Government, FDA field inspections of post-felling requirements (Commercial Forestry Dept.)

References in this audit report, Vol.2: 6.5.2 (for HII 9), 7.3.6.5 (for HII 33), 7.4.1.4 (for HII 6 and HR 4)

***Main conclusions***

Mostly due to insufficient funding, the FDA Commercial Forestry Dept. inspectors in Region 3 who attended the 1st Audit showed grave limitations in (i) fulfilling their responsibilities due to the lack of essential resources for running field inspections (vehicles, maintenance, fuel, perdiems) and reporting, and (ii) maintaining objectivity while depending on operators for logistical support (lodging, food).

Considering those limitations, unavailability of appropriate funding in Region 3 (and probably in other regions) was seen as a challenge for the FDA to take over the additional functions of the LVD.

Further evidence of the lack of critical field equipment to operate was collected in Region 4 during the field audit no.2.

The Audit 2 conducted in Region 4 of the FDA further indicated that, as also noted in Region 3, the FDA Head office is not following-up on non-conformances and other issues raised by field staff in any of the monthly (or other) reports. This increases the strong probability (and risk) that no follow-up of any nature routinely occurs from FDA in any of the regions on the field inspection reports that are submitted by FDA field staff, significantly undermining the authority of FDA field staff by incapacitating them in their duties of maintaining legal operations in Liberian forestry concessions.

These two issues combined, insufficient budget allocation and absence of follow up from FDA HO on inspection reports, are severely hampering the efficiency of the field inspection functions fulfilled by the FDA Commercial Forestry Dept. Together with operative means, support from top management is a key motivation factor for field staff.

The Audit 3 showed that the National Authorizing Division (NAD) of the CFD in Monrovia could not receive the monthly reports from the Regional Managers electronically (no computer in Head office).

Investigation during Audit 3 of the broader budgeting issue, within FDA and for the CFD in particular, in fact showed that, for the current financial year:

- The total budget was totally insufficient;
- The Goods & Services budget was grossly inadequate;
- No Capex budget had been included; and that as a result;
- Current support for field staff was virtually nonexistent.

As a result, the FDA Commercial Forestry Dept., both in the field and in the head office, was not fulfilling day-to-day field control (inspections, reporting, sanctioning, publishing) responsibilities (6.4.7). The identified risk from FDA field staff critically lacking resources, independence and management support was demotivation among field and HO staff and ineffective inspections, reporting and sanctioning.

Other new issue from Audit 3 (6.5.2), of relevance under this heading: Operator's failure to meet financial and other obligations from the Social Agreement signed with the Community.

IA review of FDA/IAWG response to the C&R in the Audit 3 report:

- IA needed to assess the reality of the net increase in qualified staff claimed by FDA, in both Head and Regional Offices.
- However, field staff are still not doing their inspections as confirmed by the Regional Manager in Region 3 – the largest and most active region in Liberia. Formal inspections are non-existent due to a "lack of resources". In that regard, the IA has not received evidence of significant improvements to the general lack of resources for the CFD to operate.
- Conclusion: Issue HII 6 remains open as there is no improvement on the ground regarding the issue of CFD ability to control forestry operations in Liberia.

FDA/IAWG response did not address the lack of support from top management (follow-up from FDA HO on field inspection reports).

***Main recommendations***

JIC to consider the need and possibility to further (1) increase budget allocation to CFD, including sufficient provision for goods and services and Capex, for CFD inspectors to be enabled and motivated to fulfill their day-to-day control responsibilities, independently of the private operators and to, in turn, contribute to effective government revenue collection (of e.g. taxes, fees, fines); (2) ensure effective follow-up from FDA Head Office on field inspection reports issues, and (3) provide support to field staff from top management.

JIC to also consider the need for responsible government bodies (CFD vs. CyFD in 3.12 below) to effectively enforce social agreements with communities.

Associated **ISSUES** in the IA Progress Database: ref. **HII 6, HII 9, HII 33**.

Associated **RISK** in the IA Progress Database: ref. **HR 4**.

## 3.11 Implementation of the role of Government, CFD Environmental Impact Assessment Division (EIAD)

References in this audit report, Vol.1: 6.2.1.3 (for HII 26, MII 10 and MII 11).

***Main conclusions***

With respect to the control of Environmental obligations by the FDA (Principle 5)

- Lack of procedures, checklists (CFHP?), report templates, training, and resources for CFD EIA Division inspections, including of waste disposal;
- Unclear division of responsibilities between the FDA EIA Division in the CFD and the EPA, hence possible loopholes or duplications of efforts;
- Lack of allocation in LM and procedures, checklist and templates developed and implemented for inspections and compliance audits of harvesting operations by FDA with regard to watercourse protection.

IA review of FDA/IAWG response to the C&R in the Audit 3 report (re: HII 26):

- The Checklist for CFHP states roles for the various role players (e.g. FDA, MOL, EPA) but it does not clearly define the respective roles of each of the EPA and the FDA EIA inspectors, to avoid overlaps and thus a wastage of resources.
- IA to be provided with the evidence of the claimed "*MOU between the FDA and the EPA ensuring that the EIA Division of FDA complements the work of EPA, and that the responsibilities of each are clear and there is no overlap*".

IA review of FDA/IAWG response to the C&R in the Audit 3 report (re: MII 10/11):

- A Checklist for CFHP, and procedures (LVD SOPs, procedures for LM verifiers for CFD), exist and may be used by CFD, but do they address the issue for CFD EIAD inspectors is the question.
- Did the training provided to new CFD inspectors cover EIAD inspections? The CFD is also completely immobile and dysfunctional in meeting their responsibilities regarding fully controlling all forest activities in Liberia. This was confirmed by the Regional Manager in Region 3.

***Main recommendations***

- Prepare procedures, checklists and report templates, and train EIAD inspectors in LM requirements;
- Clarify the respective roles and responsibilities of FDA (EIAD) and EPA in conducting EI inspections and in contributing to the FDA Annual compliance reports;
- Allocate responsibility. Implement procedures, CFHP checklists and a report template for field inspections and compliance audits by Regional office staff with regard to watercourse protection.

Associated **ISSUES** in the IA Progress Database: ref. **HII 26, MII 10** (revised), and **MII 11**.

## 3.12 Implementation of the role of Government, the FDA Community Forestry Department (CyFD)

This section of the Main C&Rs has not been significantly changed as a result of the Audit 4. It can now be found in the Volume 2 of this Audit 4 report.

## 3.13 Implementation of the role of Government, Law Enforcement Division (LED) of FDA

References in this audit report, Vol.1: 6.2.4.2 (for HII 21 and 22).

***Main conclusions (revised)***

LED is responsible to ensure broad compliance in the forest sector through enforcing all applicable laws and regulations as per the Legality Matrix (LM). As such, LED occupies a high position in the FDA organization, reporting directly to the MD.

As clarified during the Audit #4, LED should be playing three key roles, of high relevance to the Liberia TLAS:

1) A pivotal role in the law enforcement chain, receiving reports of suspected incompliances by forestry operators from FDA's operational departments (mainly CFD) and from LVD; for assessment, further investigation, enforcement of any fine or administrative penalty (including timber seizure), and information to the Public Affairs Division (PAD) for publication; and storing evidence and maintaining a central registry of the sanctions, naturally feeding into the Annual Enforcement Report to the Board of the FDA;

2) The "watchdog" (inspectorate) role, above FDA's operational departments, and even above LVD for COCS, tax payment, and Legality Verification (auditing), of counterchecking (sampling) to assess whether the other departments are working properly; and

3) To perform compliance audits, which includes document review (with e.g. CFD, CyFD and LVD), and field inspections, upon request in relation to relevant LM processes and/or as necessary to then compile an Annual Compliance Audit Report (ACAR) for each operator.

But "the LED is currently weak", as someone commented. The role of LED was never clearly assigned, and never clearly implemented, and was (but only partly) overtaken by the new LVD under the VPA. Other challenges include the lack of definition of LED's competence, of inter-departmental communication and coordination, of approved procedures and templates, of capacity, and of resources.

As a result, there is confirmation (from the Audit 3) that LED is totally incapacitated within the FDA to make any meaningful contribution to legality in the Liberian forest sector. Currently, the enforcement chain is dysfunctional and very few penalties are being enforced.

***Main recommendations (revised):***

- Confirm the key roles identified for LED within FDA: 1) qualify infractions and enforce all sanctions, 2) act as inspectorate general, and 3) perform compliance audits and compile the Annual Compliance Audit Reports (ACARs). Plus,

maintain the central registry of all notifications and recommendations to the MD and the sanctions applied; and assist with the Annual Enforcement Report to the Board.
- Ensure the roles of LED are clearly assigned and effectively implemented, with approved procedures, staff trained, and adequate resources, plus effective coordination across FDA units, systems and levels and with the other MACs.
- Confirm the general competence of LED in all LM Principles.

Associated **ISSUES** in the IA Progress Database: ref. **HII 21** and **HII 22** (revised).

**FDA/IAWG response to the Main C&R in the Audit 3 report**[9]**:** none.

## 3.14 Implementation of the role of Government, Public Affairs Division (PAD)

This section of the Main C&Rs has not been significantly changed as a result of the Audit 4. It can now be found in the Volume 2 of this Audit 4 report.

## 3.15 Implementation of the role of Government bodies (Other MACs), Environmental Protection Agency (EPA)

This section of the Main C&Rs has not been significantly changed as a result of the Audit 4. It can now be found in the Volume 2 of this Audit 4 report.

## 3.16 Implementation of the role of Government bodies (Other MACs), Ministry of Labor (MoL)

This section of the Main C&Rs has not been significantly changed as a result of the Audit 4. It can now be found in the Volume 2 of this Audit 4 report.

## 3.17 Implementation of the role of Government, Manual of CoC procedures for LVD staffs

This section of the Main C&Rs has not been significantly changed as a result of the Audit 4. It can now be found in the Volume 2 of this Audit 4 report.

## 3.18 Implementation of the role of Government, Documentation used by the Auditing section of LVD

This section of the Main C&Rs has not been significantly changed as a result of the Audit 4. It can now be found in the Volume 2 of this Audit 4 report.

[9] As per the file 'FINAL MATRIX OF THE VPA LEGALITY ASSURANCE SYSTEM_08152019.pdf' sent by the NAO to the IA on August 18, 2019

## 3.19 Implementation of the role of Government, LVD auditor training & qualifications

This section of the Main C&Rs has not been significantly changed as a result of the Audit 4. It can now be found in the Volume 2 of this Audit 4 report.

## 3.20 Implementation of the role of Government, LVD auditing in the field against the CFHP Checklist

This section of the Main C&Rs has not been significantly changed as a result of the Audit 4. It can now be found in the Volume 2 of this Audit 4 report.

## 3.21 Functionality of COCIS software (LiberTrace)

This section of the Main C&Rs has not been significantly changed as a result of the Audit 4. It can now be found in the Volume 2 of this Audit 4 report.

## 3.22 Implementation of the role of Government, CoC inspections by the LVD

References in this audit report, Vol.1: 6.2.3.7 (for MR 6).

***Main conclusions (revised)***

During Audit 3, the [LiberTrace] system had been "considered to be ready but that energy was needed to make it work". In particular, there was a risk of copy-paste of operators' data by LVD staff during certain operations.

The IA reviewed the FDA/IAWG response to the C&R in the Audit 3 report (re: HR 7), in particular the statements "*LiberTrace does not allow copy and paste of operators' data*" and "*The ISO certificate will assist the LVD as a tool to identify gaps in the system, and take corrective measures*".

As the system is designed, with "blind inspections", copy-paste of operators' data is not possible where no base data or copy of operators' data is provided to inspectors. For stump, timber yard and export permit inspections, however, some LVD office staff can see the data and it is technically possible to use it to fabricate or alter inspected data in LiberTrace.

The previously reported motivation for inspectors, out of lazy-/easiness to go and check deep into the forest in case of difficult access, remains plausible; another factor would be collusion between FDA/LVD staff and operators.

The potential (and reportedly alleged) risk for data quality is therefore confirmed. Possible implications for future investigation vary from cheating on volume-based fees, to massively under-declaring export quantities (especially in containers), to laundering entire lots of illegally harvested logs.

For the IA, only if the role of approving inspection data in the system can be granted to a truly independent third-party would this effectively enhance the quality of data in the system (not "Internal quality control" as per the proposed Mitigation Measure).

As to the ISO 9001 certificate issued to LVD in August 2019, covering the Quality Management System implemented by SGS and FDA/LVD, the IA's findings clearly undermine the effectiveness of LVD having that certificate in the longer-term in relation to the identified risk.

Finally, while the LVD Inspection section is functioning, there are not inspections of all the required activities occurring in concessions e.g. a very small sample is taken of stump inspections.

***Main recommendations:*** The idea is to involve the management to challenge the current status quo of insufficient or unreliable field data collection. Suggested measures: follow sample checking rates as per the SOPs; obligation to capture GPS coordinates of tree/stump and/or scan the barcoded tag with other data entry; Independent quality control (sample checks) of inspected CoC data from LiberTrace.

Associated **RISK** in the IA Progress Database: temporarily downgraded from high (ref. HR 7) to medium (ref. **MR 6**) in the absence of substantiated evidence.

## 3.23 Implementation of the role of Government, Data management by the LVD in Libertrace

This section of the Main C&Rs has not been significantly changed as a result of the Audit 4. It can now be found in the Volume 2 of this Audit 4 report.

## 3.24 Monitoring data sharing with civil society organizations / communities

This section of the Main C&Rs has not been significantly changed as a result of the Audit 4. It can now be found in the Volume 2 of this Audit 4 report.

Further relevant information was collected during Audit 4 but has not been processed yet since this was not an agreed area of focus for the audit.

## 3.25 Review of current Export permit issuance

This section of the Main C&Rs has not been significantly changed as a result of the Audit 4. It can now be found in the Volume 2 of this Audit 4 report.

## 3.26 Enforcement of Legality matrix requirements

This section of the Main C&Rs has not been significantly changed as a result of the Audit 4. It can now be found in the Volume 2 of this Audit 4 report.

## 3.27 Efficiency of border control

References in this audit report: 6.4.14 in both Vol.1 (follow-up) and Vol.2: 6.4.14.2 (for MR 2 and MR 3).

***Main conclusions (revised)***

Art. 8,1b of the VPA requires the LAS to "ensure that only shipments verified as such are exported to the Union".

1) The IA no longer qualifies as minimal the risks that shipments exported with an Export Permit (EP) through the main ports of Liberia might be different from the products that were reported as duly verified by LVD.

During previous audits, SGS/LVD had admitted it will only check the loading of *declared exports verified as legal (i.e. with an approved EP)* anyway and is *not dealing with smuggling issues.* These ports are in fact all reportedly controlled by the Chain-of-Custody System (COCS), which covers the export supply chain up to the loading onto the ships. This includes prior logyard inspection and also a loading inspection that is attended by most actors and concerned government bodies.

However, a major change has occurred in the recent years: logs are now mostly exported in containers. Based on a field audit during Audit 4, the IA has now identified potential risks of fraud associated with containerized exportations (of either logs or processed products). These mostly relate to: collusion between LVD inspectors and the Exporter, or alteration of the content of unsealed containers before export.

Following the IA's inquiry into the issue during Audit 3, SGS/LVD updated the SOP 24 to address the loading inspection and sealing of containers. However, the field audit also revealed the need to dramatically improve the SOPs further in that regard.

2) The IA no longer qualifies as minimal, either, the risks that *unverified* shipments (i.e. without an Export Permit, being undeclared) might yet be exported from the main ports of Liberia. A container once fell from a truck heading towards Monrovia with timber that was not registered in the COCS. The field audit in a TSC area during Audit 4 revealed a high probability that ways exist to export illegal logs, most likely outside the CoCS. The IA has requested information from LRA/Customs relative to their procedures for containers of timber.

3) Other potentials risk identified in the previous Audit report is 1) risks of uncontrolled/ illegal loading of ships by barge or raft (without an Export permit) ashore e.g. Harper port, where vessels cannot berth and transshipment occurs at sea from rafts of floating logs or barges to self-loading ships; and 2) risks of smuggling through unmanned terrestrial border-crossing points (without an Export permit). These situations rely on efficient border control by relevant Customs/ Police/ Marine authorities.

IA review of FDA/IAWG response to the C&R in the Audit 3 report (re: MR 2/3):

- The potential risk of transshipments occurring at sea without EP and without (e.g. Customs/ Police/ Marine) control exists and is not within FDA/LVD purview. FDA/IAWG response provided no mitigation measure.
- The (limited) export control exercised by the LRA has been reviewed (6.2.6.3, Vol.1). It does not mitigate the identified risk.
- Risk MR 2 shall remain open until the IA gets evidence of the contrary.

4) The risk of smuggling of timber imports from third countries into Liberia has been found minimal, subject to monitoring of the issue, mainly because there is no awareness of any imports, either in transit or for processing and re-export or local consumption. The COCS is said to be ready for it. Also, border crossings mostly consist of bridges on rivers, and bridges are said to be manned by securities (Customs) on both sides.

***Main recommendations***

The above risks will first be followed-up by the IA that will:

- Inquire into, and possibly witness loading onto ships at ports;
- Inquire for places where transshipment occurs at sea from rafts of floating logs or barges to self-loading ships and for unmanned terrestrial border-crossing points;
- Also inquire about the current capacity of Customs/ Police/ Marine authorities to exercise efficient border control and about perceived risks of smuggling.

Associated **RISKS** in the IA Progress Database: ref. **MR 2** and **MR 3**.

## 3.28 Reporting on law infringement, enforcement of sanctions, and public disclosure of (related) information

Reference in this audit report, Vol.2: : 6.4.15 (for HII 5).

***Main conclusions (from Audit 1):***

Information should not be held confidential and should therefore be disclosed, pursuant to VPA Art. 21 (as per details in Annex IX on Public information and transparency measures) of any "monetary fines imposed or regulatory action taken against any contractor (or FLEGT license-holder, in due course)", pursuant to VPA Art. 22,2d.

However, no evidence has yet been received by the IA of any such information currently being disclosed on the FDA website.

It would actually appear, until recently (with one exception in February 2018), that no sanctions were being imposed (monetary fines, regulatory action) on any contractor for violations of forest laws and published.

Whether the Public affairs division (PAD) should be able to rely on reports from the Law Enforcement Division (LED) or else, PAD clarified they are not receiving any, they are not aware of what they are supposed to get from LED.

There was a felt need that these questions are brought to the JIC and to work across the board on law enforcement. The EFI team said it was working on preparing a procedure leading to the publication of information, which was said to be currently lacking. A draft 'Communication strategy for the FDA' had also been prepared by EFI (as per VPA, Art. 21,1) and submitted for review to the EU Delegation and FDA. It awaited further developments before being approved at JIC level by both parties. The draft "Communication strategy for the JIC" that the EFI team presented at the 7th JIC does not seem to address the area of law enforcement by the FDA.

IA review of FDA/IAWG response to the C&R in the Audit 3 report (re: HII 5):

- The IA is aware that "*FDA has [now] fined some [but a small number of] companies for violations observed*".
- FDA's acknowledgment "*that current enforcement mechanisms are insufficient*" is noted, and the IA can only agree that "*FDA needs additional resources*" in

general, but it suggests that enforcement should be regarded as a revenue-generation mechanism for FDA and the Government.

- That "*the publication of sanctions has been hampered by the challenges of the FDA Website*": the IA is aware that the FDA Website has often been "down" recently and has recommended that this should be fixed.
- That an "*LVD Registry for sanctions*" exists: LVD has not been able to provide any evidence of this;
- That "*LRA receipts of fines paid are available*" (and "*the challenges of the FDA*" for using it for the monitoring and publication of sanctions): consulted, LRA informed the IA that it "*cannot provide copies of receipts (it can only confirm). So, the IA needs to go back to FDA*".
- The IA has assessed that no clear FDA procedures exist for fine issuance and the publication of relevant information (See the LED and PAD reviews, in review in 6.2.4.2 and 6.2.4.3, respectively).

***Main recommendations:*** JIC to consider the need to ensure that: (i) relevant field reports are prepared by FDA (Commercial Forestry Dept., LVD), (ii) the Law Enforcement Division is enabled and willing to impose fines or take action against contractors from those reports [subject to this being confirmed as being LED's role], and (iii) the Public Affairs Division (PAD) is enabled to transparently and timely publish related information and follow-up action for public scrutiny.

The IA is yet to understand the chain of responsibilities among FDA departments for inspections, reporting, enforcement of sanctions, and publication of information.

Associated **ISSUE** in the IA Progress Database: ref. **HII 5** (updated).

## 3.29 Communication and transparency

References in this audit report: 6.5.3, in both Vol.1 (follow-up) and Vol.2 (for HII 34); and 7.4.13 in Vol.2 (for MII 5).

***Main conclusions*** *(updated)*

Despite the VPA requirement (Art. 19,3g) for the JIC to publish an annual report, the annual reports for 2015 to 2018 (and now 2019) are yet to be published. In February 2019, the EU Delegation and FDA were said to be currently reviewing a draft annual report for 2015-16 before dissemination for consultation to parties, and that drafting of the VPA annual report 2017-18 would start shortly.

Liberia implements the international EITI (Extractive Industries Transparency Initiative) Standard. As such it is required to publish an annual EITI Report disclosing information on: contracts and licenses, production, revenue collection, revenue allocation, and social and economic spending. The report reconciles data provided by companies and by the Government.

The issue has been the suspension of Liberia from the global EITI Program since September 2018, due to incompliance with rules relative to annual reporting, change of its leadership, and multi-stakeholders process, and preventing implementation of Legality Matrix Indicators 11.2-3.

All outstanding reports have now been completed and submitted to the EITI international Board, along with other documentation concerning reorganization of the LEITI Governing body called the Multi-stakeholders Steering Group (MSG).

Early February 2020, the EITI Board was meeting and there were hopes they would act favorably on Liberia's request for lifting its suspension. At the time of closing this report (early March 2020), the LEITI website showed no new development in that regard.

***Main recommendation(s):*** As per VPA Art. 19,3(g), and details of the content in the Annex IX, the JIC shall consider any matter relating to effective VPA implementation, in particular the publication of all outstanding progress reports and of future annual reports in a timely manner going forward, focusing on achievements and work in progress.

Liberia will remain suspended from the EITI until it complies with the measures the international EITI Board prescribes to ensure that Liberia is truly committed to and implementing the EITI criteria and principles.

Associated **ISSUE** in the IA Progress Database: ref. **MII 5** (on JIC annual reports; updated)**, HII 34** (on LEITI).

**FDA/IAWG response to the Main C&R in the Audit 3 report** [10]**:** none.

## 3.30 Timber products subjected to the LAS

This section of the Main C&Rs has not been significantly changed as a result of the Audit 4. It can now be found in the Volume 2 of this Audit 4 report.

## 3.31 Continued external support to LAS implementation

References in this audit report, Vol.1: 6.2.3.2 (for HR 8).

***Main conclusions*** *(revised)*

The IA in its Inception report[11] described "Other uncertainties identified" relating to:

- The extension or renewal of current technical assistance contracts (VPA SU, SGS) in their current forms;
- The continuation or renewal of EU and DFID financial support beyond 31/12/2017 for the next 5 years and redefinition of corresponding technical support (EUD: "EU assistance not there forever", post transfer).

The potential risks and impacts, in the event of a non-continuation of such financial and technical support, were considered high for the sustainability of the VPA / LAS implementation process. They related to e.g. resources (funding), effectiveness of transfer of capacity to recipient, and uncertainties resulting from any change".

A national newspaper in September 2018[12] expressed deep concern "about reports suggesting that the management of the FDA wants the Swiss company, SGS, out since its contract with the Government of Liberia is to expire soon. Under the

[10] As per the file 'FINAL MATRIX OF THE VPA LEGALITY ASSURANCE SYSTEM_08152019.pdf' sent by the NAO to the IA on August 18, 2019
[11] Chap. 3.7.2.3
[12] "Can Liberia Afford the Re-Imposition of Sanctions on Its Timber Industry/Forestry Sector?" was published **(**Liberian Observer, September 17, 2018)

contractual arrangement, all logs leaving the country for export must bear the stamp of SGS certifying that the logs were harvested legally and were done so in compliance with all regulations governing the sector."

No indication had come yet from the VPA partners and been communicated to the IA, at the time of closing the Audit 2 report, that mechanisms had been anticipated to ensure a timely decision-making process as to the future of the current VPA implementation support projects ran by SGS (COCIS supply, support and maintenance, and data management; and LVD capacity building) and DAI (VPA SU) after both contracts expired on 13/10/2018, among the different possible options (e.g. extension, renewal, handover, termination).

The uncertainty may have affected informed budget preparation for the FDA for the next fiscal year starting July 1st, 2019.

In the interval:

- A new tranche of long-term technical assistance contract for the implementation of the VPA in Liberia (VPASU-2) was put in place in May 2019, again with the Company DAI; and
- A new EU financing agreement of €4 million for the VPA was announced in July 2018.

As of October 2019, the capacity handover process from SGS to GoL/FDA/LVD could not be considered complete until all objectives are fully achieved:

- Some activities have not yet been implemented after the July 2019 term, due to constrained capacity of Liberia to fully take over key functions from SGS (e.g. Legality Verification, monitoring of Export Permit issuance, hosting of the LiberTrace servers in Monrovia, support and maintenance of the LiberTrace system);
- No agreement has been found yet on the terms and conditions of a new SGS-GoL contract after October 2019; only short-term extensions;
- Some activities have not resumed with LVD after SGS's withdrawal (e.g. field audits) despite LVD now benefitting from direct funding out of forestry fees paid through an escrow account;
- Meanwhile, SGS Liberia has not yet been in a position to play the role of an independent third-party vis-à-vis the FDA.

These voids are undermining the current functioning of the LAS, to the extent that the partly-missed 'Handover' milestone risks resulting in a regression rather than a progression in the VPA implementation process.

There are high risks that SGS might at some point decide to stop supporting the LiberTrace software and data management if no decision is taken, and that internal GoL/FDA capacity to use, support and maintain the system will not be sustained at the current level in the longer term. This could have dramatic impacts, considering that the LiberTrace COCIS and current Export Permit issuance are essential elements of the Liberia LAS.

In the previous audit report, the IA also presented some stakeholders' concern that financial support to the VPA should be more result-orientated, i.e. conditional on milestones and related achievements measured through monitoring and evaluation. Holding VPA implementing "agencies" accountable, questioning the benefits the agencies are receiving from the process, and bringing regular

corrections to the process on the basis of a Plan-Do-Check-Adjust kind of project management circle would ensure better control over the time and resources spent, and increase chances that the project's objectives be reached, representing a critical success factor for the VPA implementation process.

***Main recommendations:***

The main recommendations are for the JIC to not allow total handover from any external technical assistance until full and durable capacity exists within GoI/FDA; to maintain truly independent third-party role in the EP issuance process; and to consider a Public-Private Sector partnership to support financially (possibly against forestry operators' rights to use it as their own system) the hosting, management (under third-party monitoring), and support & maintenance (through a service provider) of the LiberTrace system, thus ensuring its sustainability.

JIC to assess the needs and opportunities to link financial support to the VPA more to results, i.e. key milestones and related achievements measured through monitoring and evaluation.

**FDA/IAWG response to the Main C&R in the Audit 3 report** [13]**:** none.

Associated **RISK** in the IA Progress Database: ref. **HR 8**.

## 3.32 Implementation of the Independent Audit of the Liberia LAS

References in this audit report, Vol.2: 6.2.2.2 (for HII 35), 7.4.1.2 (for HII 19).

Failure by VPA implementation partners and agencies to respond to IA's requests for information is against the provisions of the VPA (Facilitation of IA's work - VPA Art. 11.5). It has so far happened in numerous occasions, despite sending reminders, and despite seeking support through copying the higher management levels and the VPA Partners.

The JIC needs to ensure that the IA has access to the information necessary for the performance of its functions (according to VPA Art. 11.5a) and that auditees respond to information requests and questions.

Several statements in the 'VPASec Updates' (7th JIC version of the Forward Planner) refer to falsely alleged findings of the IA and/or fail to provide any clear reference for these findings.

Any allusion to findings of the IA in the Forward Planner must provide a clear reference to, and truthfully reflect the exact IA's findings.

Associated **ISSUES** in the IA Progress Database: ref. **HII 19** (on IA's access to information)**, HII 35** (on wrongful quoting of the IA).

[13] As per the file 'FINAL MATRIX OF THE VPA LEGALITY ASSURANCE SYSTEM_08152019.pdf' sent by the NAO to the IA on August 18, 2019

# 4 AUDIT PREPARATION

This entire section can now be found in the Volume 2 of this Audit 4 report (as Chapter 4).

# 5 AUDIT IMPLEMENTATION

## 5.1 Baseline review of VPA requirements

This section can now be found in the Volume 2 of this Audit 4 report (Chap. 5.1).

## 5.2 Follow-up on previously reported issues

This section can now be found in the Volume 2 of this Audit 4 report (Chap. 5.2).

## 5.3 Field audits

### 5.3.1 Audit itinerary (summary)

Actual audit itinerary, as finally implemented (from the tentative schedule submitted in support of the IA's 'Request for a Commencement Order for Audit 4'):

| *Day* | *Date (dd/mm/yy)* | *Activity* |
|---|---|---|
| Sun | 20/10/2019 | Arrival of KE1-TL in Liberia |
| Mon | 21/10/2019 | Work in Monrovia including:<br>▪ Install Audit 4 mission<br>▪ Meet with IAWG to discuss detailed schedule<br>▪ Liaise with Local Partner GAI<br>▪ Review corrective actions implemented by GoL (as per IAWG Final Matrix) for follow-up |
| Tue | 22/10/2019 | Work in Monrovia including:<br>▪ Hold meetings with NAO, NKE3, GAI<br>▪ Make appointments for audit meetings<br>Arrival of NKE3 in Liberia |
| Wed | 23/10/2019 | Work in Monrovia including:<br>▪ Hold briefing meeting with FDA Management committee<br>▪ FDA issuance of Introduction Letter |

| | | |
|---|---|---|
| | | ▪ With LVD, design detailed planning of field audits |
| Thu | 24/10/2019 | Work in Monrovia including:<br>▪ Hold meeting at LRA<br>▪ Request NAO: mission orders for next field visit, agreement to use IE budget for non-IA staff<br>▪ Clarify previous issues, finalize listing of ongoing issues, assign actions, schedule activities, complete pending IA actions |
| Fri | 25/10/2019 | Work in Monrovia including:<br>▪ Hold meeting at VPASU<br>▪ Look for regular commercial or charter flights to Greenville<br>▪ Confirm and prepare field audits (itinerary, notice, logistics) |
| Sat | 26/10/2019 | Work in Monrovia including:<br>▪ Organize logistics and admin for both field trips<br>▪ Write audit report |
| Sun | 27/10/2019 | (Sunday)<br>Meet LAS implementing entities and stakeholders: SGS |
| Mon | 28/10/2019 | Field audit visit 1:<br>▪ LVD log container loading inspection in Gbarnga (export log yard of Sing Africa plantations), with LVD Ops Mgr and NAO Observer |
| Tue | 29/10/2019 | Work in Monrovia including:<br>▪ Meet with Forest Management Advisory Committee (FMAC)<br>▪ Hold individual meetings at LVD<br>▪ Meet FDA depts: LED, PAD<br>▪ Deliver short briefing at NMSMC meeting<br>▪ Meet VPA SU-2<br>▪ Request NAO: mission orders for next field visit |
| Wed | 30/10/2019 | Work in Monrovia including:<br>▪ Hold meetings at LVD<br>▪ Meet FDA depts: Commercial Dept./NAD |
| Thu | 31/10/2019 | Work in Monrovia including:<br>▪ Meet with NBSTB<br>▪ Write in audit report |
| Fri | 01/11/2019 | Work in Monrovia including:<br>▪ Hold meetings at LVD: review TSC requirements; Quality Management; discuss outcomes of Field audit 1<br>▪ Meet FDA depts: Community Dept. auditee unavailable<br>▪ Meet LFSP PM<br>▪ Meet with EUD and VPASU |
| Sat | 02/11/2019 | Work in Monrovia including:<br>▪ Meet LAS stakeholders: NUCFDC<br>▪ Write audit report |
| Sun | 03/11/2019 | (Sunday)<br>Field audit visit 2: traveling to audit site (Buchanan area) , with LVD Ops Mgr and NAO and EFI Observers |

| | | |
|---|---|---|
| Mon | 04/11/2019 | Field audit visit 2:<br>▪ Audit in TSC A2 field office, log yard, log landings, and forest<br>▪ Visit FDA Region 3 Office<br>▪ Conduct data research and team meeting |
| Tue | 05/11/2019 | Field audit visit 2:<br>▪ Audit in TSC A2 forest<br>▪ Visit FMC K log yard: take samples for traceability tests; hold information meeting on FMC K operator's software<br>▪ Draft letter to NAO to alert partners about audit findings |
| Wed | 06/11/2019 | Work in Monrovia including:<br>▪ Finalize draft letter to NAO<br>▪ Hold IA audit team discussion (reach conclusions on key issues)<br>▪ Prepare IA debriefing session with IAWG |
| Thu | 07/11/2019 | (Public holiday - Thanksgiving)<br>Prepare IA's next day's debriefing session with IAWG<br>Departure of NKE3 from Liberia (late evening) |
| Fri | 08/11/2019 | Work in Monrovia including:<br>▪ Hold IA debriefing session with IAWG<br>▪ Write in audit report<br>Departure of KE1-TL from Liberia (late evening) |

Remarks:

- FDA denied accessibility of Greenville port and Region 4 office by road. It proved possible to fly to Greenville but the flight was fully booked.
- FDA confirmed the availability of FDA Management to meet the IA for a briefing meeting, not the top management but a committee of 7 managers set up.
- FDA Management was never available to meet the IA Team (brief/debrief).
- IAWG agreed to the relevance and opportunity for IA to attend the next NMSMC meeting on 29/10, rather than to hold a stakeholder information and consultation workshop (Agenda to include a 10mn's "Update on the IA": summary of key A1-A3 findings so far and A4 work program).

### 5.3.2 Interaction with External Service Providers during Audit 4

Both **SGS**'s previous DFID contract and GoL Service Agreement were initially terminated on October 12, 2018.

Both contracts had then been extended (with a revised scope, as per 6.2.3) until the end of July 2019, at which time the SGS Liberia personnel (who were not transferred to FDA) had their contract terminated (by August, for the SGS PM).

At the time of the Audit 4 mission in Liberia, only the Project Coordinator (PC) had been called back in September to replace the PM for a one-month extension in October, and up to then SGS ensured continuity in the management. After that he was no longer available for the IA auditors.

Regarding the long-term technical assistance to the VPA, the former **DAI**'s VPASU contract had been terminated as of 30 September 2018, had then been up for retendering, and a new contract had been awarded as of May 2019. The new DAI ("VPASU-2") team was therefore present and available in the country for the IA.

The VPA FLEGT Facilitator provided by **Palladium** was out of the country.

### 5.3.3 Field audit reports

Implementation of the field audits is described in the reports that were generated by this activity (see the next Chap. 6, 'Audit evidence and findings').

## 5.4 Review of the current issuance of Export permits

This entire section can now be found in the Volume 2 of this Audit 4 report (Chapter 5.4).

# 6 AUDIT EVIDENCE AND FINDINGS

**ISO 19011, 3 - Terms and definitions:**

- 3.2 **Audit criteria**: set of policies, procedures or requirements used as a reference against which audit evidence (3.3) is compared.
- 3.3 **Audit evidence**: records, statements of fact or other information which are relevant to the audit criteria (3.2) and verifiable.
- 3.4 **Audit findings**: results of the evaluation of the collected audit evidence (3.3) against audit criteria (3.2).

**Management of the reviews from one Audit report to the next Audit report**

References and abbreviations used in the table below (now in both Vol.1 and Vol.2 of this Audit 4 report):

- Chapter 3: Main conclusions and recommendations from the audit
- Chapter 6.1: Baseline review of VPA requirements and state of implementation
- Chapter 6.2: Field audits
- Chapter 6.3: Review of the current issuance of Export permits
- Chapter 6.4: Follow-up on previously reported issues
- Chapter 6.5: New issues from reports or complaints
- Chapter 7.1 Assessment of VPA requirements
- Chapter 7.2: Risks & Issues' Database [IA Progress DB]
- Chapter 7.3: Baseline review of VPA requirements, Track record of activity
- Chapter 7.4: Implementation of VPA requirements
- Chapter 7.5: Review of the issuance of Export permits, Track record of activity
- C&R: Conclusion and recommendation.

***Table 3: Management of the reviews from one Audit report to the next Audit report***

| Audit 3 or 4 report | Next audit report |
|---|---|
| New reviews, or reviews in progress, conducted in (Vol.1) Ch. | |

| | |
|---|---|
| 6.1-6.3, 6.5<br>If review still incomplete -> | Review remains in Vol.1, Ch. 6.1-6.3, 6.5 in next report |
| New issue raised in (Vol.1) Ch. 6.1-6.3, 6.5 as part of the review:<br>Follow-up required to clarify C&R -> | Issue followed up in Vol.1, Ch. 6.4 for further investigation<br>C&R (if any) provided in same Ch. 6.4 |
| Same as above<br>No follow-up required -> | Discussion moved to Vol.2, Chapters 7.3-7.5 for archiving |
| New review, or review in progress, conducted in (Vol.1) Ch. 6.1-6.3, 6.5:<br>Review completed -> | Discussion moved to Vol.2, Chapters 7.3-7.5 for archiving<br>(safe for any issue to be followed up in Ch. 6.4) |
| Issue followed up and C&R provided in (Vol.1) Ch. 6.4:<br>Investigation complete -> | Discussion moved to Vol.2, Chapters 7.3-7.5 for archiving |
| Issue followed up and (temporary) C&R provided in (Vol.1) Ch. 6.4:<br>Further investigation required -> | Discussion remains in Vol.1, Ch. 6.4 |
| Review/Issue archived in (Vol.2) Chapters 7.3-7.5 | Review/Issue remains there,<br>unless recalled in Vol.1, Ch. 6.4 if new development requires further significant investigation |

# 6.1 Baseline review of VPA requirements and state of implementation

## 6.1.1 Legal and regulatory framework relative to LAS implementation

Issues were raised in previous reviews conducted under Ch. 6.1.8 and 6.1.9 in the Audit 2 report (A2R), with C&Rs provided in A2R, Chap. 7. Follow-up was still required to clarify the C&Rs, thus these discussions were then moved to under Ch. 6.4.1 in the Audit 3 report (A3R), and now in this Audit 4 report (A4R) Vol.1 for further investigation, together with the related C&Rs – See:

- 6.4.1.1 Development of new regulations and application to the LAS; and
- 6.4.1.2 Development of implementing and enforcement tools in the context of the LAS.

The other reviews below, initiated under Ch. 6.1 in the Audit 2 report, were either finally completed and moved to Section 7 for archiving in the Audit 3 report (A3R),

now in Section 7 of the Audit 4 report (A4R) Vol.2, or can still be found below under 6.1.1.1 to 6.1.1.9.

#### 6.1.1.1 List of relevant references in the VPA

This review has been completed and can be found in Chapter 7.3.6.1 of A4R Vol.2.

#### 6.1.1.2 Introduction

This review has been completed and can be found in Chapter 7.3.6.2 of A4R Vol.2.

#### 6.1.1.3 Legal framework vs. institutional & governance frameworks

This review, only mentioned as Chapter 7.3.6.3 in A4R Vol.2, has actually still been followed-up in Chapter 7.3.5.3 of this A4R Vol.1.

#### 6.1.1.4 Overview, as per the VPA preamble

This review has been completed and can be found in Chapter 7.3.6.4 of A4R Vol.2.

#### 6.1.1.5 The VPA Legality Definition: an exhaustive representation, or a sub-set of Liberian law?

This review has been completed and can be found in Chapter 7.3.6.5 of A4R Vol.2.

#### 6.1.1.6 Hierarchy of the legal and administrative texts

This review has been completed and can be found in Chapter 7.3.6.6 of A4R Vol.2.

#### 6.1.1.7 Existing Liberian forestry legislation

This review is on-going but can now be found in Chapter 7.3.6.7 of A4R Vol.2.

#### 6.1.1.8 What it takes for an implementing text to become a by-law regulation (binding on forest stakeholders)

This review has been completed and can be found in Chapter 7.3.6.8 of A4R Vol.2.

#### 6.1.1.9 Land Rights Act and Local Government Act

This review has been completed and can be found in Chapter 7.3.6.10 of A4R Vol.2.

#### 6.1.1.10 Different types of forest licenses: CFMAs

This section covers the legal and regulatory framework relative to LAS implementation, in relation to the definition, allocation and management Community Forestry Management Agreements (CFMAs).

Other direct references to CFMAs as forest licenses, in A3R and in this Audit 4 report, Vol.1/Vol.2:

6.2.2.2 The Community Forestry Department (CyFD) in the Legality Matrix

6.2.4.1 Approval of a Community Forest Management Plan in a CFMA

6.4.1.1 Timber sources: development of new regulations, and application to the LAS

6.5.1 Approval of Annual Operation Plan (AOP) in a CFMA

8.6, Vol.2: Compliance Audit Report on (…) CFMA-4

8.13, Vol.2: LVD audit of a CFMA (Jan. 2018)

Below, the IA intends to collate JIC's and other progress reports on CFMAs.

**Summary from the 7th JIC (Feb. 25 - March 1, 2019) Aide-memoire (AM):**

- Through CFMAs, communities in Liberia are increasingly establishing ownership of forests and selling logging rights to timber companies. Exports from CFMAs already match that from private concessions and the future expansion of commercial logging will mostly take place in community forests.
- But most felling and commercial forestry (reportedly up to 3-4 times the scale of concession logging for export) is done informally outside of the concessions by chainsaw millers, for a Liberian domestic wood market that is still therefore mainly informal, unregulated and untaxed. CFMAs have the potential to capture part of that previously informal market.
- The FDA's **Community Forestry Working Group (CFWG)** established in 2007 has a mandate (making recommendations to the FDA) for the inclusive development and eventual implementation of laws, policies, and regulations relevant to community forestry, for CFMA approval and for the allocation of forests for commercial use vs. conservation.
- The FDA is uploading CFMA allocation documents to the FDA website in line with existing laws on public disclosure of information.
  Note: On 21.02.2020 the IA found that the http://www.fda.gov.lr/community-forestry-management-agreements/ section of the FDA website is still empty.
- Although the CFWG has challenges implementing its work plan, a number of CFMAs have been approved, some already producing timber for commercial purposes.
- Along with community forestry, there are currently 1.1 out of 2.5 million of hectares assigned for commercial forestry and 411,000ha assigned for conservation. FDA is making efforts to increase conservation forestry to achieve 1.5 million ha as required by law.
- The CFWG facilitates community and stakeholder engagement, assists in the implementation of the community forestry program, and helps to build stronger ties between the FDA and forest communities (e.g. helping forest dependent communities to review and understand the terms and conditions of CFMAs before signing them).
- The legal framework applicable to community forestry is now complete, with amended CRL Regulation approved (February 2017), but regulations on forest lands and community forestry and specific guidelines for community forest management (including the "*Nine steps Handbook: checklist for establishing a forest community*") still have to be scrutinized so as to be coherent with the new Liberia Land Rights Act (in particular on CFMAs´ allocation and third-parties' agreements).
- The 6th JIC meeting (June 2018) had formed a multi-stakeholder committee to work on integrating timber sourced from commercially-oriented CFMAs into the TLAS (to ensure that timber coming from CFMAs goes through the same type of legality checks than other sources), which would require amendments to the Legality definition and relevant VPA annexes such as the LM. However, the identification of the legality requirements and verification procedures applicable to the CFMAs would already serve as a useful basis for enhancing the control and monitoring of current activities, and for leading FDA to adapt/increase its operational capacities.
- Even if specific regulations on the CFMAs are not included yet as such in the LM, commercial timber from CFMAs should still comply with the applicable laws, which includes entering the COCS.
- Further work is needed to make the draft "Compliance Procedures (on the process of CFMA allocation and broader compliance elements) for the VPA LM Verifiers" (VPASU,

2018), which incorporates the existing legal requirements for community forestry, comprehensive.

- This work will be implemented by a new 'JIC Committee on the Inclusion of the CFMAs into the VPA's Legality Matrix'. The JIC approved the Committee's ToR and assigned individual members to the Committee (Annex 6 of the AM).
- A template for Commercial Use Contracts (CUC) - between an authorized community and a third party for a medium-scale commercial use of its forest – was being reviewed by the FDA.

Detailed information regarding 'Incorporating CFMA into the LM' from the 7th JIC Aide-memoire, and its Annex 6 (ToR for the Committee), are provided in 6.1.1.10 and Annex 8.19, Volume 2.

## 6.1.2 VPA Articles

The Table '**Assessment of VPA requirements'** in Section 7.1, in Vol.2, indicates the status of the assessment for all VPA requirements (as per 5.1.2, also in Vol.2):

- As having been completed and immediately "closed" in the table for different possible reasons ('For information only', 'Not considered in IA's scope', 'Fulfilled by definition and through VPA ratification');
- As having been fulfilled through the 'Required measure implemented' or 'Fulfillment "assumed'; or
- For which there is still a 'Review in progress, or 'Ongoing compliance' that must be monitored.

The other Table '**Baseline review of relevant VPA requirements and state of implementation'** provides more detailed references (for the IA's internal use).

Only significant (problematic) findings are analyzed under the next sections. The assessment of remaining VPA requirements was due to be continued during Audit 4, however only a few sections have been updated below (this was not the required focus for Audit 4), while the others (not updated) can now be found under (6.1.2, now archived as) 7.3.1 in the Volume 2.

The following reviews have not been updated during Audit 4 and can now be found under 7.3.1 in A4R Vol.2:

#### 6.1.2.1 VPA Art. 3,1b

#### 6.1.2.2 VPA Art. 3,2

#### 6.1.2.3 VPA Art. 4,1a

#### 6.1.2.4 VPA Art. 4,2

#### 6.1.2.5 VPA Art. 8,1a

#### 6.1.2.6 VPA Art. 8,1b

Since an issue was raised that required a follow-up, this discussion is still being followed-up on under 6.4.14 'Efficiency of border control' in Vol.2.

The following reviews have not been updated during Audit 4 and can now be found under 7.3.1 in A4R Vol.2:

#### 6.1.2.7 VPA Art. 8,1e

#### 6.1.2.8 VPA Art. 8,2

#### 6.1.2.9 Art. 9,1a

#### 6.1.2.10 Art. 9,1b

#### 6.1.2.11 VPA Art. 14,2

#### 6.1.2.12 VPA Art. 16,1

The first part of this review was completed in previous reports of the IA and can now be found in Chap. 7.3.1.11 in A4R Vol.2. It continues below as updated during Audit 4.

The Forest Management Advisory Committee (FMAC) is operational and working. The FMAC was recently reconstituted by the FDA following expiry of the three-year term of the members who had been serving since 2015.

In a written communication dated April 29, 2019 and sent separately to the Executive Director of the Environmental Protection Agency (EPA) and to the President of the Liberia Timber Association (LTA), the Managing Director (MD) of the FDA advised that "the three-year term of office of the present committee members of the Forestry Management Advisory Committee (FMAC)" has elapsed since December 2018. Noting that by "law, the FDA shall appoint at least seven and no more than twelve people to constitute a [FMAC] that shall advise the Authority on Forest Policy", the MD requested each of the EPA and LTA "to nominate one person" to replace their current member.

As tangible evidence of some activity, there is written correspondence between the FDA and the FMAC indicating request sent by FDA for advice of the FMAC and some detailed advice the FMAC provided, especially regarding (i) Draft regulation for Timber Resource Waste/Residue Commercial Utilization; (ii) Revised Chainsaw Milling Regulation 115-11, etc.

#### 6.1.2.13 VPA Art. 16,2

This review has not been updated during Audit 4 and can now also be found under Chap. 7.3.1.11 in A4R Vol.2.

#### 6.1.2.14 VPA Art. 19,1-2

Same as above (7.3.1.12).

#### 6.1.2.15 VPA Art. 19,3a, 3b, 3d, 3e, and 3f; 19,3g

Same as above (7.3.1.13), except that the analysis of the VPA Article 19,3g regarding the publication of **JIC Annual reports** by the FDA is now being followed-up in this report under Chap. 7.4.13 in A4R Vol.2.

#### 6.1.2.16 VPA Art. 19,3c, Art. 21,3, and Art. 24,7

This review has not been updated during Audit 4 and can now be found under Chap. 7.3.1.14 in A4R Vol.2.

#### 6.1.2.17 VPA Art. 22,2d

Status: the review of this particular VPA article is now considered complete.

The analysis conducted in the Audit 1 report (6.1.1.7) is now being followed-up under 6.4.15 (Reporting on law infringement, enforcement of sanctions, and public disclosure of information) in A4R Vol.2 as a previously reported issue.

#### 6.1.2.18 VPA Art. 25 and Art. 29

This review has not been updated during Audit 4 and can be found under 7.3.1.15 in A4R Vol.2.

#### 6.1.2.19 VPA Art. 26,1

Same as above (7.3.1.16).

#### 6.1.2.20 VPA Art. 26,3

Same as above (7.3.1.17).

### 6.1.3 Annex II - Introduction of Legality verification in the VPA

Status: Initial review completed and moved to Chap. 7.3.2 in A4R, Vol.2.

### 6.1.4 Annex II - Introduction of the chain of custody system (COCS)

Status: Initial review completed and moved to Chap. 7.3.3 in A4R, Vol.2.

### 6.1.5 Annex II - Introduction of, and conditions for licensing

Status: Initial review completed and moved to Chap. 7.3.4 in A4R, Vol.2.

### 6.1.6 Annex II - Definition and coverage of the LAS' scope

The following reviews have been completed in previous reports and were moved to under Chap. 7.3.5 in A4R, Vol.2:

#### 6.1.6.1 Relevant references in the VPA

#### 6.1.6.2 Discussion

#### 6.1.6.3 Timber sources

#### 6.1.6.4 Timber markets

**Ann. II, 2.3a-b:** Verification of legality is applied … to timber products sold on the domestic market [subject to provisions in Ann. II, 2.3c, below] … and to exports, irrespective of the country of destination.

Liberia's obligations to apply the LAS to *both its domestic market and to all countries of export* is first reflected in the VPA as a commitment:

- The Parties "recognizing" that "Liberia's [LAS] is designed to ensure the legality of all timber products exported from Liberia to any part of the world … and with a view to applying and/or extending the legality requirement to all timber products used on the domestic market" (VPA preamble);
- Liberia shall endeavor to use the verification systems developed under the VPA for …timber exported to non-Union markets, and for …timber sold on its domestic markets, where possible (Art. 9,1a-b).

But **Section 2.3 of Annex II** of the VPA then further provides that "*Verification of legality shall apply both to timber products sold on domestic market and (…)".*

The application and extension of the LAS to Liberia's domestic market is therefore the *binding and enforceable* treaty obligation of Liberia.

"(…) Checks on products sold on the *domestic market will gradually be phased in* according to a schedule…

| *Dependency* | *Legislation* | *Status** |
|---|---|---|
| …that *depends on* (i.e. is conditional on, but may not have to automatically follow) the implementation of: … | …the Community Rights Law and Chainsaw Regulation; | **Regulation to the Community Rights Law (CRL)** of 2009 with respect to Forest Lands, as Amended (Approved May 2017)<br><br>**Chainsaw Milling Regulation**: still under review by FDA (See 6.4.1.1) |
| and which takes consideration of: | ECOWAS regional trade treaties and their integration into the LAS" (**Ann. II, 2.3c**) | TBC |

* The IA is monitoring the applicability of these triggers in 6.4.1.1)

In relation to the 'Timber sources' above, the IA scope is due to incorporate new timber sources (as per the estimate dates provided in the IA ToR – now outdated) subject to (the) new regulations being developed and enforced. (However) Legality verification checks* on products sold on the domestic market are *expected to be phased-in within two years after the LAS has become operational for exported timber*. (ToR p.8, Sequencing of Audits and operationalization of FLEGT licensing scheme)

* It is further understood that the schedule for implementation of such checks includes both (i) Verification of compliance with the LD, and (ii) application of the CoCS, i.e. "legality" and "traceability", simultaneously.

However, no evidence of such timeframe has been found in the VPA.

It remains that the NFRL law (13.5 a, e) provides for the COCS to be "established for *all Timber* (…)", including *domestic markets*.

Likewise, the FDA Regulation No. 108-07 on "Establishing a COCS", in Section 21 provides that (a) The Authority shall establish and operate a COCS to track Logs, Timber, and Wood Products from forest to processing to *domestic market* or export; and that (d) The COCS established by this Regulation shall begin operation on September 30, 2007.

Therefore:

- Traceability-wise, timber that is destined for the domestic market is already subjected to the COCS;
- Legality-wise, most timber that is destined for the domestic market is likely to derive mostly from chainsaw milling and the latest update on the revision of the Chainsaw Milling Regulation # 115-11 (2013, passed but not in force) is that a completed revised version has been sent by FAO to the FDA for regular final

validation before submission to the Board for its consideration for adoption (in June 2019, the FDA consulted the FMAC - See 6.4.1.1); and,

- Formally, Chainsaw Milling will not be in the IA's scope until the regulation is approved and enforced.

## 6.1.7 Annex II - Institutional set-up of the LAS

### 6.1.7.1 Establishment of the Legality Verification Department (LVD)

Status: Initial review completed and moved to Chap. 7.3.8.1 in A4R, Vol.2.

### 6.1.7.2 The Liberia Licensing Department (LLD)

Art. 4,1a requires "Liberia (to) designate its "licensing authority".

Evidence found:

- 'Licensing authority' means the authority designated by Liberia to issue and validate FLEGT licenses (Art. 2, g);
- Ann. II (LAS), Ch. 7 (Licensing) provides: "The Liberia Licensing Department (LLD) will be established…" as Licensing authority. (Also, in Ann. VI, 4);
- The LLD still needs to be established (this is evident from many sources).

**Ann. II, 3.3a:** The Liberia Licensing Department (LLD) is to be established by the FDA as a new department, to issue FLEGT licenses for timber product exports.

The LLD is likely to be one of "the FDA departments … involved in implementing the LAS" for whom the "service provider [SGS]… (has been) contracted on a BOT basis for the first five years to … build the capacity (as per Ann. II, 3.1b).

The 'Manual of Procedures for LVD staffs' (V2.2 of 17.07.2018; not yet approved) developed by SGS indeed mentions on p.6: "…the [LLD] has not yet been created" (however) "the FLEGT Licensing procedures are included in this manual for information purposes".

Related sections, both in Vol.2: 7.3.4 (Annex II - Introduction of, and conditions for licensing), and 7.3.14 (Annex II – Licensing).

*Follow-up during Audit 3:* SGS informed the IA that the new SGS contract includes training for a function that prefigures the core of the future LLD and monitoring until LLD capacity is built (See 6.2.3.2).

Regarding the independence of the LLD, and potential conflicts of interests for LLD, see Chap. 7.3.7.3 in both Vol.1 and Vol.2 of this Audit 4 report.

Status: review still in progress until LLD is established.

### 6.1.7.3 Verification and licensing framework

Status: completed parts of the initial review were moved to 6.1.7.3 (and further to 7.3.8.1) in A4R, Vol2. The review continues below.

It was unclear to the IA where the "Levels" (2, 3, as on the above Figure 4) are defined: not in the VPA text, not in the ESP ToR, not in the LVD SOPs. On the Figure, Level 2 refers to Field inspections, and Level 3 to LAS implementation audits.

The IA has now identified the other (already mentioned above) document titled '**LAS Verification Framework**'[14] that defines "4 distinct, yet interrelated levels at which the LAS, and verification thereof, essentially operates", where "Levels" are defined as the IA herewith summarizes:

1. The first level [**Level 1**] consists of the statutory requirements that a timber operator[15] must comply with. Examples provided: the management plan that an FMC Holder needs to prepare; the Environmental Impact License that the EPA needs to have issued prior to commencement of harvesting operations.

**Is it worth asking for info from the FDA re: these audits?**

2. At a second level [**Level 2**], the LAS relies on the inspection and/or enforcement checks by relevant FDA divisions [and other government bodies] to ensure that there is compliance with the first level requirements.

As part of the second inspection level, the LVD has the responsibility of gathering evidence to prove compliance with the legislation. In case such evidence is in a document form, the document is uploaded into the software system (LiberTrace). Examples provided: where MOL needs to check that contractor/permit holder or timber processor complies with the maximum hours of work, or where MOL issues an attestation of compliance in favor of contract holder or timber processor to indicate that contract/ permit holder or timber processor meets its obligation under the Labor Law and any collective bargaining agreements of the timber industry.

3. The third level of the LAS [**Level 3**] depicts the LVD's "internal audit" function within the LAS. LVD essentially validates legal compliance by periodically verifying the implementation of operational procedures and outputs of other FDA divisions/ units[16] against the Liberia legal timber standard [i.e. the LM]. Through this verification LVD also monitors the effective functioning of the LAS. In performing the role of verification and validation, the LVD relies on its normal auditing techniques that are based around document review (by interrogation of both LiberTrace data-base system), interviews and field visits. Additionally, the integrity of the LiberTrace database system also needs to be periodically audited to ensure that it is maintained.

Example provided: where LVD verifies the completeness and validates that the contract or permit holder or timber processor implements the mitigating measures identified in its EIA as indicated in the EI license.

This validation process helps inform the LLD licensing decision. Note: verification or inspection evidence is available to the LLD at all levels within the LVD, including full time access to the data provided through the LiberTrace.

4. The fourth level [**Level 4**] would now be, as results from the IA's analysis and recommendations in 6.2.6.4, the overall watchdog/ internal audit/ inspectorate role that the Law Enforcement Division (LED) plays or should be playing.

5. The (now) fifth level [**Level 5**] comprises of an external mechanism that aims to evaluate the entire LAS including the Licensing: the **Independent Auditor** that is to be appointed by the Liberian Government, as reflected in Art. 11 of the VPA.

[14] 'Liberia Legality Assurance System (LLAS) Verification Framework' (SGS/ FDA, 2013, by J. Laporte)
[15] "Or a particular division of a Government Department, or both" – but this addition is the subject of the discussion that follows in this same section.
[16] "…and also timber license holders and processors involved in the LAS implementation" – but this addition is the subject of the discussion that follows in this same section.

The “Levels” (2, 3) used in the above Figure 4) rather seem to refer to the concept of “instances” used in the text.

A discussion was therefore to be had, whether the opportunity exists to clarify and more clearly separate the first three “levels”, thus reducing potential conflicts of interests, by departing slightly from the SGS document to rather consider that:

- **Level 1** only includes all the statutory requirements that apply to forest operators (no Government duties to implement the broad compliance framework, no such requirements for Government Departments like in the SGS document, all requirements that are bearing on Government being rather included in Level 2);
- **Level 2** only includes all direct Government checks i.e. all the legal and regulatory compliance checks that are the responsibility of relevant FDA divisions and other government bodies (It does not include obligations on the forest operators insofar as they are involved in implementation of the LAS, to rather be included in Level 1).

  The example provided above for Level 1 (Environmental Impact License that the EPA needs to have issued prior to commencement of harvesting operations) would be Level 1 for the operator (Operator must have the License issued prior to commencement of harvesting operations) and would be Level 2 for the EPA (the EPA must issue the License prior to commencement of harvesting operations). Clearly, every Level 1 requirement for the operators generates a Level 2 requirement for the relevant MAC to check compliance. *For further attention, it remains to be seen how this is presented in the LM.*

  In the example provided for Level 3 (“where LVD verifies that the contract or permit holder or timber processor implements the mitigating measures identified in its EIA as indicated in the EI license”), in the IA’s view it is rather:

  - the duty of the EPA to – as part of Level 2 - verify that the contract or permit holder or timber processor has – as part of Level 1 - implemented the mitigating measures identified in its EIA as indicated in the EI license (and to instruct and close any CAR), and
  - the duty of the LVD to – as part of Level 3 – ensure and validate that the EPA did the proper verification i.e. that there is compliance with the Level 1 requirement.

Following the same logic, and contrary to what the SGS document states, the LVD should/would no longer be responsible for field inspections [see Level 2, in above Figure 4] in first instance in connection with forest concession holders’ compliance with:

a. The Chain of Custody System (COCS) or Traceability;

b. The forest management and harvesting requirement of the Legality Matrix (i.e. Principle 4 of the Matrix).

LVD should also not interfere with other MACs’ enforcement in their respective areas. Doing this instead of the EPA, in the example, would only create problems (confusion, lack of coordination, an undermining of EPA’s sense of responsibility, a possible duplication of efforts, possible conflicts of interests, and a resulting inefficiency and over-loading for the LVD). Contrary to what the SGS document

states, LVD should no longer be primarily responsible for the compliance by Private Timber Companies [see Level 3 in above Figure 4] in second instance.

The LVD would still be tasked with the direct checking on "the Private Sector participants" (as per the SGS document) but only through "auditing the operations of actors in the forestry sector" as part of Level 3 on a sampling basis "to validate consistency of compliance" by the operators and to double-check on enforcement by the other MACs (EPA's verification in the example).

This links to the discussion (initiated in 6.2.3.5 below (Assessment of LVD auditing against the CFHP Checklist), now moved to A4R, Vol.2 under 7.4.6.4) *whether LVD should also conduct direct Level 2 checks on Operators, or only Level 3 audits on Level 2 Government checks*, where it was felt that:

- Part of the answer is likely to be found in the Indicators, Verifiers and Guidance of the Legality matrix of the VPA (and whether this is in the "spirit" of the VPA);
- There is also a need to clarify whether these audits were being done (i) *as part of the LVD's function to conduct field audits of the inspections/ audits implemented by other departments* (FDA, MoL, EPA) against the requirements of the LM, or (ii) *in the absence of any such inspections/ audits being implemented*. In the latter instance, there was no indication that the LVD auditors had checked on the (though existing) FDA inspection report (see 6.4.7 below, 'FDA field inspections (CFD)' - now moved to A4R, Vol.2 also under 6.4.7), which suggests both a confusing duplication of Level 2 control (since LVD was re-checking on the Operator instead of auditing the other FDA department) and inefficient Level 3 control.

***Conclusions (revised)***

There has been considerable confusion in LAS documentation regarding the different levels in the 'LAS Verification Framework', and it is suggested that the following definitions would bring clarity:

- Level 1: the statutory requirements that a timber operator must comply with.
- Level 2: the monitoring and inspection checks conducted by relevant MACs (FDA divisions and other government bodies) to ensure that there is compliance with the first level requirements. Every Level 1 requirement for the operators generates a Level 2 requirement for the relevant MAC to check compliance.
- Level 3: the "internal audit" and validation functions conducted by the LVD. LVD essentially validates legal compliance by periodically verifying the implementation of (i) the verification procedures by other MACs in accordance with the Legality Matrix and (ii) operators' compliance with the corrective action requests issued by these bodies. LVD relies on document and system review, interviews and field visits; this also includes monitoring the effective functioning of the overall LAS. Corrective actions should be implemented through LED and FDA Management.
- Level 4: the Law Enforcement Division (LED)'s inspectorate and enforcement roles, above LVD. Another round of analysis may be necessary to clarify the respective roles of LVD and LED and ensure there is no duplication, depending whether and how the Levels 2 and 3 are more clearly separated beforehand.

- Level 5: the Independent Audit of the LAS of the VPA, fifth component of the LAS.

***Recommendations***

Consider implementing a more logical definition of five levels in the LAS verification framework, as recommended.

The IA identifies this as a significant issue for a clear construction of the LAS, and registered an **ISSUE** (ref. **MII 18** in the IA Progress DB):

| **ISSUE MII 18** |
|---|
| **Impact level**: Medium; |
| **Identified ISSUE**: There has been confusion so far in LAS documentation regarding the different levels in the LAS Verification Framework; |
| **Recommendation**: Consider implementing a more logical definition of five levels in the LAS verification framework, as recommended. |

On the basis of the above definition of the five levels of the LAS, the following roles currently entrusted to LVD at Level 2 create particular situations:

- For LVD, Level 2 includes the collection of regulatory evidence and uploading it to the COCIS (LiberTrace), and ensuring that the integrity of the information in LiberTrace is maintained. This is workable as long as LVD remains the owner and manager of the system; but other options could be considered in terms of ownership, use rights, and data management of LiberTrace to broaden its use across FDA while still securing its integrity.
- For LVD, Level 2 currently also includes field inspections in connection with forest concession holders' compliance with: a) the Chain of Custody System (COCS) i.e. traceability requirements; and b) the forest management and harvesting requirements of the Legality Matrix (i.e. Principle 4 of the Matrix). These functions could be given back to the Commercial Forestry Dept (CFD) of FDA for a clearer separation of Level 2 vs. Level 3 roles of LVD (See current Conflicts of interest issues as per ISSUE HII 8) and increased coherence and productivity in field operations for the CFD, as long as CFD is also provided with the appropriate level of resources to operate.

Consider transferring the responsibility of Level 2 field inspections from LVD to CFD, to increase coherence and productivity, together with appropriate operational means and resources.

The IA identifies the above situation as an issue, in relation to ISSUE HII 8 (Conflicts of interest b/w key roles of LVD and within FDA in VPA implementation), and registered a new **ISSUE** (ref. **MII 19** in the IA Progress DB):

| **ISSUE MII 19** |
|---|
| **Impact level**: Medium; |
| **Identified ISSUE**: On the basis of a clear definition of five levels in the LAS verification framework, some roles currently entrusted to LVD at Level 2 create issues; |

**Recommendation**: In particular, consider transferring Level 2 field inspections from LVD to CFD, together with the associated resources, to remove conflicts of interest issues and for more coherence in the LAS and productivity for CFD.

There has also been a discussion whether Independent Audits (i.e. Level 5 verification) of *private sector operators* by the IA would also be justified as part of assessing the overall efficiency of LAS implementation or if, as it was felt in A4R Vol.2, 4.3 (Preliminary planning of Audit 3 work, 4.3.2 Guiding principles), the auditing of the field operations of private forestry operators by the IA only serves to assess the quality of the Level 2 to 4 government checks based on their reports.

The answer shall probably be “both” because, as the discussion resurfaced during Audit 3, it may be necessary to also assess the private sector operators’ efficiency in implementing the LAS as per their roles and responsibilities in it, in case this cannot be solely assessed through, and while auditing, the Level 2 to 4 checks.

For further attention, therefore: IA to understand to what extent/scope it also (as the IA) needs to assess whether PS operators contribute efficiently to the LAS (which is different from auditing Govt's checking of the same), as per their roles & responsibilities in the LM.

In this regard, the risk-based audit approach that the IA applied in Audit 1 using adapted government checklists could continue to be used and the risk profile and rating should be updated prior to each audit.

#### 6.1.7.4 Legality definition and related verification procedures

Status: Initial review completed and moved to 6.1.7.4 (and now further to 7.3.8.3) in A4R, Vol.2 for archiving.

#### 6.1.7.5 Data management

Status: Initial review completed and moved to 6.1.7.5 (and now further to 7.3.8.4) in A4R, Vol.2, likewise.

#### 6.1.7.6 Legality verification of operators working under an independent forest management certification scheme

Status: Initial review completed and moved to 6.1.7.6 (and now further to 7.3.8.5) in A4R, Vol.2, likewise.

### 6.1.8 Annex II - Implementation of Legality verification

Status: Initial review completed and moved to 6.1.8 (and now further to 7.3.9) in A4R, Vol.2 where it has been archived.

### 6.1.9 Annex II - Chain of Custody System

Status: Below initial reviews considered to have been completed in previous reports of the IA and moved to 6.1.9.1 to 6.1.9.12 (and now further to 7.3.11.1 to 7.3.11.12) in A4R, Vol.2 for archiving.

**6.1.9.1 Standard operating procedures (SOPs)**

**6.1.9.2 Pre-harvest checks**

**6.1.9.3 Harvesting**

**6.1.9.4 Forest log yard/landing**

**6.1.9.5 Transport of logs or processed wood**

**6.1.9.6 Processing of timber**

**6.1.9.7 Export**

**6.1.9.8 Domestic market**

**6.1.9.9 Imported timber**

**6.1.9.10 Timber in transit**

**6.1.9.11 Rubberwood**

**6.1.9.12 Data reconciliation**

Status: The first part of this review was considered completed and was moved to 6.1.9.12 in A4R, Vol.2 for archiving. It continues below.

**Ann. II, 5.12c**: "In addition to the reconciliation of quantitative data, the COCS checks with the LVD database that there is full compliance with the LD prior to each sale whether intended for export or sale in Liberia". This clearly also makes the right to sell *in Liberia* (i.e. on the domestic market) conditional on full compliance with the LD.

For future attention: this relates to the on-going investigations (i) in 6.1.7.5, whether and which records are in fact "blocking" (i.e. used as triggers to allow progress along the product chain, such as … transfer of logs along the supply chain" as per **Ann. II, 4.2e**), and (ii) in Chap. 6.3 about Export permit issuance, whether prior legality check for *export* and for *sale in Liberia* are implemented in LiberTrace and in the protocols for using the software.

First, there is a need to understand (i) what mechanism currently exists in the COCS/COCIS (LiberTrace), if any, to allow or block a *sale in Liberia*, like the EP or the FLEGT License for export, based on legal compliance, and (ii) whether this is backed by any law making the right to sell *in Liberia* (domestic market) conditional on legal compliance; or whether it only makes "common sense" to use such mechanism, if any, to verify legality, as has been assessed for the Export Permit (See 7.3.12.2).

For further attention: Does the "mandatory declaration of ownership change by the Seller and acceptation by the Buyer in LiberTrace" (as per 6.3.3.2) for a sale in Liberia provide any mechanism to verify Legality (in the broader sense) or by which the Buyer would consider the product accepted as Legal?

For further attention: Need to complement the analysis of the guiding principles of the COCS at key control points (in 7.3.11.1, Vol.2) through the review of Appendix B (in 6.1.15, herein).

## 6.1.10 Annex II - Failure to comply with the LAS

Status: Initial review completed and moved to 6.1.10 (and now further to 7.3.12) in A4R, Vol.2 for archiving.

### 6.1.11 Annex II - Licensing

Status: Initial review completed and moved to 6.1.11 (and now further to 7.3.14) in A4R, Vol.2 for archiving.

### 6.1.12 Annex II - Independent audit

Status: Initial review completed and moved to 6.1.12 (and now further to 7.3.15) in A4R, Vol.2 for archiving.

### 6.1.13 Annex II - Appendix A: Legality Definition, Matrix and Verification Procedures, 1. Plan for Forestry Policy and Law Reform

Status: Initial review completed and moved to 6.1.13 (and now further to 7.3.16) in A4R, Vol.2 for archiving.

### 6.1.14 Annex II - Appendix A: Legality Definition, Matrix and Verification Procedures, 2. Legality Matrix

#### 6.1.14.1 Foreword

Status: Initial review completed and moved to 6.1.14.1 (and now further to 7.3.17.1) in A4R, Vol.2 for archiving.

#### 6.1.14.2 The Legality Matrix itself (table)

Status: Initial review considered to have been mostly completed in previous reports of the IA and moved to 6.1.14.2 (and now further to 7.3.17.2) in A4R, Vol.2 for archiving and follow-up.

#### 6.1.14.3 Exploration of the VPA Annex II, Appendix A (continued and ended)

Status: Initial review completed and moved to 6.1.14.3 (and now further to 7.3.17.3) in A4R, Vol.2 for archiving.

### 6.1.15 Annex II – Appendix B: OVERVIEW OF THE CHAIN OF CUSTODY SYSTEM (COCS)

The Baseline review should continue during the next independent audits with the review of the 'Overview of The Chain of Custody System (COCS)' as per the VPA Annex II, Appendix B, complementing the analysis of the COCS (under 6.1.9, now further moved to 7.3.11) in A4R Vol.2), and then of the rest of the VPA Annexes III to X. It was not an agreed point of focus for Audit 4.

## 6.2 Field audits

### 6.2.1 Implementation of the role of Government, the Commercial Forestry Department (CFD) of the FDA

#### 6.2.1.1 Background

Status: Review completed and moved to 6.2.1.1 (and now further to 7.4.1.1) in A4R, Vol.2 for archiving.

#### 6.2.1.2 The Commercial Forestry Department (CFD) on the FDA Organogram

Status: Review completed and moved to 6.2.1.2 (and now further to 7.4.1.6) in A4R, Vol.2 for archiving.

#### 6.2.1.3 The Commercial Forestry Department (CFD) in the Legality Matrix

Status: completed parts of the initial review were moved to 6.2.1.3 in A4R, Vol.2 for archiving and follow-up. The review continues below with LM Principle 4.

| ***LM Clauses*** | *4* ***Forest management operations and harvesting***<br>*4.1* ***The contract or permit holder*** **has completed** ***an annual operational plan and where applicable, a forest management plan***<br>***4.1.1 Annual Harvesting Certificate***<br>***4.1.2 Approved Annual Operational Plan (AOP)***<br>***4.1.3 Approved Forest Management Plan (FMP)*** |
|---|---|
| Other clauses | CFHP Management planning guidelines of Liberia |
| Procedures | Procedures are described in the Guidelines for Forest Management Planning in Liberia (FMGs), but no approved FDA procedures exist to ensure that the AOP is signed-off according to the requirements of the LM and as stipulated in the Guidelines |
| Design of Templates | No checklist exists to ensure that Commercial Department officials consistently follow the LM requirements.<br>**Recommendations:**<br>▪ An AOP report template is required for operators to use when preparing their AOPs<br>▪ A checklist for the review of AOPs can be used consistently by FSC Commercial Department officials |
| Comments and recommendations | No AOP report template for operators to follow<br>No approved procedures for approval of AOP by FDA<br>**Recommendations:**<br>Report template and approved procedures to be implemented |
| Relevance in LM | Fully relevant |

Note: The responsibility of this verification is assumed to be with CFD.

***Conclusion:*** Lack of AOP template for operators to follow, and of approved procedures for approval of AOP by FDA;

**FDA/IAWG response to the Main C&R in the Audit 3 report:**

*This is incorrect: There are forest management guidelines that spelled out procedures to approving AOP and Five years forest management plan. In addition, there is also community forest management guidelines developed by FDA/PROSPER and it is used as a template to review and approve CFMAs.*

*Mitigation Measure:*

*Responsible Department: Commercial /Community departments*

*Time Frame:*

*Reference: AOP approval templates*

*Remarks: The Template was developed from the Forest Management Guidelines for Planning*

IA review of FDA/IAWG response:

This is still under investigation with the IA waiting for further evidence to be provided by the CFD.

Regarding procedures, templates and checklists, the IA has been requesting the information below from the FDA (FDA/NAD office), with the assistance of the VPA Secretariat to collect and scan the documents (no soft copies are available) and email them to the IA Auditor, and finally return the originals to the NAD's office, but to date there has been no response from FDA on the above request:

1. Approved procedures incl. for approval of AOP and 5-year FM plan;
2. Approved procedures for the process of approving AOPs by FDA (i.e. to ensure that the AOP is signed off as FMGs stipulate and the LM therefore also requires);

   Note: The IA has only been provided with a Geblo AOP approval letter and memo 191209 (no review report). This does not qualify as "approved procedures".
3. An approved official AOP report template for the operators, to prepare their AOPs;
4. An approved checklist for CFD to review AOPs; all reflecting the FMGs.

The IA so far confirms that no AOP report template exists for operators to follow; no approved procedures exist for approval of AOP by FDA (i.e. to ensure that the AOP is signed off as FMGs stipulate and the LM therefore also requires); and no checklist exists either, for approval of AOP by CFD (i.e. to ensure that CFD officials consistently follow the FMG/LM requirements).

IA still needs to review and confirm:

- That "*procedures exist in the FMGs incl. for approval of AOP (and 5-year FM plan)*";
- That "*a template exists, based on new CyFM guidelines for CyFD to review and approve CFMAs*" (presumably the new community forest management guidelines reportedly launched at the end of October 2019).

Meanwhile, Issue MII 8 (below) shall remain open.

The IA had registered an **ISSUE** (ref. **MII 8** in the IA Progress DB) about this during Audit 3, now updated as follows:

| **ISSUE MII 8** (updated) |
|---|
| **Impact level**: Medium; |
| **Identified ISSUE**: Lack of approved procedures and templates for the management of the competitive concession bidding process by FDA; lack of AOP template for operators to follow, and of approved procedures for approval of AOP by FDA; |
| ***Recommendation***: Procedures and templates for the management of the competitive concession bidding process by FDA, AOP report template for the operators, and approval procedures and checklist for CFD (including for the CFMA Forest Management Plans) to be developed and implemented. |

| | |
|---|---|
| ***LM Clauses*** | ***4.2 The contract or permit holder* complies with *the terms of its annual operational plan (AOP) and requirements of law regarding the species and quantities it is permitted to harvest***<br>***4.2.1 Approved annual blocks***<br>***4.2.2 Compartment and Annual coupe***<br>***4.2.3 Felled trees data verification (SOP11)***<br>***4.2.3 Annual compliance audit report of FDA*** |
| Other clauses | Code of Forest Harvesting Practices (CFHP), Guidelines for Forest Management Planning in Liberia (FMGs) |
| Procedures | 4.2.1 No procedures for the approval of annual blocks by FDA<br>4.2.2 Procedures are described in the FMGs, but no approved FDA procedures and checklist exist for approval of Compartment plan by FDA (i.e. to ensure that the Compartment plan is signed-off as FMGs stipulate and the LM therefore also requires)<br>4.2.3 Felled trees data verification is contained in SOP11, but the 30-day registration requirement is not being enforced in the system (see review done in Audit 2 report related to the CoC Procedures Manual.<br>4.2.3 No Annual compliance audit report (ACAR) is prepared by FDA that covers the Compartment planning and Annual coupe review. Letter was sent by the MD of FDA to the Law Enforcement Division (LED) to complete the Annual compliance audit(s), but LED does not have the resources to complete this audit (the IA still needs to receive clarity who is responsible for completing the Annual compliance audit (LED?) and for writing/compiling the report (ACAR), whether LED or the FDA jointly (Management / several Departments). CFD TM provided no clear or firm response ("Understands relevance of compilation approach of inputs from all responsible depts. No, have not seen any one done yet in FDA"). |
| Design of Templates | Insufficient design templates are in place to ensure that FDA can consistently and accurately evaluate documents/plans supplied by operators |
| Comments and recommendations | No Compartment report template for operators to follow<br>No approved procedures for FDA approval of Compartment plan<br>No procedures and audit checklist and report template for completing the Annual compliance audit<br>**Recommendation:**<br>Report templates and approved procedures to be implemented<br>CFD to implement an annual audit of all operators active in the forest industry in Liberia, using appropriate procedures, templates and checklists. |
| Relevance in LM | Fully relevant |

Note: The responsibility of this verification (annual blocks, compartment, annual coupe, felling data) is assumed to be with CFD.

***Conclusion:*** Lack of Compartment plan template for operators to follow, and of approved procedures for approval by FDA;

**FDA/IAWG response to the Main C&R in the Audit 3 report:**

*"A template for compartment harvesting report has not been formulated but Forest Management guidelines have been closely followed to ensure that the compartments are operated base on the 25yrs felling circle. There is no requirement in the VPA for creation of separate compartment procedures. The FDA is reviewing possibly developing a template for the compartment Report".*

*Mitigation Measure: Compartment harvesting report template needs to be developed after 5 years by the FDA Management*

*Responsible Department: Commercial /Community departments, assisted by VPA SU-2*

*Time Frame: After 5 yrs*

*Reference: Forest Management Guidelines*

*Remarks: Review of the Forest Management Guidelines*

IA review of FDA/IAWG response:

- All levels of planning are described in the FMGs, including compartment level planning, but no approved FDA procedures and checklist exist for approval of Compartment plan by FDA (i.e. to ensure that the Compartment plan is signed off as FMGs stipulate and the VPA/LM therefore also requires - Have FMGs been closely followed to ensure that the compartments are operated based on the 25-year felling cycle?).
- The intended corrective measure for FDA Management to develop a compartment harvesting report template *after 5 years* is noted.
- Issue MII 9 shall remain open, as slightly revised below.

The IA had registered an **ISSUE** (ref. **MII 9** in the IA Progress DB) about this during Audit 3, now revised as follows:

| **ISSUE MII 9** |
|---|
| **Impact level**: Medium; |
| **Identified ISSUE**: Lack of Compartment report template for operators to follow, and of approved procedures for FDA approval of Compartment plan; |
| ***Recommendation(s)***: Report template and approval procedures to be developed and implemented for Compartment plan and annual blocks. |

The lack of clear assignment and of procedures and audit template checklist and report for completing the Annual compliance audit is already included in the Issue HII 22.

Consulted during the Audit 4 regarding general procedures for the CFD, the CFD TM asserted that these are the "same LVD SOPs for all Depts… plus the CFHP plus the FMGs plus the Ten Core regs etc. but eventually recognized they have no

procedures to tell exactly what inspections they have to do, when and how etc. and which checklist and report template to use etc.; and admitted this is still missing. The IA shall consider raising a *general* issue about this, replacing the lack of specific procedures in different areas.

| ***LM Clauses*** | *5* ***Environmental obligations***<br>*5.2* ***The contract or permit holder or timber processor implements the mitigating measures identified in its EIA as indicated in the EI permit***<br>***5.2.2 FDA EIA inspection report*** |
|---|---|
| Other clauses | CFHP |
| Procedures | No procedures for conducting EIA inspections |
| Design of Templates | No checklist for conducting EIA inspections. Checklist prepared as part of the CFHP not being used.<br>No report template for FDA EIA inspectors working in the EIA Division of the CFD to conduct consistent and credible infield inspections of all operators in Liberia. |
| Comments and recommendations | FDA CFD EIAD inspectors should be doing monthly inspections, but they are doing it quarterly due to lack of resources.<br>Lack of procedures, checklists and report templates in the EIA Division of the CFD.<br>**Recommendations:**<br>▪ All EIAD inspectors trained on how to do EIA inspections in the field to meet the LM requirements<br>▪ Prepare procedures, checklists and report templates to allow inspectors to conduct consistent and credible field audits regarding EIA requirements. |
| Relevance in LM | Fully relevant |

Note: The responsibility of this verification is assumed to be with CFD, Environmental Impact Assessment (EIA) Division (EIAD).

**FDA/IAWG response to the Main C&R in the Audit 3 report**

*Response: A checklist for the Code of Forest Harvesting Practices (CFHP) and procedures (SOPs for LVD staff and operators, procedures for LM verifiers for Commercial Department) were developed and is used by … Commercial Department*
*Mitigation Measure: Continue training of … Commercial Dept….*
*Responsible Department: VPA SU-2/ LFSP*
*Time Frame: Ongoing*
*Reference: SOPs, Checklist, and Verifiers Procedures*
*Remarks: The VPA Secretariat will coordinate the training in coordination with the Commercial*

IA review of FDA/IAWG response:

- A Checklist for CFHP and procedures (LVD SOPs, procedures for LM verifiers for CFD) exist and may be used by CFD, but do they address the issue for CFD EIAD inspectors is the question (i.e. are they relevant?). Do they tell them what inspections or checks they must conduct, when, how often, how etc.?

- Is the lack/need of training really the problem? VPASU provided newly recruited CFD inspectors with a week's training (See HII 6). But did this cover EIAD inspections? The CFD is also completely immobile and dysfunctional in meeting their responsibilities regarding fully controlling all forest activities in Liberia. This was confirmed by the Regional Manager in Region 3.
- Until the above is clarified, Issue MII 10 (as slightly revised below) shall remain open.

The related **ISSUE** (ref. **MII 10** in the IA Progress DB) registered by the IA during Audit 3 has been revised as follows:

| **ISSUE MII 10** |
|---|
| **Impact level**: Medium; |
| **Identified ISSUE**: Lack of relevant procedures and checklists, report templates, training, and resources (specifically) for CFD EIA Division inspections, including of waste disposal; |
| **Recommendation(s)**: Prepare relevant procedures, checklists and report templates for EIAD inspectors and equip them with training in LM requirements and with adequate resources. |

| ***LM Clauses*** | *5* ***Environmental obligations***<br>*5.3* ***Contract or permit holder or timber processor has disposed of equipment, fuel, wood refuse and related waste arising from its operations in a lawful and environmentally appropriate manner***<br>***5.3.2 FDA Annual Compliance Audit Report*** |
|---|---|
| Other clauses | CFHP |
| Procedures | No procedures for conducting waste disposal inspections |
| Design of Templates | No checklist for conducting EIA inspections. Also, the checklist prepared as part of the CFHP is not being used.<br>No report template for FDA EIA inspectors working in the EIA Division of the CFD to conduct consistent and credible infield inspections of all operators in Liberia. |
| Comments and recommendations | FDA EIA inspectors are not involved in conducting annual audits from an environmental perspective as part of producing the FDA Annual compliance audit report (ACAR).<br>Lack of procedures, checklists and report templates in the EIA Division of the CFD.<br>**Recommendation:**<br>Firstly, establish if the EIA inspectors have a role to play vis a vis the responsibilities of the EPA. If so, clearly define the respective roles of each of the EPA and the EIA inspectors of the FDA, to avoid overlap of responsibilities and thus possible wastage of resources.<br>All EIA inspectors trained on how to do EIA inspections in the field to meet the requirements of LM.<br>Prepare procedures, checklists and report templates to allow inspectors to conduct consistent and credible field audits regarding EIA requirements. |
| Relevance of the | Possibly not relevant - EPA is directly responsible for |

| | |
|---|---|
| requirement in LM | environmental compliance. On the other hand, the EIA inspectors have a similar responsibility and there is a clear overlap between the two entities. |

Note: Responsibilities in this verification are collectively assigned in the LM to CFD, LED, and EPA, possibly reflecting the lack of a clear division of roles. The Division in charge within CFD is assumed to be the EIA Division (EIAD).

Issues related to procedures, checklists, templates and training under this Indicator are also addressed in MII 10 (above).

The other, and primary issue here before 'How to do it' is "Who does what', i.e. the need to clarify the respective roles and responsibilities of the EIA Division in the FDA CFD and of the EPA.

The IA registered an **ISSUE** (ref. **HII 26** in the IA Progress DB) about this, during Audit 3:

| **ISSUE HII 26** |
|---|
| **Impact level**: High; |
| **Identified ISSUE**: Unclear division of responsibilities between the FDA EIA Division in the CFD and the EPA, hence possible loopholes or duplications of efforts; |
| **Recommendation(s)**: Clarify the respective roles and responsibilities of FDA (EIAD) and EPA in conducting EI inspections and in contributing to the FDA Annual compliance reports. |

**FDA/IAWG response to the Main C&R in the Audit 3 report**

*Risk/ Issue: Unclear responsibilities between EPA and FDA, possible overlaps and loopholes*

*Response: The EIA Division within FDA compliments the work of EPA, and does not usurp the function of EPA. In addition, there is a current MOU between the FDA and the EPA when it comes to responsibility. The responsibilities of each is clear and no overlap.*

*Mitigation Measure: The Checklist for the Code of Harvesting Practices clearly states the roles of the FDA-EIA Division, EPA, and the MoL*

*Responsible Department: Commercial Department/R&D department*

*Time Frame: 2019/2020 harvesting season*

*Reference: dbh (diameter cut limit) annex to the code of forest harvesting practices*

*Remarks: The FDA request to VPA SU-2 to conduct research for updating the minimun diameter cut limit.*

IA review of FDA/IAWG response:

- The IA acknowledges that the roles of the various role players (e.g. FDA, MOL, EPA) are stated in the Checklist for CFHP. But it does not clearly define the respective roles of each of the EPA and the FDA EIA inspectors, to avoid overlap of responsibilities and thus a wastage of resources.

- IA to be provided with the evidence of an MOU between the FDA and the EPA ensuring that the EIA Division of FDA complements the work of EPA, and that the responsibilities of each are clear and there is no overlap.
- What research on DCL has FDA requested VPASU2 to conduct? There is no relevance to the issue raised.
- Meanwhile, Issue HII 26 shall remain open as is.

| *LM Clauses* | *5* ***Environmental obligations***<br>*5.4* ***Contract holder has maintained a buffer between its harvesting operations and water courses, and has specifically not felled trees that could threaten the flow or stability of the water course(s)***<br>***5.4.2 FDA Annual Compliance Audit Report*** |
|---|---|
| Other clauses | CFHP |
| Procedures | No procedures available to ensure that FDA routine inspections and annual compliance audits are checked in a consistent and credible manner. In practice, ongoing inspections culminate in a monthly report that the Regional Manager sends to the National Authorizing Officer in the Contract Administration Division (National Authorizing Division - NAD) of the CFD in Monrovia. No procedures exist to guide field staff on the frequency, methodology and approach in conducting ongoing routine inspections. |
| Design of Templates | CFHP checklist exists to check requirements reflected in 5.4 but is not being used by FDA staff.<br>These reports currently have the following deficiencies:<br>▪ The various regional reports are not consistent in their layout as there is no master template to follow.<br>▪ Reports are not completed consistently each month for each region. For example<br>• May/June reports: 3 reports were submitted (no report for Region 1)<br>• June/July reports: No reports were available<br>• July/August reports: 1 report was submitted from Region 3<br>• No reports were submitted since then.<br>• No electronic transmission and filing (NAD office has no computer).<br>▪ No follow up on issues raised in the reports by FDA staff. See specifically the Region 2 report dated July 5, 2018 with regard to non-compliances related to water quality. |
| Comments and recommendations | No procedures and templates as described above for conducting ongoing inspections by FDA staff.<br>**Recommendations:**<br>▪ Prepare field inspection procedures for field staff<br>▪ Implement CFHP checklists as the checklist to be used by field staff during ongoing audits<br>▪ Prepare a generic reporting template for regional managers to allow for consistent and credible reporting on field |

| | |
|---|---|
| | activities |
| Relevance in LM | Totally relevant |

Note: Responsibilities in this verification are collectively assigned to CFD, LED, and EPA, possibly reflecting the lack of a clear division of roles. The Division in charge within CFD is not identified either (EIAD?).

The key issue here is the lack of procedures (frequency, methodology, approach), checklist (CFHP checklist not being used) and master templates developed and implemented for FDA staff to conduct routine field inspections and annual compliance audits of harvesting operations with regard to watercourse protection.

The issue of who is responsible for the FDA Annual Compliance Audit Report (ACAR) has been raised separately (See ISSUE HII 22, in A4R Vol.1, 6.2.4.2) and recalled above under LM Clause 4.2.

The IA registered an **ISSUE** (ref. **MII 11** in the IA Progress DB) about this, during Audit 3:

| **ISSUE MII 11** |
|---|
| **Impact level:** High; |
| **Identified ISSUE:** Lack of allocation in LM and procedures, checklist and templates developed and implemented for inspections and compliance audits of harvesting operations by FDA with regard to e.g. watercourse protection; |
| **Recommendation(s):** Allocate responsibility; implement procedures, CFHP checklists and a report template for field inspections and compliance audits by Regional office staff. |

**FDA/IAWG response to the Main C&R in the Audit 3 report**
*Risk/ Issue: Lack of clear allocation in LM and procedures for inspections and audits*
*Response: A checklist for the Code of Forest Harvesting Practices (CFHP) and procedures (SOPs for LVD staff and operators, procedures for LM verifiers for Commercial Department) were developed and is used by LVD and Commercial Departments*
*Mitigation Measure: Continue training of LVD Dept., Commercial Dept., Law Enforcement Division (LED), Community Forestry Dept., VPA Secretariat, and R&D/GIS*
*Responsible Department: VPA SU-2/ LFSP*
*Time Frame: Ongoing*
*Reference: SOPs, Checklist, and Verifiers Procedures*
*Remarks: The VPA Secretariat will coordinate the training in coordination with the Commercial*

IA review of FDA/IAWG response:

- Same as for MII 10 above.

### 6.2.1.4 Capacity analysis of the Commercial Forestry Department (CFD)

Status: Review completed and moved to 6.2.1.4 in A4R, Vol.2 for archiving.

## 6.2.2 Implementation of the role of Government, the Community Forestry Department (CyFD) of the FDA

### 6.2.2.1 The Community Forestry Department (CyFD) on the FDA Organogram

Status: Review completed and moved to 6.2.2.1 (and now further to 7.4.2.1) in A4R, Vol.2 for archiving.

### 6.2.2.2 The Community Forestry Department (CyFD) in the Legality Matrix

Status: Review completed and moved to 6.2.2.2 in A4R, Vol.2 for archiving.

### 6.2.2.3 Capacity analysis of the Community Forestry Department (CyFD)

Status: Review completed and moved to 6.2.2.1 (and now further to 7.4.2.2) in A4R, Vol.2 for archiving.

## 6.2.3 Implementation of the role of Government, (Establishment and) functioning of the LVD

For further IA action: Move any parts of this section 'Establishment (and functioning) of the LVD' related to LVD's *establishment*, separately from other sections on the *functioning* (i.e. all performance-based assessment aspects) of the LVD to A4R Vol.2 for archiving (in 7.3.8.1 under 7.3.8, 'Broad institutional set-up of the LAS'), together with the completed review of the initial establishment of the LVD from 6.1.7.1 (under 6.1.7 'Annex II - Institutional set-up of the LAS').

### 6.2.3.1 Background

Status: See material from reviews previously completed moved to 6.2.3.1 (and now further to 7.4.5.1) in A4R, Vol.2 for archiving.

**SGS/LVD monthly reports**

*Update regarding the LVD monthly reports, during Audit 4 (Source: LVD):*

The LVD monthly reports are no longer uploaded to LiberTrace after June 2019, since SGS handed over to LVD. The reports should be on the FDA Website, but LVD are claiming problems with it. The IA asked whether there was any problem that could not possibly be solved, but got no clear response.

So, the monthly reports are now only being sent to relevant stakeholders: LRA, EU, FDA MD, DMDO; and upon request (The IA thus asked for, and received soft copies of the 'LVD TM Monthly Reports' from May to September 2019).

The fact that the LVD monthly reports are no longer publicly available on the FDA Website or in the public News section of LiberTrace is a regression from the LVD pre-SGS Handover time.

This links to the general **ISSUE HII 24** regarding the FDA Website and aggravates the **ISSUES MII 5 and MII 6** on Communication and transparency regarding the lack of publication of annual and other reports by the JIC.

#### 6.2.3.2 Current establishment of the LVD, SGS contract as Service provider, and handover process to LVD

Status: See material from reviews previously completed moved to 6.2.3.2 (and now further to 7.4.5.2) in A4R, Vol.2 for archiving.

**LVD structure**

Early indications as of 12.10.2018 regarding the future scope of SGS (post-short-term extension of current mandates during negotiations) until July 2019 had included the following information.

Updates have been added from the Audit 4 (”Ok” or other comments in italic):

- Under **DFID funding through EU**:
  - Capacity building of LVD HO (handover of CoCS management, by March 2019):
    **Ok** (Evidence indicated by SGS: Project Board meeting report, SGS/LVD progress report)
  - Capacity building of the Legality Verification (LV) team (SGS was to keep it until May 2019 hoping that more verifiers would be turned on by that time):
    *As indicated to the IA, SGS got an extension up to 31 July, but formal handover never took place afterwards, because staffing was not completed by May (previous LV Team Leader's services were terminated end April; the new TL was still lacking leadership; SGS managers were not operational anyway).*
  - Basic training for a function that prefigures the core of the future LLD; monitoring until LLD capacity is built:
    *SGS started training 2 staff supposed to take over EP issuance responsibilities from SGS, the last time in May 2019, together with the LV team. The staffs were officially appointed from May to July, then have been in standstill.*
- Under the **GoL Service Agreement** (with direct funding from LRA to SGS's escrow account):
  - Transfer of LiberTrace (LT) hardware and software (no further Support & Maintenance nor enhancement of hardware and software; no more hosting of S/W & data servers (GoL to decide on data center or Cloud*)); and training (in use and S&M):
    *The LT servers (machines) have been stored in the FLEGT Facilitation office in Monrovia. The system and data "servers" have been hosted on the Cloud under SGS IT management (Geneva).*

    Internal FDA capacity to maintain and enhance the system: *as the IA was informed, SGS set criteria for the future FDA IT specialist; FDA selected a candidate who was assessed and, as a result, registered by SGS at BlueCrest IT College, which concluded the candidate was not enough qualified to receive the training. EFI then recommended several new candidates, who were also assessed by SGS as lacking knowledge, and the process has stayed there: no FDA IT Manager has been qualified yet.*

    *As of one day before, SGS felt entitled to turn LT off by October 31, 2019 (end of short-term contract extension) if no decision was taken by then!*

- Supervision of the LVD HO activities wrt CoC:
  This in fact mainly covered the Export Permit process (See below).

- Monitoring of the CoC activities in Regions (all being transferred with, currently, some remaining uncertainty as to the readiness of R4); to include "counter-checking" until (and even after*) July 2019:
  * Which is not foreseen in the VPA framework post-BOT

  *This consisted in sampling blocks and in counterchecking after LVD block verification, until Oct 31st. It would appear that SGS did not issue reports resulting from such supervision and monitoring.*

  *As part of these supervision and monitoring responsibilities, the Conflict of Interest risk identified under 7.3.8.3 (lack of independence of SGS from FDA) in A4R Vol.2 clearly undermined SGS's power to challenge FDA decisions taken in regional / HQ offices (See Audit 4 report on EP issuance).*

- Legality Verification (LV - audits and recommendation on issuance of EPs):
  The SGS Project Coordinator (PC) coached a team (including the LV TL) on this, starting in February 2019.

  *But no field audits have been conducted since 31 July, only desk review. "Lack of funding", and that the escrow account was not being used for LVD auditing operations, were the reason initially given to the LVD Audit team staff. For the LVD TM, the real reason is that the vehicles left by SGS were worn out (only 3 vehicles running; LVD now buying 2 new cars).*

  *Other indications received are that forest companies are paying COC Inspectors' DSA (Daily Subsistence Allowance) through the Head of LVD. This was denied by the LVD TM and OM as "pure fantasy; LVD has budget", while the LV TL was "not aware at all".*

  *One finding has been that the blocks are not being verified (by CoC Inspector), processed (by Data Clerk) and approved (with OM recommending) following the sequence of the requests submitted in LT. But the IA's suggestion of "subjectivity in treatment" was again denied by the LVD OM as "Not true; there is no preference to anybody; the company submits documentation, then the team goes to the field".*

  *No new Verifiers have been activated since then, contrary to what had been hoped for.*

  *The IA auditors were also informed that the final recommendation sentence and signature for the issuance of Export Permits (EPs) had been removed from the LV Report. The LV report is prepared for the MD; it is not in LiberTrace (LT), since the MD does not use LT. Evidence of such removal was supposed to be obtained between the new and the previous LV reports. This was however not verified, from the template provided (See 7.4.5, Vol.2). Recommendations are in fact issued (but negative recommendations have been ignored by LVD TM, SGS, and MD, as the IA could find – See Audit 4 report on EP issuance).*

  *The SGS Liberia personnel who were not transferred had their contract terminated by end of July 2019 (August, for the SGS PM). The PC was then called back in September to replace the PM for a one-month*

*extension in October. Up to then SGS ensured continuity in the management.*

*Meanwhile, SGS has remained responsible for the final decision regarding EP issuance (process goes from LVD Data Clerk to LVD LV TL, to LVD TM, to SGS, and then to FDA MD).*

*SGS (Liberia/Geneva) has also remained in full and unshared control of LiberTrace (that has not been legally transferred, only physically for Cloud hosting).*

*SGS submitted a proposal to continue providing some services after October 31st, 2019. But, as of 27 October, SGS had not concluded the negotiation, leaving much uncertainty – in view of the situation observed by the IA during Audit 4 -, for a successful outcome of the LVD capacity building program initiated in 2013.*

*For the SGS PC, the cost of SGS' services must be compared to what it brings in. The SGS PC claims that before July all companies were broadly compliant but that this is now "very doubtful".*

*Indications as of October 2019 regarding the future scope of SGS (following the short-term extension of previous mandates until the end of the same month during negotiations) included the following services under the GoL agreement:*

1) *Capacity-Building of LVD Legality Verification (auditing) team*
2) *Capacity-Building of LVD staff for an EP issuance function that prefigures the core of the future LLD*
3) *Third-party monitoring of EP and COO issuance*
4) *Technical Assistance covering the 'Market intelligence' service/function and a Software Licensing Agreement (SLA) for LiberTrace.*

*Update received from the SGS PC by the IA regarding the signing of a new contract, as of 7 January 2020:*

- *No agreement with GoL had been found yet, following further changes to the draft contract by FDA after December 3rd, 2019, which SGS could not agree to.*
- *SGS had not been paid since August 2019, for which the agreement negotiated and agreed on by December 3rd needed to be official.*
- *Meanwhile, the SGS PC personally remained in stand-by.*
- *LiberTrace was still running, but could be turned off at some point if an agreement is not reached with GoL.*

For future IA action (from 6.4.10 Draft A4R Vol.2):

- Confirmation when the transfer of the IP rights to the LiberTrace software by SGS under the GoL Service Agreement really takes place (it was due by July 2019), and of no further Support & Maintenance (incl. no software upgrades), nor any further enhancements of the software, and of only some "training in use and S&M" of the system.

  The evaluation of the LiberTrace software that was ongoing during Audit 3 aimed to identify what will be required to sustain, maintain, operate and

upgrade LiberTrace at the end of the current (until July 2019) SGS contracts, and the second, optional part of the assignment aims to the provision of technical assistance to the FDA (EFI Update, 05.02.2019).

Despite the training and the evaluation and its possible outcome (technical assistance to the FDA, to be confirmed), the IA considered raising a high RISK that the use and Support & Maintenance of the LiberTrace software system will not be fully sustained by the FDA (at the same level as currently by an external service provider like SGS) in the longer term (particularly after the technical assistance to the FDA, if any is provided, terminates). Such doubts were justified by the evidence of the FDA's then current financial incapacity and proven inability or unwillingness to currently maintain its website.

Stakeholder suggestion: Private Sector (under third party monitoring?) to take charge of it? Or support it financially (through a service provider) to ensure its sustainability, against rights to use it as own system?

*Follow-up during Audit 4: On March 21, 2019, SGS informed LiberTrace users that the content of the LiberTrace (data, software?) servers had been successfully migrated from SGS Geneva to "Azur Cloud" as part of the handover. For future attention: Under which SGS or GoL Dept.'s responsibility?*

***Main findings*** regarding the SGS contract as Service provider and the handover process to LVD, as of October 2019 (all under the GoL Service Agreement):

- A positive aspect is that LVD since the end of 2018 is benefitting from the same financing system that SGS/LVD had for its "Side agreement" with the GoL: all forestry taxes and fees paid to LRA, transferred to an escrow/transitory account, from which bills are then paid. This mechanism secures LVD funding while avoiding dependence on the national budget like for the other FDA depts.
- Capacity building of the Legality Verification (LV) Section of LVD: formal handover has not taken place after 31 July 2019 as planned. No field audits have been conducted by LVD LV since then either, only desk review. One reason provided was the bad condition of the vehicles left by SGS;
- Staff officially appointed and trained for monitoring EP issuance, taking over responsibilities from SGS until LLD capacity is built, have been in standstill since 31 July 2019;
- Meanwhile, due to the persisting lack of independence of SGS from FDA, SGS has not been in a position to impose independent third-party opinions or to challenge FDA decisions taken in regional / HQ offices;
- The LiberTrace software and data have been migrated from SGS Geneva to "Azur Cloud", and SGS is only providing basic support (debugging), no further upgrades or enhancements of the hardware and software. But SGS (Liberia/Geneva) has remained in full and unshared control of the system;
- LiberTrace hardware (system and data servers) will likely remain stored in the FLEGT Facilitation office in Monrovia until Liberia decides on a hosting strategy.
- And no FDA IT Manager has been qualified yet as internal FDA capacity to maintain and enhance the LiberTrace (hardware and software) system;

- The IA understands that at the time of closing this report, the situation has only been extended and is being renewed on a short-term 6-month basis and on a lump sum basis for a limited package of services; arrears are being paid, but with cuts into outstanding invoices.
- There is no certainty that SGS will extend this transitory period indefinitely. The implied risk is that LiberTrace could be simply turned off by SGS at some point if no decision is taken. This is a very high risk, with uncertain probability but a huge potential impact, considering that LiberTrace COCIS is an essential element of the Liberia LAS;
- Even if the legal IP rights to the software are eventually transferred to Liberia, there is a risk that the use and Support & Maintenance of the LiberTrace system will not be fully sustained by the FDA (at the same level as currently by an external service provider like SGS) in the longer term. This is also a very high risk, with even higher probability and still very serious potential impacts.

***Conclusions***, as of October 2019 (all under the GoL Service Agreement):

The capacity handover process from SGS to LVD may not be considered complete until a number of objectives are fully achieved. Some activities have not been totally implemented after July 2019 due to varied reasons (including the constrained capacity of Liberia to take over key functions from SGS). These have included: formal handover of the Legality Verification (LV) Section of LVD, the decision on a hosting strategy (installation of the LiberTrace servers in Monrovia, with data migration from the Cloud), and support and maintenance of the LiberTrace system, including upgrades and enhancements.

No agreement has been found yet on the terms and conditions of a new SGS-GoL contract after October 2019 and the relationship is since then only being renewed on a short-term basis for a limited package of services.

The current situation is precarious, the deadline for effective handover being now over, and the withdrawal of SGS from many of its previous technical assistance functions being a reality. Some activities have not resumed with “the LVD without SGS”, notably: field audits by LVD LV, the monitoring of Export Permit issuance by LVD staff until LLD capacity is built. This is despite the direct funding mechanism now benefitting LVD through LRA and an escrow account.

Meanwhile, SGS Liberia is not in a position to impose third-party opinions or to challenge FDA decisions.

These voids are undermining the current functioning of the LAS, to the extent that the ‘Handover’ milestone risks resulting in a regression rather than a progression in the VPA implementation process.

There are high risks that SGS might at some point decide to stop supporting the LiberTrace software and data management if no decision is taken, or that internal capacity to use, support and maintain the system will not be sustained at the current level by the FDA in the longer term. This could have dramatic impacts, considering that the LiberTrace COCIS is an essential element of the Liberia LAS.

The IA registered a new **RISK** (ref. **HR 8**) about this in the IA Progress DB:

| **RISK HR 8** |
|---|

| |
|---|
| **Impact level:** High |
| **Identified RISK factor:** Uncertain status of the capacity handover process from SGS to GoL/FDA/LVD with: some handover activities not yet implemented (e.g. Legality Verification, monitoring of Export Permit issuance, hosting of LiberTrace servers, system support & maintenance); no new SGS-GoL agreement reached yet (only short term); some activities not resumed yet by LVD (e.g. field audits); SGS Liberia not yet enabled to play a truly independent third-party role in EP issuance. |
| **Identified RISK description:** Current LAS functioning and future success of the VPA implementation process undermined; SGS might at any time stop supporting the LiberTrace software, while Liberia does not have the internal capacity in place yet to use, support and maintain the system at the current level; critical potential impacts, considering that the COCIS and current Export Permit issuance are essential elements of the Liberia LAS. |
| **Recommendation(s):** Do not allow total handover to GoL/FDA from any external technical assistance until full, durable and reliable capacity exists within GoI/FDA; maintain independent third-party role in EP issuance; consider a Public-Private Sector partnership to support financially (possibly against forestry operators' rights to use it as their own system) and secure LiberTrace system hosting, management (under third-party monitoring), and support & maintenance (through a service provider), thus ensuring its sustainability. |

**LVD sites (offices) and organogram**

Status: review completed and moved to 6.2.3.2 (and now further to 7.4.5.2) in A4R, Vol.2 for archiving.

**Capacity handover process from SGS (as of Oct. 2018)**

Same as above.

#### 6.2.3.3 Review of the Manual of procedures for LVD staffs

Status: review completed and moved to under 7.4.6.1 (Performance of the LVD, SOPs) in A4R, Vol.2 for archiving.

#### 6.2.3.4 The LVD auditing section (as of April 2018)

Status: review completed and moved to under 7.4.6.2 (Performance of the LVD, The LVD auditing section (as of April 2018)) in A4R, Vol.2 for archiving.

#### 6.2.3.5 Assessment of LVD auditing against the CFHP Checklist

Status: review completed and moved to under 7.4.6.4 (Performance of the LVD, Assessment of LVD auditing against CFHP Checklist) in A4R, Vol.2 for archiving.

#### 6.2.3.6 Further assessment and Capacity analysis of LVD during Audit 3

Status: previous analyses completed during Audit 3 have been moved to under 7.4.6.6 (same heading) in A4R, Vol.2 for archiving.

*Follow-up during Audit 4 on **LVD Budget**:*

LVD now since the end of 2018 is benefitting from the financing system (through an escrow/transitory account) that SGS/LVD had for its "Side agreement" with the GoL (on COCS management and tax collection), under a Memorandum of Understanding (MOU) signed with the Central Bank of Liberia: forest taxes paid to

LRA (See 6.2.6.3), transferred to an escrow account, from which bills are then paid

(SGS, 13.03.2019).

This mechanism would address the issue of LVD funding while avoiding dependence on the national budget.

During Audit 4, the IA sought confirmation that "the FDA is now a signatory to the Escrow Agreement between SGS and LRA, which provides funding to the LVD."

- LVD was already signatory, but is now also beneficiary;
- This is for all forestry taxes and fees;
- It is only for SGS (Side agreement; 700k$ outstanding) and LVD;
- The rest goes to the central budget;
- Other FDA depts. (that do not benefit from the mechanism) are reportedly struggling.

Note: SGS had two contracts. The IA understands that as part of the capacity-building contract (DFID Contract), there is no handover of any functions to FDA/LVD and thus no need to organize funding for FDA/LVD. The DFID contract ended July 2019 anyway.

For further attention, get clarification about:

- What mechanism is in place to ensure transparency in the use by FDA of the funds on the transitory" account.

#### 6.2.3.7 Issues potentially undermining the LVD handover process from SGS

The following discussion was extracted from initially 6.2.3.2 (and 6.2.3.6 where it was also mentioned) in A3R to this newly created section.

Handover process (as of Oct. 2018):

- (…)
- Operating independently of SGS' support:
  - (…)
  - The [LiberTrace] system is ready, but energy is needed to make it work. The idea is to involve:

    1) (…)

    2) the management (to challenge the status quo of copy-paste by inspectors on operators' data)**;

    ***** Further investigation during Audit 3 regarding the above Point 2:***
    - Examples include: Inventory verification, logyard inspection.
    - Inspector, out of lazy-/easiness if difficult access, can be tempted to cheat and take the declaration without going deep into the forest; or will say: "no trees; tree not found".
    - This raises serious data quality issues.
    - Suggested measures: take GPS coordinates and/or scan the barcoded tag together with data entry.

    ***** Further investigation during Audit 4 regarding the above Point 2:***

    **FDA/IAWG response to the Main C&R 3.22 in the Audit 3 report**

*Risk/ Issue: CoC data quality issues due to copy-paste of operators' data*

*Response: LiberTrac does not allow copy and paste of operators' data. The information provided by the Auditor is not correct. The inventory is verified prior to export and there is logyard inspection. The Auditor has not provided any evidence of this. FDA needs more precise information in order to respond. If the Auditor has no evidence to substantiate this claim, this Section must be removed from the Audit Report.*

*Mitigation Measure: Internal quality controled of data submitted by operators.*

*Responsible Department: LVD & Commercial*

*Time Frame: Ongoing*

*Reference: LiberTrace*

*Remarks: The ISO certificate will assist the LVD as a tool to identify gaps in the system, and take corrective measures.*

**IA review of FDA/IAWG response:**

1) Is it correct to state, "*The information provided by the Auditor is not correct"?*

- The IA's conclusion in A3R (RISK raised, ref. HR 7) was based on the initial supporting finding presented above under "Follow-up during Audit 3" which was a direct transcription from the interview with the SGS/LVD auditee (SGS LVD Project Manager)
- The statement has been reviewed during Audit 4 with the SGS LVD Project Coordinator (below).

2) Is it correct to state, "*LiberTrace does not allow copy and paste of operators' data"?*

- It was explained to the IA that copy-paste of operators' data is not possible for the forest inventory verification/ approval process (no base data is provided).
- The IA has also verified that, for on-site Export Permit Inspections (according to SOP 22.2.3 4), the COC Inspectors do not have a copy of the data submitted by the operator (and could therefore NOT be tempted to validate the data without checking i.e. take the "declared data" as "verified data"): the *Export Permit Inspection Form* only provides the list of the Barcode Tag numbers of products to be inspected.
- However, for stump, timber yard and export permit inspections, while it is true that the inspector doesn't have access to the data (being provided empty TDF, LDF, EPIF forms[17]), the LVD managers (DIM and OM[18]) and data clerk do have access to the data, and LiberTrace allows data exports in Excel files. So it is technically possible to copy or export the declared data and to then use it to start filling the inspection form in LiberTrace (without doing the inspection), or to

[17] Tree Data Form, Log Data Form, Export Permit Inspection Form
[18] Data Input Manager and Operations Manager

change the results from the handwritten paper forms that are given to the data clerk (and can also be altered or substituted before attaching them in LT) and have them approved by the managers (DIM, OM, TM[19]) before the reconciliation by the system.

- Further evidence provided to the IA: By checking the Export Permit inspection number 2019/00627/2 in LiberTrace there is alleged evidence that there has been a copy of declaration data. The document uploaded by the DIM (at his office in Monrovia, although the timber yard is in Greenville) as "inspection report" is the one that was provided by the operator by email, which is the copy of the re-inspection done by the LVD team (nothing wrong there, the operators have access to the reports in LT) where, however, 4 logs with the four diameters missing are highlighted in yellow as "with discrepancy" and, in spite of that, the missing data was filled in in LiberTrace for the Export Permit, thereby necessarily coming from the declaration.
- See also the observation during the field audit of the LVD container loading inspection (in 6.2.3.8): inspectors had the SPECs with them; they claimed they were re-scaling the logs without looking at the SPEC, but having the SPECs with them clearly increased the risk of copy-paste of data.
- To summarize, SGS has designed "blind inspections" (not influenced by any declared data) for the inspectors on the field, but managers and data clerks can see the data, and they are the ones who could sometimes be tempted to fill-in inspection forms with declaration data:
    - For stump, timber yard and export permit inspections, it is technically possible for the managers who have access to the data (DIM, OM, data clerk) to use declared data to fabricate or alter inspected data in LiberTrace before the reconciliation is done by the system. This constitutes a potential risk for data quality. The IA will consider the risk as medium in case the only possible implication is to reduce or annul discrepancies between declared and inspected data (the declared data is adopted as final) in an attempt to reduce the amount of taxes paid.
    - The risk will be considered high in case further investigation shows that entire data sets of fabricated data can be used to launder illegally harvested logs or to significantly under-declare export quantities (i.e. numbers and dimensions of e.g. containerized logs).
- For further attention, the IA will also need to reassess the risk that copies of declared data be taken by LVD CoC inspectors with them to the field and that, indeed, copy-paste of operator's data could occur.

Regarding the proposed Mitigation Measure in the above FDA/IAWG response ("*Internal quality control of data submitted by operators*"), the IA would recommend that only if the role of approving *inspection data* in the system can be granted to an independent third-party would this effectively enhance the quality of data in the system.

[19] Technical Manager

3) Is it correct to also state the Remarks, "*The ISO certificate will assist the LVD as a tool to identify gaps in the system, and take corrective measures"?*

- The IA was provided with a copy of the ISO 9001 certificate No. 59072 issued to LVD by ABS Quality Evaluations (USA), with effective date as of 27.08.2019, for 3 years subject to periodic surveillance audits.
- The Certificate certifies conformance of the Quality Management System (QMS) of the LVD Head Office, and the additional facility Region III office in Buchanan (Activity: CoC and data reconciliation), with ISO 9001:2015 requirements. Validity confirmed at www.abs-qe.com/cert_validation: it has not been possible to verify validity due to the site responding with an error message relating to viewing environment configuration.
- The ISO 9001 certificate was issued shortly after the due handover date of SGS to LVD and was an SGS contract requirement. It covers the QMS in place within LVD as implemented by SGS (with support from the Capacity Building Manager) and the LVD Quality Management (QM) unit.
- According to the LVD QM Manager, the performance was assessed, though not in too much detail, as is reflected in the account of the process that was followed:
  - 1st, remote, audit (by Skype and emails, with the auditor based in the Netherlands). It consisted in a gap audit and report and in LVD closing CARs and sending a CAR closing report back to ABS;
  - 2nd, also remote, audit: was a Stage 1 certification audit (i.e. of system documentation);
  - 3rd, on-site audit: was a Stage 2 certification audit (i.e. of system performance), with the auditor on-site for 3 or 4 days, 2 sessions in Monrovia, and 1 session in Buchanan office plus port logyard.
- Current situation:
  - No minor CARs left to look at;
  - First surveillance audit due within a year;
  - Doing pre-surveillance audit activities, making sure everybody follows the system, and improving the system.
- Reliability and significance of the certificate:
  - The LVD QM Manager is aware of the issues the IA has raised and part of his tasks is to address those issues, along with the LVD team.
  - The LVD QM Manager however recognizes that *ABS may not have had a copy of the IA's Audit 3 report*.
  - The process also left a short time for the institution to demonstrate its efficient and reliable functioning, having just acquired some autonomy from SGS.

- The IA therefore identifies risks that (i) some of the recurrent issues raised in the IA's reports could at some point compromise the maintenance of the certificate, meaning minor or major CARs (Corrective Action Requests) issued and not closed in time, if detected by ABS and not properly addressed; or (ii) that some critical issues are not detected by ABS and the reliability and significance of the certificate are undermined.
- The above findings clearly undermine the effectiveness of LVD having that certificate in the longer-term in relation to the identified risk.

▪ Risk HR 7 shall remain open, now edited as follows:

In the absence of substantiated evidence, the IA downgraded the corresponding **RISK** in the IA Progress Database from high (ref. **HR 7**) to medium (ref. **MR 6**):

| **RISK MR 6** |
|---|
| **Impact level**: Medium |
| **Identified RISK factor**: LVD managers have access to operators' data in LiberTrace; |
| **Identified RISK description**: Declared data used to fabricate or alter inspected data (CoC data quality issue; under-declarations); |
| **Recommendation(s)**: Follow the SOPs for sample checking rates; Capture GPS coordinates of tree/stump with other data, or scan the barcoded tag; Or use electronic devices to secure field data capture and processing; Implement independent quality control (sample checks) of inspected CoC data from LiberTrace. |

#### 6.2.3.8 Audit of a container loading inspection by LVD during Audit 4

On October 28, 2019 two IA auditors witnessed LVD CoC (Chain of Custody) staff conducting the inspection of a container loading operation (with logs) on Sing Africa Plantation's timber yard in Gbarnga, Bong County.

The LVD Operations Manager (OM) and one Observer (the NAO Project Manager) accompanied the IA team. Two LVD CoC inspectors conducted the inspection. An FDA Law Enforcement Division (LED) officer also unexpectedly showed up towards the end of the inspection.

That field audit served to assess implementation of the roles of two different sections within LVD: CoC Inspection and Auditing (Legality Verification).

Using 40ft (more rarely 20ft) containers is one of the two options that exporters have to export logs or processed wood products by see. The other option is the loading of loose logs or bundles directly onto a ship. The IA was informed that the exporters are using containers more and more, and the reason provided is cost-efficiency.

The relevant Standard Operating Procedure (SOP) and associated Work Instruction (WI) in the Manual of Procedures for LVD staff (July 2016) is SOP No. 26 'Loading registration and inspection'. A (vessel or container) loading inspection is always conducted.

Related **inspection planning information in LiberTrace**, the CoC Information System (COCIS) implemented by SGS within the LVD:

- In SALES, Loading Request (SOP 26 says "upon notification from the Port Authority or the Exporter", the LVD OM creates a loading record): Loading Request #, SHIPMENT REFERENCE (Loading Site, Name Of Vessel, Voyage Number, Effective Loading Date, Estimated Date of Arrival in Liberia (ETA), Estimated Date of Departure from Liberia (ETD), INSPECTION (Scheduled Date From, Scheduled Date To, Specific Instructions, Inspection Comments).

  **Investigation in progress:** Comment received from LVD OM contradicts the SOP and is confusing. LVD OM to describe the work flow properly to reflect how things are done in practice and how it compares with what the SOP says.

  **No further response received** despite several reminders. The IA shall conclude either that the requested information does not exist or to the lack of cooperation on the part of LVD/FDA.

- In relation to this inspection: 'Approved' Loading Requests # 2019/00436 and 2019/00437. The LVD OM manages an inspection schedule (Example shared with the IA auditors: Monthly Activities Plan 10_01-2019.docx) that shows: S/N, Type of Inspection, Region, Inspectors, No. of Blocks, Inspection Budget, Start Date, End Date, and No. of Days.

  **Investigation in progress:** How the LVD OM prepares the Monthly Activities Plan that includes the loading inspections.

  **No further response received** despite several reminders. The IA shall conclude either that the requested information does not exist or to the lack of cooperation on the part of LVD/FDA.

The main objective of the container loading inspection is to complete the Loading Registration Form (effective loading date, comments, and status of each product: Loading done, Not loaded or Loading refused). The inspectors write (or scan) the barcode tag numbers of the logs or sawnwood products designated for loading, and they visually check that the products are really loaded. The Form is then uploaded in LiberTrace (See copy of 'Container Loading Inspection Report_10-28-2019' provided as **Annex 8.1** to this report).

Initial finding: The SOP was written initially with only "vessel loading" in mind. The official July 2016 version of the SOP does not mention the word "container" at all. The July 2018 version of the SOP (now No. 24; not yet approved) only includes one new (rather poorly written) paragraph[20] under 24.2.1 Loading Inspection, as follows:

"*In the specific case of loading thru containers, each wood product (recorded on an Export permit/SPEC) is checked before loading as well (exactly the same/consistency as the loading in vessel above), and the container is sealed once it's full. The seals are provided by the maritime company in addition a certified agency like SGS could provide its seals. At the end of the loading thru*

[20] For future attention (to understand why sealed containers constitute an exception to SOP 14 on Transport Declaration), Work Instruction 14.2 (Transport Declaration/ Waybill registration), 14.2.1 Description also now mentions (July 2018 version): "Waybills shall be used when moving logs or processed timber products on a truck from one point to another, mainly if the wood products are not sealed in the container".

*container, the report is managed exactly as it's done with the loading at the foot of the vessel. The seals numbers are recorded (shipping company and SGS)*".

As a result of the inspection, in both cases (vessel or container loading), the wood products are registered as exported, as soon as they are really loaded, and therefore exit the supply chain (and the COCS/ LiberTrace).

An important difference though is that, in the container option, the LVD inspection is the **last check before shipment:**

- While the loading inspection *onto a vessel* takes place at the foot of the vessel, with the presence of all shipment stakeholders and responsible MACs involved, and all participants in the "data reconciliation meeting" - Exporter, Buyer, NPA, Customs, Shipping Agent, and LVD... – (are supposed to) counter sign the loading report[21], no example could be given to the IA of any such for reconciliation meeting taking place for the loading *of containers* on a timber yard like Sing Africa's. Reason provided: Related parties are not interested in sending staff to cover the container loading process at a local timber yard, even when invited, mainly because they would have to pay DSAs.
- The loading into a container is also the exit point for the wood products in LiberTrace;

  Clarification from the LVD OM: Container-loading inspections can take place on the different sites listed in Libertrace and locations as the company requests: Public Site (such as Buchanan, Greenville, or Harper), Private Site such as the company registered Timber Yard in LiberTrace, more or less remote from the port (other example: ICC/FMC K Timber Yard in Buchanan).

  **Investigation in progress:** Where in Libertrace we can find the list of registered sites.

  **No further response received** despite several reminders. The IA shall conclude either that the requested information does not exist or to the lack of cooperation on the part of LVD/FDA.
- Once loaded, the containers observed by the IA auditors were sealed on the timber yard by the Exporter, with a seal provided by the company (as is most often the case, the IA was informed). The seal is a mechanical one; it will just be broken open by the Buyer upon delivery. The Buyer can verify that the seal has not been broken before (if not intentionally by the company itself);
- Only exporter staff and the two LVD CoC inspectors were there, and only LVD staff (Lead Inspector and OM) signed the loading report;
- In addition to the final loading report, the LVD inspectors also fill in a Container loading form, hand writing the container number and the seal number, and the barcode tag number and the species code for each log loaded (a photo of such a form being completed is provided as **Annex 8.2** - Filling in Container loading form by container - to this report).
- According to the LVD OM, photos are always taken of the logs loaded in each container – as the IA auditors were suggesting, with the log numbers clearly visible, to prove that the Container loading form was correctly filled in -, *but*

[21] WI 24.2, July 2018 pending approval.

*these records and photos are only kept as "internal records", "for any inquiry", not stored as evidence in LiberTrace for external observers*;

- External observers can therefore not access evidence that no other/ no additional logs were actually loaded into the container. Manual forms, notes and photos taken by the LVD CoC inspectors are kept only as internal records, hold as evidence for any inquiry, if someone asks, but not in the LiberTrace system. The LVD DIM claims these files are heavy. Relevant supporting records could still be uploaded in LiberTrace, reduced in size.
- LiberTrace will not monitor the segment between the timber yard and the final loading of the containers onto the ship. The Loading Request (LR) and the Certificate of Origin (COO) only show the 'Estimated Date of Arrival in Liberia (ETA)' and the 'Estimated Date of Departure from Liberia (ETD)' for the ship.
- Once the container sealed, the LVD Auditing section will not be able to counter-check what LVD CoC inspectors have inspected;
- The FDA LED officer could not explain herself well. According to the LVD OM, her role is (at port for vessel loading inspection, or similarly for container loading), counter-checking ("re-scaling"): *copy of invoices paid by Company, compare volume with Spec, check signature on Spec*. The IA has not received clear indications from LED of any existing LED procedure for this role, or the ToR of the responsible individual staff member, if relevant. In this case, she told the IA she was *just waiting to take photocopies of the LVD records to write her own report*. No clarity was obtained of the added value of such control. Consulted regarding this, the FDA/CFD/NAD replied: "*LED is responsible for overall compliance. They do not have to tell what they do, keeping secretive*".
- As the LVD OM also informed the IA, Customs have every right to re-inspect a container before it is loaded onto the ship but have never asked to reopen a container.
- At the same time, there is apparently *no readily available and easily accessible information in LiberTrace as to which and how many shipments were done through containers:*
  - Maybe in the Loading requests? No, Loading Request # 2019/00436 for example indicates Freeport (Export Port) as the Loading Site, although the shipment was done through containers.
  - In the Export permits, maybe? Not from the list of EPs on the side. For example, for EP 2019/00696, one must open the EP and look for 'INSPECTION INFORMATION', Inspection Site Type: Site, Inspection Place: Sing Africa Gbarnga Log Yard (Timber Yard); while for other EPs this is not conclusive and one has to go to the Loading Request and look for the 'Shipment Inspection Report' (as opposed to a 'Container Loading Inspection Report') in the DOCUMENTS. So this is only an indirect and time-consuming way of checking for such information.

**Pending questions to LVD:** A "data reconciliation meeting" takes place at the end of the loading inspection onto a vessel, and all participants counter-sign the loading report:

- Can you provide the reference of at least 3 such counter-signed loading reports in LiberTrace?

- Who are the participants that are normally involved (Exporter, Buyer, NPA, Customs, Shipping Agent, LVD...)?
- Are there however examples of such meeting for the loading of containers on a public site or on a private timber yard near the port (like ICC's in Buchanan)?

**No further response received** despite several reminders. The IA shall conclude either that the requested information does not exist or to the lack of cooperation on the part of LVD/FDA.

In those circumstances, the IA must question, for further investigation:

- Are the measures in place robust enough to prevent collusion between the Exporter and the LVD inspectors and the latter from being encouraged to "not see" or "not report" the real or full content of the containers?
- Once sealed, are there measures in place to prevent a container from being re-opened, the load changed, and the seal just replaced?
- Are there robust measures in place to prevent collusion between the Exporter and Customs officers and the latter from accepting to give way to containers exported outside of LiberTrace (without LVD inspection)?

  **Pending inquiry** regarding the Customs authority under LRA:

  In the case of containers, the LVD inspection of the loading operation is the last check before shipment.

  Reportedly, Customs have every right to re-inspect a container before it is loaded onto the ship but have never asked (LVD) to reopen a container, even on a low sampling rate basis.

  a) Do you confirm the above as being the likely reality?

  b) What document would Customs need, if they wanted to check: the seal numbers? the content of the containers?

  c) What measures exist (like controlled access to the port area, procedures, internal or third-party auditing) to prevent any collusion between the Exporter and Customs officers giving way to containers exported outside of the COCS/LiberTrace system (without LVD inspection)?

Other considerations:

- The LVD CoC inspectors were witnessed scaling logs on a sample basis. The LVD OM asserted that 1) this was part of the container loading inspection, to make sure the Operator is not fooling LVD, like moving a barcode tag to a different log, 2) that LiberTrace would compare the two sets of measures and analyze any discrepancies, and 3) that (once again) the report would be kept as internal record. The IA has not found any indication of this task in the relevant SOP, which suggests an issue of consistency between theory (the SOP) and practice, and raises the question of which one is right.

  Clarification from the LVD OM: This is a copy of the process that is done at the port during normal shipment. Which involves 10% or above random scaling.

  **Investigation in progress:** LVD OM to provide evidence that this process is described in the SOP for a normal shipment that is done at the port.

**No further response received** despite several reminders. The IA shall conclude either that the requested information does not exist or to the lack of cooperation on the part of LVD/FDA.

- The inspectors had the SPECs with them anyway (the auditor took photos). They claimed they were re-scaling the logs without looking at the SPEC, but having the SPECS with them clearly increases the risk of copy-paste of data, already analyzed in 6.2.3.7.
- Assuming that the SPECs already contain adjusted 'Reference values', between declared and already inspected data in the timber yard, it is not clear to the IA what the added value of re-scaling the logs at that stage and on a sample basis really was; other than to make sure there was no substitution, which could be done by checking the log tag nos., species and measurements against the SPEC while tallying the logs being loaded.

  **Investigation in progress:** Is the LVD OM saying the CoC inspectors should not have had the SPEC with them, or only so with the log tag numbers on it (no measurements)?

  **No further response received** despite several reminders. The IA shall conclude either that the requested information does not exist or to the lack of cooperation on the part of LVD/FDA.

- *All records were manually written, and taken on loose paper sheets or forms.* Compared to electronic records, the use of such manual records is prone to multiple errors and does not prevent forging (such records can always be altered or substituted).
- According to the SOP, before submitting the Loading Registration Form the Lead Inspector is supposed to cross-check consistency with the Bill of Lading (B/L) (for e.g. number of logs loaded, volume) "at the port" or "back at the LVD office", address any inconsistency, and still review and upload the Form in LiberTrace no later than 12 hours after the inspection date. An available B/L is even a pre-requisite in the 2018 version of the SOP. This does not seem to be consistent with the actual practice for containers, since the IA auditors were informed that the B/L would only be available at a later stage and the reconciliation would only be done for the COO to be issued. Pending question to LVD: Is it not the right thing to do anyway, to wait until the logs are loaded, and all short-shipped logs are known, before issuing the B/L? If not, how can inconsistency be addressed at that late stage: by re-issuing a corrected B/L?

  **Investigation in progress:** LVD OM to confirm understanding that he does the reconciliation in Libertrace on the basis of the inspection records. The output being the Loading Requests? And only then the Company asks the Shipping Agent to issue the B/L (so that the company can submit it to LVD OM before he can issue the COO)? Indicating the SOP is incorrect, at least for containers?

  **No further response received** despite several reminders. The IA shall conclude either that the requested information does not exist or to the lack of cooperation on the part of LVD/FDA.

- From the 'Container Loading Inspection Report' dated 10-28-2019, as could then be downloaded from LiberTrace, the IA was able to reconstitute the

following information – reflecting the work of both LVD CoC Inspection and Auditing (Legality Verification) sections - under two Export Permits (EP 2019/00696 and EP 2019/00697) found duly approved in LiberTrace, with their associated SPECS:

Date format in LiberTrace: mm/dd/yyyy or mm.dd.yyyy.

| | *EP 2019/00696* | *EP 2019/00697* | *Total, or Comment* |
|---|---|---|---|
| Total volume to be loaded (m3) | 93.550 | 120.557 | 214.107 |
| Date EP approved | 10/10/2019 | 10/08/2019 (03:33 PM) | **Comment:** "*Approved according to the override document attached to the company's account.*"<br>**Explanation received** from SGS/LVD (for future attention, on importance and implications): *EP 2019/00697 log products had specific issues with diameter cutting limit and a communication from FDA/LVD was sent to allow that EP being issued. So, the comment means that the EP is issued based on the document that is attached to the company's account as override.*<br>**Qu.:** Where can override doc be found? **A:** *Under Account, Validated, Company, DOCUMENTS*; however, the IA's "read only" role does not allow access to uploaded documents.<br>**Qu.:** Where, in LiberTrace, the roles are defined? You say that with the "read only" role we can't access "any data uploaded", but we can already see a number of documents uploaded (by LVD, at least; and maybe by companies, I can't say right now). Can you clarify?<br>No further response despite several reminders. |
| | | Same day, 01:16 PM: EP marked 'Rejected' | Reason: "*All the logs coming from trees felled below diameter cutting limit must be removed*".<br>**Explanation received** from SGS/LVD (for future attention, on importance and implications): *Said EP was rejected at 01:16PM because log products had issues with diameter cutting limit. We recommended that the logs with issues be removed from the list so that only logs without issues can be recorded on the EP. After having received the communication attached to the company's account, the EP was issued 2 hours later.*<br>Same comment as above re: communication/ override document. |
| Product Description: | Round Wood: 11 PIP-Dabema (93.550 m3) | Round Wood:<br>- 1 PAR-Sougue (3.902 m3),<br>- 18 PIP-Dabema (116.655 m3) | |
| SPEC: Tag | AA319YVQ | AA919YVC | Matches IA's photos |

| | | | |
|---|---|---|---|
| nos. | to AA990ZAR | (PAR-Sougue); then AA041ZC9 to AA989ZA8 | |
| Total FOB Value (USD) | 50,000.00 | 500,000.00 | Re: aberrant amounts, as IA was advised: (only) "meant to be an indication for the operator"; meaningless; no implication. |
| Loading Request | # 2019/00436 | # 2019/00437 | |
| INSPECTIONS status | Inspections (0) Despite: Inspection requested; scheduled | Inspections (0) Despite: Inspection requested; scheduled | Status: under Loading Requests, was still in Inspection scheduled (Not "done", not "Approved", why?). Results now to be found in Inspection "Approved". OK |
| Documents (1) | File;PDF | File;PDF | Same 'Container Loading Inspection Report' |
| Total volume loaded | 93.550 m3 | 107.968 m3 | 201.518 m3 |
| Short-shipped logs | | AA983ZAL, PIP-Dabema, 12.589 m3 | No. 18 on running list (SPEC) |
| LOG PRODUCTS | All red flags, only 2 Ts green, but 'All approved'! | All red flags, but 'All approved'! | This suggests a totally abnormal situation. Investigation: see below Click on each T, L, F |

- In SALES, Export Permit, CLOSED, EP 2019/00696/ 00697, re: the "Ts" (for Traceability):
  - Explanation received: *In at least several cases, there was a discrepancy (See message within T) but the Operator accepted LVD's measurement*.

    **Question to LVD:** No place where Operator's approval can be found? **Answer:** *No, Operator approves through the system (In 'Waiting for Operator approval', then moves to 'Waiting for final approval'). LiberTrace does not keep any record of that action, except 'Reference values: Inspected' in 'Traceability details', and both data sets are then shown under LOG PRODUCTS (declared measurement in brackets).*

  - *IA therefore identifies a gap in LiberTrace:* System doesn't turn the red T into a green T as it should, if the initial discrepancy has been resolved. Unless there is another issue, which is actually the most probable on second look? Except for the two green Ts in EP696, all the other logs have an issue under FELLING, like: 10/16/2018 07:37 PM, Log AA414YZQ is issued from tree AB106WP6 felled between 09.14.2018 and 10.10.2018 through felling form # 2018/004070; Event Messages (1): Diameter class is different of the one declared during inventory (Over tolerance of one diameter class)".

**Question to LVD:** Please explain the meaning and implications of such issue and why LVD finally decided that this was not a blocker for approving the log for export.

**No further response received** despite several reminders. The IA shall conclude either that the requested information does not exist or to the lack of cooperation on the part of LVD/FDA.

- Investigation of **what happened around short-shipped logs in November 2018**. This was done through reviewing an incident concerning Log AA414YZQ, and actually all the 11 logs of EP # 696, that were *declared loaded, then short-shipped, then loaded again* (with the risk that another log was laundered with the same log tag number):
  - EXPORT PERMIT **01/01/2019** 03:42 PM: "*Log AA414YZQ included in export permit # 2018/00427 has been loaded successfully through loading request# 2018/00264*". [Same for 8 of the 11 logs, plus for the 3 other logs in other EPs, # 2018/00429, 430 and 432, respectively through loading requests # 2018/00265, 266 and 269]
  - LOADING REQUEST **10/09/2019** 03:49 PM: "*After approval of Loading Request # 2018/00264, the loading status of this product has been changed from "Loaded" to "Not Loaded". It means Log # AA414YZQ is eligible again to export because it has been finally declared as short-shipped in export permit # 2018/00427*". [Same for 8 of the 11 logs, plus for the 3 other logs in EPs # 2018/00429, 430 and 432, respectively]
  - EXPORT PERMIT **10/10/2019** 11:39 AM: "*Log AA414YZQ has been included in export permit # 2019/00696 approved on 10/09/2019*". [Same for all the 11 logs]
  - EXPORT PERMIT **11/19/2019** 01:17 PM: "*Log AA414YZQ included in export permit # 2019/00696 has been loaded successfully through loading request# 2019/00436*". [Same for all the 11 logs]
  - Evidence in LiberTrace that the logs were indeed short-shipped under EP # 2018/00427? The associated Loading request # 2018/00264 (for AA414YZQ) indicates: "*Log was short shipped and has been found at the logyard*". [Same for 8 of the 11 logs]
  - **Pending questions to LVD:** Why such change, 9 months later? How trustworthy is the statement "*Log was short shipped and has been found at the logyard*"? Found when, by whom, with what supporting inspection record or evidence?
  - **Pending questions to LVD:** What is the implication of the fact that these 11 logs, finally included in EP 2019/00696 and loaded successfully through loading request # 2019/00436, were initially declared loaded (in EP 2018/00427, 429, 430 and 432, through loading request# 2018/00264, 265, 266 and 269)? Did they not trigger e.g. export fees at the time? How was this corrected? Actually, the IA finds (ref. 2016 SOP 24 on EP issuance) that Export Fees are paid before the EP is issued, so what happens with the short-shipped products: are Export Fees reimbursed?
  - And for the 3 other short-shipped logs through loading requests # 2018/00265, 266 and 269, the statement is just "*Not loaded*". This implied that the 3 logs (AA-319-YVQ, AA-428-YZF and AA-945-ZBJ)

remained "*eligible again to export*" although no proof of short-shipped was ever provided.

- The 'Container Loading Inspection Report' under this same Loading request # 2018/00264 mentions newly short-shipped logs in EP # 2018/00427, log numbers 26, 27, 29, 32, 37, 39 and 41, that are just stated as "*Not loaded*" (and therefore also remained "*eligible again to export*" under a future EP)...
- **Pending questions to LVD:** A number of logs declared as short-shipped were just stated as "*Not loaded*" (and therefore remained "*eligible again to export*" under a future EP): like the 3 other short-shipped logs through loading requests # 2018/00265, 266 and 269 (Logs AA-319-YVQ, AA-428-YZF and AA-945-ZBJ); like newly short-shipped logs in EP # 2018/00427, log numbers 26, 27, 29, 32, 37, 39 and 41. On what grounds do LVD/SGS find such statements acceptable, since there is no indication that this was ever challenged?
- For EPs # 2018/00430 and 00432, the report just says "Numerous shortships" and includes a rather confusing Note: "*EP#430, 432 & 437 were the original EP given to this team for loading. But EP#427, and 428 were initially used by different team and still had logs that were reported as short ship but were loaded on this vessel. In so during, we are unable to give you list of short ship for said EP#s*". A photocopy of the tallied SPEC # 2018/00430, stamped by SGS Liberia, indeed shows Log AA-428-AZF as not loaded. **Pending question to LVD:** Can you provide any clearer explanation?

- **Pending question to LVD:** Organogram / Organizational for LVD? Is the LVD OM only on the CoC side or both CoC and Audit?
- Can the Bill of Lading (B/L) be used to confirm the content of the containers? B/L No. 579550159 corresponding to Loading request # 2018/00264 was issued in LiberTrace on 12/31/2018 by the LVD OM; and on 2018-11-30 by Safmarine, the Shipping agent, for a "Shipped on Board Date" as of 2018-11-24 (Note: The latter does not match the container loading dates, between 2018-11-26 and 2018-11-28).
  - The 'PARTICULARS FURNISHED BY SHIPPER' include: "15 containers said to contain 67 PIECES" (being 47 ORIGINAL PCS + 20 CROSS CUT PCS), for 317.870 CBM of LIBERIAN ROUND LOGS AZOBE (LOP).
  - A list of the 15 containers follows, totaling 67 pieces and 317.870 CBM:

    MSKU9921486 ML-LR0028486 40 DRY 9'6 6 PIECES 22722.520 KGS 20.481 CBM
    …
    PONU8213899 ML-LR0028739 40 DRY 9'6 5 PIECES 25502.760 KGS 23.503 CBM
    "SHIPPER'S LOAD, STOW, WEIGHT AND COUNT"
  - It is indeed difficult to reconcile the B/L with the LOADED LOG PRODUCTS count in the related Loading request(s), because 1) the B/L is not per EP or Loading request, and 2) the Loading request does not take the cross cut pieces into account.

- Number of pieces on Loading request # 2018/00264 associated with B/L No. 579550159, declared loaded (Loaded Done): 20 on p.1, 6 on p.2, and 0 on p.3, total 26.
- Number of pieces on Loading request # 2018/00265 also found associated with B/L No. 579550159, declared loaded (Loaded Done): 17 on p.1, and 8 on p.2, total 25.
- Total number of pieces on Loading requests # 2018/00264 and 00265 associated with B/L No. 579550159, declared loaded (Loaded Done): 51. This does not match the 'PARTICULARS FURNISHED BY SHIPPER' on the B/L that include: "67 PIECES (47 ORIGINAL PCS + 20 CROSS CUT PCS).
- **Pending question to LVD:** It is admittedly currently difficult to reconcile the B/L with the LOADED LOG PRODUCTS count in the related Loading request(s), because 1) the B/L is not per EP or Loading request, and 2) the Loading request does not take the cross cut pieces into account. LiberTrace does not do it. What clarification can you provide (to the above)?
- Unfortunately, nothing tells which other EP(s) or Loading request(s) were used for this shipment, together with the Loading request # 2018/00264, with the same SHIPMENT REFERENCES (Loading Site: Freeport (Export Port); Name Of Vessel: Container; Voyage Number: n/a; Effective Loading Date: 11/26/2018; Estimated Date of Arrival in Liberia (ETA): 11/12/2018; Estimated Date of Departure from Liberia (ETD): 11/18/2018). Plus, there was no certainty that these SHIPMENT REFERENCES referred to a real vessel (it says "Container") and a vessel (vs. container) loading date. The loading report and the EP mention as Name Of Vessel: "Safemarine (Container)". The shipment occurred around 2018-11-30 (date B/L issued by Safmarine).
- The IA audit team's effort to manually reconcile Export Permits, Loading Requests and Bill of Ladings shows how complex, time-consuming and yet inconclusive it is (See 'Sing Africa Reconciliation' as **Annex 8.3** to this report). Finding related elements, like all the Loading Requests associated with a given B/L, is a slow and uncertain investigation.
- On the B/L No. 579550159 issued by Safmarine, the seal numbers are not registered for any inspection.

- Can the Bill of Lading (B/L) otherwise (and sometimes) be used to confirm the content of the containers that were loaded during the LVD inspection? Under the Loading Requests # 2019/00436 and 2019/00437, only one B/L (No. IBE0102148) was found, issued in LiberTrace on 11/19/2019 by the LVD OM; and on 11/07/2019 by the Shipping agent for the carrier CMA CGM, with the following content:
  - Shipper: Sing Africa
  - Vessel: ATLANTIC DISCOVERER
  - Port of discharge: Ho Chi Minh Port, Vietnam

- A total of 9 containers and 201.518 m3
- The number of “bundles” (/pieces i.e. logs), the Species (Dahoma, (PIP)), total weight, tare, and volume for each container.

- Only possible reconciliation:
  - With the LVD Loading Report (See **Annex 8.1**): total volume loaded (201.518 m3), for the two EPs involved. But the Loading Report is manual, and the information is not in LiberTrace. The Loading Requests in LiberTrace should at least provide the subtotal volumes (Loaded / Not loaded).
  - Note: Name of Vessel on B/L and Loading Request (ATLANTIC DISCOVERER) does not match with the Loading Report (VELA).
- Reconciliation with the details of LVD’s loading record by container as per one photo taken by the IA Team and showing 3 containers:

| *LVD loading record* | | | | *Loading Request* | *Volume on SPEC (m3)* | *B/L* | | |
|---|---|---|---|---|---|---|---|---|
| **Container no.** | **Seal no.** | **Barcode (loaded)** | **Species code** | **Loaded on LR#** | **SPEC # 696 / 697** | **No. of bundles** | **Species code** | **CBM** |
| TCNU9869644 | F1364251 | AA-319-YVQ | PIP | 436 | 10.369 | | | |
| | | AA-674-ZAR | PIP | 436 | 5.429 | | | |
| | | AA-593-ZAT | PIP | 437 | 4.689 | | | |
| | | AA-743-ZAV | PIP | 437 | 3.367 | | | |
| **S/total** | | | | | **23.854** | **6** | **PIP** | **23.854** |
| TCNU4114157 | F1364252 | AA-041-ZC9 | PIP | 437 | 5.751 | | | |
| | | AA-045-ZC1 | PIP | 437 | 6.176 | | | |
| | | AA-093-ZB2 | PIP | 437 | 9.166 | | | |
| **S/total (m3)** | | | | | **21.093** | **4** | **PIP** | **21.093** |
| CMAU5609057 | WIP:<br>F1364253 (From waybill) | AA-602-ZA3 | PIP | 437 | 3.922 | | | |
| | | AA-724-ZAV | PIP | 437 | 8.988 | | | |
| | | AA-681-ZBV | PIP | 437 | 6.484 | | | |
| | | AA-107-ZB1 | PIP | 437 | 3.653 | | | |
| **S/total (m3)** | | | | | **23.047** | **6** | **PIP** | **23.047** |

- Volumes per container: match.
- Number of pieces: does not match because some logs have been cross cut into two smaller logs (A, B) and possibly more. The Company waybill (a photo of it is provided as **Annex 8.4** to this report – 'Company waybill') lists them up but only retains the initial number of logs and the initial volume of each log.
- Only the LVD manual loading record by container therefore allows some reconciliation of the number of logs per container and the volume per container and in total, with the B/L. But this reconciliation requires building a table and entering data manually from four different documents. And it still does not take the cross cut pieces into account. What's more, the LVD loading record is only kept as an internal record. LiberTrace should provide such breakdown, including the cross cut logs so as to match the number of pieces per container on the B/L. LiberTrace should also provide photos of the load (butt ends, clearly showing the painted log numbers and the log tags) before closing the container.

- An important finding in relation to B/Ls for containerized products, though, is that the content of the B/L ('PARTICULARS FURNISHED BY SHIPPER') can only be what the Shipper declared to the Shipping Agent (who issues the B/Ls: TBC below) on the basis of what was loaded into the containers during, and as per the LVD inspection, supposedly based on:
  - The Loading Request, indicating "Loading Done" or "Not Loaded" for each log? But no individual volumes (not legible on the pdf) and no total volume loaded.
  - The LVD loading record by container? But it does not provide the volumes.
  - The Company waybills by containers (only document that provides the complete description of the content of each container)? Per se, the B/L cannot therefore constitute a way of counter-checking what was declared loaded into a container on the basis of the LVD inspection (this may different in the case of a vessel).
- **Pending questions to SGS/LVD**, asked to confirm, in the example of the Loading Requests # 2018/00263 to 2018/00266:
  - Who issues the B/L: the Shipping Agent (e.g. Safmarine)?
  - Shipping Agent not necessarily based in Monrovia (since signed by SAFMARINE SINGAPORE; 'Place of Issue of B/L': Singapore)?
  - The content of the B/L ('PARTICULARS FURNISHED BY SHIPPER') is what the Shipper (e.g. AMROSE SINGAPORE PTE LTD) declared to the Shipping Agent?
  - The Shipper in this case also being the Buyer?
  - Meaning this is an FOB Contract (not including Freight & Insurance)?
  - But the sale is not recorded in Libertrace? No record of any pro-forma invoice or of the final commercial invoice issued by the Exporter? How can a 'Commercial Invoice #' be provided on the Export Permit?
  - The Shipper's declaration to the Shipping Agent is based on what was loaded into the containers during, and as per the LVD inspection, right?
  - The documents on which the Shipper's declaration is based include: The Loading Request, indicating "Loading Done" or "Not Loaded" for each log (but no individual volumes (not legible on the pdf) and no total volume loaded)? The LVD loading record by container (but it does not provide the volumes)? The Company waybills by containers (only document that provides the complete description of the content of each container)?
  - Which document or information does LiberTrace use to calculate the amount of Export tax due: loaded products on Loading request, or other?
  - Where can the Taxable values be found in LiberTrace?
  - Where can information on fee management and payment be found in LiberTrace (as per SOPs 31, 31 of July 2016, like pro forma invoices

providing the amounts to be paid to LRA, as automatically calculated by LiberTrace, delivered to Operators; archives proofs of payment from the LRA)? How is such information shared with LRA?

**Very partial response** so far from LVD OM: *"Kindly not that, every information on Bill of Lading is issue to us by the Concession Company that is doing the shipment. They owned the products and to request for Certificate of Origin, we always make request for a Bill of Lading and the reconciliation on the Bill of lading volume will be done in line with the loading report from the CoC Inspectors."*

The IA shall conclude either that the requested information does not exist or to the lack of cooperation on the part of LVD/FDA.

- Currently, there is no way for an external auditor to work backward from the B/L to the corresponding export permit(s).
- What about the Certificate of Origin (COO)? COOs to be issued / issued / delivered can be found under SALES, FLEGT License. Note: 'FLEGT License' section currently used to manage COO issuance; will be replaced when FLEGT Licenses are issued. The COOs can be searched by Loading Request #, in this case 2018/00436 and 00437, ISSUED. The COO VN/2019/000096 relates *in LiberTrace* to EP # 2019/00696 and to Loading Request # 2019/00436 for the 11 LOADED PRODUCTS. The *document itself* mentions EP # 2019/00696 and Shipment Volume (m3): 93.550, with no more detail. It does not mention the B/L and cannot be used for reconciliation purposes with the B/L. Like the Loading Request, it only shows the ETA and ETD for the identified vessel.
- The whole shipment monitoring system for containers definitely relies solely on the LVD loading inspection.
- For future attention, when LiberTrace issues FLEGT Licenses, will LiberTrace not need to provide clear supporting evidence matching the FLEGT License, back to Export Permit, taking into account the short-shipped logs and a breakdown by containers, providing elements for a reconciliation later on, for example by Liberian Customs before shipment or by the destination EU member country Customs upon arrival at an EU port?

▪ How do we know whether/when the containers were eventually shipped?

- LVD answer: This is not a piece of information LVD monitors, only incidentally [and indirectly] to be able to issue COO against B/L.
- In fact, the Loading Request only shows the 'Estimated Date of Arrival in Liberia (ETA)' and the 'Estimated Date of Departure from Liberia (ETD)' for the identified vessel, and then "- Loaded log products (11/11): Loading Done"; meaning loaded either into a container or onto the ship, depending on the context (same procedure).
- No reconciliation meeting with the responsible MACs and the shipment stakeholders obviously take place in the case of containers. The responsible MACs do not travel to the timber yards where the loading of containers is done.

- **Pending question to SGS/LVD:** If LVD does not monitor the eventual shipment of the containers, and no reconciliation meeting takes place with the responsible MACs and the shipment stakeholders in the case of containers, is there therefore any indication of containers loaded (with LVD inspection, with an EP) but not shipped? What would this suggest?

  **Preliminary answer:** Every Container Loaded by a Concession company, LVD will always be inform to form part of the shipment. In the event, where LVD is not inform on container shipment, it is a violation and will be flag as non-conformity on the part of the company.

  **IA's reply:** You have been very clear on several occasions (and as reported above) that LVD does not monitor the eventual shipment of the containers, and no data reconciliation meeting takes place with the responsible MACs and the shipment stakeholders in the case of containers. To now say that "LVD will always be informed to form part of the shipment" is a gross contradiction. Please provide any evidence of this.

- **Pending question to SGS/LVD:** Is there any indication of containers loaded (*without* LVD inspection, *without* an EP) and shipped/exported by road?

  **Preliminary answer:** Every container loading is followed with an EP from the Libertrace System. Container loading without an EP and without LVD Inspector present is a violation.

  **IA's reply:** It would obviously be a violation, but this is not answering the question, which was in essence "Are you aware of any containers loaded without LVD inspection and EP and yet shipped or exported by road?

- **Pending question to SGS/LVD:** Has LVD ever received requests for inspection of exports by road to neighboring countries with an EP? This being the case, where can records of truck or container loading inspections by LVD for export by road be found in LT? And/or of LVD inspections at border-crossing points? Is there any evidence of the physical presence and reliable checks by other MACs (Customs, Police) of such exports by road?

  **Answer:** Yes, it is also done with an approved Eps from the LiberTrace system. The Trucks transporting the products are accompanied with Waybills and information of the Trucks are captured by the LVD COC Inspectors and Commercial Representative present doing the Loading. Kindly Note that: At a Border Point, Police are always present and will make sure to check every information on the Waybill before allowing that truck to go through the check point.

  **IA's reply:** So, the answer is yes, LVD would receive an inspection request and the inspection would take place at the loading place (not at the border-crossing point where, however, Police would always check the Waybill).

  One yet missing answer is to 'Where can records of such truck or container loading inspections by LVD for export by road therefore be found in LT?'. Please provide examples.

- Further traceability testing

- For example, in LiberTrace under SALES, Export permit, Approved, Sing Africa, EP 2019/00696, LOG PRODUCTS (11), first PRODUCT TAG AA414YZQ: By clicking on the T, one can access to all TRACEABILITY DETAILS for that log.
- To go back to the timber yard inspection, one must copy-paste the timber yard inspection number, go to STORAGE, timber yard inspection, Approved, search by the no., and find the whole record: 10/27/2018 12:00 AM, Done Date 10/27/2018 12:00 AM, Inspection Result: Not Satisfactory; Still Approved 11/05/2018. Sing_Africa.PDF: 22 pages of records (100% inspection).
    - Note, according to LVD OM: Log not found: means not found in the timber yard. Means still in the bush, not yet delivered to the timber yard. LVD will have to go again to complete the inspection.
- LVD OM: Yes, all logs loaded into a container in October 2019 must have been found in the timber yard in November 2018.
- The IA auditor tested traceability for the logs contained on 1 waybill No. 1198, of which he took a picture, using the 'Product history' function in LiberTrace, under TOOLS, going back to the Export permit (all EP# 2019/00697), to the Loading request (all LR# 2019/00437), and to the Resource area (all BLUYEAMA CFMA, attributed between 01.30.2016 and 01.29.2031 to Sing Africa Plantations Liberia Inc, Monrovia (Liberia), Logging Operator = same):

| | *Bar Code* | *L (m)* | *D (cm)* | *Vol. (m3)* | *Ver.* | *L (m)* | *Av. D (butt end)* | *Av. D (top end)* | *Vol.* | *Issues* |
|---|---|---|---|---|---|---|---|---|---|---|
| | AA-602-ZA3 | 10.8 | 68 | 3.922 | Ok | 10.8 (10.8) | 78 (74) | 64 (62) | 4.276 (3.922) | Diam. below DCL* |
| | AA-724-ZAV | 11.0 | 102 | 8.988 | Ok | 11.00 (11.00) | 107 (111) | 90 (93) | 8.297 (8.988) | Diff. diam. class** |
| A | AA-681-ZBV | 6.7 | 80 | 6.484 | 3,368 | 12.80 (12.90) | 91 (91) | 72 (69) | 6.596 (6.484) | Diff. diam. class |
| B | AA-681-ZBV | 6.0 | - | - | 3,016 | | | | | |
| A | AA-107-ZB1 | 7.0 | 61 | 3.653 | 2.046 | 12.40 (12.50) | 68 (67) | 57 (55) | 3.744 (3.653) | Diam. below DCL |
| B | AA-107-ZB1 | 6.2 | - | - | 1,812 | | | | | |
| | | | | 23.047 | 23,152 | | | | | |

- *For Species PIP (Dabema): suggesting a minimum Diameter Cutting Limit (DCL) was applied. Source in LiberTrace? Not found under TOOLS, Species.

Question to SGS/LVD: Where can the applicable minimum Diameter Cutting Limits to all or particular FMCs, TSCs and CFMAs be found in LiberTrace?

Answer: The Minimum Diameter Cutting Limits can be configured in the System by the system Builder. Also, the company contract indicates the Cutting 6o cm above.

Note: Clarity has been gathered through IA's research under 7.3.5.9.

- **From the one declared during inventory (Over tolerance of one diameter class).

  **Pending question** to SGS/LVD: Where can the applicable tolerances be found in LiberTrace?

  Answer (for future verification and attention): The tolerance can be form in the letter T, and it is also configured by the System builder.

  Note: Under 6.3.2.2 in Vol.2, the IA has received information regarding tolerances applied in LiberTrace, but not yet a clear answer as to where in LT this is documented.

- **Pending question to SGS/LVD:** Where 'Reference values' = Declared, does it mean that the declared measurements (in brackets), compared to the inspected measurements, were within the tolerance *for each log*, or *for the whole inspected lot?*

  Response received from LVD provided **no clear answer** to the question.

- Re: "Fs" (for Fiscality): If Paid: green; Payment date not passed: Orange; Payment date passed: Red.

  - Example: INVOICE DATE, NUMBER, INVOICE TYPE, AMOUNT, DUE DATE, STATUS: 01/30/2019, 2019/002803, Area Fee, 55,555.00 USD, 03/01/2019, To be paid

  - This shows that EP issuance is approved even in (all) instances where 'Fiscality' has a red flag because the due date for payment of certain taxes has expired.

  - This is in contravention of the SOP 16.2 for Operators, Table 1 (Stumpage fees, CoC Fees, or Export fees not paid before loading implies EP cannot be issued; Stumpage fee arrears imply no COO can be issued either (and no further felling)).

  - According to the LVD TM: A decision is made within LVD (IC, TM) to adopt a recommendation to FDA Management (DMDO, MD) whether to allow more time for the Operator to settle arrears and to issue EP despite the red flagged payment issue or not. A meeting with the Operator may take place, in the MD's office.

  - Identified gap: There is ample room for discretionary decisions, whether to enforce Due Date for payment and block EP issuance or to allow more time.

- IA was informed that the volume of arrears is building up as a result, to currently around 1 million USD for Stumpage fees (to be confirmed) and was advised to ask IC or LRA about it as both reconcile their data.
- The IA has contacted LRA about this issue, whether LRA is aware of, and monitors all fee payments from forestry operators: see the discussion in 6.2.6.3 (LRA, Revenue collection).

**Findings:**

- The LVD SOPs (official 2016 version) do not mention the word "container" any single time, suggesting containerization is a new technique for the exportation of wood products from Liberia. The IA was informed that this has recently become the most popular method for both logs and processed wood products (which in itself may raise questions).
- The new draft July 2018 version of the SOP on 'Loading registration and inspection' (still not approved) yet only includes one new paragraph for containers. The rest of the procedures for vessel loading is said to be applicable to containers as well, but the IA has observed several inconsistencies with the actual practice for containers.
- Like vessel loading, the loading into a container on a timber yard (remote from the port, in this case, and as may often be the case) is also the exit point (final control point) for the wood products in the COCS. LVD and LiberTrace do not monitor what happens beyond the timber yard, up to the eventual shipment of the containers. The export sale is apparently not recorded in Libertrace (no pro-forma invoice, no final commercial invoice).
- In (this and) most cases, the container loading inspection is only attended by Exporter's staff and by two LVD CoC inspectors who sign off on the inspection report.
- All other inspection records (like the observed container loading form) and photos (of the logs loaded in each container) are only kept by LVD as internal records; not stored as evidence in LiberTrace for third party auditing.
- Once the containers are sealed, LVD or other auditors will not be able to counter-check what the LVD inspectors have inspected and access evidence that no other, or no additional logs were actually loaded into the container.
- This could justify the presence of a LED officer, with clear work instructions. Clearly, this was not the case during the audit.
- No data reconciliation meeting takes place at the end of the container loading inspection, where all participants (relevant MACs and shipment stakeholders), would counter-sign the loading report (like in the case of vessel loading).
- The Bill of Lading (B/L) issued by the Shipping agent just states what was declared loaded on the basis of the LVD inspection and cannot therefore be used to confirm the content of the containers.
- Currently, there is no way for external auditors to work backward from the B/L to the corresponding export permit(s) (EPs).
- The Certificate of Origin (COO) mentions the EP(s) but not the B/L; it is also based on the inspection results and it provides no detail on the content of the

containers. It is useful for the Buyer but cannot be used for reconciliation purposes.

- Customs authorities have never asked to reopen a container to re-inspect its real content before it is loaded onto the ship.
- The Buyer can verify that the seal has not been broken before delivery. But in case the Buyer and the Exporter are in connivance, the seal could have been broken and replaced by the Exporter itself. The original seal numbers are not registered on the B/L for any later inspection by e.g. Customs in the EU.
- In those circumstances, the IA must question whether the measures in place are robust enough 1) to prevent collusion between the Exporter and the LVD inspectors, or 2) to prevent a container from being re-opened, the load changed, and the seal just replaced after the LVD inspection.
- Pending question to LRA/Customs: Whether there are robust measures in place at port to prevent any collusion between the Exporter and Customs officers giving way to containers exported outside of LiberTrace (without LVD inspection). The other field audit (See 6.2.3.9) provided high probability that the illegal logger was always confident in the possibility to export the (illegal) logs, most likely so by circumventing the CoC system.
- The manual reading of the log tags and the handwriting of all inspection records, on loose paper sheets or forms, are possible factors of multiple data management errors and do not prevent forging.
- The reason given to the IA for the aberrant Pricing Information (Total FOB Value) found on the EPs is that such information is merely indicative, suggesting that it should either be removed from the EPs or its management reviewed to make it useful. The IA must also establish the link to the Commercial Invoice # provided on the EP. The SOPs do not provide any related instructions. Nothing was found in the LiberTrace User's Guide either.
- If the role of the three indicators (Traceability, Legality, Fiscality) on the Loading Request is to provide a visual means to quickly figure out whether all three indicators are green and the product can therefore be approved for export, then almost all LOG PRODUCTS verified were wrongfully marked 'Approved' despite all indicators being flagged in red.
- Investigations are in progress as regards Traceability:
  - On the implication of the issue behind the red "T's" (different diameter class from the inventory, over the tolerance);
  - For logs changed as short-shipped 9 months after being initially declared loaded, and how trustworthy the statement "*Log was short shipped and has been found at the logyard*" is;
  - Where logs declared short-shipped are just stated, "*Not loaded*" (and therefore remain "*eligible again to export*" under a future EP), which raises a question, on what grounds LVD/SGS find such statement acceptable, in view of the risk that other logs could then be laundered under the same log tag numbers. Stricter conditions or supporting evidence is needed (like photos of the logs loaded when the log was declared short-shipped; and a

clear photo of the log tag and a new physical inspection of the log when it is eventually loaded?);

- Regarding a particular incident where, based on a rather confusing note, the LVD OM concluded to LVD's inability to give a list of the short-shipped logs for certain EP#s;
- That the Bill of Lading (B/L) is not being used, and can currently not be used to confirm the content of the containers: it only provides a list of the containers, the number of pieces and volume loaded for each container, and the total. The B/L cannot be reconciled manually with the LOADED LOG PRODUCTS count on the related Loading request(s), because 1) it is not per EP or Loading request, and 2) the Loading request does not take the newly cross cut pieces (into two smaller A, B logs or more, where the length exceeded 40ft) into account. LiberTrace does not do it either on the basis of the Container loading form. Nothing tells which other EP(s) or Loading request(s) were used for a particular shipment. There is no certainty that the EP, the Loading request and the LVD loading report refer to a real vessel and to the real vessel loading date or to the loading of containers.
- The IA assumes that because the loading of containers was not initially contemplated (See above note on SOPs), the *vessel loading* information management function in LiberTrace is actually being used to manage the *container loading* information management where this occurs. As a result, where this occurs, it is not possible to find both vessel loading information *and* container loading information separately, and there is confusion as to what the loading information provided refers to.
- Some reconciliation for how EPs and Loading Requests were actually shipped (loaded) is currently possible with LVD's 'Container Loading Inspection Report', which mentions the short-shipped logs, and with LVD's 'Loading record by container' (See **Annex 8.2** to this report). But both reports are manual, the latter is not even stored in LiberTrace, and the data by containers is not in LiberTrace. The Loading Requests in LiberTrace should at least provide the subtotal volumes Loaded / Not loaded.
- Best is with the waybills, as were issued by the Company (See **Annex 8.4** to this report), that list up all logs and newly crosscut logs loaded in the container (but retains the initial number of logs and only the initial volumes, for obvious simplification). The Company waybill is the only document that provides the complete description of the content of each container.
- It is possible that all the 11 logs of EP # 2019/00696 were indeed previous short-shipped as stated, however there is no evidence that the LVD Auditing section and SGS challenged the statement, and are challenging this kind of statement, thus opening space for doubt.
- Export permits have been granted for logs with diameter issues, on the basis of an override document issued by FDA Management.

▪ There is no readily available and easily accessible information in LiberTrace, as to which and how many shipments were done through containers, and by which companies. Not in the Loading requests: LR 2019/00436 for example indicates Freeport (Export Port) as the Loading Site, although the shipment

was done through containers. Not directly from the list of EPs on the side, in the Export permits. Only by reviewing individual EPs: for EP 2019/00696, for example, one must open the EP and look for 'INSPECTION INFORMATION', Inspection Site Type: Site, Inspection Place: Sing Africa Gbarnga Timber Yard; while for other EPs this is not conclusive and one has to go back to the LR and look for the '*Shipment* Inspection Report' (as opposed to a '*Container Loading* Inspection Report') in the DOCUMENTS, as an only indirect and time-consuming way of checking for such information.

- With regards to 'Fiscality', in the two EPs involved in the inspection, the IA found evidence that EP issuance was approved even in (all) instances where Fiscality had a red flag because the due date for payment of certain taxes has expired. This is in contravention of the LVD SOPs. The IA was informed that the LVD managers in this and other cases adopted a recommendation to FDA Management to issue the EP despite the flagged payment issue and allow more time for payment, and FDA Management decided to issue EP, for which a meeting with the Operator may take place in the MD's office (which suggests some possibly unhealthy negotiation).

**Summary of findings / Conclusions:**

- Containerization of wood product exports from Liberia has become a most popular practice. But even the latest draft revision of the LVD SOPs (July 2018) for inspection of the loading of containers is far insufficiently developed to support this new practice. LiberTrace still confusingly provides *container* loading information as if it was *vessel* loading information, and not both separately.
- The loading into a container on a timber yard (even remote from the port) is thus also the final control point in the COCS. LVD and LiberTrace do not monitor what happens beyond the timber yard, up to the eventual shipment of the containers. Once the containers are sealed, nobody will check what the LVD inspectors have inspected and that no other, or no additional logs were actually loaded into the container.
- The container loading operation which the IA audited was only attended by Exporter's staff and by two LVD CoC inspectors who filled in the (manual) inspection report. No other MACs or stakeholders were there to counter-sign the loading report (like in the case of vessel loading).
- All other inspection records (like the container loading form and photos) are not held available as evidence in LiberTrace for third party auditing.
- That an LED officer joined the scene to only make photocopies of LVD inspection records, not to counter-check, could still be useful if the containers are re-opened for inspection at the port before shipment. But this has never been the case, by Customs authorities or anyone. There is thus "no evidence" that the LED officer was bringing any extra security to the process and making any good use of FDA's scarce resources.
- No other documents established afterwards can be used by any inspectors or auditors to confirm the real content of the containers and the original seal numbers (the Bill of Lading issued by the Shipping agent just states what was declared loaded on the basis of the LVD inspection and does not link back to the Export Permits); no export sale (pro-forma or commercial) invoice is

recorded in Libertrace). The seal could be broken and replaced by the Exporter itself.

- LiberTrace does not reconcile the Container loading form, taking newly cross cut pieces into account, with the LOADED LOG PRODUCTS count on related Loading request(s) and with the associated EPs.
- Reconciliation for how EPs and Loading Requests were actually shipped (loaded) is currently manual and very difficult. The Loading Requests in LiberTrace does not provide the subtotal volumes Loaded / Not loaded. The Company waybill is the only document that provides the complete description of the content of each container, but it is not stored in LiberTrace.
- Further investigations are needed as regards Traceability in LiberTrace, because of several questions (red “T’s” accepted for EP on the basis of an override document issued by FDA Management, logs changed as short-shipped 9 months after being initially declared loaded, LVD’s inability to give a list of the short-shipped logs for certain EP#s, logs loaded just stated as previous short-shipped).
- The whole shipment monitoring system for containers definitely relies, solely, on the LVD loading inspection. The question is whether all the measures in place are robust enough 1) to prevent collusion between the Exporter and the LVD inspectors (for example loading logs, but then falsely declaring them short-shipped, thus allowing the same log tag numbers to be reused to launder other, illegal logs) or 2) to prevent a container from being re-opened, the load changed, and the seal just replaced after the LVD inspection. Questions to LRA/Customs have remained pending.
- There is suspicion from the other field audit (See 6.2.3.9) that the illegal logger knew how to export the (illegal) logs on a big scale, most likely so by circumventing the CoC system. Is it possible that these indices link up at some point to uncover recurrent illegal exports from Liberia?
- The level of security of the inspection (to ensure data accuracy and reliability, availability of records etc.) relies on the procedures used (i.e. SOPs, templates), which need to be improved. The IA finds it is currently highly dependent on the integrity of the staff, and a team of two field inspectors is not incorruptible. The IA therefore considers the current level of security to be too low, in a context of possible collusion with the Company, to guarantee the integrity of the CoC system.
- For further consideration, the potential risks at stake are varied: 1) under-declaration of species and volume (but this risk is minimal due to the prior 100% inspection on the timber yard), 2) under-declaration of quantities (number) loaded into a container (like in case of falsely declared short-shipped), 3) laundering of illegal stuff through the COCS (based for example on previously falsely declared short-shipped, or on an inflated inventory where all trees do not exist in reality but are used in fabricated tree data forms and will somehow not be detected through post-felling inspection for back-to-stump traceability*), and 4) smuggling of wood products, entirely outside the COCS.

* IA to explore current post-felling inspection rates for back-to-stump traceability.

- In the end, this raises questions whether cost-efficiency is really the reason why some exporters are increasingly using containers to export their logs. Unfortunately, there is no readily available information in LiberTrace as to which and how many shipments were done through containers, and by which companies.
- The cases of EPs issued in spite of taxes not paid, in contravention of the LVD SOPs, have revealed discretionary decisions by FDA Management following a meeting with the Operator. For the IA, this indicates that there is much, and probably excessive discretionary power in the hands of the LVD/FDA managers. In this instance, the IA again concludes to a low security level (or high risk) for integrity in the decision-making chain leading to EP issuance.
- The IA has asked the Liberia Revenue Authority (LRA) whether LRA is aware of, and monitors all fee payments from forestry operators (per fee invoice, with the due date, and whether paid or pending), and the associated arrears; and on which grounds and through which process LRA is accepting delayed payments, whether in agreement with FDA or not.

For further attention: whether the IA should register further risks or issues about these conclusions and provide specific recommendations.

**Recommendations:**

- The issuance of Export permits for logs with diameter issues, only granted on the basis of an override document issued by FDA Management, should stop.
- For the sake of clarity and avoiding confusions, review the LVD SOPs to accommodate exportation through containers and address inconsistencies.
- Unlike vessel loading, container loading should not be the final control point for containerized wood products in the COCS. LVD and LiberTrace should monitor what happens beyond the timber yard, up to the eventual shipment of the containers.
- Ensure that photos of the logs loaded in each container are always taken as evidence that the Container loading form was correctly filled in.
- Store key container loading inspection records (e.g. container loading record, waybills) and photos (reduced in size) in LiberTrace as evidence for internal or third-party auditing that no logs were substituted or added into the container.
- Internal auditing could justify the presence of an LED officer, but with clear work instructions to bring extra security to the process.
- A data reconciliation meeting with the responsible MACs at the end of the container loading inspection, where all participants counter-sign the loading report (like in the case of vessel loading), should be encouraged even if it is on a sampling (but unannounced) basis.
- Electronic management of field data (use of barcode readers and portable data assistants - PDAs) must be recommended as an evolution of LiberTrace.
- The Loading Requests in LiberTrace should at least provide the subtotal volumes Loaded / Not loaded.
- LiberTrace should handle a desk version (and a PDA-based version in future) of the LVD ‘container loading report’ and of the ‘waybill’ per container (the only

document that provides the complete description of the content of each container, including all logs and newly crosscut logs loaded) and manage the associated information.

- LiberTrace should thus provide a detailed packing list by containers (EP #, Log tag #, Species, Average diameter, Length, Volume), including the crosscut logs, matching the number of pieces and volume per container on the B/L.
- LiberTrace should provide a list of which EP(s) and Loading request(s) were used for a particular shipment.
- LiberTrace should support the management of both vessel loading information *and* container loading information, where this occurs, and display how many shipments were done through containers, and by which companies.
- Improve LiberTrace and LVD procedures to ensure that products are not routinely approved for export while all or part of the three indicators (Traceability, Legality, Fiscality) on the Loading Request are still flagged in red. Mechanisms are needed to address the issues behind the red flags, or to manage exceptions, and turn the red flags to green.
- Improve LVD procedures and LiberTrace to provide supporting evidence where the statement "*Log was short shipped and has been found at the logyard*" is used.
- In view of the risk that other logs could then be laundered under the same log tag numbers, improve LVD procedures and LiberTrace to restrict the conditions for allowing logs, once declared short-shipped but just stated "*Not loaded*", to be used again in future EPs.
- The export sale (at least the pro-forma invoice, if not the final commercial invoice) should be recorded in Libertrace.
- Remove Pricing Information (Total FOB Value) from the EP template or review its management to make it useful and update the LVD SOPs and the LiberTrace User's Guide.
- Customs and/or other relevant authorities (Police, Marine, NPA, Export Verification service provider…) must exert reliable border-control checks after the container loading and before the actual shipment (seal numbers; content of containers, even if it is on a small sample basis) and to detect any containers being exported outside of the COCS.
- Subject to further exploration by the IA of current post-felling inspection rates against prescriptions, for back-to-stump traceability, the actual rates should probably be increased.
- Clarify and strengthen the conditions and transparent process for an EP to be still issued in instances where payment of certain taxes is still outstanding,

#### 6.2.3.9 Audit in a Timber Sales Contract (TSC) area during Audit 4

The audit of a Timber Sales Contract (TSC), more precisely of FDA/LVD control of the forest and timber yard operations of the logging operator in a TSC, had been planned as part of Audit 4.

Upon consultation with the LVD Operations Manager (OM), the TSC "A2" located in Compound #1, Grand Bassa County, and owned by Tarpeh Timber Corporation, was selected. TSC A2 was actually the only active and accessible TSC.

The field visit took place between November 3 and 5, 2019. Two IA auditors were accompanied by the LVD OM, representing FDA/LVD as the auditee, and two Observers (NAO Project Manager; and an EFI FLEGT Facility expert from Spain).

While preparing the audit, the IA auditors were informed that the logging operator Renaissance had been fined USD 100'000 on January 11, 2019, for felling trees outside the concession area.

Having received such information, the IA Team needed to acquire sufficient understanding of the situation during the audit, to assess whether the responsible FDA divisions, mostly Commercial Forestry Department (CFD) and Legality Verification Department (LVD) staff from both Region 3 and Head Office, had fulfilled and were still fulfilling their responsibilities in a trustful and efficient manner.

The IA Team collected evidence related to the incident, through documents, interviews and field observations. The auditors then tried to reconcile facts, figures, COCS data from the field and in the LiberTrace system, places, chronology etc. both in advance and during the field visit. This proved to be a difficult and inconclusive exercise and will remain so, if no further investigation is conducted.

The administrative situation of TSC A2, as it was presented to the IA and understood, appeared to be confusing and largely uncontrolled as can be judged:

- The TSC has been extended several times since it was first allocated in 2008 (initially for 3 years, as for all TSCs);

  Since then, the IA found that a new extension had been awarded to Tarpeh for another 2 years, from September 2, 2019, to September 1, 2021. By then the TSC A2 will have reached over 10 years of activity.

  And new blocks are in fact being submitted for inspection, all that despite the controversial historical records and the fact that previous requirements may not have been complied with:

  - No evidence in LiberTrace of key documents issued at the time of establishing TSC A2:
    - TSC contract with Tarpeh Timber
    - Paperwork that explained the rationale for deforesting the area defined as concession TSC A2
    - Approved AOP for the company (last / new logging season).
  - Already 'approved' block inspections for Freedom Group in TSC A2 have indeed been found in the LiberTrace system (PREHARVEST, Inventory Inspection) for several blocks with the respective inspection dates, reports and results: E3, F2 to F6, G3, G6, G7, and H7 (between 11/03 and 11/12/2019), all inspection results stated "Not Satisfactory" (for future attention, and so why 'approved'?).

  The IA's legal assessment is that it is *not illegal* to extend or renew a TSC, as long as the parties agree to it; however:

  - The rationale behind the creation of TSC A2 is no longer available;

- There was no indication (from visiting the area) of planned forest conversion to other uses;
- According to the FDA extension letter, TSC A2 "still has valuable species that can be harvested to generate the needed revenue to sustain the national budget and provide job opportunities to the citizens";
- As a result, large tracks of forests can be logged intensively, down to 40cm, i.e. unsustainably, 10 years after the TSC was created;
- And the IA is thus questioning whether all this is in line with the intention of the law (NFRL) that established the TSCs.

Further questions include:

- Can FDA lawfully (under new Land Rights Act, Aug. 2018) extend a TSC over an area that is presumably a community or customary land?
- Has FDA followed due protocols to authorize such extension for commercial logging?
  - For example, has the Forest management Advisory Committee (FMAC) been given a chance to participate in validating the proposed land use regarding committing a forest area to a commercial forestry, community forestry, etc. (as per NFRL, 4.5 (d))?
- Had all statutory requirements been met by Tarpeh at the time of the extension? Regarding Legality Verification by LVD, there has been no confirmation, of a desktop audit for TSC A2 (Tarpeh Timber) by the LVD LV Team using the 'Current regime for Export Permit' checklist.

The IA recommends referring this TSC and its successive extensions to the concession review panel.

- The ownership of the concession has passed from father to son in the Tarpeh family;
- The logging company Renaissance was "sold" to another company Freedom Group Liberia, Inc. (although some company owners may remain the same);
- The company name 'Renaissance' was simply replaced with 'Freedom Group' in many instances in the LiberTrace system and without any evidence that formal protocols were followed for such substitution;
- The traceability links are said to be broken between the old company and the new one, as a result;
- Two Freedom Groups have been created in LiberTrace (by mistake the auditors were told, but this has not yet been corrected). Two TSC A2s were also created, which the IA understands should disappear if the "second" Freedom Gp. is removed;
- The legally required documents, where existing and valid, since 2008 for some of them, are scattered in different places within LiberTrace (for future attention);
- Since the sale to Freedom Group, there has been a significant, if not complete, change in key positions and field staff in the company from Renaissance. The log scaler who did the initial tree/log tagging was also made redundant. Was

the “institution’s memory” erased on purpose? This certainly further complicated the IA’s ability to gather field evidence of the history and sequence of events since the felling commenced outside the boundaries of TSC A2.

Bringing clarity into a complex situation like this one cannot be completed in the time allocated for a field audit; nor is it the role of the IA beyond reasonable efforts:

- The volume of felling (reportedly) declared under ‘Special Felling’ in LiberTrace amounted to roughly 14’000 m3 of logs, of which 11’000 m3 have been allowed for export (with Export permits), and 9’000 m3 have actually been exported, hence 5’000 m3 must remain “in stock”;

New research in LiberTrace (OTHER ENTRIES) for the declaration of the Special Felling showed the following:

Number: 2018/000009

Company: Freedom Group Liberia, Inc., Monrovia (Liberia)

Resource Area: TSC A2 (Timber Sales Contract)

Special Felling Type: Route opening

Felling from Date: 08/06/2018 To 09/03/2018

FELLED TREES: 1,641

- 83 pages (20 items per page)

- TAG AFFIXED? No (to all)

- STUMP KEPT? Yes (to all)

- Information items informed for each log:
TREE TAG, SPECIES, LOG TAG, DIAM. BUTT, DIAM. TOP, LENGTH, VOLUME

- Note: No total volume is indicated

- 6 incidents reported because of: “Average butt end diameter not greater or equal to average top end diameter”

DOCUMENTS (3):

- Special Felling Form # 2018/000009 (151 pages) issued three times on 05.12.2018, 14.12.2018, and 18.12.2018 (with no apparent differences):

. GPS coordinates: UTM Zone: 29N (for all logs)

. Species: LOP (for all logs)

. TreeTag # from AC807ZTB to AC545ZSK

. LogTag # from AB756LZL to AB854LYQ

. Easting: 376328, Northing 693540: on 62 pages

. Easting: 376745, Northing 687208: on the rest of the 151 pages

STATUS HISTORY (7):

- DATE, FROM STATUS, TO STATUS, COMMENT:

. 12/18/2018 09:58 PM, Data entry completed, Declared

. 12/15/2018 05:41 PM, Draft, Data entry completed

. 12/14/2018 12:53 PM, Data entry completed, Declared

. 12/14/2018 12:48 PM, Draft, Data entry completed

. 12/05/2018 02:00 AM, Data entry completed, Declared

. 12/05/2018 12:21 AM, Draft, Data entry completed

. 12/04/2018 09:44 PM, - - - , Draft (Creation...)

Note: The IA auditor has no explanation what the process has been and why the (apparently) same declaration was made several times.

Further research in LiberTrace for Export permits showed the following:

Cancelled Export permits for Freedom Gp.: 2019/626, 2019/617, 2019/616, 2019/580, 2019/535, 2019/529, 2019/440 (with logs re-submitted in later EPs)

Closed Export permits for Freedom Gp.: None

Approved Export permits for Renaissance: None

Approved Export permits for Tarpeh: None

After the USD 100'000 fine was issued on January 11, 2019, a total log volume of 9'144 m3 was indeed exported between January and September 2019, under the following 'Approved' EPs for Freedom Group: 2019/453, 2019/454, 2019/581, 2019/629, 2019/630, 2019/631, 2019/632, 2019/633, 2019/634, 2019/635 and 2019/636. All these EPs apparently[22] go back to the same Special Felling #2018/000009.

An FDA "Permission Letter" to LVD/SGS to process 11'000 m3 for export submitted by 'Renaissance Group', is dated June 27, 2019 (i.e. after 4'665 m3 were already exported) following payment of the USD 100'000 fine.

No copies of the following Loading Requests associated to the above EPs are provided in LiberTrace: 2019/00287, 2019/00281, 2019/00360 (though it says Loading insp. done), 2019/00397, 2019/00423, 2019/00422, 2019/00421, 2019/00424, and 2019/00396; no Loading request is mentioned in relation to EP # 2019/636.

There is a necessity to review the authenticity, issuance, and content of all export permits.

Traceability tests (in SALES, Export permit, LOG PRODUCTS, TRACEABILITY DETAILS), on a random sampling basis:

- In EP 2019/634, Log tag # AB896LYG can be traced back to:
  - Resource area TSC A2 (12/18/2018)
  - Tree # AC457ZSG issued from special felling 2018/000009 performed by Renaissance Group. Comment: "*The tag has been affixed on the stump after felling because the tree was not previously inventoried*". 'Cell Reference' data: empty. Dimensions are provided for the tree: Diameter Class (125); Height (15.8).
  - Log # AB827LWR issued from special felling 2018/000009 performed by Renaissance Group. Declared values: Average **Diameter Butt End (127)**; Average **Diameter Top End (98)**; Length (15.80).
  - Log # AB896LYG issued from a cross-cutting of log AB827LWR made between 12/05/2018 and 12/12/2018. Inspected values: Average **Diameter Butt End 84 (85)**; Average **Diameter Top End 78 (75)**; Length 15.60 (15.60). Comment: "*Top end diameter is lower than the one declared during the felling (Over tolerance of 10%)*".

    IA observation: *For roughly the same length, the range of the declared butt and top end diameters of the cross-cut log, confirmed by the inspection, do not match the declared values of the mother log.* This could

[22] The IA Auditor tested the first and the last logs in each EP.

suggest some fantasy in the initial declaration, corrected by a systematic cross-cutting declaration.

- Log # AB896LYG was *not found* during EP inspection done on 06/24/2019.
- Log # AB896LYG was [then successfully] inspected during EP inspection 2019/00634/1 done on 07/12/2019. Inspected values accepted by operator.

  IA observation: The proximity of the respective registration dates and times of the CROSS-CUT event and of the subsequent (EP or timber yard) INSPECTION in some cases, and the important volume of INSPECTION registered on the same date, both raise questions:

| *EP #* | *Date & time CROSS-CUT (MM/DD)* | *Date & time INSPECTION (MM/DD)* | *EP Volume (m3)* |
|---|---|---|---|
| 453, 454 | 01/05 2:40AM | 01/05 10:21AM | 1'502, 1'953 |
| 581, 629, 635, 636 | 03/29 | 04/05 | 1'210, 1'140, 509, 190 |
| 630, 631, 632, 633, 634 | 06/01 | 06/24 | 532, 530, 526, 534, 518 |

  A deeper investigation should be conducted to establish whether the declared cross-cut logs dimensions may have been fabricated on the basis of the inspected values.

- Log AB896LYG was included in EP 2019/00634 approved on 07/22/2019.

- Similar history and comments for the 5 logs in EP 2019/634 tested with an orange T[23] out of 122 logs in total in EP 2019/634: all logs and trees go back only to the Special Felling declaration; all with tree tags claimed to "*have been affixed on the stump after felling*", and no cell reference (tree not previously inventoried), which is no surprise for illegally felled trees; all went through cross-cutting, and only a few through timber yard inspection instead;
- Similar history and comments for 3 logs in EP 2019/634 tested with a red T[24], but with inspected length and/or volume different from the declared values beyond the tolerance, or sum of cross-cut log lengths exceeding the length declared at felling;
- The only 2 logs in EP 2019/634 that have a green T[25] still have similar discrepancies between declared and inspect value.
- In EP 2019/581, 5 logs tested with an orange T[26] out of 209 logs in total have similar history and comments; there are no red T logs; and for the 5 logs tested with a green T[27], there are no dimensional problems beyond the tolerance.
- So, the comment that "The traceability links are broken between the old company and the new one" does not apply to these logs produced outside the TSC A2 boundaries but, working backward from Export Permit to Special Felling declarations for these logs, all the information is registered under the

[23] AB896LYG, AB924LWW, AB966LWM, AB019LX3, AB910LV7
[24] AB898LVJ, AB920LYO, AB025MAH
[25] AB021LWL, AB021LYG
[26] AB863LWW, AB092LY7, AB022LXG, AB018LY3, AB999LWC
[27] AB982LYP, AB344MAB, AB094LY3, AB979LWE, AB531LW9

same Freedom Group. And there are apparently no other EPs issued to Freedom for logs that were produced by Renaissance *within* the TSC A2 area to verify the statement. But the fact is, no EPs issued to Renaissance for logs that were produced by Renaissance within the TSC A2 can be found any more, suggesting that the related records in LiberTrace have now all been lost (unless backups exist from before the incident; this could be asked to SGS or even EFI).

While all Export Fees were paid for the 9'144 m3 exported, a Stumpage Fee Invoice of USD 184,326 issued on 12/18/2018 to Renaissance for 14,028 m3 (Due Date 01/17/2019), likely on the basis of the Special Felling declaration, was still unpaid as of 11/14/2019.

This suggests that if Renaissance/ Freedom have not paid the Stumpage Fee amount of USD 184,326 for 14,028 m3 (i.e. USD 13.14 per m3) and were instead fined USD 100'000 for 11'000 m3 (i.e. USD 9.09 per m3), it thus resulted more economical for the operator to log illegally and pay a fine than to operate legally.

From new research, it is also unclear to the IA:

- Why the fine was settled at the level of USD 100'000;
- Whether a fine of such magnitude lies within the jurisdiction of the FDA or whether it should have involved the Ministry of Justice;

  Preliminary review of this issue with the IA Legal expert:

  - FDA may impose administrative fines but only (a) up to US$ 5000 (plus expenses, due fees, and damage reparation) and (b) if conditions are met including (i) the violator's consent to the fine, (ii) no physical injury, no significant harm to the interests of a local community, and no damage to forest resources or the environment exceeding US $10,000 in value, and (iii) the violation not being criminal;
  - If not all these conditions are met, FDA should refer any alleged violation of the NFRL and its regulations to the Ministry of Justice (MoJ) to move the case into the (civil or criminal) court system. Any civil[28] or criminal case[29] must be heard and determined only by a civil or a criminal court, respectively, and not by any administrative agency. One violation may give rise to both civil and criminal sanctions depending on the circumstances. In case of alleged criminal violations, FDA/LED should coordinate with LNP for investigation and with MOJ to proceed.
  - The above, however, are provisions of the 'FDA Compliance & Enforcement Handbook' of August 2017. The Handbook is still a draft pending approval, and is a guidance, not law. There is nothing in the law that stops FDA from imposing any amount of monetary fine appropriate to the level of violation and damage caused by the violation provided that, where the person fined does not agree with the fine, such person may appeal it. One pending question is whether the Handbook, once formally approved, would take the status of a regulation[30].

[28] as per the list in Section 1.5 of the FDA Enforcement Handbook
[29] as per the list of crimes in Section 1.4 of the EH, based on what offenses the NFRL criminalizes
[30] See 7.3.5.8, in A4R Vol.2, "What it takes for an implementing text to become a by-law regulation (binding on forest stakeholders)".

  - In the TS A2 case, if the FDA imposed a fine that was consented to by Renaissance, as it appears to be the case, then there is apparently no issue, even if this is in excess of the Handbook[31].
  - Gaining further clarity into the circumstances of the fines, what the amounts represented, and whether the FDA, in imposing a fine, consulted with the MoJ and the LRA, would probably help determine whether the FDA acted within its administrative jurisdiction.

- Why the fine was issued on LLD letterhead;
- Why the payment was to be made into the LRA Forestry Transitory Account (used for SGS, and now LVD), and whether this is in accordance with the MoU for the use of these funds.
- Why, as the IA since then also found in LiberTrace, FDA had issued a first fine of USD 5'000 to Renaissance on November 02, 2018.

There is also much confusion in the forest and to some extent in the LiberTrace data system, making the reconstitution of events and reconciliation of data difficult:

- Why the logs were not confiscated in the first place, in accordance with Regulation 118-17 on 'Confiscated Logs, Timber and Timber Products' (that has been enforceable since it was officially gazetted on October 24, 2017);
- Only 2 of 11 stumps found in the forest had a tree tag affixed to them; 3 logs that were found in the log yard yet happen to be registered "shipped" in LiberTrace; 4 old log tags found on logs were not traceable in LiberTrace; and new log tags are being put onto logs now being extracted (in the last two weeks before the audit, at the initiative of Freedom's new CoC Manager) but had not yet been declared in LiberTrace, while most of these "new logs" did not have a tag affixed to them yet;
- The company staff could neither indicate what quantity of logs is yet to be extracted from the forest, nor where all the trees were felled at the time, so as to try to make up for the declared volume; felled trees are present over a very large area but their tree finders still have to be sent to locate the felled trees.

In terms of FDA/LVD control of the situation:

- The auditors also learned that the case had been made known to FDA/LVD upon a denunciation ("insider information" from FDA staff alien to the TSC A2 operation);
- The FDA Region 3 Regional Manager said he had a log scaler on site for some months, now on sick leave, but there is no evidence of any reporting related to TSC A2;
- LVD CoC inspectors came to inspect the logs for export, but not beyond the company log yard in Compound #1;
- The evidence at hand to the IA thus suggests that neither any CFD staff nor LVD auditors have ever reported on the forest itself; and there is no indication that forest visits were ever scheduled to TSC A2.

[31] If the Handbook had the status of a regulation, the question could be whether some expenses, fees and/or damage reparation (as per the Handbook, Step 8) could rightfully be added, and were added, by FDA to the maximum fine of $5'000, to reach $100'000 or more.

- The IA auditors were informed by company field staff that felling actually continued up to April this year (after the $100k fine was issued on January 11); they were also told that local communities tend to collaborate with operators (for money) rather than report them (acting as accomplices rather than forest guardians and whistle blowers). As a result, it may be that nothing has prevented felling to be still continuing even after April.
- This is all making the current status and real magnitude of the violation, and of the loss in revenues for the Government, largely unknown.

Many questions still remain unanswered:

- Where is the stock of about 5'000 m3? The new Freedom CoC Director who the IA auditors met with said he was trying (with much difficulty) to sort out the paper work and reconcile it with the stumps that could be found in the forest and the new logs that could be extracted, some with a tag, some without.
- For the IA Team, a plausible hypothesis is that the special felling declarations, including the tree and log tag number allocation to the logs, were made up retrospectively from the company's internal felling records in the office, therefore not matching field evidence.

The IA questions, what would have happened if the incident had not been uncovered? The operator, who felled such an important volume of logs illegally (in this case at least 14'000 m3 of logs outside the legitimate TSC A2 resource area), ran very high risks (financial, legal, reputational etc.). The mere fact that the operator took such risks, knowingly, provides a high probability that he/she was always confident in the possibility to export the (illegal) logs, most likely so by circumventing the CoC system, which raises more questions for further consideration (see below*).

In view of the magnitude of the illegal operation, of the lack of clear information in many respects, and of the risks that the disorder could continue around TSC A2 and, similarly, potentially in other places in Liberia, the situation was assessed by the IA team as requiring urgent protective measures from FDA and other MACs.

The IA decided to send a letter to the NAO (as one option for reporting to the JIC, in IA's Complaint Management System). The IA aimed to alert at least FDA and EUD and possibly the IAWG. The IA recommended that the whole area be placed under control of the FDA, all logs seized, the company's documents and computers inspected or seized, and a formal investigation launched, with external technical assistance to design a robust methodology and oversee its implementation.

TSC A2 was then taken as case study for the IA's debriefing session with the IAWG at the end of the Audit 4 mission.

* Two hypotheses have been formulated and a third one was actually observed:

1) The illegal operator thought it possible to have those illegal logs enter and be laundered throughout the normal COCS.

*Discussion:* This seems improbable, and this Independent Audit has not acquired indications that it is possible to do so. One avenue to be further explored, though, is whether, because back-to-stump traceability is *de facto* only declared retroactively by the operators when they are ready to export (See 6.4.11, Issue MII 14), and only a limited (very small?) sample of stumps is in practice searched back to the forest (against tree data) by LVD, such traceability could be somehow

fabricated so that illegal logs can eventually be linked to a legitimate resource area. If this can be done without compromising the possibility for other legitimate production from that same resource area to be exported throughout the normal COCS, one way to it is to purposely increase the declared inventory to make room for logs from other areas.

2) There exist ways in Liberia to export illegal logs outside the normal COCS, without an Export Permit.

*Discussion:* Tackling this requires reliable checks in the forest, during transport (like at check points or by mobile authorities, both daily and at night), and at border-crossing points or at entry points into local sawmills. See related discussions as part of this Independent Audit.

3) The operator has actually been allowed to export over 9'000 m3 of these illegal logs, already, without confiscation of the logs and after paying a moderate fine, which admittedly constituted yet another way of doing it.

If this happened in one place, could it not happen in other places in the Liberian people's forests? Therefore, in how many places, for how many trees, and for what amount of revenue losses to the GoL?

**Summary of findings:**

The field audit in the Timber Sales Contract (TSC) area 'A2' in Grand Bassa County during Audit 4 and further research in the LVD LiberTrace data system showed the following information as audit evidence and findings:

- TSC A2 has been extended several times since it was first allocated in 2008 for 3 years (as for all TSCs) and will be reaching over 10 years of activity.
- There is no clarity:
    - What the rationale has been, behind the creation of TSC A2 and its successive extensions, and whether it is in line with the law (NFRL) to support the fact that the TSC area is still being logged intensively, and unsustainably (down to 40cm), 10 years after it was created. There was no indication (from visiting the area) of past or planned forest conversion to other uses;
    - Whether FDA could lawfully extend a TSC over an area that is presumably a community or customary land (ref. Land Rights Act) and if it has followed due protocols to authorize such extension for commercial logging (ref. NFRL, 4.5 (d);
    - Whether all statutory requirements had been met by the owner at the time of the extension and if LVD had had a chance to verify it.
- The logging operator (then Renaissance Group) was fined USD 100'000 on January 11, 2019 for felling trees outside the concession area.
- There is a most confusing and largely uncontrolled administrative situation in relation to the logging operator(s):
    - Logging company Renaissance reportedly "sold" to Freedom Group Liberia, Inc. (although some company owners may remain the same), without formal evidence provided;

- Name 'Renaissance' simply replaced with 'Freedom Group' in LiberTrace, with no evidence that this followed formal protocols or whether an authorized system administrator overstepped his/her rights and wrongfully overrode the system;
- The traceability links are now reportedly broken between the old company and the new one:
  - No other EPs issued to *Freedom* for logs previously produced by *Renaissance within* the TSC A2 area could be found in LiberTrace to verify the statement;
  - And so, there is no clarity whether or not Freedom started operating outside the TSC A2 area right from the start, or also *within* the TSC A2 area or also bought an existing stock of legal logs from Renaissance;
  - But no previous EPs issued to Renaissance can be found any more, either, suggesting that all records related to Renaissance have indeed now been lost (unless old backups exist);
- Two Freedom Groups and two TSC A2s have been created in LiberTrace;
- There was a complete change in key positions and field staff in the company. Whether this was done on purpose or not, the history of events is now lost.

- The volume of felling declared under 'Special Felling' in LiberTrace reportedly amounted to roughly 14'000 m3 of logs produced, from August 6 to September 3, 2018. The IA found and analyzed the relevant records in LiberTrace. But a special investigation would be needed to tell whether evidence gathered reflects "normal practice" or otherwise:
  - Special Felling Type: "Route opening";
  - Same Special Felling Form apparently issued three times in December 2018;
  - GPS coordinates: same UTM Zone for all logs; Same 'Easting' (376328) and 'Northing (693540) on 62 pages; Same 'Easting' (376745) and 'Northing' (687208) on the rest of the 151 pages of the declaration;
  - Same species (LOP) for all logs;
  - No total volume is indicated to confirm the 14'000 m3 figure.
- A volume of 11'000 m3 has been allowed to Renaissance for export (with Export permits): FDA "Permission Letter" to LVD/SGS dated June 27, 2019 (i.e. after 4'665 m3 were already exported) following payment of the USD 100'000 fine in April 2019.
- It is however unclear to the IA:
  - Why the logs were not confiscated in the first place, in accordance with Regulation 118-17 of October 2017 on 'Confiscated Logs, Timber and Timber Products';
  - Why the fine was settled at the level of USD 100'000 and whether an administrative fine of such magnitude lies within the jurisdiction of the

FDA[32] or if it should have involved the Liberia National Police and the Ministry of Justice;

- Why the fine was issued on LLD letterhead; why the payment was made into the LRA Forestry Transitory Account; and whether this is in line with the LRA-FDA-SGS MoU for the use of these funds;
- Why FDA issued a first fine of USD 5'000 to Renaissance on Nov. 2, 2018.

- A total log volume of 9'144 m3 was in fact exported from January to September 2019, under 11 EPs approved for Freedom Group, after the USD 100'000 fine was issued on January 11, 2019.
  - However, the related Loading Requests cannot be found in LiberTrace and the IA is still waiting for an explanation;
  - Sample traceability tests showed that:
    - Most logs were "not found" during a first EP inspection in June, and were then successfully inspected during a second EP inspection, and the inspected values accepted by the operator;
    - All logs went through cross-cutting, without exception, which seems questioningly unusual;
    - In many cases of "orange T" logs in LiberTrace, the declared diameters and length of the cross-cut log do not match the declared values of the mother log, suggesting some fantasy in the initial declaration subsequently corrected by a systematic cross-cutting declaration;
    - The proximity of the registration of the CROSS-CUT and subsequent INSPECTION events in terms of dates and times, and the important volume of INSPECTION registered on the same dates (3'455 m3 on 01/05, 3'049 m3 on 04/05, and 2'640 m3 on 06/24), both raise questions. The IA will recommend a deeper investigation be conducted to establish whether the declared cross-cut log dimensions may have been fabricated on the basis of the inspected values and whether this may reflect any connivance between the operator and LVD staff.
    - In the case of "red T" logs, the difference between the inspected and declared values exceeded the tolerance;
    - All logs and trees go back only to the Special Felling declaration;
    - For all the trees, tree tags are stated to "have been affixed on the stump *after felling* because the tree was not previously inventoried" (although only a few stumps have one, in the forest), and there is no cell reference, which is no surprise for illegally felled trees.
  - Stumpage Fees amounting to USD 184,326 (invoice issued to Renaissance on Dec. 18, 2018 for 14,028 m3; Due Date Jan. 17, 2019),

[32] The latter being limited to USD 5000 plus expenses, due fees, and damage reparation as per the 'FDA Compliance & Enforcement Handbook', Step 8, provided the provisions of the Handbook are binding, not just guidance; or because some of the violations can be considered criminal, as per the list in Section 1.4 of the Handbook based on what offenses the NFRL criminalizes, which seems to be the case on more than one account.

likely on the basis of the Special Felling declaration, were still unpaid as of November 14, 2019.

- On that basis it would result more economical for the operator to log illegally and pay a fine than to operate legally and pay the due Stumpage Fees.

- In relation to the remaining stock of 5'000 m3 (roughly), it is now difficult even for the company to reconstitute the events in the forest and reconcile the paperwork and the data in LiberTrace:
  - Most stumps were found without a tree tag; logs found in the log yard are yet registered "shipped" in LiberTrace; "old" tagged logs were not traceable in LiberTrace; newly extracted logs, though tagged, were not yet declared in LiberTrace; and most "new logs" were observed without a tag;
  - The quantity of logs yet to be extracted from the forest is unknown, and all felled trees not yet located;
  - The special felling declarations, including the allocated tree and log tag numbers, may have been made up retrospectively by the company from internal felling records in the office, in disconnection from field reality.
- That in terms of FDA/LVD control of the situation:
  - The case was only made known to FDA/LVD upon a denunciation from an external party;
  - No reporting from the FDA Region 3 inspector in charge is available in relation to TSC A2;
  - LVD CoC inspectors only inspected the logs presented for export in the company log yard;
  - CFD staff and LVD auditors never reported on the forest itself.
  - Felling is said to have continued up to April 2019 (after the $100k fine was issued in January);
  - Local communities are seen as having vested interests in the illegitimate logging and are thus not expected to report the operator;
  - It is therefore not impossible that felling has continued even after April;
  - The current status and real magnitude of the violation, and of the loss in revenues for the Government, are largely unknown.
- New blocks are now being submitted for inspection, despite the controversial historical records and the fact that previous requirements may not have been complied with (f. ex. no evidence of approved AOP for the last / new logging seasons).
  - Already 'approved' block inspections for Freedom Group in TSC A2 have indeed been found in the LiberTrace system for several blocks, with the respective inspection dates, reports and results, all "Not Satisfactory" (so why 'approved', for future attention?).

**Conclusions:**

The audit conducted in relation to the TSC A2 raises concerns for the current capacity of the FDA to control important components of the LAS. The observed issues further undermine the reliability of the current export permit (EP) process.

Over 9'000 m3 of logs had been exported by Freedom Group up to September 2019, through Monrovia Freeport, despite the following problems:

- All the trees were felled illegally in 2018 by Renaissance Group, outside the concession area; the logs were not confiscated and were instead accepted as 'Special Felling' (roughly 14'000 m3, for "Route opening") in LiberTrace; yet the Stumpage Fees have not been paid (though duly invoiced); and 11'000 m3 of logs were permitted by FDA for export (after 4'665 m3 were already exported) - following the payment of fines that stakeholders consider too low.
- All previous company staff in key positions have been replaced, and the history of events has been lost.
- It is unclear why the USD 100'000 fine was issued by the FDA (vs. MoJ), on LLD letterhead, to a reportedly discretionary amount, and paid into the LRA Forestry Transitory Account; and what governed the use of these funds.
- Traceability tests strongly suggest fabricated records and could suggest connivance with the operator: systematic cross-cutting declarations; with in many cases *declared* values not matching the previous felling declarations, and little different from the *inspected* values (that were registered within a short time after the cross-cutting) and could therefore have inspired the latter, or the other way around; and with the *inspected* values all eventually being accepted by the operator.
- All records of Loading Requests are missing in LiberTrace and cannot be used to see what was really loaded. The Loading inspection records do not mention a single short-shipped log (despite a few logs still found present in the log yard). This would also mean that not a single log was rejected for not matching the species or dimensions on the SPEC.
- That it was really feasible to inspect the large volumes reported at certain dates, in the time available and with the number of inspectors involved, remains to be confirmed.
- The reconstitution of events and reconciliation of data, towards establishing the quantity of logs yet to be extracted from the forest, are now difficult because of the confusion: stumps without a tree tag; logs registered "shipped" in LiberTrace, still found in the log yard; log tags not traceable in LiberTrace; tagged logs not yet declared in LiberTrace; most "new logs" without a log tag; and all felled trees not yet located.
- Poor FDA/LVD control of the situation in the field: illegal felling of 1,641 trees between 08/06/2018 and 09/03/2018 (as finally declared) remained unnoticed or unreported; awareness of the case eventually came from an external source; no further reporting from FDA Region 3 CFD inspectors or from LVD auditors on the forest itself; no further LVD CoC inspection in the forest beyond the company log yard.
- After the Special Felling was declared in December 2018, and the $100k fine was issued in January 2019, felling is said to have continued up to April 2019, therefore uncontrolled by FDA.

- Since the local communities are described as having vested interests in the illegitimate logging and no desire to report the operator, it is not impossible that felling has continued even after April.
- The current status and real magnitude of the violation and of the loss in revenues for the Government, therefore, are largely unknown. Reason why the IA alerted the authorities and recommended that an investigation be launched.

In view of the very high risks incurred with such a massive illegal operation, it is felt probable that the operator knew how to export the (illegal) logs. This can only be done by either fooling, or circumventing entirely, the CoC system; or by anticipating the permission to export the logs, without confiscation, and after paying only a moderate fine, and no Stumpage Fees (the whole illegal operation resulting even more economical than a legal one for the operator), as *de facto* happened, which, if the anticipation is confirmed, would necessarily suggest some deal passed with the forestry authority.

Further to the above reported incident, it is unclear (i) whether TSC A2 has repeatedly been extended lawfully ever since 2008, and all statutory requirements met by the owner and duly verified by LVD, and (ii) if it makes it a legitimate logging area in view of the facilities granted to TSCs (such as a minimum diameter reduced to 40cm).

The transition process from the previous logging operator (Renaissance) to the current one (Freedom) is largely uncontrolled: undocumented sale of the company after the illegal felling was uncovered, no evidence of real change of ownership, and unclear transfer of assets and liabilities, simple name substitution in LiberTrace, and traceability links reportedly broken (no records of prior export activity by Renaissance, nor by Freedom); two 'Freedom Group's (and two TSC A2's) created in LiberTrace; all shipments exported by Freedom on the basis of EPs issued to Renaissance.

A number of pre-felling requirements have not been complied with by Freedom (e.g. Stumpage Fee arrears; no approved AOP for the new logging season), and yet the logging operator was allowed to submit new blocks for inspection.

Several blocks were indeed found, in the 'Approved' block inspections' section of LiberTrace (though inspected as "Not Satisfactory", for future attention).

For further attention: whether the IA should register further risks or issues about these conclusions and provide specific recommendations.

**Recommendations**

Illegal felling should have been detected, inspected and reported by FDA staff (Region 3 CFD inspectors, LVD CoC inspectors, LVD auditors).

The logs should have been confiscated, not allowed for export.

Clear procedures, including due amounts, jurisdiction (FDA vs. MoJ) and payment, should have been followed for imposing fines or other sanctions.

The Stumpage Fees should have been paid in time or no EP issued.

It is necessary to review the authenticity, issuance, and content of all export permits.

The Loading Requests should be available in LiberTrace.

The whole area should have been put under control to prevent further illegal felling after the incident was uncovered.

Intelligence should be put into an investigation of the whole case, to reconstitute the events and reconcile the paperwork and the data, and to challenge the many grey areas; including the transition process from the previous logging operator to the current one; and including whether the records of the Special Felling in LiberTrace reflect "normal practice" or suggest some late reconstruction of the data.

Main recommendation: In view of the magnitude of the illegal operation, of the lack of clear information in many respects, of the lack of control by FDA, and of the risks that the disorder could continue around TSC A2 and similarly in other places in Liberia, the IA team recommended that a formal investigation be launched and the adoption of urgent protective measures of evidence at hand from FDA and other MACs.

For future activity, refer the TSC A2 and its successive extensions to the concession review panel; and establish whether pre-felling requirements have been met by the logging operator before submitting new blocks for inspection.

## 6.2.4 Review of implementation of the role of Government departments (FDA, Other roles)

### 6.2.4.1 Approval of a Community Forest Management Plan in a CFMA

Status: Review considered completed during Audit 3 and moved to under 7.4.3.1 (Approval of Forest Management operations – LM P4) in the Volume 2 of this Audit 4 report (A4R Vol.2).

### 6.2.4.2 Law Enforcement Division (LED)

The bulk of evidence collected during the Audits #3 and #4 regarding the LED was moved to A4R Vol.2, 6.2.4.2 (and, partially, further to 7.4.8.1 for archiving). A revision of the cumulated findings, conclusions, recommendations and related issues raised regarding the LED is provided below.

***Summary of findings***

The LED is also known as the 'Forest Law Enforcement Division' (FLED).

A review of all relevant documents has not provided *in any one place* a clear definition of LED's roles and responsibilities, although new draft VPASU Procedures are lately bringing some coherence to it, but this is the IA's understanding so far:

- The Law Enforcement Division (LED) is responsible to ensure *total compliance* to the key forestry laws and policies (FDA Annual report 2015, 1.5), in other words "*to ensure compliance at all levels in the forest sector*" (LED TM)".
- LED's mandate includes "*formulating and promoting policies and regulations relating to forest law enforcement and inspection*" and "*ensuring legal compliance, law enforcement, good governance, and best practices for all related forestry activities in Liberia*" ('Mandates of the FLED, undated, unsigned).

- "*The LED was established as part of the Forestry Reform Program 2006, to make sure that the forest law, policies and international protocols are effectively applied*" ('History of FLED in the Forest Sector.docx', undated, unsigned). Note: The IA has found no evidence of such statement.
- The LED in fact participates in the control and enforcement chain, with a key role in law enforcement:
  - Some FDA departments (mainly CFD) do "Level 2" checking and inspections on Operators (LAS Verification Framework, SGS/FDA, 2013)
  - Those FDA departments then report the infractions they have observed to the LED for further investigation – where deemed necessary – and enforcement of any sanctions or redress actions;
  - The LED has apparently no role in the day-to-day Level 2 checking of operators (CHFP 2007, revised 2017);
  - The Public Affairs Division (PAD) finally publishes the information it receives from the LED (A4R Vol2, 6.2.4.3, now 7.4.8.2).
- In more detail, the LED:
  - **Receives all reported suspected violations**, (including*) from any other FDA department (within 24 hours);
    * Including, for future attention, the FDA Complaint Mechanism

    Examples of Verifiers 3.1.1, 3.1.2 & 3.1.3, Non–compliance: "*CFD shall make a report to LED where there has been a violation*" (Compliance Procedures for LM, Draft V2.2 August 2018, VPASU).

    There are numerous other instances (Verifiers 3.2.1-3, 3.3.2-4, 3.4.1, 3.5.1-2, 4.1.1-3, 4.2.4, 8.1.1-4, 8.6.1) of "*Where suspected violations are detected, they shall be referred to the LED for investigation*" (ibid.).
  - **Notifies the Managing Director (MD) of the FDA** (who within 5 working days shall review the notification and, if there is reasonable suspicion, instructs the FLED to investigate the claim; the MD also leads in FDA coordination with other agencies),

    Note: This is not consistent with Verifier 1.1.3, Non–compliance: "*FDA departments report suspected violations* to the MD, assisted by the LED *and Legal Advisors, to proceed according to the legal framework – using the Compliance and Enforcement Handbook*" (Draft Compliance Procedures);

    But it is in line with "*Suspected violations shall be referred* to the FDA MD by the LED *and shall be investigated and decided through the laws*" (ibid.).

    The IA notes that where Reg. 109-07 provides that *Authority staff* shall promptly *notify the MD* of any offense or violation, and that *the MD shall promptly investigate* any offense or violation brought to his attention and notify other Government agencies or ministries as necessary, the NFRL is less prescriptive than the Handbook that specifically assigns those responsibilities to the LED (reporting to the MD).

    The LED indeed reports directly to the MD (and to the Internal Auditor) of the FDA. It does so higher up than the Deputy Managing Director for

Operations (DMDO), to whom the five operational FDA departments (LVD, CFD, Conservation, CyFD and R&D) report, and above the Deputy Managing Director for Admin. & Finance (DMDA) (Organizational Chart of the FDA, Oct. 2018).

The Regional Offices (ROs) have a direct reporting line to the LED, as well as to three of the five Departments (LVD, CFD, CyFD) (ibid.).

"*LED is under Commercial Forestry, and LED TM reports to CFD TM*" (LFSP Program Coordinator during Audit 4). Note: this would be a complete departure from the above settings and would considerably weaken the LED's position by undermining its (relative) independence. It shows the need for clarification regarding the LED.

- **Conducts investigations** (the LED investigators enjoying reasonable independence in reaching their conclusion); or
- **Oversees all other investigations** (by other units, LED providing coordination in inspector safety);

  The LED supposedly coordinates with the FDA Legal Section that also supports management efforts in ensuring Compliance to Forest Laws and Regulations and their enforcement (FDA Annual report 2015).

  The LED also coordinates with LNP and MOJ for criminal offenses (FDA Compliance & Enforcement Handbook, August 2017, pending approval).
- **Continually updates the MD** on progress with the investigation;
- **Submits a report to the MD** (which includes specified information) along with a recommendation of how to proceed with the case. The MD may instruct to re-investigate the case ('Mandates of the FLED').

  Clear regulations or guidelines are needed to define the nature and levels of financial or administrative sanctions to be applied for each particular infraction, acknowledging Annex D (Level of penalties) of the draft Handbook. See the issue raised as part of the field audit of TSC A2 (6.2.3.9).

  "*The FDA is responsible for making a 'Referral to Ministry of Justice' or, in lieu, to resolve the violation through the assessment of an administrative penalty*" (Section 22, FDA Regulation 109-07 (2007)).

  Clear rules and thresholds are also needed for when a case must be referred, or a fine issued by, the Ministry of Justice. See the other issue raised as part of the field audit of TSC A2 (6.2.3.9).

  Note: However, the 'Compliance Audit Report on FMC-K and CFMA 4' (Sept. 2018) was sent to the DMDO (see the cover Memo annexed to the report); and the 'Request to conduct compliance audit under the LFSP' in the concession area of Sing Africa (Sept. 2018) was also submitted to the DMDO through the Financial Comptroller.
- Upon MD approval [of the recommendation for a fine], **prepares and delivers the fine to the Operator**, and gets a copy of the payment to Accounts; and

"*Issuing fines on the basis of the findings of other depts. is the (LED's) role*" (LED TM).

*"CFD also have the right to issue fines, but in a coordinated way with LED*" (LED TM). Note: This may create confusion.

- **Is responsible for storing and maintaining evidence** (Draft Compliance & Enforcement Handbook).

- Competence (per Principles and Verifiers in the VPA LM):
  - LED is competent for P1 (Legal eligibility to operate), e.g. Verifiers 1.1.3 and 1.2.3 (in: Compliance Procedures). Shareholders are to be updated by CFD *and LED* on P1 requirements (6th JIC Aide Memoire, Ann. 3);
  - LED is "*one of the 'main information sources by Principle' for P2 (Forest Allocation) and P8 (Worker's Rights, Health, Safety and Welfare)*" (Compliance Procedures);

    Example: Verifier 2.6.1: "LVD shall ensure that the requirements for the verifier were met and also confirm the validity of the concession map with the FDA R&D department *and the LED".*
  - For P3 (Social obligations and benefit sharing), examples of Verifiers include: 3.1.1, 3.1.2 & 3.1.3, 3.2.1-3, 3.3.2-4, 3.4.1, 3.5.1-2, 4.1.1-3, 4.2.4, 8.1.1-4, and 8.6.1.
  - Regarding P5 (Environmental obligations), Verifier 5.4.1-2, 5.5.1-2, Notes: "The LVD must consult, and verify with the FDA Commercial Department *and Law Enforcement Unit"*.
  - The general competence of the LED to "*receive all reported suspected violations, from any other FDA department*" (as mentioned above) for *all LM Principles* needs to be highlighted, in particular for Principle 4 (Forest management operations and harvesting), Principle 6 (Timber transportation and traceability), Principle 7 (Transformation and timber processing), Principle 9 (Taxes, fees and other payments), Principle 10 (Export, processing and trade requirements) and Principle 11 (Transparency and general disclosure).
  - Note on "LED vs. FLED": LED staff and some documents (e.g. Compliance & Enforcement Handbook) also refer to the Division as the 'Forest Law Enforcement Division' (FLED), with an "F" like in FLEGT. Assuming the LED is competent for the whole scope of the LM Principles, both are presumably acceptable, insomuch as FLEGT and the Liberia LM in particular do not limit themselves to *forest* laws *per se*, but also embark e.g. social regulations of general application.

- LED's perceived mandate and relation with other FDA departments:
  - Counter-checking mandate: "*Can get that info [from other depts.], but have staff in the field (16 staff in the four regions)… To make sure no incompliance goes on, as a watchdog, proactively, counterchecking to assess whether the other depts. are working properly*". "*Should counter-check pre-harvest, on-going harvesting and post-harvest, using the CFHP checklist*" (LED TM).

    Note: under the VPA, the above statement may create confusion with LVD.

- "*Would like to do 100% checking if had the means. See that as final check. Our ToR cover all ToR from other depts. Procedures are in the Handbook; would not be just sampling*" (LED TM). LFSP PC: "*All want to go the field for DSAs…*".
- The LED is the designated *recipient of information from LVD* regarding issues with post-felling, timber yard or checkpoint inspections, ongoing operations despite fee arrears, and seized timber, and is involved in deciding what to do with seized timber (LVD SOPs).
- Any overlap with LVD? "*Not on CoC, because LVD mostly intends to establish truthful data while LED is more like an internal audit/ inspectorate. But some for auditing: ensuring compliance includes through LED's own field inspections, sometime joined with CFD, LVD; checking on CFD on the inspection side; auditing for compliance (on Operators, CFD, LVD). Wherever LVD is auditing, LED should be in the know.*" (LED TM, A3).
- For example, in relation to the IA's field audit on 28.10.19: "*The Law Enforcement lady officer was counter checking on LVD*" (LED TM).
- For the IA, there may still be a need to clarify the difference between the respective roles of the LVD and the LED, to avoid confusion, overlaps and conflicts.

- Responsibility for the **Annual Compliance Audits** and for the **Annual Compliance Audits Reports (ACARs)**:
  - The NFRL 2006, Section 3.4 (Annual Audit) prescribes an *annual compliance audit of each contract holder*. The mandate of the LED includes to *"Conduct compliance audit of all logging concessions* as required by the NFRL 2006" (Draft 'Mandates').
  - *The LED executes compliance audits*: document review with e.g. CyFD and CFD and field inspections undertaken to compile the Annual Compliance Audit Report (VPASU Compliance Procedures): Verifiers 3.5.2 (FDA Compliance Audits, *detailing payments of fees to communities*) and 4.2.4 (Annual Compliance Audit Report of FDA).
  - LED did complete at least two ACARs in the past: 'Alma Wood' (15.02.17) and 'ICC/Forest Venture of FMC-K and LTTC/CFMA-4' (17.09.18), but reportedly none since then. "*FDA annual audits reports are still not complied with. … the process of annual report is not ongoing*" (7th JIC, Forward Planner).
  - The IA needed to check who is responsible for *writing the report*, whether LED or the FDA jointly (Management / several Departments)" (Review on LED, from Audit 3, now in A4R Vol2, Annex 7.9).
    - "*It should be the LED that is responsible for completing the Annual compliance audit and for writing/compiling the report. But reports from other divisions: has been a problem; no inputs from other depts.*" (LED TM, Audit 4).

- "*A letter was sent by the MD of FDA to Law Enforcement to complete the Annual compliance audit, but Law Enforcement does not have the resources to complete this audit*" (Audit 3 report).
- "*It is very clear LED has the mandate to do ACAR. LFSP funded one under the former TM*" (LFSP Project Coordinator, Audit 4).

- In terms of coordination with other FDA departments:
  - LED reports go to the MD (e.g. Alma Wood ACAR, Feb. 2017; and as the LED TM stated during Audit 4), while CFD reports go the DMDO. But the lack of coordination is evident between those different levels: "*LED are not getting CFD reports, neither in FDA HO, nor in ROs. CFD are not informing LED*" (LED TM, A3).
  - "FDA EIA inspectors are not involved in conducting annual audits from an environmental perspective as part of producing the FDA ACAR (Audit 3 report, re: LM Indicator 5.3).
- For the IA, the above evidence suggests the LED is responsible for leading the effort of preparing the ACARs, in consultation or association with other relevant FDA Departments.
  - ISSUE HII 22, Recommendation: Envisage ACAR as a summary of broad compliance information available from relevant departments, to be compiled by the LED.
  - LED would conduct complementary audits or other investigations only where deemed necessary.
- Other LM Indicators mention ACAR as a Verifier, e.g.: 2.6, 5.3, 5.4, 5.5, 8.6, in association with the LED.
- Indicator 8.6 stating "…review of the Compliance Audit Reports *by the FDA Law Enforcement Unit*" is confusing, whether the LED is responsible for completing (*reports* by LED?), or only for *reviewing* (*review* by LED?) the ACARs.
- These reports are also mentioned in Verifiers 4.2.3, 3.5.2 and 6.3.3, but not in association with the LED. Annual audits are also mentioned in relation to the CFD and LVD, but not clearly linked to the ACAR.
- "A new template has been created for the ACAR, as per IA's recommendations, yet to be approved by the MD" (LED TM). Note: the 'Annual Compliance Audit form' received just lists up and copies the content of a number of Principles, Indicators[33] and Verifiers from the LM that (for future attention) are assumed to reflect LED's scope and/or the due content for the ACAR.
- Note: The IA did not find any reference, in the NFRL or in the LM, to the "*compliance certificate to be issued annually by the FDA to all logging companies, as required by the NFRL 2006, Section 3.4 (a/b)*" as is mentioned in the Alma Wood report (Feb. 2017).

- Responsibility for **other compliance audits reports**:

[33] Indicators 2.6, 3.5, 4.2, 5.3-5, 6.3, 8.6, 9.1-4, and 10.1-3

- The FDA compliance audit report mentioned under Verifier 2.6.2 (in: Compliance Procedures) is *not an annual report* but is rather triggered by the intent to operate a forest license.
- Verifiers 3.5.2 and 4.2.4 (in: Compliance Procedures) suggest that the compliance audits may also be executed on an *ad hoc* basis, *not only annual,* to compile the *Annual* Compliance Audit Report.

- Responsibility for the **Annual Enforcement Report to the Board** of the FDA:
  - NFRL 2006, Section 20.11(a), provides for an **Annual Enforcement Report** that the Authority (FDA) shall submit to the Board and make available to the public; listing: name(s) of violator(s), date, and nature of each violation, enforcement actions taken, penalty assessed and penalty collected by the Government or any court for each violation.
  - The FDA Regulation 109-07 (2007) "*implements Chapter 20 of the NFRL of 2006*", including in its Section 3 on '**Annual Enforcement Report**' (NFRL 20.11(a)).
  - The LM Verifier 2.6.2 stating "*FDA enforcement report (FDA compliance Audit Report)*" is confusing. This is no firm indication that these two reports, for the regulator at the time, were one and the same document; the part in brackets might rather mean "alternatively".
  - There is no indication that LED is involved in the Annual Enforcement Report.
- Training: VPASU has trained LED staff at using the 'Compliance Procedures' and the 'Handbook', but both are still lacking formal approval (LED TM). Support from the Liberia Forest Sector Project (LFSP) is currently on hold, in relation to the on-going Concessions Review process. All LED officers are being sent to the Forestry Training Institute for a crash course, but there is a need to raise individual competences and leadership (LFSP PC).
- Effectiveness:
  - ISSUE HII 21 raised during Audit 3 highlighted, for the LED, the unclear definition of roles, the overlaps, loopholes, and lack of coordination;
  - ISSUE HII 22 highlighted, for the ACARs, the lack of clear assignment of the tasks and the lack of procedures, checklist and report template, and of resources to complete it.
  - ISSUE HII 23 (now merged with HII 21 and H22) insisted for the LED on the lack of budget, training, scheduling of work, and registry of sanctions.

***Conclusions***

The Law Enforcement Division (LED) was established as part of the Forestry Reform Program 2006 and is responsible for broad compliance with, and enforcement of, all laws and regulations applicable in the forest sector and as retained in the Legality Matrix (LM).

LED's mandate also includes formulating and promoting policies and regulations relating to forest law enforcement and inspection, for good governance and best practice in all forestry-related activities in Liberia.

This shows a high and transversal level of forest law enforcement responsibility across FDA that (if confirmed) is of high relevance to the LAS of the VPA.

The law enforcement chain includes: 1) 'Level 2' checking on operators for legal compliance and reporting on law infringement (Responsibility: FDA's operational departments, 2) investigation of cases and enforcement of sanctions (Responsibility: LED), and 3) publication of information (Responsibility: PAD). The LED therefore plays a **key role** in the chain (Point 2).

This places the LED in a strong position, above the five operational FDA departments (mainly CFD and LVD): LED reports directly to the MD (and to the Internal Auditor) of the FDA, even above the DMDO.

The other FDA departments in fact refer all reported suspected violations *to the LED*, for assessment, further investigation where necessary, and enforcement of any sanction or redress action. They do so at both Head Office and Regional Office levels of the FDA.

The LED conducts its own investigations, to see if the other FDA departments (including LVD, as per LVD SOPs) correctly reported the suspected violations referred to it; and it oversees all other investigations.

The LED coordinates with other agencies (e.g. EPA), with the FDA Legal Section, and with LNP and MOJ for criminal offenses.

The MD approves all investigations and sanctions. The LED then issues the fines and monitors payment, or the implementation of other redress actions. It is responsible for storing and maintaining evidence.

Clear regulations or guidelines are needed to define the nature and levels of financial or administrative sanctions to be applied for each particular case; as well as clear rules and thresholds for when a case must be referred, or a fine issued by, the Ministry of Justice.

The **second key role** of the LED is that of watchdog above FDA's operational departments. While under the VPA, the responsibility of counterchecking "*pre-harvest, on-going harvesting and post-harvest, using the CFHP checklist*", "*to assess whether the other depts. are working properly*" (as mentioned by LED to be their mandate) is actually now firstly with LVD for COCS, Legality Verification and tax payment, an overall watchdog/ internal audit/ inspectorate role remains in the ambit of the LED, above LVD auditing.

The **third key role** of the LED is to perform the *annual compliance audit of each contract holder* that the NFRL 2006, in its Section 3.4 (Annual Audit), prescribes. This includes a document review with e.g. CFD and CyFD, and field inspections, to then compile the **Annual Compliance Audit Report** (ACAR) for each operator.

The three specific roles of the LED, therefore, are: 1) law enforcement (upon violations of the law), 2) counterchecking (sampling, not 100% checking) on the other FDA departments (mainly through and upon LVD), and 3) the compliance audits and Annual Compliance Audit Reports (ACARs).

However, all this is currently mostly "on paper":

- The Issues HII 21, 22 and 23 raised during the previous Audit 3 remain amply valid (even slightly revised).
- The alleged lack of capacity of the LED might actually be a symptom:

- that LED's roles and responsibilities are not clearly assigned and effectively implemented,
- that the new draft Compliance and Enforcement Procedures and Handbook and templates are still lacking formal approval, hampering effective implementation by LED despite training of LED staff in their use,
- of the lack of (protocols and means for) communication and coordination with and between the different levels (FDA's operational departments, DMDO and MD, Regional Offices and Head Office).

No protocol exists for PAD to ensure PAD has access to law enforcement information for publication on the LiberTrace or FDA websites.

There is no indication that LED is involved in the **Annual Enforcement Report** to the Board, but (for future attention) the IA is not aware either of any such report yet ever submitted to the Board by FDA Management and made available to the public, listing the information provided for in the NFRL.

The (only) purposes for LED to do field checks (on Operators, CFD, LVD) should be: (1) Investigation of violations referred by other FDA departments, (2) counterchecking on the other FDA departments, and 3) field inspections (complementary audits) to compile the ACARs; not direct 'Level 2' checking on Operators.

With regards to Point 2) above, it was legitimate for the LED lady officer to be counterchecking on LVD during the container loading inspection conducted on 28.10.19 (See 6.2.3.8, IA's field audit in Gbarnga); although it is right for the LED TM to also say that "*She should take and have had her own records (tally), not just collecting photocopies from LVD tally forms. In the timber yard, she would rescale the logs*".

***Main conclusions***

The Law Enforcement Division (LED) is responsible to ensure broad compliance in the forest sector through enforcing all applicable laws and regulations as per the Legality Matrix (LM). As such, LED occupies a high position in the FDA organization, reporting directly to the MD.

As clarified during the Audit #4, LED should be playing three key roles, of high relevance to the Liberia TLAS:

1) A pivotal role in the law enforcement chain, receiving reports of suspected incompliances by forestry operators from FDA's operational departments (mainly CFD) and from LVD; for assessment, further investigation, enforcement of any fine or administrative penalty (including timber seizure), and information to the Public Affairs Division (PAD) for publication; and storing evidence and maintaining a central registry of the sanctions, naturally feeding into the Annual Enforcement Report to the Board of the FDA;

2) The "watchdog" (inspectorate) role, above FDA's operational departments, and even above LVD for COCS, tax payment, and Legality Verification (auditing), of counterchecking (sampling) to assess whether the other departments are working properly; and

3) To perform compliance audits, which includes document review (with e.g. CFD, CyFD and LVD), and field inspections, upon request in relation to relevant LM

processes and/or as necessary to then compile an Annual Compliance Audit Report (ACAR) for each operator.

But "the LED is currently weak", as a stakeholder once commented. The role of the LED was never clearly assigned, and never clearly implemented, and was (but only partly) overtaken by the new LVD under the VPA. Other challenges include the lack of definition of LED's competence, of inter-departmental communication and coordination, of approved procedures and templates, of capacity, and of resources.

As a result, there is confirmation (from the Audit 3) that LED is totally incapacitated within the FDA to make any meaningful contribution to legality in the Liberian forest sector. Currently, the enforcement chain is dysfunctional and very few penalties are being enforced.

***Recommendations***

Confirm the three key roles identified for the LED: 1) qualifying reported incompliances from other FDA units, enforcing sanctions, informing the PAD, storing evidence, and maintaining a central registry of the sanctions, feeding into the Annual Enforcement Report to the FDA Board; 2) watchdog, assessing whether the FDA departments are working properly; and 3) performing compliance audits and compiling the Annual Compliance Audit Reports (ACARs).

Ensure the roles of the LED are clearly assigned and effectively implemented within FDA, procedures and templates are formally approved (including: Compliance & Enforcement Handbook, Compliance Procedures for LM), and the Division is fully capacitated, with LED staff trained and adequate resources (budget for Capex, goods and services) to operate.

In particular:

- The general competence of the LED to receive reports from other FDA units, for violations related to *all* LM Principles, needs to be clarified.
- The competent FDA units that refer suspected incompliances to the LED should remain responsible *in first instance* for their investigation, to ensure their reports are informative and accurate, and to avoid a dilution of responsibilities and duplication of efforts. The LED may participate in these investigations for oversight or assistance purposes. Re-investigation by the LED should be an exception (where necessary, or on a sampling basis) rather than the rule.
- There is an opportunity to streamline the fine issuance process by allowing the LED to issue all fines, for all FDA departments.
- All LED notifications and recommendations to the MD, and the consequent fines or redress actions imposed, should be held available, to third-party monitoring and to any oversight mechanism, in a central registry maintained by the LED, using an incremental numbering system.
- The LED would then be well positioned to help prepare the 'Annual Enforcement Report' submitted to the FDA Board and made public.
- The ACARs should be a summary of the information made available to the LED by other FDA units, from Level 2 checks, LVD audits, and ('read-only') access to the LiberTrace system, for each operator. The LED must be well and timely informed of the other FDA units' relevant activity and reports.

- Put in place clear protocols and effective means for communication and coordination with, and between the different FDA units, systems and levels (i.e.: the operational departments, LVD, PAD, DMDO and MD, Internal audit, LiberTrace, Complaint management system, Regional Offices and Head Office), as well as with and between other MACs (EPA, MoL, LRA, MoJ etc.).
- Issue regulations or guidelines to define the nature and levels of financial or administrative sanctions to be applied for each particular infraction; as well as rules and thresholds for when a case must be referred, or a fine issued by, the Ministry of Justice rather than by the FDA.

***Main recommendations:***

- Confirm the key roles identified for LED within FDA: 1) qualify infractions and enforce all sanctions, 2) act as inspectorate general, and 3) perform compliance audits and compile the Annual Compliance Audit Reports (ACARs); maintain the central registry of all notifications and recommendations to the MD and the sanctions applied; and assist with the Annual Enforcement Report to the Board.
- Ensure the roles of LED are clearly assigned and effectively implemented, with approved procedures, staff trained, and adequate resources, plus effective coordination across FDA units, systems and levels and with the other MACs.
- Confirm the general competence of the LED in all LM Principles.

The associated **ISSUES** in the IA Progress Database (ref. **HII 21, 22 and 23**) have been revised and reduced to two ISSUES, referenced HII 21 and 22, and the ISSUE with ref. HII 23 has been closed for being merged with the other two as revised.

| **ISSUE HII 21** |
|---|
| **Impact level**: High |
| **Identified ISSUE**: The role of the LED is not clearly defined, very few penalties are being enforced, and FDA is not, or inconsistently preparing Annual Compliance Audit Reports for all operators. |
| **Recommendation(s)**: Confirm the general competence of LED in all LM Principles and confirm the key roles and responsibilities identified for LED within FDA: 1) qualify infractions and enforce all penalties; 2) act as inspectorate general, above FDA's operational departments and above LVD; 3) perform relevant compliance audits and compile the Annual Compliance Audit Reports; 4) store all evidence; 5) maintain a centralized penalty management system and public registry; and 6) assist with the Annual Enforcement Report to the Board. |

| **ISSUE HII 22** |
|---|
| **Impact level**: High |
| **Identified ISSUE**: The LED is currently weak, its role is not clearly assigned and is not effectively implemented, due to the lack of approved procedures and templates, of capacity, of resources, and of inter-departmental communication and coordination. Currently, LED is totally incapacitated within the FDA to make any meaningful contribution to legality in the Liberian forest sector, and the enforcement chain is totally dysfunctional. |

**Recommendation(s)**: Ensure the responsibilities of LED are clearly assigned and recognized, and effectively implemented with approved procedures and templates, properly skilled and trained staff, and adequate budget allocation including for field inspections; plus, effective coordination across relevant FDA units, systems and levels, and with the other MACs; and proper scheduling of work.

**FDA/IAWG response to the Main C&R in the Audit 3 report** [34]**:** none.

#### 6.2.4.3 Public Affairs Division (PAD)

Status: no significant changes noted since Audit 3. The content of this section can now be found in the Volume 2 of this Audit 4 report (6.2.4.3, now moved to 7.4.8.2 for archiving).

### 6.2.5 Implementation of the role of Government, financing of the Liberian Forestry Authority (FDA) as a whole

Status: no significant changes noted since Audit 3. The content of this section can now be found in the Volume 2 of this Audit 4 report (6.2.5, now moved to 7.4.9 for archiving).

### 6.2.6 Implementation of the role of Government bodies (Other MACs)

#### 6.2.6.1 Environmental Protection Agency (EPA)

The previous analyses from Audit 3 can now be found in A4R Vol.2, 6.2.6.1 (now further moved to 7.4.10.1 for archiving).

***Conclusion (revised):***

EPA has three main roles:

1) The 'Environmental Impact & Social Assessment (ESIA) before a company can start operating, issuing an Environmental Permit (EP) for all categories for forest contracts renewed every 2 years, and collecting EP fees.
2) Concession monitoring, dealing with issues of different land uses and overlapping areas, including communities, mining etc.
3) Implementation of CFHP.

Compared to FDA EIAD, EPA essentially looks at soils, water, and biodiversity issues, and also oversees national parks, conservation areas, coordinating wildlife, bushmeat issues… EPA is not involved in FDA pre-/post felling requirements implementation, only EP issuance and maintenance. EPA is divided in counties, not corresponding to FDA's (four) Regions.

The EPA is virtually paralyzed in its ability to fulfill its responsibilities with regard to quarterly field inspections of forestry operations in Liberia. This is primarily due to a lack of resources within the EPA.

Other issues include:

[34] As per the file 'FINAL MATRIX OF THE VPA LEGALITY ASSURANCE SYSTEM_08152019.pdf' sent by the NAO to the IA on August 18, 2019

- The lack of a clear division of some responsibilities between FDA CFD Environmental Impact Assessment Division (EIAD) (FDA should check 5.4) and EPA (EPA should check 5.3);

  This is covered under the ISSUE **HII 26** and the Main recommendations 3.11 (from the CFD EIAD perspective) and 3.15 (for EPA, like the two next points).

- The lack of procedures to conduct the inspections except, as far as the IA is now aware of, for the 'ESIA Procedural Guideline' revised 2017, and national guidelines on community consultation (FPIC) that were being developed;
- The lack of awareness of the CFHP checklist, and the lack of training for EPA EIA inspectors.

The IA registered a new **ISSUE** (ref. **HII 36** in the IA Progress DB) related to EPA during Audit 4 (since none had been so during Audit 3):

| **ISSUE HII 36** |
|---|
| **Impact level**: High; |
| **Identified ISSUE**: The EPA is virtually paralyzed in its ability to complete quarterly field inspections of forestry operations in Liberia. This is primarily due to a lack of resources within the EPA. Other issues include the absence/lack of: clear division of responsibilities between FDA CFD EIAD regarding who should check Verifiers 5.3 and 5.4, procedures to conduct the inspections, awareness of the CFHP checklist, and training for EPA EIA inspectors; |
| **"Recommendation(s)"**: Proper budget allocation to EPA, clear division of responsibilities between FDA CFD EIAD regarding who should check Verifiers 5.3 and 5.4, procedures to conduct the inspections, awareness and use of the CFHP checklist, and training of EPA EIA inspectors. |

#### 6.2.6.2 Ministry of Labor (MoL)

Status: no significant changes noted since Audit 3. The content of this section can now be found in the Volume 2 of this Audit 4 report (6.2.6.2, now further moved to 7.4.10.2 for archiving)).

The IA registered a new **ISSUE** (ref. **HII 37** in the IA Progress DB) related to MoL during Audit 4 (since none had been so during Audit 3):

| **ISSUE HII 37** |
|---|
| **Impact level**: High; |
| **Identified ISSUE**: The MoL is virtually paralyzed in its ability to complete regular field inspections of forestry operations in Liberia (only office inspections are done). This is primarily due to a lack of resources within the MOL. Other issues include the absence/lack of: procedures and training for MOL inspectors, labor solicitor available through MOL, and officers appointed to conduct hearings in relation to labor grievances.; |
| **"Recommendation(s)"**: That the MOL first be supplied with the necessary resources that will allow them to fulfill their responsibilities regarding inspections of all the forestry operations in the country. |

#### 6.2.6.3 Liberia Revenue Authority (LRA), Government forestry revenue collection

The content of these reviews, once completed, might be moved in future to a new section created as 7.4.10.3 in the Volume 2 of this Audit 4 report for archiving of revieww on Government forestry revenue collection.

Relevant extracts from the 6th JIC (June 13-14, 2018) Aide-memoire:

- The EU requested clarity on the status of **arrears of payments from forest concessionaires to the GoL**. The LRA highlighted that the current arrears owed on bid premium is appx. $ 12 million, however collection of these arrears is delayed for three years, because of provisions in the 'Forestry Industrial Development and Employment Regime' (FIDERA) passed in October 2017. The LTA clarified that the FIDERA does not affect the land rental fees [same thing as Area fees? See further down in this section.]; *logging companies are still paying land rental arrears through a payment arrangement with LRA and FDA of 13% of FOB price for exported timber*;
- Details of the government's current status of arrears, amounts, and a summary of what has been negotiated with forest operators, [was] attached as Annex 2 of the Aide-Memoire (below*).

* Annex 2: **Preliminary GoL, Current Status of Arrears, Amounts, and a Summary of What Has Been Negotiated With Forest Operators** (Data pending validation by the LRA) .
Note: see the types of fees under different headings:

- Arrears update on **Land Rental bid fees** 2008-2018 July - Summary: shows Land Rental Bid Fees for 15 companies (Total invoiced $ 31.211.138; Balance $ 12.650.727),
- Arrears update from 2008-2015, as of July 2018 - Summary: shows **Annual Contract Administration Fees** and **Area Fees** for 17 companies (Total invoiced $ 15.864.184; Balance $ 5.507.349),
- Ebola Period Invoices set Aside July 9, 2018: **Annual Contract Administration Fees** and **Area Fees** for 15 companies (Total invoiced $ 2.687.734).

Discussion now moved hereto, from 6.2.3.2 (SGS/LVD) in the Audit 3 report:

- "LRA should double-check payments with SGS to address risks" (SGS/LVD Project Manager (PM)).

  *Follow-up during Audit 3 (with SGS/LVD PM):*

  SGS/LVD PM no longer sees what this last point referred to (unreliable proofs of payment maybe?). "*The revenue collection process is not described in an LVD SOP because it is temporary. LRA was supposed to issue an instruction to describe the process"*.

  "*There are two different things: forestry taxes, and tax clearance for all taxes & fees to GoL (incl. forestry!). For forestry taxes: companies now pay by bank transfer to a transitory account, get a proof of payment, LVD get bank statement, LVD do the reconciliation. This can be seen in the Monthly revenue reports (SGS/LVD still issuing reports)*".

  Note: Regarding the instruction/procedure describing the revenue collection process, see below, in the follow-up during Audit 4.

**Extract from the 7th JIC (Feb. 25 - March 1, 2019) Aide-memoire:**

Forest Revenue Collection and FOB Pricing

30. The JIC participants were also informed on the current challenges faced by the GOL around **'Free on Board' pricing**, its analysis and the validation of information. The FDA explained that by law the FDA is required to compile FOB market price estimation at the start of the logging season and to revise the list more frequently in response to the changing market. The FOB price list is based on the quality of logs and a reflection of the actual market of Liberia, relevant African markets and international markets.

31. There are, however, various factors to be considered in determining the **FOB unit price** including the specific features of Liberian forests, lesser used species, market, infrastructural challenges or transaction costs by companies. There is the need for FDA to consider and register to relevant market intelligence/ information systems which could help inform the determination of the FOB price list. FDA was granted support by FAO FLEGT Programme but this was put on hold.

EU noted the reduced representation of the Private Sector in this conversation.

32. The LRA stressed that there was a need to have a more appropriate determination of the **FOB unit prices** that takes into account relevant factors and local conditions. The LRA and FDA agreed to have a meeting to conclude on a strategy and identify the wider participation to be involved in the FOB prices determination. The FDA reinforced this point as well as the need to update it regularly as the list was not approved in two years, but has just been approved in December 2018. The FDA will circulate the recently approved list to relevant stakeholders.

*Follow-up on this issue of the determination of FOB prices with LRA, during Audit 4:*

- Not much has been done.
- SGS provided market intelligence, but even with that, prices have only been updated like twice or three times, and not in the last 2 years.
- SGS handed over to GoL/FDA [Manager, Forest Products / Marketing & Revenue Forecast], but there is no capacity at all to use market intelligence sources, like SGS from public and private sources.
- Current list of FOB prices: must be available in LiberTrace (for future attention, whether this is the case).
- Proforma invoices based on it, for taxation purposes.
- Real prices [i.e. from real commercial invoices, where no "transfer pricing" affects the real prices] are not provided back to FDA.

33. LRA has collected USD 10.7 million in **arrears** from the USD 15.8 million total owed*. LRA also explained that collected **revenues for the forestry sector** so far is USD 1.4 million, compared to the USD 3.4 million collected over the same period in 2017-18. The FDA highlighted that the LRA should include the relevant arrears into the revenue numbers for the respective period. The realization of FDA´s revenue target of USD 9 million has been difficult. It is unclear whether tax credits/ benefits (i.e. roads rehabilitation) were taken into account. The FDA recognized the inconsistencies and called for the FDA and LRA teams to meet with a view of harmonizing the various inconsistencies and agree on tax breaks. In closing, the FDA asked for a breakdown of the types, and periods in which arrears were collected. The EU asked that the breakdown be annexed to this Aide Memoire (Annex 3 of this Aide-memoire) *.

* ANNEX 3 - Arrears update from 2008-2015, as of 31 December 2018: it shows the SUM OF AMOUNT PAID, SUM OF AMOUNT INVOICED, and BALANCE DUE per company for the Annual Contract Administration Fee and for the Area Fee with subtotals per company and Grand Totals.

**'VPASec Updates' on the 7th JIC version of the Forward Planner (FP) (February 25, 2019)**, not yet taking account of eventual 7th JIC decisions:

Regarding extra-LM Principle of "**Regulations in place** for compliance with VPA LAS to issue FLEGT Licenses": …"; Reminder of **developments between 6th and 7th JIC** as per the FP, highlighting past and current issues:

- Oct – Dec 2018 regarding above extra-LM Principle: "In accordance with the Technical JIC decision request, … One-month grace period for **payment of stumpage fees** to be implemented and now SGS to provide more information on stumpage fee*".*

Regarding **Principle 9** (TAXES, FEES AND OTHER PAYMENTS), **Indicator 9.1** (all tax arrears settled prior to forest contract or sawmill permit), **Indicator 9.2** (initial annual area fee or annual registration fee paid prior to contract or sawmill permit), **Indicator 9.3** (tax clearance and compliance with contract terms), and **Indicator 9.4** (annual tax return filed with MoF in time):
"*LIC/LRA needs to require for all documents to be uploaded on LiberTrace*".

*Follow-up on the uploading of documents on LiberTrace with LRA, during Audit 4:*

- Previous LRA Manager used to have access to LiberTrace [LT], but no longer (last 8 mths). Need to ask DMDO for info/data. Just a slip…
- Agree they would need access to LT.
- LRA never raised an issue about documents not being uploaded.
- But what worked with SGS may not work as well with LVD without SGS because of constraints…
- Automated pull/push integration of tax system with LT is desired (currently a plan, waiting for funding for implementation).

Reminder of **developments between 6th and 7th JIC** as per the FP, highlighting past and current issues:

- Oct – Dec 2018 regarding **Indicator 9.1** (above): "Follow up still needed with LRA.
  *IA reported non-compliance on the following reasons: Tax clearance on Libertrace is dated 19 July 2017 and valid for 90 days. It has thus expired and no document uploaded on LiberTrace".*
- Oct – Dec 2018 regarding **Indicator 9.2** (above): "Follow up needed with LRA.
  *IA reported non-compliance on the following reasons: No up-to-date document in LiberTrace."*
- Oct – Dec 2018 regarding **Indicator 9.3** (above): "FDA indicated that Copies of the Tax clearance are available and uploaded in the LiberTrace.
  *IA reported non-compliance as it could not find documents on LiberTrace".*
- Oct – Dec 2018 regarding **Indicator 9.4** (above): "Follow up needed with LRA.
  *IA reported non-compliance as it could not find documents on LiberTrace".*

Note: The above statements in the VPASec Updates regarding the IA do not truthfully reflect or fail to provide a clear reference to the exact IA's finding. See **ISSUE** raised about this (ref. **HII 35** in IA Progress DB) during Audit 4.

***Follow-up during Audit 4 (with LRA)***

Three IA auditors met with the LRA Deputy Commissioner General, Technical Affairs, the Commissioner, Domestic Tax Dept., and the Manager, Natural Resource Tax Section, during Audit 4.

Overall role of LRA with regards to the forest sector, involvement in VPA implementation process:

- Revenue administrative arm of MFDP
- To collect all revenues, taxes & fees defined by law; Forestry sector: all taxes and fees as part of the NFRL
- Also engage with FDA for exports, through Customs in LRA.

Regarding the procedure describing the revenue collection process:

- LRA has a procedure, not Forest Sector-specific though, available on the LRA website. *For future attention: relates to (existing, or missing) LVD SOPs?*
- The LRA SOP 'For Direct Transfer for the Payment of Forestry Fees Using the Transitory Accounts at Ecobank' (LRA-TPSD-012-2017, Version 001)' governs the collection process for Forestry Fees.

Confirmation of the other role of LRA (apart from through Customs) in the control of exports as per FDA/IAWG Remarks: "*All Exports through the Ports are controlled by the FDA, LRA, Customs, MoL, MOA, and NPA*" (*irt* RISK **MR 2**, 6.4.14 Efficiency of border control in A4R Vol2): "*No export is possible without Tax Clearance, meaning all payments must be made for that shipment*".

Regarding the Tax Clearance Certificate (TCC)

Further research by the IA: TCC issued by the LRA to taxpayers, states "*This is to certify from information available to the Domestic Tax Department that the above mentioned taxpayer has qualified to obtain this Tax Clearance and is hereby issued this Tax Clearance Certificate for the period indicated below*": observed period of 45 to 360 days, usually "conditional" on e.g. "pending the submission of outstanding payments and documents" or "pending the settlement of outstanding tax obligations".

Is a Tax Clearance Certificate, presumably meaning that all payments have been made, but that is so "conditional", still certifying anything? See further below explanation by LRA (Step by step process for Tax Clearance).

"*However, SGS/LVD is never contacted by LRA to issue tax clearance "flag" receipt*" [TCC] *(although tax clearance is supposed to be for all taxes & fees to GoL, and this includes forestry)*" (SGS/LVD PM, Audit 3). LRA response: "*Forestry-related taxes and fees are under FDA control (billing, transmitted to LRA), LRA look at other [i.e. not forestry-related] taxes and fees*" (see below). "*There are specific mechanisms to manage the forestry-related taxes and fees. TCC does not need to cover Forestry-related taxes and fees specifically, but all taxes and fees*". There is thus admission from LRA that *the TCC does not cover forestry-related taxes and fees.*

Does LRA then monitor due payments from forestry operators (per fee invoice) and the associated arrears (per kind of fee)?

LRA answer is "*Yes, LRA monitors all fees payments from the forestry operator per transaction (invoice) and it is administered in accordance with the* [above-

mentioned] *SOP. These payments are in addition to their regular taxes and other fees as a taxpayer within Liberia*".

"*In summary as per the SOP, when invoices are received from the FDA team* [For future attention: by which means? Using what IT or communication systems or protocols? Simple emails with attached slips?],

*a) We capture the invoices in SIGTAS by tax type based on the information provided on the invoices.*

*b) When the bill is* [thus] *generated by the BPS officer, it is then forwarded to the validation officer who* [in time?] *confirms the payment on the FDA statement* [and] *then passes it to the payment officer for payment* [Who pays to whom, not the operator?]. *At the time of posting the payment, the payment officer uses each invoice number as the payment system instrument reference (i.e similar to the delaruelle receipt number) to enable us trace the transaction during reconciliation*".

On which grounds and through which process is LRA accepting delayed payments, in agreement with FDA or not?

LRA answer: "*The tax clearance process below explains the grounds and process by which LRA accepts delayed payment. Please note that all delayed payments are against arrears that existed on or before December 2015. Since the restart of the sector, all concession owners pay their current fees due and as per the agreement with the FDA, they pay 13% of the FOB value of any shipment against the outstanding arrears. Prior to the passage of the 2017 FIDERA act, arrears included both land rental and bid premium. However, since the FIDERA act and the three (3) years suspension of the payment of bid premium, the 13% is only going towards the liquidation of the land rental*".

However, the IA has received indications that some payments of fees are long overdue (and export permits are still being issued: see 6.3.3.4).

The IA asked LRA to describe the situation, also in the light of an article[35] that contains among others the following conclusions and recommendations regarding the 'Payment of taxes':

- "*There appears to be no shared platform between FDA, LRA and NIC[?] to reconcile data and monitor companies' compliance with investment, tax, and other contractual payment obligation.*
- *Furthermore, FDA has not provided updates to the National Bureau of Concession's Concession [NBC] Information Management System (CIMS).*
- *We recommend FDA and LRA to clearly define the signification of the tax clearance certificate* [See IA review above] *and tax return in order to give credibility to these documents.*
- *We recommend FDA, LRA, NBC and NIC jointly evaluate individual concession accounts for the purpose of ascertaining open and overdue concession fee payments, payments to communities, and the volume of investments made within the "wood processing sector" agreed upon by LRA, FDA and NIC. We recommend that the result of this evaluation be published and updated onto the CIMS.*

[35] Article published by the Global News Network (http://gnnliberia.com/2019/12/10/depleting-the-forests-concessions-take-advantage-of-fda-epa-poor-regulations/) that mentions the World Bank's 'Legality Review of Forest Concessions report'.

- *We recommend that GoL applies and enforces appropriate sanctions to companies in violation of payment obligations.*
- *We recommend that FDA update its FOB price calculation*."

LRA answer: "*Please see the TCC steps and explanation of how the LRA administer the issuance for both forestry fees, taxes and other non-forestry related fees*".

"*Step by step process for processing of Tax Clearance [TC]:*

*a) Taxpayer requests Tax Clearance through the Tax Clearance unit;*

*b) Clearance request is then forwarded to NRTS*[?] *for processing;*

*c) Clearance is assigned to the Compliance officer who performs compliance on the Taxpayer;*

*d) If issues are identified, queries are sent down to the TC unit to inform the Taxpayer of such, who in turn provides documentations;*

*e) If the taxpayer clears the issue and is in compliance, TCC is issued;*

*f) Otherwise, if the taxpayer is in arrears of taxes (not FDA fees) and does not have the capacity to pay all immediately, a communication is sent to the LRA Commissioner requesting stipulation payment. If such plan is agreed, 25% of the taxes are paid in line with the enforcement manual with the remaining pay according to the plan. Conditional Tax Clarence will be issued to the Taxpayer to continue operating while paying the remaining amount. Some companies cease operations sometimes after such arrangement and do not fulfil their plan which causes their arrears in Taxes to be on the books. They are however required to pay upon resuming operations".*

"*Finally, TCCs are basically used as a tool to provide authorization for shipment in the Forestry Sector and not really indicating that such taxpayer is CLEARED of all Taxes (if a stipulation payment has been made). As stated above, 13% of the previous shipment values are invoiced by FDA on the Arears (Land rental and bid premium prior to the abolition of the bid premium) for each company and are paid before export permits are given to the companies by FDA/LVD. It was agreed that ALL FEES (including Area fees) are to be current after December 2015. Therefore, the arrears for Area fees cover the period prior to December 2015. It is FDA/LVD that invoice such payment based on the past shipment of the company.*

*Any stipulation payment that falls into arrears, automatically attracts penalty and interests as per the law. We take note of the recommendation of the evaluation of investments that might be made now and would be used to lay claim on the bid premium when the 3 years period has elapsed". "The operators will not get a TCC if they do not pay when they have to*".

No confirmation of FDA/IAWG response that "*LRA receipts (and registry) of fines paid are available" / "Fines paid to LRA receipts available*" (irt ISSUE **HII 5**, 6.4.15 Reporting on law infringement, enforcement of sanctions, and public disclosure of information in A4R Vol2):

- "Fines come from both operations and failure to pay taxes;
- *LRA cannot provide copies of receipts* (this is by law; can only confirm);
- So, the IA needs to go back to FDA".

The IA also wished to obtain evaluations of 1) the **revenue collection potential** per year from the forest sector and 2) the (theoretical) financial self-sustainability of the forestry administration, on the basis of the total FDA Budget (in 6.2.5).

From the Liberia Revenue Authority (LRA), on 26.11.2019 the IA auditors received a submission 'Forestry Sector Revenues' that shows the detailed revenues collected by GoL by tax kind, with the specific fees under the FDA regulations (See sub/total Forestry Revenues), for the last two fiscal years (FY2017/2018, FY2018/2019). See the table provided in **Annex 8.5** (Forestry Sector Revenue) to this report.

The list of forestry fees contained in the table refers to fees paid by FMCs with only one exception (Area fees – TSCs):

- Area fees (FMCs)
- Contract administration fees (FMCs)
- Stumpage fees GoL share (FDA regulation 107-7 section 22b) (FMCs)
- Timber Export license fee (FDA regulation 107-7 section 42c) (FMCs)
- Log and wood product export fee (FDA reg. 107-7 section 44-45) (FMCs)
- CoC management fee (GoL SGS contract. 1.4% FoB value) (FMCs)
- Other fees (FMCs)
- Area fees (TSCs)

It is also interesting to see the other fees and taxes beyond FDA fees.

For future attention: "Land rental fees", same thing as "Area fees"?

LRA, separately, also mentioned other "immediate assessment" tax types (captured as other fees, above): Waybill sticker fees, Bar code fees, and sawmill fees.

In LiberTrace, the FISCALITY Details of Product # in the LOG PRODUCTS tab include the following INVOICE TYPES: Area Fee, Chain of Custody Registration Fee, Annual Contract Administration Fee, Annual Coupe Inspection Fee, Stumpage Fee.

Note: The above analysis is an early effort by the IA to make a listing of the **regulatory taxes and fees that are applicable to the forest sector** "*being governed by the FDA Ten Core Regulations*" (LRA, Audit 4) and other fees that were created for the purpose of implementing the COCIS and the VPA LAS.

For future attention, the total Forestry Revenues decreased sharply from USD 5.2 millions in 2017/2018 to USD 4.5 millions in 2018/2019. Delayed payments (including because of the FIDERA Act) are one possible reason, but there is no indication whether these are the invoiced, or the paid amounts. The other parameters are mostly export volumes, the species mix and the official taxable values.

The total of Forestry Revenues is around USD 5 millions anyway, and the bulk of it (both from the FMCs) is comprised of:

- the Stumpage fees GoL share (FDA regulation 107-7 section 22b), and
- the Log and wood product export fee (FDA regulation 107-7 section 44-45).

However, the weight of these forestry revenues in the grand total rose from 58.1 to 61.5%, due a sharp decrease in the total FORESTRY SECTOR REVENUE, from

USD 8.9 millions in 2017/2018 to USD 7.2 millions in 2018/2019. The weight is around 60% anyway.

The total Forestry Revenues, of around USD 5 millions, is to be compared to the total FDA Budget: USD 4.8 millions in 2017/18, USD 2.3 millions in 2018/19, and USD 3.7 millions in 2019/20. The significant finding, on that basis is, that:

The sub/total Forestry Revenues has exceeded the total FDA Budget in 2017/18 and in 2018/19, making the forestry administration (theoretically) financially self-sustainable (bearing in mind that the FDA Budget is judged insufficient, though).

Relevant extract from the 7th JIC (Feb. 25 – March 1, 2019) Aide-memoire:

**Opportunity costs of legality and the value of the forest sector**

35. The EU explained that they recently received a formal request from the MFDP for a study on the **economic value of the forest sector in Liberia**. The requested study would assess potential revenues *if legal compliance was systematic*. Such study would help framing the VPA in a different light and putting a strong focus on its role in economic gains and increased revenue collection. EU confirmed that they are looking for funding resources to respond to MFDP request.

36. The FDA confirmed its interest in such a study and looking at best practices. The Liberian National Forest Inventory is in its last stages and could also inform this study.

***Summary of findings***

The Liberia Revenue Authority (LRA) is the revenue administrative arm of MFDP. Its main role is to collect all revenues, taxes & fees defined by law (i.e. the NFRL, for the forestry sector).

LRA also engages with FDA for export control, through Customs (in LRA) and by issuing the Tax Clearance Certificate (TCC) without which no export is possible, meaning all payments must be made for that shipment.

The LRA has a procedure that governs the revenue collection process for forestry fees (among others), and a MoU has been in place between LRA, SGS/LVD and FDA, signed by the Central Bank of Liberia: companies now pay by bank transfer to a 'LRA Forestry Transitory Account', get a proof of the payment, LVD gets the bank statement, and LVD does the reconciliation. This can be seen in the LVD Monthly revenue reports.

Tax clearance for all taxes & fees paid to GoL is a different thing. Regarding the TCC, SGS/LVD was never contacted by LRA; there is admission from LRA that tax clearance does not cover forestry-related taxes and fees, and that it does not need to, since these are under FDA control (billing, transmitted to LRA). LRA then monitors all fees payments from the forestry operators per transaction (invoice) as per the SOP.

(For future attention) the IA has not received specific answers whether LRA, for forestry fees, also 1) monitors the associated arrears (but there are records of LRA providing the JIC with information on the status of arrears upon request), 2) chases up the defective operators, 3) negotiates deferred payment arrangements called "stipulation payment" (it does it for "other than FDA" fees), and 4) issues fines for overdue payments (only that "*any stipulation payment that falls into arrears*

*automatically attracts penalty and interests as per the law*"); or what it relies on FDA for.

LRA claims all delayed payments are against arrears that existed on or before December 2015. However, the IA has current evidence that some payments of fees are long overdue. LRA has not fully clarified to the IA "On which grounds and through which process is LRA accepting delayed payments, in agreement with FDA or not".

As of June 2018, the arrears of payments from forest concessionaires to the GoL on bid premium (Land Rental Bid Fees) was appx. $ 12 million. Collection of these arrears was being delayed for three years, because of provisions in the 'Forestry Industrial Development and Employment Regime' (FIDERA) act passed in October 2017. Arrears also include Annual Contract Administration Fees and Area Fees, for appx. $ 8 million. The FIDERA act does not affect the land rental fees [same thing as Area fees?]; logging companies are still paying land rental arrears through a payment arrangement of 13% of FOB price for exported timber.

Regarding late payments, a one-month grace period for payment of stumpage fees is to be implemented in accordance with a Technical JIC decision (as an "Extra-LM Principle" of "regulations in place for compliance with VPA LAS to issue FLEGT Licenses").

Communication between FDA and LRA: LRA Manager no longer has access to LiberTrace [LT] to see uploaded documents by LVD. Implementation of a plan for automated integration of the tax system with LiberTrace is waiting for funding. Both SGS/LVD and LRA have access to the transitory account at Ecobank.

The uploading of documents (by LVD) on LiberTrace has been an issue for Principle 9 Indicators (no document uploaded, or document expired), as reported by the IA.

The IA is asking LRA how LRA communicates with FDA/LVD, by email or else, and with whom at FDA.

LRA has provided the IA with a table of the 'Forestry Sector Revenues' detailing revenues collected by GoL by tax kind, including the specific fees under the FDA regulations, for the last two fiscal years.

With regards to fines issued in the forest sector and to a registry of fines, LRA receipts (and registry) of fines paid [may exist internally but] are not available: by law, LRA is not allowed to provide copies of receipts [nor a listing of fines issued/paid, for future attention].

In terms of Government forestry revenue collection and whether it covered the costs of the forestry administration (based on the FDA Budget) in the last 3 to 4 years:

- An "FDA´s revenue target of USD 9 million" is mentioned in the 7th JIC (Feb./March 2019) Aide-memoire;
- Actual forestry revenues have been around USD 5 million. The bulk of it is comprised of 1) the Stumpage fees (GoL share) and 2) the Log and wood product export fee (both from the FMCs);
- The weight of these forestry revenues in the grand total of FORESTRY SECTOR REVENUE has been around 60%;

- The total Forestry Revenues (of around USD 5 million) must be compared to the total FDA Budget (USD 3.7 millions in 2019/20), whether that makes the forestry administration (theoretically) financially self-sustainable (bearing in mind, though, that LVD was not on the FDA Budget and that the FDA Budget has been judged insufficient).

Determination of FOB prices: FDA is required by law to compile FOB market price estimations at the start of each logging season (and to revise the list more frequently in response to the changing market). Proforma invoices are based on it, for taxation purposes. The FOB price list is based on the [species and] quality of the logs and is a reflection of the actual [international] markets for Liberia.

SGS used to be responsible for providing estimates of average market prices using market intelligence/ information systems from both public and private sources. Even though, the list had just been approved in December 2018 but had not been approved in two years before (which, for future attention, may reduce the amounts of fees paid to GoL). Since SGS handed over to GOL/FDA, revising market prices has been a challenge. Real commercial invoices are not provided back to FDA and cannot be used as a source (with due attention to "transfer pricing" possibly affecting the real prices). The current list of FOB prices should be available in LiberTrace (LT).

***Conclusions***

The LRA collects all Government revenues, the forestry revenues from taxes & fees defined by the NFRL and others.

LRA also participates in export control, through Customs and by issuing the Tax Clearance Certificate (TCC) that is required for any shipment.

The TCC does not cover forestry-related taxes and fees, since these are under FDA control. As per the LRA procedure for revenue collection, and the MoU between LRA and SGS/LVD and FDA, companies now pay the forestry fees to an LRA transitory account and LVD does the reconciliation. LRA yet monitors all fees payments from the forestry operators per transaction (invoice) and the associated arrears.

(For future attention,) The IA has not (not yet) received specific answers whether LRA, for forestry fees, also 1) reminds late taxpayers, 2) negotiates deferred payment arrangements like for other fees, and 3) issues fines for overdue payments, or relies on FDA for it. Note: This shall inform the review of FDA handling of fees and any issue raised on FDA (*irt* 6.3.3.4 Review of current issuance of EPs during A4).

While the IA has current evidence that some payments of fees are long overdue, LRA is yet to clarify on which grounds and through which process LRA is accepting delayed payments, whether in agreement with FDA or not, or just leaves it with FDA. Note: This shall inform any issue to be raised on LRA.

The main current arrears from forest concessionaires to the GoL are on "bid premium" [i.e. Land Rental Bid Fees], the collection of which is still being delayed because of provisions in the FIDERA act of October 2017. Arrears also include Annual Contract Administration Fees and Area Fees. Logging companies are paying "land rental" [i.e. Area fees] arrears through a payment arrangement of 13% of FOB price for exported timber.

LRA no longer has access to LiberTrace [LT] to see uploaded documents by LVD. A plan for automated integration of the tax system with LiberTrace is waiting for funding.

(For future attention,) While the IA understands that LRA is not allowed to provide copies of receipts of fines paid, the IA has asked LRA to clarify whether LRA maintains (or could extract from LRA's systems) a registry/listing of all forestry fines issued and paid. Note: the (non-)existence of such a registry being kept within FDA has been a point of attention since Audit 1 (See 6.2.4.2/3.13/HII 21, 6.4.15/3.28).

Since SGS handed over to GOL/FDA, revising estimates of average FOB market prices every year for taxation purposes, using market intelligence/ information systems from both public and private sources, has been a challenge. This may affect revenue collection negatively.

Commercial invoices, if can be made available to FDA, and where no "transfer pricing" risks affecting the real prices, would be the best source of information.

For further attention: whether the IA should register further risks or issues about these conclusions and provide specific recommendations.

***Recommendations***

Although LRA relies on FDA for Tax Clearance regarding forestry-related taxes and fees, LRA should ultimately 1) ensure proper and efficient monitoring of all fees' payments from the forestry operators per transaction (invoice) and of the associated arrears, and take responsibility for 2) reminding late taxpayers, 3) negotiating deferred payment arrangements, 4) issuing fines for overdue payments, and 5) maintaining a central registry/listing of all forestry fines issued and paid, made available to third-party monitoring.

LRA should have access to LiberTrace to see all the documents uploaded by LVD. Funding of the existing plan for automated integration of the tax system with LiberTrace should be considered by the development partners.

For the determination of FOB market prices for taxation purposes, FDA should envisage getting access to the real (not pro-forma) commercial invoices as the best source of information (subject to no "transfer pricing"); otherwise, FDA should keep sourcing the (annual or more) revision of market prices from external consultants. FDA/LVD should also make the current list of FOB prices available in LiberTrace.

## 6.3 Review of the current issuance of Export permits

### 6.3.1 Introduction to the assessment (as per the Questionnaire)

Status: This review has not been updated during Audit 4 and can be found in the Volume 2 of this Audit 4 report (A4R Vol2), under 6.3.1 (now further moved to 7.5.1 in Vol.2 for archiving).

### 6.3.2 System-based assessment of Export permit issuance

Status: These reviews have not been updated during Audit 4 and can be found in the Volume 2 of this Audit 4 report (A4R Vol2), under 6.3.2 (now further moved to 7.5.2 in Vol.2 for archiving).

#### 6.3.2.1 Generalities

#### 6.3.2.2 Traceability

#### 6.3.2.3 Fiscality

#### 6.3.2.4 Legality

## 6.3.3 Performance-based assessment of Export permit issuance

#### 6.3.3.1 Export permit issuance and LVD reviews using the "Current regime"

Status: Same as above, under 6.3.3.1 (now 7.5.3.1).

#### 6.3.3.2 Export permit sample testing

Status: Same as above, under 6.3.3.2 (now 7.5.3.3).

#### 6.3.3.3 Re-assessment and further assessment of EP Issuance during Audit 3

Status: Same as above, under 6.3.3.3 (now 7.5.3.4).

#### 6.3.3.4 Review of the current issuance of Export permits during Audit 4

Assessment of the Export permit (EP) process has again been a focus for Audit 4.

In the previous audit, the IA reported on the legitimacy of the issuance of EPs. The evidence presented covered the following:

- The accuracy/completeness of indicators (LVD, November 2016) listed in the 'Current regime for export permit' checklist used by the LVD to verify compliance.
- The accuracy of the analysis of the LVD auditors when using this checklist to verify compliance.

On both accounts evidence showed that the requirements were not met and that the issuance of EPs was thus illegitimate.

As part of the Audit mission 4, the IA thus covered the EP once again, but from a slightly different angle, focusing on the various approval process steps in place and how compliant each of these are in respect of the EP system:

- The Auditing section of the LVD reviews active concessions from time to time using a checklist compiled in Word of the 'Current regime' requirements relative to the 'Legality' pillar of EP issuance.
- The LVD auditing section has reviewed the "active operators". The IA was given information on the following active concessions, with the results from the checklist completed by the LVD auditor for each corresponding concession:
  - Geblo Logging Inc – 6 non compliances raised
  - Mandra Forestry – 5 non compliances raised
  - Sing Africa Plantations – 3 non compliances raised
  - Almawood – 14 non compliances raised
  - Westnaf Limited – 3 non compliances raised
  - Akewa Group of Companies – 11 non compliances raised

- Euro Liberia Logging – 8 non compliances raised
- International Consultant – 4 non compliances raised
- Atlantic Resources Limited – No audit report submitted
- Alpha Logging – 0 non compliances raised

- Operator applies for EP through LiberTrace (EP Request): Ok
- LVD Data Manager opens a file for preparation and issuance of EP, adding the following documents:
  - The latest 'Current regime' report completed by the auditing section of LVD: 8 of the 9 Current regime reports identified non conformances as stipulated above and had a recommendation from the auditor that these need to be corrected. One concession did not have a report available.
  - An EP application form containing:
    - Recommendation and signature of LVD Audit team leader: In all cases, except for one (Alpha Logging) the Team leader recommended that the EP not be issued until non compliances had been addressed.
    - "Log traceability" results added by a member from the Data Management team (relative to the 'Traceability' pillar of EP issuance): In all cases the log traceability results showed that a percentage of logs were "not traceable", as shown below (percentages with issues):

***Table 4: LVD review of current issuance of Export permits to active operators - Log traceability results***

| *Company* | *Traceability* | *Date and # of EP* |
|---|---|---|
| Geblo Logging Inc | Total: 826 logs<br>Diameter: 43%<br>Species: 28% has warning<br>Over tolerance: 29% | 22/10/19 2019/00667 |
| Mandra Forestry | Total: 211 logs<br>Diameter: 1% with warning<br>Species: 43%<br>Over tolerance: 56% | 21/10/19 2019/00688 |
| Sing Africa Plantation | Total: 11 logs<br>Diameter: 82%<br>Species: Ok<br>Over tolerance: 18% | 18/10/19 2019/00696 |
| Almawood | Total: 98 logs<br>Diameter: 37%<br>Species: 6% has warning<br>Over tolerance: 57% | 07/10/19 2019/00609 |
| Westnaf Limited | Total: 1720 logs<br>Diameter: 49% with a warning<br>Length: 39%<br>Species: Ok<br>Over tolerance: 12% | 25/10/19 2019/00698 |

| | | |
|---|---|---|
| Akewa Group of Companies | Total: 103 logs<br>Volume: 20%<br>Diameter: 5% with warning<br>Over tolerance: 75% | 13/08/19 2019/00641 |
| Euro Liberia Logging | Total: 322 logs<br>Diameter: 53%<br>Species: 14% with a warning<br>Over tolerance: 33% | 15/08/19 2019/00655 |
| International Consultant | Total: 675 logs<br>Diameter: 13% with a warning<br>Species: 38 %<br>Over tolerance: 49% | 10/09/19 2019/00654 |
| Alantic Resources Limited | No audit report | 20/08/18 2018/00367 |
| Alpha Logging | Total: 18 logs<br>Diameter: 56%<br>Species: Ok<br>Over tolerance: 44% | 08/08/19 2019/00666 |

The IA was informed by the Data Manager that, like in the above cases, when the operator accepts the inspection results of the LVD inspection team, then the EP can be released. This is shown under the log traceability section in LiberTrace.

- Regarding the 'Fiscality' pillar of EP issuance, EP issuance is approved even in many instances where 'Fiscality' has a red flag because the due date for payment of certain taxes has expired. It was explained to the IA that the decision to allow more time for the operator to settle arrears is taken between the three managers already mentioned above, which often involves a meeting with the operator in the MD's office. The IA team was informed that the volume of arrears is building up as a result, to currently around 1 million US dollars for Stumpage fees (to be confirmed). For the IA this reflects an excessive discretionary power in the hands of the LVD/FDA managers. The IA concludes to a low security level (or high risk) for integrity in the decision-making chain.
- Recommendation and signature of Data Manager: In all cases the Data Manager recommended the issuance of the Export permit and signed the form. Eight of these were in contradiction with, and ignoring the recommendation made by the LVD Audit team leader not to issue EP.
- Signature of the Technical Manager: In all cases the Technical Manager recommended the issuance of the Export permit and signed the form. Eight of these were in contradiction with, and ignoring the recommendation made by the LVD Audit team leader not to issue EP.

- Completed EP application form sent to SGS for issuance of EP. EP duly signed and stamped by SGS: In all cases the SGS Project Coordinator or the SGS Project Manager recommended the issuance of the Export permit

and signed the form. Eight of these were in contradiction with, and ignoring the recommendation made by the LVD Audit team leader.

- Full file sent to MD for approval and signature: In all cases the Managing Director recommended the issuance of the Export permit and signed the form. Eight of these were in contradiction with, and ignoring the recommendation made by the LVD Audit team leader.
- EP supplied to operator: This is done directly from the MD's office and no copy of the approved EP is sent to LVD.

The above process leads to the following conclusions by the IA:

- The LVD Audit team leader fulfilled her responsibilities regarding recommending approvals. The IA did not review the quality of the checks (as was done in Audit 3). So, based on face value of the results supplied by the LVD Audit team leader, only one EP was approved by her, namely Alpha Logging. Eight EPs were not approved.
- Both the Data Manager and the Technical Manager of LVD wrongfully recommended issuance of the EP in 8 cases out of nine. This resulted in companies not carrying out the corresponding corrective actions to address non conformances and still being authorized to export.
- SGS followed suite and wrongfully and knowingly issued export permits for all 8 cases.
- Finally, the MD of FDA also signed off the export permits. In all cases the signatories had sufficient information at their disposal to know that they were contravening the requirements of the Current regime document by signing the approval of the 8 export permits.
- The IA thus needs to again highlight the issue of conflict of interest (COI) within the FDA regarding the autonomous functioning of the whole LVD Division, and in particular for the Auditing section (who needs to audit the activities of their CoC colleagues in LVD) and with the Management of the FDA (who ultimately controls the issuance of the export permits). As described in previous IA audit missions, this issue needs to be addressed to ensure that the LVD, in its totality, and SGS or any other third party, can operate totally independently and without influence from FDA top management. The current situation is not a healthy one to maintain a credible and functioning LVD, as well as the LLD yet to be established. The situation described above thus clearly displays the ability of the LVD to maneuver its way around the required policies and procedures (in this case related to the issuance of export permits) with no red flags being raised in the system where recommendations or decisions are made in contradiction with, and ignoring the recommendation made at a previous step in the process.

***Main conclusion:*** The IA covered the EP approval process once again, focusing on the various steps in place and how compliant each of these are in respect of the EP system. Despite non-compliances raised by the LVD auditing section in 8 cases out of 9, and a recommendation that these need to be corrected, and despite red flags related to outstanding tax payments, all LVD/SGS/FDA line managers recommended that the EPs be issued anyway. The IA concluded to a low security level (or high risk) for integrity in the decision-making chain. The IA also again

highlighted the issue of conflict of interest within the FDA, regarding the autonomous functioning of the whole LVD, and in particular for the Auditing section, with the Management of the FDA (who ultimately controls the issuance of the export permits).

***Main recommendation:*** Ensure no export permits are granted against LVD evidence and recommendations.

#### 6.3.3.5 Miscellaneous issues for future attention

In parallel to the assessment of the Export permit (EP) process (or at a later stage), the IA recommends a similar investigation be conducted, into the requirements for FLEGT licensing with a view to highlighting all commonalities and differences between the two processes and clarify the transition from the current system (EPs) to the future system (FLEGT licenses). See suggestions for a 'comparative analysis of requirements' table in 6.3.2.4.

Export permits (EPs) issued for timber from third countries *via* Liberia: the analysis in 6.3.2.1 recalled above in 6.3.3.3 shows the EP system applies to all imports and (re-)exports and must be part of the scope of this assessment. Is Liberia importing and re-exporting any timber products, either in-transit or via processing, though? As per 6.4.14.2 (Efficiency of border control) recalled in 6.1.9.9 and 6.1.9.10, regarding the current importance of imported timber, interviews conducted during Audit 3 have indicated "Not aware of any imports; there is zero data".

In relation to the EP being an important piece of evidence that EU importers should be able to use, in the absence of FLEGT licensed timber from Liberia, in order to meet EU Timber Regulation (EUTR) 'Due Diligence' requirements (See 5.4, 6.3.1 and new section to be created where EUTR DD will be covered[36]):

- The IA noted that EU importers, to exercise EUTR due diligence, can (i) check the EP by uploading the original form (supposedly the complete approved EP) in LiberTrace – through the "Check document authenticity" function (Further IA action: *to be tested*) – and (ii) can contact LVD in order to get the legality documentation available (Further IA action: *to be audited*).

  Further IA action:
  - Assess visibility of both LT, FDA websites by search engines (referencing)
  - Assess visibility of the above queries directly by search engines and on these two LT, FDA websites
  - Assess to which extent EPs are currently being used by EU importers to comply with the EUTR (as legality claims).

- Several sources of information (Liberia profile websites) indicate how EPs currently issued by Liberia are being perceived, whether as reliable EUTR DD evidence; among others:

  - The 'Timber Legality Risk Assessment Liberia' Guide by NEPCON (2017), at https://www.nepcon.org/sourcinghub/timber/timber-liberia;

[36] IA's Fifth Six-monthly Report, Activity 3.4 (3.2.16), Task 3 'Evaluate Liberian authorities' response to additional information requests from EU MS authorities in relation to EUTR Due Diligence' : Assess the credibility of LAS-based official documents that are currently available to importers in the EU as evidence of the legality of exports from Liberia, for EUTR Due Diligence purposes. Relevant legal reference: the minimum requirements to be met for the issuance of the Export permits (i.e. Current regime).

- The FSC Liberia country profile (www.globalforestregistry.org; if different from the NEPCON Guide);
- The Liberia Country profile on the Timber Trade Portal (TTP) jointly owned by ATIBT and ETTF (www.timbertradeportal.com). The approach is allegedly different from NEPCon's, in particular, which focuses on risk classification for each country. The TTP aims to rather provide information that is as factual as possible and leaves the risk identification to the operator. It avoids excluding entire countries in advance because of high-risk profiles. Although EP perception is a relevant risk factor, the TTP assumes that the situation still depends on the particular supply chain of the individual operator.
- The BVRio 'Guide to Conducting Due Diligence of Tropical Timber' (2017), Liberia section running from p.12 on, with:
  - Forest legislation and enforcement agencies 13-14;
  - Main documents needed 14-20;
  - Main types of fraud 21-24 (of relevance to the IA risk-based approach);
  - Samples of main documents and how to read them 25-39;
- The 'Holding the line, Liberia logging accountability report' by Global Witness (2017);
- The WRI Forest Legality Alliance (FLA) Risk Tool Liberia (http://forestlegality.org/risk-tool/country/liberia), last updated January 2014
- EFIs '2014 08 VPA country fiches Liberia efi.docx'
- The FAOSTAT Liberia Country profile (www.fao.org/faostat/en/#country/123);
- FLEGT IMM reports (VPA countries).

▪ Regarding EU destination, there has been some, relatively small volumes (<5'000 m3) recently. Buyers and traders are not asking questions. The SGS PM is not aware of [EUTR or other] Due Diligence/ Due Care information requests to SGS [Procedure is in place to "Check document authenticity": see 6.3.3.5]. But operators are indeed using SGS' / GoL documents as 'evidence of legality': Exports permits issued by SGS-FDA (according to minimum requirements; but there are admittedly problems with small producers operating TSCs and PUPs to get all their documentation Ok, esp. AOPs, not standard, maps showing streams, slopes…), Certificates of origin.
(June 19, 2017 meeting with SGS PM)

*Follow-up during Audit 4:*

The EU market represented less than 2% of all destinations for round log exports from Liberia in 2018.

| **Round log exports 2018** | **Volume (m3)** | **Volume (%)** |
|---|---|---|
| - Belgium | 1 993 | 1,06% |
| - France | 1 602 | 0,85% |
| **Total EU** | **3 596** | **1,91%** |
| **Total non-EU** (Bangladesh, China, Korea, India, Singapore, Turkey, Vietnam) | **184 304** | **98,09%** |
| | **187 900** | **100,00%** |

| **Sawn wood exports 2018-2019** | **Volume (m3)** | **Volume (%)** |
|---|---|---|
| - France | 2 379 | 0,16% |
| - Greece | 21 514 | 1,45% |

| | | |
|---|---|---|
| - Norway | 11 929 | 0,80% |
| - Poland | 9 553 | 0,64% |
| **Total EU (+ Norway)** | **45 375** | **3,06%** |
| **Total non-EU** (China, India, Nepal) | **1 437 671** | **96,94%** |
| | **1 483 046** | **100,00%** |

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## 6.4 Follow-up on previously reported issues

As noted in 5.2, while Chap. 5 (**Audit implementation**) only provided a list of those "previous issues", the actual follow-up is covered in this Chap. 6.4 (with any further **Audit evidence** gathered in the course of implementation or corrective measures applied in relation to previous issues, and including new related **findings** from comparing new evidence with the audit criteria, and from new developments of previous findings).

The updated *Conclusions & Recommendations* concerning these *previous* issues, as well as any *Notes for further IA action*, are now covered in the same Chap. 6.4, while *Conclusions, Notes for further IA action, & Recommendations on **new** issues* were directly addressed under 6.1 to 6.3, and all the '**Main** conclusions and recommendations from Audit 3' from both *old and new issues*, if not updated, are summarized in Chap. 3 of the Volume 2 of this Audit 4 report (A4R Vol2) , while the '**Main** conclusions and recommendations from Audit 4' from *new issues* or from *old issues,* if updated, are summarized in Chap. 3 of this Audit 4 report, Volume 1 (A4R Vol1).

This section builds on the Audit 1 to 3 reports (Chap. 3 Main conclusions and recommendations, and related references in Chap. 6.4, as well as 7.3 and 7.4 for archived reviews, for Conclusions, further IA action, and recommendations to the JIC). Where possible the specific issues reviewed are being regrouped and reclassified under more relevant VPA/LAS requirements.

For issues previously followed up in Ch. 6.4 in the Audit 3 report (A3R):

- If the Investigation was completed in A3R, the discussion has now been moved to Sections 7.3/7.4 in this report for archiving;
- If further investigation was required, the discussion remained in Ch. 6.4 in this A4R Vol1, if updated, or in A4R Vol2 if not.

### 6.4.1 Legal and regulatory framework relative to LAS implementation

#### 6.4.1.1 Timber sources: development of new regulations and application to the LAS

The IA ToR (4.2, Sequencing of Audits and operationalization of FLEGT licensing scheme) provided that the division of scope would need to take into account the **phasing in new timber sources** based on the **development of new regulations**.

***Table 5: 'Estimation of LAS coverage and sector evolution'** (IA TOR p.8) **and Update***
*[TBC = To Be Completed as per the following analysis]*

| *Timber sources* | *Estimate date for coverage by the LAS (and by the IA)* | *Update*[1] |
|---|---|---|
| Forest management contracts (FMC) | 2016 | 2017 |
| Timber sale contracts (TSC) | 2016 | 2017 |
| Private use permits (PUP) | 2017 | TBC |
| Community Forest Management Agreements (CFMA) | 2017 | 2018 |
| Timber from artisanal logging [Chainsaw Milling] | 2018 | TBC |
| Timber from plantation [Plantation Forests] | 2017 | TBC |
| Timber from agricultural and mining concessions | 2018 | TBC |

1 As detailed below, based on actual IA Contract dates and status of new regulations

**Detailed history and current status of the specific regulations**
[Investigation in progress – See below, separate tables, distinguishing *regulations already in force,* and providing *references of relevant legislation (laws & regulations) establishing and implementing the particular regime*]
TBC = To Be Continued / Confirmed / Researched

***Table 6: New laws/regulations approved and enforceable, defining timber sources***

| *Name of the particular regime* | *History and current status* | *Relevant legislation* |
|---|---|---|
| **Forest management contract (FMC)** | First FMCs issued in May 2009 for 15 years.<br>Number of FMCs issued and currently valid: see Annex 8.8 to Vol.2 (Detail of forestry licenses, LEITI 2013); Other suggested sources: SGS/LVD reports, LiberTrace | **NFRL** 2006, Section 5.3<br>Others: The Act of the Legislature approving each FMC[37] |
| **Timber sale contract (TSC)** | First TSCs issued in June 2008 for 3 years.<br>Number of TSCs issued and currently valid: see Annex 8.8 to Vol.2; other sources (as above) | **NFRL** 2006, Section 5.4<br>Others: n/a[38]. |
| **Forest use permit (FUP)** | FUPs cover specified Commercial Uses of forests: (i) Production of charcoal; (ii) Tourism; (iii) Research and education; | **NFRL** 2006, Section 5.5 |

[37] Legal advice to the IA: Each FMC is a special legislation in and of itself because it is passed by both chambers of the Liberian legislature and approved by the President. Hence, it is a law that can only be changed by following the same legislative process.
[38] Legal advice to the IA: The TSC is only pursuant to the named provision of the NFRL. It is an agreement signed by the operator and FDA, and so it is not covered by any legislative act of ratification like the FMCs.

| | | |
|---|---|---|
| | (iv) Wildlife related activities; (v) Harvest of small amounts of Timber for local use within the County or community; and (vi) Harvest or use of non-timber Forest Products.<br>Note: Not in the Timber sources that are included in the LAS (See 7.3.5.3, Vol.2). | |
| **Regulation to the Community Rights Law (CRL) of 2009 with respect to Forest Lands, as Amended** (also referred to as "Community Rights Regulations"/ "Community forestry regulation") | Published on May 17, 2017<br>VPA Ann. II, 2.1d: once regulation completed, amendments will be made to the LAS to reflect any additions.<br>Other VPA requirements: Ann. II, 5.1b; App. A, 1,2b (Area that requires policy and legal reforms) | Community Rights Law (CRL) of 2009<br><br>Others: TBC |
| **Community Forest Management Agreement (CFMA)** | First CFMA signed: TBC<br>Number of CFMAs signed and currently valid: see Annex 8.8 to Vol.2 (CFMBs); other sources (as above) | **Community Rights Regulations**, Sections 1,2, 2.12, Ch. 7<br>**Nine-step Handbook**<br>Others: TBC |
| **Abandoned Logs, Timber and Timber Products** | Drafted in 2012; re-draft submitted for FDA approval (2017); officially gazetted[39] as Regulation 116-17 (October 24, 2017).<br>Ann. II, 2.1f: product to be incorporated into the system once it has been auctioned and new legal ownership established.<br>Other relevant VPA requirements: Ann. II, App. A, 1,2c (Area that requires policy and legal reforms). | TBC |
| **Third Party Access to Forest Resource License Areas** | Drafted in 2012; re-draft submitted for FDA approval (2017); officially gazetted as Regulation 117-17 (October 24, 2017).<br>VPA requirement: Ann. II, App. A, 1,2h (Area that requires policy and legal reforms). | TBC |
| **Confiscated Logs, Timber and Timber Products** | Drafted in 2012; re-draft submitted for FDA approval (2017); officially gazetted as Regulation 118-17 (October 24, 2017). | TBC |

[39] i.e. published, thus enforceable

| | | |
|---|---|---|
| | VPA Ann. II, 2.1g: regulation to be incorporated into the LAS once developed and before FLEGT licensing becomes operational.<br>Other VPA requirements: Ann. II, 5.1e; App. A, 1,2d (Area that requires policy and legal reforms). | |
| **Sustainable Wood-based Biomass Energy Production and Marketing in Liberia** | Officially gazetted as Regulation 119-17 (October 24, 2017).<br>Covers fuel wood, charcoal, briquettes, etc.<br>Fuel wood (HS Code 4401), which also includes wood chips, is listed in the VPA Annex I (Timber products subjected to the LAS). | NFRL 2006<br>Based on a Forest Use Permit (FUP). |

***Table 7: Regulations cancelled or suspended***

| *Name* | *History and current status* | *Relevant legislation* |
|---|---|---|
| **Private use permit (PUP)** | First PUP awarded in November 2009 (Lofa County).<br>Legal advice to the IA: No PUP was issued until a few years, but the issuance took off rapidly in 2011 at the end of President Ellen Johnson Sirleaf's first term, These PUPs were granted over areas not constituting "private land" and were also marred by a number of illegalities detailed in a report by a Special Independent Investigative Body (SIIB). Based on the report of the SIIB, the then President of Liberia, Ellen Johnson Sirleaf issued Executive Order No. 44 imposing a (Temporary) Moratorium on Private Use Permits.<br>Since Executive Order No. 44 was issued, no PUP has been issued or operated. The general understanding is that no PUP is allowed or intended to be issued.<br>However, two points are worth noting:<br>1. PUP is still a recognized forest resource license under the NFRL; and<br>2. An executive order has a validity period of one year maximum under Liberian law, unless extended or renewed, and there is no evidence that this executive order was renewed.<br>Based on the foregoing, it is fair to say that the Government or FDA may lawfully issue a PUP under current Liberian law[40].<br>See below: Private Use-Permit (PUP) Regulation. | **NFRL** 2006, Section 5.6<br>Others: TBC |

[40] PUP is still a recognized forest license under the law. However, following the cancellation of all the illegal PUPs, the Government announced that it would not be granting any more PUPs. That could change, especially if a private person actually desires a permit to harvest a very limited timber on his or her private land where there is no evidence or semblance of any impropriety or fronting for a logging company.

**New regulations still under development, not yet approved:**

- **Private Use-Permit (PUP) Regulation:** regulation drafted, regionally vetted and awaiting board approval (7th JIC Aide-memoire, Feb./ March 2019, Annex 2).
- **Guidelines for Plantation Forests**: Drafted by FDA Legal; To be circulated for stakeholder input, national vetting; Produced by FDA on 2017 (VPASU update March 2018). A consultation is in progress with the IA Legal expert on the two main questions of official approval and binding effect (See Annex 7.13). The IA's current understanding is that 1) these 'Guidelines on Plantation Harvesting' are the same thing as the a.k.a. 'Timber from plantation' regulation mentioned in the VPA; 2) they aim to have the status of a regulation that is binding on operators or other relevant parties where it creates new regulatory requirements for plantation timber; 3) they provide that plantation timber is covered by the LAS and therefore would become part of the IA's scope; and 4) they have not been officially approved yet by the Board, and are therefore not yet in force and not in the IA's scope until further notice; 5) the exception to the above Guidelines for "exotic timber species from scattered planted areas that have been felled or threatened by farmers" falls under conversion timber (see below).
- **Guidelines for Timber from Agriculture and Mining Concessions**: Draft to be developed by FDA Legal; Cancelled by FDA given issues with "Conversion Timber" (VPASU update March 2018). Likely covers "rubberwood and other timber products harvested under agricultural concession agreements" as per Ann. II, 2.1e (i.e. reformed aging rubber trees, not plantation timber)? Note (See 6.3.2.1): The "timber products" listed in the Annex I of the VPA, and to which the FLEGT licensing scheme shall therefore apply (Art. 3,2), include 'fuel wood' (HS Code 4401), which also includes 'rubber wood chips'.
- **Import Logs, Timber and Timber Products**: drafting started in early 2012; pending EU Comments (as of Nov. 2017); TBC (and whether it provides that "All imported timber products listed in Annex I to the VPA will also be controlled by the LAS as per Ann. II, 2.1h, in acc. With details in Ann. II 5.9).
  "The EU has previously been requested to comment on the Regulations on Transit Timber [below] and Imported Logs, Timber and Timber products. Liberia stressed that in absence of these regulations, Liberia is violating the NFRL. FDA urged the EU to prioritize this matter and to provide the necessary feedback. In response to this request, the EU indicated that the review of the Transit and Imported Timber Regulations is one on the first tasks of the new EU VPA support project". [7th JIC Aide-memoire, (Feb./ March 2019), 19]
  Regulation drafted, regionally vetted and awaiting board approval (7th JIC Aide-memoire, Feb./ March 2019, Annex 2)
  Status (VPASU, 26.10.2019): still pending FDA and FDA Board approval.
  Status (VPASU, 03.11.2019): drafted by VPA-SU1, pending EU review.
- **Transit Logs, Timber and Timber Products**: drafting started in early 2012; was pending EU Comments (as of Nov. 2017). According to comments (IA Stakeholder Workshop, 07.12.2017): a new 'in-transit' regulation (had been/was being?) (re-?) drafted by VPA SU (in consultation with Customs) – VPA requirements apparently contradictory: Ann. II, 5.1b re: COCS SOPs: Control and verification of timber from (d) timber in transit will be developed within two years of signature of the VPA; however Ann. II, 5.10b: "Timber in transit will not

be integrated in the COCS and will not be subject to issue of a Liberian FLEGT license at the point of export".

**'VPASec Updates' on the 7th JIC version of the Forward Planner (FP) (February 25, 2019)**, not yet taking account of eventual 7th JIC decisions:

Regarding **Principle 6** (TIMBER TRANSPORTATION AND TRACEABILITY): "The next EU support project will support the review and finalization of the **Import and Transit Regulations**."

Reminder of **developments between 6th and 7th JIC** as per the FP, highlighting past and current issues regarding **Principle 6** (above):

- Oct – Dec 2018 regarding **Principle 6**: "The JIC asked the EU to provide their updates on the regulations that have been sent to them (Import and Transit). Comments and inputs from the EU are to be provided.
  According to FDA, no regional vetting schedule has been produced*".*

Regulation drafted, regionally vetted and awaiting board approval (7th JIC Aide-memoire, Feb./ March 2019, Annex 2).

Status (VPASU, 26.10.2019): still pending FDA and FDA Board approval.

Status (VPASU, 03.11.2019): drafted by VPA-SU1, pending EU review.

- **Chainsaw Milling Regulation # 115-11** (same thing as the "**Chainsaw Regulation**" as per the VPA Ann. II, 2.1d and the a.k.a. '**Timber from artisanal logging**' regulation; governs artisanal millers/loggers): promulgated in 2013; Passed but not in force. This is a VPA requirement (Ann. II, **A1.2**: "(i) Validation and promulgation of Chainsaw Regulations: to guide new procedures for working with the informal sector.").

  Regarding domestic market, the FDA was reportedly making efforts to finalize the necessary regulations to the Community Rights Law in addition to reviewing and revising the existing Chainsaw Regulations[41].

  According to comments (IA Stakeholder Workshop, 07.12.2017):

  - **Chainsaw milling** is to become legal (and incorporated in LAS) when new regulation is adopted.

  To be revised by FDA Legal after baseline study (FAO) in process led by FAO-FLEGT (VPASU update March 2018). Although this regulation is still in effect, but yet to be revised, a completed revised version has been completed with funding from the FAO. This version was a subject of two regional workshops in Tubmanburg, Bomi County and Buchanan, Grand Bassa County in July 2018 following which it was completed and sent by FAO to the FDA for regular final validation before submission to the Board for its consideration for adoption.

  "*The FDA explained that the revision of the Chainsaw Milling Regulation #115-11 is ongoing. Following the regional vetting, FDA is now compiling the comments and intends to provide the revised Regulation for approval to the next FDA Board meeting*". (7th JIC Aide-memoire, Feb./ March 2019, 55)

  Revised Chainsaw Milling Regulation 115-11: regulation drafted, regionally vetted and awaiting board approval (7th JIC Aide-memoire, Feb./ March 2019, Annex 2).

  The IA reviewed a communication dated June 25, 2019 under the signature of the FDA MD, Mr. Mike Doryen and addressed to Rev. Dr. Isaac Chukpue-Padmore, Chairperson of the Forest management Advisory Committee (FMAC) whereby the FDA MD presented to the FMAC "the attached draft documents for

[41] With funding provided by the FAO, the IA KE2 expert has also been hired by FDA to review the chainsaw regulations. He has since completed the initial draft, which was scheduled for stakeholders review later in 2017. TBC

your advice as required by Section 23 (d-2) of the national Forest Reform Law of 2006 [see also 6.1.2.12, A4R Vol1]. The documents included, among others:

- **Revised Chainsaw Milling Regulation 115-**11;
- Draft Regulation for Timber Resource Waste/Residue Commercial Utilization [See below]."

The FDA letter to the FMAC Chairperson concluded as follows: "*Due to the urgent needs to make these attached documents functional, it is the hope of the FDA management that your Committee will speedily provide your advice before they are sent to the FDA Board of Directors before their next meeting.*"

The response from the FMAC "as a Technical Advisory Arm", dated July 22, 2019, states "*…the rural governance structures set up are not yet capacitated in terms of training. As such, they need to acquire the skills in chainsaw milling and other regulatory framework to undertake legal and traceable small-scale timber production from the CFMAs. In light of above, we recommend that FDA should seek ways and means to institute measures that will address the capacity deficit in the rudiment of chainsaw milling technology*".

Status (VPASU, 03.11.2019): Proposed Amendment to Chain Saw Milling Regulation, drafted by FAO-HPA, pending approval.

- **Charcoal Regulation**: As of 11.09.2018 this regulation is said to have now been passed (but not yet published). Note: Charcoal is not in the "timber products" that are listed in the Annex I of the VPA, and to which the FLEGT licensing scheme shall therefore apply (Art. 3,2).

  According to comments (IA Stakeholder Workshop, 07.12.2017):
  - **Charcoal** is to become legal when new regulation is adopted.
- Regulation on **Timber Processing # 112-08**: Passed but not in force; To be revised by FDA Legal. Timber processing regulation in place (180418 Forward Planner / 180703 JIC Forward Plan Version, P7 Progress by end December 2017); Regulation 113 passed and active (180703 JIC Forward Plan Version, P7 Progress from 5th JIC), but "Timber processing regulation in place" (Annex 3, Forward Planner (summary), Principle 7, January 2018 Status, Capacity) is coloured in orange, not green). (To be confirmed; Reference: TBC – This is a VPA requirement (TBC).

  No progress (VPASU update March 2018).

  "*Liberia is in the process of reviewing the **Timber Processing Regulation 112-08** to include the Code of Wood Processing Practices in Liberia which is yet to be developed. In addition, a Regulation to establish a **Standard for Scaling and Grading of Timber and Forest Products** in Liberia is being developed as outlined in the National Forestry Reform Law (NFRL) of 2006*". [7th JIC Aide-memoire, (Feb./ March 2019), 18]

  Three regulations under review and intended for drafting (7th JIC Aide-memoire, Feb./ March 2019, Annex 2)

  a) Amendment to **Timber Processing** Regulation 112-08

  b) Regulation to establish **Standard for Scaling and Grading of Timber and Forest Products** in Liberia (NFRL 2006, Section 13.6

  c) **Code of Wood Processing Practices** in Liberia
- Amendment to the **Penalties Regulation** # 109-07: pending Regional Validation (as of Nov. 2017); National Public Review and comment period on December 2017; pending FDA Board Resolution (VPASU update March 2018). Penalties regulation 109-07 is still not in force: process has been delayed (171204 Third Technical JIC meeting Agenda); amended? Penalties regulation

109-07 in force (180703 JIC Forward Plan Version, Progress by end December 2017 – Still a target?); Presidential approval process is slow. Comments from EU also delayed (180703 JIC Forward Plan Version, Gaps); Need to work to ensure smooth approval of regulations from the President's office. Perhaps FDA board can liaise with Executive Mansion (180703 JIC Forward Plan Version, Remarks); TBC.

Amendment to Regulation No. 109-07 on Penalties and Administrative Enforcement: regulation drafted, regionally vetted and awaiting board approval (7th JIC Aide-memoire, Feb./ March 2019, Annex 2).

Status (VPASU, 03.11.2019): Proposed Amendment to Penalties Regulation, drafted by VPA-SU1, pending approval.

- **Guideline/Manual and Procedure for Accessing Timber Resource Wastes/Residues:** regulation drafted, regionally vetted and awaiting board approval (7th JIC Aide-memoire, Feb./ March 2019, Annex 2).
- **Guidelines for the improvement of EIA processes and environmental management within contract areas**: Draft to be developed by FDA Legal; Replaced by including provisions in the Amended Code of Forestry Practices of 2017 (VPASU update March 2018). TBC.
- **EIA Regulation # 113-08**: Passed but not in force, To be revised by FDA Legal, No change, by including forestry provisions in the Amended Code of Forestry Practices of 2017 (VPASU update March 2018). TBC.
- **Regulation on Revised Fiscal Policy and Bid Premium Payments**: Drafted by FDA. Draft needs recirculation for stakeholders input; incorporate input from stakeholders by FDA Legal; then, conduct national vetting, National Public Review and comment period on December 2017; pending FDA Board Resolution (VPASU update March 2018). As of 11.09.2018 this regulation was said to be still pending.

  Regulation on the Revised Forest Sector Fiscal Policy: regulation drafted, regionally vetted and awaiting board approval (7th JIC Aide-memoire, Feb./ March 2019, Annex 2).
- **Guidelines for complaint mechanism procedures:** Draft to be developed by FDA Legal (VPASU update March 2018). TBC.
- **FDA Forest Definition**: National Public Review and comment period on December 2017; pending FDA Board Resolution after public consultation (VPASU update March 2018). As of 11.09.2018 this regulation was said to be still pending FDA Board's approval; TBC.
- **ECOWAS regional trade treaties**, as may be relevant (as recalled in 6.1.6.4 and 7.3.1.8 in this report, Section 2.3 of VPA Annex I (also recalled in Ann. II, 2.3c) provides that "Verification of legality shall apply … to timber products sold on domestic market. Checks on products sold on the domestic market will gradually be phased in according to a schedule that depends on the implementation of the Community Rights Law and Chainsaw Regulation, and which takes consideration of *ECOWAS regional trade treaties and their integration into the LAS*"). TBC

Regulations are to be complied with for licensing as per the following VPA articles (among others):

- Art. 4,3b (imports);
- Art. 7,1b (general);
- Art. 9,1b, and Ann. II, 2.1c and 2.3c (domestic market);
- Ann. II, 2.1e (rubberwood);

- Ann. II, 2.1g (confiscated timber).

As stated in the Appendix A, **Section 1** (Plan for forestry policy and law reform), it is therefore essential that law reforms be finalized as early as possible to support the VPA implementation process, as *to be added to the identification of applicable Liberian forestry legislation (laws and implementing regulations) in the VPA Appendix A of Annex II and in a revision of the Legality Matrix*.

The list of regulations provided in 6.1.13 as per VPA Ann. II, A1.2 ("Areas that require policy and legal reforms") with regards to the need to also update the Legality Matrix, includes:

| *Policy area* | *Status of the regulation* |
|---|---|
| (a) Social Agreements | TBC as per monitoring under 6.4.1.2 |
| (b) Community forestry regulation | Approved and enforceable (See above) |
| (c) Use of abandoned logs | Approved and enforceable (See above) |
| (d) Use of confiscated logs | Approved and enforceable (See above) |
| (e) Integration of Independent Certification Schemes | TBC |
| (f) Debarment List | TBC as per monitoring under 6.4.1.2 |
| (g) Processing facilities | TBC as per above monitoring |
| (h) Third Party Access and Use of Forest Products | Approved and enforceable (See above) |
| (i) Chainsaw Regulations | TBC as per above monitoring |

The IA registered an **ISSUE** about the slow development of new regulations and application to the LAS, referenced **HII 13** in the IA Progress DB, now updated as follows:

| **ISSUE HII 13** |
|---|
| **Impact level**: High. |
| **Identified ISSUE description**: Generally slow development of new regulations and their application to the LAS, despite some recent progress. |
| **Recommendation(s)**: Steadier development and implementation of new regulations, including through a revision of the Legality Matrix. |

It may be worth noting that, at the 6th JIC, "the GOL … highlighted that a review process should be carried out to indicate whether all procedures and regulations are *implementable*" (6th JIC Aide Memoire, Introduction, 4). The IA has no indication at this stage of what motivated such statement (possibly meaning *ready*).

**FDA/IAWG response to the Main C&R in the Audit 3 report:**

*Five regulations have been developed, three of which have been passed and two are pending. However those two were vetted and sent to the EU in 2017 for input, (e.g. Import & Transit logs,Timber & Timber) and comments from the EU are still pending.*

*Responsible Department: Edward Kamara/Commercial Department*

*Time Frame: Pending EU Comments*

IA review of FDA/IAWG response:

- The IA acknowledges progress made as per Annex 2 (List and status of TLAS relevant Regulations and Procedures) to the 7th JIC (Feb./March 2019) Aide-memoire. Seven regulations are still awaiting board approval while two others (Transit, and Imported Timber) are still pending EU review, which the EU indicated is due under the new EU VPA support project [7th JIC Aide-memoire, 19].
- Meanwhile, Issue **HII 13** remains open as revised.

#### 6.4.1.2 Development of implementing and enforcement tools as part of the LAS

TBC = To Be Continued / Confirmed

Beyond laws, regulations, and VPA texts (esp. the Legality Matrix), documentation of the relevant legal framework includes adaptations of the VPA into procedures, checklists and guidelines, as per the following, important documents prepared by consultants and support services providers like FRM, SGS, and DAI (VPASU Project).

Regarding Standard Operating Procedures (SOPs), the VPA **Ann. II,5.1b** prescribes that "Control and verification of timber from the following sources will be developed within two years of signature of the VPA" (and supposedly introduced in the COCS):

| *Timber sources* | *Status of the regulation* | *Introduced in COCS* |
|---|---|---|
| (a) Forests regulated by the Community Rights Law | Approved and enforceable (See 6.4.1.1) | TBC |
| (b) Chainsaw logging operations | TBC as per monitoring under 6.4.1.1 | TBC |
| (c) Imported timber | TBC as per monitoring under 6.4.1.1 | TBC |
| (d) Timber in transit | TBC as per monitoring under 6.4.1.1 | TBC |
| (e) Confiscated timber | Approved and enforceable (See 6.4.1.1) | TBC |

For further attention: SGS/LVD to inform the IA which of these (new) sources have been introduced in the COCS (i.e. in the COCS SOPs, and in the COCIS/LiberTrace). It seems to be the case only for (a) – a search in the SOPs

with the words “chainsaw”, “imported”, and “transit” has revealed nothing -, which may just reflect the current non-enforceability status of these regulations (as monitored above in 6.4.1.1). The word “confiscate” comes out several times and Section 33 on ‘Non-Compliant Timber Securitization’ mentions “(…) this SOP would be applicable subject to final approval of Confiscated Timber Regulation”.

The development of new regulations is an on-going process that is being monitored under 6.4.1.1.

***Table 8: New tools or requirements approved, implemented***

| *Name* | *History and current status* | *Relevant legislation* |
|---|---|---|
| **‘Requirements for Export Permit under Current Regime’** | The list of official “current regime” requirements for Export Permit issuance listed by the FDA | As per the document |
| **Debarment List** | The establishment of a debarment list identifying those individuals who contributed to the civil war of Liberia and are thus banned from working in the forest sector, as required by existing FDA Regulations, is also a VPA requirement (Ann. II, A1.2f).<br>The debarment list is one of the documents that are requested for pre-allocation of concession under P2 and are currently part of the ‘missing documents’ issue that has been raised since 2013 for some existing concessions and casts doubts whether the concerned concessions are operating legally (SGS, 6.4.9). TBC | FDA Regulation: TBC |
| **Social Agreements** | VPA requirement (Ann. II, App. A, 1.2(a)): Establishment of procedures to govern negotiations of Social Agreements, including (i) timing of negotiations; (ii) timeliness of both the payments and transfers of funds to communities; (iii) minimum content of social agreements and enforcement of provisions; (iv) community user rights in respect of concession areas, and (v) employment of non-skilled workers, etc. | TBC |
| **Manual of Procedures for LVD staffs** and **Manual of Procedures for Forestry Operators** (July 2016, SGS, Project ref. PO 6380) – more commonly known as **‘Liberia COCS Standard Operating Procedures’** (COCS SOPs) | Official July 2016 version.<br>Updated July 2018 (pending official approval, if needed, as per the discussion in 7.3.5.8, ‘What it takes for an implementing text to become a by-law regulation (binding on forest stakeholders)’).<br>SOPs for COCS (covering LM | TBC |

| | | |
|---|---|---|
| | Principles 6, 7, 9 & 10): draft revision by SGS pending approval (191103, VPASU),<br>This is a VPA requirement (Ann. II, 5.1 inter alia); see the review in 6.1.9.1 (SOPs) | |
| SGS/LVD **SD 01-01 Audit Checklist and Report** (FDA, 23/10/2015, V2) | Based on the VPA Legality Matrix and contains references to the next document (CFHP). | LM<br>CFHP |
| **Inspection Checklist and Report for CFHP** | The Code of Forest Harvesting Practices (CFHP) made into a checklist (FDA, 22/04/2017, V1.0 said to have been included in the CFHP) | CFHP |
| The **"Nine Steps" Handbook** | Checklist for establishing an authorized forest community, published July 2017[42].<br>According to the FDA CyFD Technical Director, nothing in the manual is legally binding on third parties beyond existing regulation; the Handbook works as internal procedures.<br>Note: Whereby the IA understands that no official approval is needed. | |
| **Liberia's Forest Management Guide** | Officially unveiled (October 2019) by the National Union Community Forestry Development Committee (NUCFDC), the guide is intended to be used by the Community Forest Development Committee (CFDC), CSOs and other community groups to ensure the implementation of social agreements, and other agreements that forest communities sign with concessionaires. The guide, intended to ensure the effective management and monitoring of forest resources in the country, was developed with support from the FAO. | |
| **National Guidelines for Community Consultation on Free Prior and Informed Consent (FPIC)** | Guidelines on Community Consultations developed to comply with Section 2.2 (e) of the CRL of 2009.<br>The FPIC process is backed by international and regional instruments, including the 2009 ECOWAS Directive on the Harmonization of Guiding Principles and Policies in the mining sector, the African Commission on Human and Peoples' Rights, and the Pan African Parliament Recommendations and Resolutions. The | CRL<br>ECOWAS<br>ILO<br>UN |

[42] Originally produced for review by USAID under the PROSPER Project, prepared by Tetra Tech ARD and printed with the support of the Liberia Forest Sector Project (LFSP)

| | | |
|---|---|---|
| | international documents that support FPIC are the International Labor Organization Convention 169 on Indigenous and Tribal Peoples, United Nations Declaration on the Rights of Indigenous Peoples (2007), UN Guiding Principles on Business and Human Rights (2011).<br>Implementing agencies: EPA, FDA, FDA/REDD+ Implementation Unit. | |

**Others in progress:**

- **Compliance and Enforcement Handbook**: First Edition 31st August 2017 produced for FDA by VPASU for use by forest rangers and other officers of the FDA involved with enforcing the forest laws of Liberia; Updates needed after FDA approval of Amendment to Penalties Regulation 109-07 (VPASU update March 2018). Related "Assistance to the FDA in the administrative enforcement regulation and training staff in utilizing the (…) Handbook to address non-compliances, further training to FDA LED to implement the (…) Handbook and associated Penalties and Fines Regulation" is planned (180418 Forward Planner May-June 2018, with HPA involved). As of 11/09/2018 this document is said to be still pending FDA's approval.
  Note from the IA's 2nd Six-monthly Report: Training in using the handbook was provided in Monrovia and in Gbarnga, and was facilitated by the law offices of Heritage & Partners based on engagement with DAI/VPASU. LED staff have been trained at using the above two documents, however these two documents are not considered to have been officially approved as implementing tools (though backed by the CFHP).
  Status (VPASU, 26.10.2019): still pending FDA and FDA Board approval.
  Compliance and Enforcement Handbook: drafted by VPA-SU1, pending approval (191103, VPASU),
- **Compliance Procedures to the VPA Legality Matrix Verifiers** developed by the VPASU, a "Manual containing work instructions/ operating procedures that apply to whichever agency/ organization is responsible for producing the documents/ inputs that validate all the relevant verifiers". It complements the above-mentioned LVD Manual of Procedures – As such, it also addresses the VPA requirement (Ann. II, 5.1 *inter alia*); see the review in 6.1.9.1 (SOPs). Version 1.1 December 2017: Final draft produced by VPASU pending final approval by DFID to then seek approval in next JIC[43] (VPASU update March 2018); Version 2.2 July 2018 "public, not yet endorsed". TBC
  Procedures for Legality Matrix Verifiers (cover Principles 1, 2, 3, 4, 5, 8, 11): drafted by VPA-SU1, pending approval (191103, VPASU),
- New **Guidelines for Sustainable (Community) Forest Management** are being developed by FDA/PROSPER, only for CFMAs, to be used as a template to review and approve CFMAs (not due to replace the more general Guidelines for Forest Management Planning, 2009). Early November 2019 (during the IA's Audit 4 mission) the IA was informed that (FDA) "management is right now in the field creating awareness on the new guidelines" and that "all [CFMA] projects activities are being suspended pending the piloting and approval of the new guideline which will be approved after the consultant

[43] Final draft release 26 March 2018, subject to review by SGS/LVD and DFID and to JIC approval

finally *report*"; "the new guideline seeks to *homonize* the *cutting circle* [15-year cycle used for management plans in the CFMAs?] and many more" and "is intended to strengthen existing template approved by USAID PROSPER and FDA".

#### 6.4.1.3 Applicable legal framework in the implementation and operational phases of the VPA

To understand the implications of the findings in the previous sections and be able to draw preliminary conclusions on LAS efficiency, it may be necessary to reach a better understanding of the broad timber legality assurance/ verification (LV) context and framework in Liberia under the implementation and operational (i.e. FLEGT Licensing) phases of the VPA, through being able to build and fill in the following diagram (for future attention: To be completed with the assistance of the IA Legal expert):

| | ***Current VPA implementation phase*** | ***Future VPA operational phase*** |
|---|---|---|
| Which laws are enforced? | Existing Liberian forestry legislation (see list of existing laws and regulations (L&Rs) and status of missing regulations) | Same<br>The VPA and its annexes: have the status of a binding and enforceable law in Liberia (IR, 3.3.5.3) but the Legality Matrix is enforceable where based on existing L&Rs |
| Compliance reward (for export) | Export Permit (EP)<br>Export License (EL) covered by the EP | FLEGT License for EU market<br>EP for other countries |
| Conditions | Current regime requirements for EP | VPA TLAS |
| Sanctions for incompliances | Denial of EP | Same + denial of FLEGT License (no other penalties as such under the VPA) |

## 6.4.2 Minimum cutting diameters

Status of this review: initially completed in previous reports and moved to 7.3.6.9 for archiving (with the same heading), where it has however been updated.

## 6.4.3 Current relevance of the Legality matrix / Urgent need to update and review the Legality matrix

Status of this review: considered completed in previous reports and moved for archiving in 7.3.7 (same heading), now placed in the Volume 2 of this Audit 4 report (A4R, Vol.2), where it has however been followed up on (but without significant changes to previous conclusions).

## 6.4.4 Institutional setting for effective VPA implementation; multiple conflict of interest issues for the Auditing section of the LVD and within the FDA

Status of this review: initially completed in previous reports, and moved for archiving in 7.3.8.6 (same heading), where it has however been updated.

### 6.4.5 Operator's compliance with Legality matrix requirements, assessed against the SD-01 and CFHP audit checklists

Status of this review: considered completed in previous reports, and moved for archiving in 7.3.10 (same heading), now placed in A4R, Vol.2 where it has however been followed up on (but without significant changes to previous conclusions).

### 6.4.6 Management of non-conformances under the VPA

Status of this review: considered mostly complete in previous reports, and moved for archiving in 7.3.13 (same heading), now placed in A4R, Vol.2 where it has however been followed up on (but without significant changes to previous conclusions).

### 6.4.7 FDA field inspections (Commercial Forestry Dept.)

Status of these reviews: considered completed in the previous report, and were left in A4R, Vol.2, under 7.4.1.

**6.4.7.1 Background from Audit 1**

**6.4.7.2 FDA's annual budgeting (and actual budget allocation)**

**6.4.7.3 FDA reporting and sanctioning protocols**

**6.4.7.4 Effectiveness of CFD field inspections and reporting**

### 6.4.8 Implementation of the role of Government departments, Documentation used by the Auditing section of the LVD

Status of this review: moved to under 7.3.11 (Performance of the LVD) as 7.3.11.3 (with the same heading) for archiving in the previous report. It can now be found in the Volume 2 of this Audit 4 report (A4R, Vol.2), under 7.4.6.3.

### 6.4.9 Implementation of the role of Government, Other results from auditing against the SD-01 and CFHP Audit Checklists ('Pre-felling requirements')

Status of this review: mostly completed in previous reports, and can now be found in A4R, Vol.2 under 6.4.9 (same heading – But 'Pre-felling requirements' likely to be adopted as new heading for this entire section, with the old one reused for a sub-section) as well where it has been followed up on (but without significant changes to previous conclusions).

### 6.4.10 Functionality of the COCIS software (LiberTrace)

Status of this review: now placed in A4R, Vol.2 where it has been followed up on in 6.4.10 (same heading; now moved to 7.4.7.1 for archiving) but without significant changes to previous conclusions.

### 6.4.11 Implementation of the role of Government departments, Data management by the LVD, Incorrect information loaded on LiberTrace

The first part of this review was completed in previous reports and can now be found unchanged in A4R, Vol.2 in 6.4.11 (same heading; now moved to 7.4.6.5 for archiving). The updated part of the review continues below.

*Follow-up during Audit 3 and Audit 4:*

Another potentially critical issue that was not fully investigated during the previous audits was the capture of logs in LiberTrace (LT): from a sample of 15 logs listed on a way bill of logs delivered to the logyard, the logs could be found in the logyard but not in LT, so these logs were also *not traceable back to stumps in the forest*.

Also, many abandoned logs were identified in the field at the logging contractor blocks where harvesting had been completed, but could not be traced in LT.

*FDA comment:* "Logs being at the logyard does not mean the logs are not traceable. All logs transported from the forest to the logyard carried barcodes. Additionally, operators have 30 days to declare logs into LiberTrace, and the LVD verifies the process. On the issue of abandon logs, which yardstick did the auditors used to determine that the logs are abandoned?"
*IA response:* The "30 days" rule had not yet been reviewed by the IA and this is followed on in the Audit 3 report (below). The abandoned logs were identified as such because the blocks visited were areas where harvesting had been completed, which the operator confirmed.
What's more, while barcode *tags* are used on all logs and timber products, no logs in Liberia use the barcoded number for traceability. The barcode system is not operational in the country. Traceability is only done on (alphanumerical) log numbers.
Finally, the fact that operators have 30 days to declare logs only confirms that logs are not traceable if they reach the log yard prior to being captured in LiberTrace.

It was not clear at that stage (i) when logs are captured in the system, possibly late in the process as a way to delay the payment of taxes to the last moment before logyard inspection (hence abandoned logs are not captured either)*, (ii) whether previous inspections that are due in the process were completed for these logs**, and (iii) if the full chain of custody is included in the software in due time – for example the transportation from the log yard to the port***.

**FDA comment:* "Companies are invoiced upon declaration of data into the system."
*IA response:* FDA statement is a confirmation that delaying the declaration of data into the system to the last moment, i.e. for logyard inspection just before export, also allows logging companies to defer the payment of post-harvesting taxes.

***FDA comment:* "inspections are done along the chain up to exit."
*IA response:* The IA wonders, is it realistic to state that upstream inspections are being done, especially in the current context of scarce presence of FDA inspectors in the field, before the logs are declared for logyard inspection just before export? With some possible exception for a small sample of stumps in the forest for some blocks? This issue will be followed on during the next audits (below).

****FDA comment:* "transportation is captured in the chain of custody."

*IA response:* It is not realistic to state that logs are being checked at checkpoints whereas waybills are filled in retrospectively, only when the logs are declared for logyard inspection just before export. It was already confirmed that transportation is not captured in the software from log yard to port. For future action: this issue needs to be followed on during the next audits. (below).

It had already been confirmed that the logs in the logyard are not yet in LiberTrace, only so when they are exported (meeting with EFI, March 21, 2018).

This was further investigated with SGS/LVD during Audit 3 (October 23, 2018 meeting at the FDA LVD office):

- It is again confirmed that these logs are not traceable back to stumps in the forest until they are declared in LT, and that *this is the main problem the COCS is facing*.
- The Operators have 30 days after the declared felling date to pay the stumpage (Future attention: IA to identify the related regulation).
- In practice, the felling date information is often made up (within the Annual coupe).
- The system is indeed only retrospective. There is no access to traceability data on the field; it can only be accessed through the server, later on). But the logyard is a mandatory step (logs no longer going from forest directly to port as before).
- Likewise, no non-conformities can be known before the logyard (there is no way of checking diameter, no prohibited species).
- Is there a question why this (late declaration) is accepted by SGS/LVD in the first place? SGS/LVD: Have no way of checking [/detecting that felling is declared late*]. Only if the Annual coupe is [declared] finished, LVD can block 30 days later [/block declarations after the 30 days have elapsed].
- Is it right to conclude that previous declarations and/or inspections due in the process (before export) for these late-declared logs cannot have been completed (will never be completed; or are not completed in time)?
    - SGS/LVD: No, landing inspection is not due;
    - What about post-felling inspection(s)? (See above)
    - What about waybill declaration? (Often done retrospectively; see below).
- Is it also right to conclude that, for these late-declared logs, the full chain of custody is not included in the software in due time – for example the transportation from the log landing in the forest to the company logyard near the port?
    - SGS/LVD: Yes, the chain of custody is reconstituted (retrospectively);
    - EFI: Yes, logs in reality [often/always?] circulate without the waybill[44] without control [at checkpoints, how possible?]. Waybill must [just] exist [i.e. be declared] in the COCIS [Who uploads the data, then?) between the TDF (Tree Data Form) in the forest and the logyard. [Waybill therefore also used in retrospect?]

[44] Waybills issued by SGS/LVD, taxed by booklet; carbon copies at/in origin, truck, FDA, SGS.

- Log waybill: (WB) issued by SGS/LVD, taxed by booklet; carbon copies at/in origin, truck, FDA, SGS). Is the date of the waybill reconciled in LT with the declared felling date for a log (should not be anterior)? Are the waybills checked, whether they reconstitute a credible itinerary, for the same truck?

* Tentative solutions for future attention (whether to complement and elevate MII 14 below, into a High Impact Issue):

- SGS/LVD: Dissociate felling declaration and payment of stumpage: FDA to give 20 days to declare felling, then 10 more days to pay the stumpage.
- SGS/LVD: Use the declared use of the barcode tag (which would generate an alert in case old tags have not been declared used or if tags have been declared used but no logs have been declared under those tags)?
- IA: effective checking and recording in LT of waybills through fixed or mobile checkpoints during transportation to the export logyard, and figuring out inconsistencies (felling date posterior to date at checkpoint) or abnormal delays before the felling is eventually declared (currently only for logyard inspection just before export).

  Is the date of the waybill reconciled with the declared felling date for a log (cannot be anterior)? Are the waybills checked (whether they reconstitute a credible itinerary, for the same truck)?

  Note: Retrieve IA's observations from visiting a checkpoint during Audit 1, in the Audit 1 report.
- IA: Are operators supposed to, or do they have an opportunity to, declare the logs other than for (before) logyard inspection, for example when the logs reach the logyard?
- IA: field checks of harvesting operations to detect undeclared felling of above 30 days.

  Field inspections would also capture logs that were left waiting in the forest, or effectively abandoned logs, not yet declared in LiberTrace over 30 days after (declared or estimated) felling. IA to search the regulation on abandoned timber for what it provides for in terms of declaration and taxation (including when a portion of the tree is abandonned or left waiting). SGS/LVD: Correct, if abandoned logs are not declared and not checked, they will not be taxed, implying a loss of government revenue.

  Only CFD Inspectors can detect the problem (i.e. the late declaration of log data in LT and its multiple implications), from the field. However, inspecting it more systematically (or without waiting for the felling declaration) would require a lot more staff to inspect logs and stumps in the forest. Note for future attention: Field inspections currently very scarce (i.e. very far from systematic), whereas SGS/LVD is supposed to do a sample check of 100% FDA-inspected logs and stumps in the forest? For future attention: Is it (only) the felling declaration that triggers the post-felling inspection?

**'VPASec Updates' on the 7th JIC version of the Forward Planner (FP) (February 25, 2019)**, not yet taking account of eventual 7th JIC decisions:

Regarding **Indicator 6.1** (Transportation accompanied by a **waybill**): "Documents missing in LiberTrace need to be traced and uploaded".

Note for future attention: Refers to missing waybills in LT? What should be / have been the normal procedure?

Reminder of **developments between 6th and 7th JIC** as per the FP, highlighting past and current issues regarding **Indicator 6.1** (above):

- Oct – Dec 2018 regarding **Indicator 6.1**: "According to FDA, CoC field staff does the monitoring and issue Tally booklet and the issuance of sawn timber waybill on regular basis, and the log waybill is issued by the LVD. About *Verifier 6.1.2, that requires waybills for imported timber*, it is not possible to assess this given that Liberia does not import logs or timber products at the moment.
  *The IA, based on sampling observations, observed the following: the waybills were fully completed but the logs contained on the waybill were not included in LiberTrace yet and could thus not be checked for compliance.*
  *Several illegal activities are occurring on the concession where trees are being harvested and for which no paperwork exists (illegal pit sawing, illegal community encroachment, illegal mining is occurring on a large scale)".*

  Note by the IA: The above statement in the VPASec Updates does not truthfully reflect, or fails to provide a clear reference to the exact IA's finding. See **ISSUE** raised about this (ref. **HII 35** in IA Progress DB) during Audit 4. What's more, here the alleged IA observation (second part) is not directly relevant to the Indicator being monitored.
- If logs admittedly circulate without control: is there any risk of illegitimate logs also circulating, and never registered in COCIS if processed without being declared, or if smuggled out of the country (see border control)?

For future attention: This area requires much attention. IA to describe the sequence of control on the basis of SOPs and LiberTrace functionality. Then reassess risks and issues.

So far the IA registered both an **ISSUE** (ref. **MII 14**) and a RISK (ref. **HR 6**) in the IA Progress DB about the above situation during Audit 3, now updated as follows.

| **ISSUE MII 14** |
|---|
| **Impact level**: Medium. |
| **Identified ISSUE**: It is common practice that the felling is not declared in LiberTrace until the logs are prepared for export in the export logyard, the felling date information is often made up, the logs circulate without the waybill and the COCS is only reconstituted retrospectively. Meanwhile they are not traceable back to stumps in the forest and payment of stumpage fees is delayed. In the absence of field checks by CoC Inspectors, abandoned logs may not be declared either. |
| **Recommendation(s)**: Dissociate felling declaration (within e.g. 20 days) and payment of stumpage (within e.g. 10 more days) to encourage early registration in COCS; use the declared use of the barcode tag; check waybills through fixed or |

mobile checkpoints; strengthen field checks to detect absent or late declarations of felling and abandoned logs.

| **RISK HR 6** |
|---|
| **Impact level**: High. |
| **Identified RISK factor**: "Undeclared logs can circulate without the waybill and without control" |
| **Identified RISK description**: "Illegitimate logs risk circulating and be processed undeclared or smuggled out of the country" |
| **Recommendation(s)**: "Review procedures for "near-realtime" (early) registration in COCS. Add consistency data checks in LiberTrace. Implement efficient, fixed or mobile roadchecks (for consistent tags and waybill, including physical description)". |

## 6.4.12 Review of the current issuance of Export permits

Status of this review: considered mostly completed in previous reports, and moved for archiving to the Volume 2 of this Audit 4 report (A4R Vol.2) where it can now be found under 7.5 (same heading).

## 6.4.13 Inconsistent enforcement of Legality matrix requirements / Many requirements of the Legality matrix not currently verified

Status of this review: considered mostly completed in previous reports, and moved for archiving to A4R Vol.2 where it can now be found under 7.4.12 (same heading).

## 6.4.14 Efficiency of border control

The first part of this review was completed in previous reports and can now be found in A4R Vol.2 (6.4.14, same heading). The review continues below as followed-up during Audit 4.

### 6.4.14.1 Track record of activity

See A4R Vol.2, 6.4.14.1.

### 6.4.14.2 Outcomes

See A4R Vol.2, 6.4.14.2.

*Follow-up during Audit 4:*

Further potential risks of leakage outside the COCS have been identified during Audit 4 through the 'Audit of a container loading inspection by LVD' and the 'Audit in a TSC area' (6.2.3.8 and 6.2.3.9): see below.

Potential risks related to containerized exportation (logs or processed products):

1. With an Export Permit

- Risk of collusion between LVD inspectors (two on the loading site) and the Exporter. The LED Officer who visited the site did not counter-check;
- The container is often sealed by the shipping agent at the port, not by LVD on the loading site, meaning the container goes unsealed and the content could be changed between the loading site and the port;

- And no further inspection of the container and its content takes place before export, be it by Customs or any Export Verification service provider (like SGS or BV), or anybody else (shipping agent?). This implies that the container will not be checked again after the LVD inspection.
- The B/L is therefore necessarily based on the loading details provided by the Exporter as established by/ with LVD (the source likely being the Company waybills by containers[45]), and it cannot be used to check the loading details back (unlike for lose logs loaded onto ships).

2. Without an Export Permit (therefore undeclared)

- There has been a reported incident of a container that fell from a truck heading to the port in Monrovia and revealed timber that was not registered in the LAS.
- This suggests unregistered container loads. Do Customs have a procedure to request a proper EP? Do they keep a register of EPs issued that could be (at least sample) checked? Can a forged EP or an EP issued out of LT be accepted as a "proper EP"? Have Customs access to LT? or to LT information otherwise provided by LVD?
- The 'Audit in a TSC area' (6.2.3.9) revealed a high probability that the illegal logger was always confident in the possibility to export the (illegal) logs, most likely so outside the CoC system.

A review of relevant SOPs has been moved to the end of A4R Vol.2, 6.4.14.2 since it was mostly gathered "for further attention".

### 6.4.15 Reporting on law infringement, enforcement of sanctions, and public disclosure of information

Status of this review: now placed in A4R, Vol.2 where it has been followed-up on (in 6.4.15, same heading) but without significant changes to previous conclusions.

### 6.4.16 Communication and transparency

Under this heading, a review of the publication of annual reports by the JIC has been considered completed in previous reports and was moved to under 7.4.13 (same heading) for archiving.

New evidence has now been collected regarding the broader communication and transparency issue, but only so for future attention, under 6.4.16 (same heading) in A4R, Vol.2.

### 6.4.17 Timber products that are subject to the LAS

Status of this review: considered completed in previous reports, and has been moved for archiving to under 7.4.14 (same heading), now placed in A4R, Vol.2.

## 6.5 New issues from (other) reports or complaints made known to the IA

Some reports or complaints have been used in the relevant sections of this report.

[45] According to the IA's 'Email 3' consultation with LVD

Reviews conducted in this Ch. 6.5, once completed, are to be moved to Section 7 for archiving.

### 6.5.1 Approval of Annual Operation Plan (AOP) in a CFMA

Status of this review: considered completed in the previous report; has been moved to A4R, Vol.2. for archiving under 7.4.3 Approval of Forest Management Operations (LM P4) - Pre-felling requirements, as 7.4.3.2 (same heading).

### 6.5.2 Implementation of social agreements with communities

New evidence has been collected regarding this broad issue, but only for future attention, under 6.5.2 (same heading) in A4R, Vol.2.

### 6.5.3 Suspension of Liberia from the global EITI Program

This review of the Liberia Extractive Industries Transparency Initiative (LEITI), as completed in previous reports, has been placed under 6.5.3 (same heading) in A4R Vol.2.

***Follow-up by the IA Legal expert during Audit 4*** *(with the acting head of the LEITI secretariat, another officer, and one member of the MSG)**:***

In line with what could be assumed from going through the LEITI website, the IA Legal Expert was able to confirm that LEITI completed and published all reports that were outstanding[46]. These reports along with other documentation concerning reorganization of the LEITI Governing body called the Multi-stakeholders Steering Group (MSG) has been submitted to the EITI international Board.

Early February 2020, the EITI Board was meeting in Oslo, Norway, and there were hopes they would act favorably on Liberia's request for lifting its suspension. At the time of closing this report (early March 2020), the LEITI website showed no new development in that regard.

Funding for production of the latest LEITI Reports was provided by DFID through its new program in Liberia called MFGAP, of which the HPA law firm is one of the members of the implementing consortium.

Last minute news: The EITI Board has agreed to lift Liberia's temporary suspension effective 6 March 2020 in recognition of improvement in implementation related to multi-stakeholder group (MSG) oversight (Requirement 1) and the publication of outstanding EITI Reports. Source: Africa On Line, Mar 10, 2020[47].

### 6.5.4 Issuance of Export permits

This section containing the review of one particular case (of FDA approval of Export permit against SGS/LVD recommendation) during Audit 2 can now be found in the Volume 2 of this Audit 4 report (7.5.3.2) where it has been archived.

The "review of the current issuance of Export permits" in Section 6.3.3.4/5 in this report as an agreed area of focus for Audit 4 (but not "from reports or complaints

[46] On December 30, 2019, the Liberian Government had reiterated its commitment to the full implementation of the EITI process in the Country as EITI deadline for delisting neared. The next day, the MSG approved the 10th & 11th EITI Reports for Liberia, as well as the combined 2017 and 2018 Annual Activity report and the costed 2019/2020 workplan.

[47] https://frontpageafricaonline.com/front-slider/eiti-lifts-liberias-temporary-suspension/

made known to the IA" as in this Section 6.5). Reviews already completed, however, have been moved to under Section 7.5, in Vol.2, for archiving.

# 7 PREVIOUS REVIEWS COMPLETED

This section contains reviews already completed in previous reports of the IA that were however updated during the Audit no. 4. Those that have not been updated during Audit 4 can now be found in the Volume 2 of this Audit 4 report (A4R Vol.2) for archiving under the same headings.

## 7.1 Assessment of VPA requirements

Status of this review: archived in A4R Vol.2 (same numbering and heading).

## 7.2 Risks & Issues tracking' Database [IA Progress DB]

The IA '**Progress, Risks & Issues Tracking' Database** ("IA Progress DB"), as first introduced in the Inception report (6.11) and constantly improved and updated since then, is one of the 'Tools developed and used for the baseline review' (See 5.1.1).

The IA intends to ensure that any new issue is systematically registered in the Progress DB and that any development concerning an existing issue is also uploaded for tracking purposes.

The Progress DB has been updated before submission of this Audit report, and a copy of the updated version is provided in the following pages.

## 7.2.1 Issues

| 'Progress and risks & issues tracking' Database [IA Progress DB] | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| A. ISSUES | | | | | | | | | | | |
| **Impor-tance /Priority (H/ M/ L)** | **Date of finding/ record [yymmdd]** | **Ref. no.** | **IA's latest referen-ce** | **Area / Element of the VPA/LAS** | **Origin of evidence (if not con -fidential)** | **Identified ISSUE description** | **[H/M/L Impact Issue *n* ]** | **Impact [1-3]** | **Recommen-dation(s)** | **Update of Progress, Mitigation/ Corrective measure** | **Impact of measure [-4 to +4]** |
| **H** | 170928 | HII 1 | A4R Vol.2, 7.4.1.2 | Pre-felling requirements | Audit 3 | Annual Operation Plan (AOP) and Annual coupe approved after felling took place (non-conformity by FDA) | HII 1 | **3** | Do not allow felling to take place before approval of AOP/Annual coupe | IA response: Government is taking corrective action to ensure this does not happen | To be monito-red |
| **H** | 180223 | HII 2 | A4R Vol.2, 7.3.7 | Legality matrix (VPA Annex II) | Audits 1, 2 | Legality matrix needs to be updated and reviewed | HII 2 | **3** | Proposed process (A3R, 7.4.13 in relation to HII 3) | IA response to FDA/IAWG comment on A3R: LM only being updated for CFMAs. Copy of revised LM to be provided | +1 |
| **H** | 180223 | HII 3 | A4R Vol.2, 7.4.5 | Art. 8,1a; Legality matrix | Audits 1-3 | Inconsistent enforcement of LM requirements for Export Permit and else | HII 3 | **3** | Proposed LM revision & enforcement plan | | |
| **H** | 180914 (amen-ded) | HII 4 | A4R Vol.2, 7.3.8.3 | Legality matrix, compliance | Audits 1, 2, 4 | Current log exports would not allow FLEGT Licenses to be issued | HII 4 | **3** | A gap analysis of requirements between the two standards; and a plan to raise compliance levels for export, from "Current regime" to VPA/LM requirements (before Licensing can start). | Relevant FDA/IAWG response: Activation of additional LM verifiers | To be monito-red |
| **H** | 180223 | HII 5 | A4R Vol.2, 6.4.15 | Art. 22,2d; Enforcement | Audits 1-3 | Very few sanctions being imposed on contractors for violations of forest laws and none published | HII 5 | **3** | Clarify and activate the chain of responsibilities among FDA dep'ts (inspections, reporting, enforcement of sanctions, public information) | | |
| **H** | 180223 | HII 6 | A4R Vol.2, 6.4.7.4 | FDA Commercial FD, field inspections | Audits 1-4 | FDA Commercial Forestry Dept. in field and head office not fulfilling day-to-day control (inspections, reporting, sanctioning, publishing) responsibilities | HII 6 | **3** | Increase budget allocation to CFD, including for goods and services and Capex, allowing it to fulfill the LM requirements and contribute to government self revenue generation | | |
| **H** | 180223 | HII 7 | A4R Vol.2, 6.4.9 | Pre-felling requirements | Audits 1, 2 | Regulatory steps before an operator can be allowed to start harvesting are not being followed correctly | HII 7 | **3** | Enforce all the regulatory steps before an operator is allowed to start harvesting | Ongoing forest concession review initiatives (LFSP, Presidential Review) | To be monito-red |
| **H** | 180223 | HII 8 | A4R Vol.1, 7.3.1.10; 7.3.7.3 | Ann. II, 3-4, Institutional setting, LVD | Audits 1, 2, 4 | Conflicts of interest b/w key roles of LVD/LLD and within FDA in VPA implementation | HII 8 | **3** | Transfer CoC inspections to CFD; have LVD head report to MD; until LLD is created, move final review and formal EP issuance out from CFD to above the LVD; strengthen the independent or multi-stakeholder committee (like the NMSMC) provided for in the NFRL, or a supervisory Board, to increase transparency and accountability in forest governance; mitigate CoI risks by separating out key conflicting roles | | |
| **H** | 180412 | HII 9 | A4R Vol.2, 6.5.2 | Social agreements | NUCFDC Com-plaint against ICC | Reported case of Operator's failure to meet financial and other obligations from the Social Agreement signed with the Community | HII 9 | **3** | Responsible government bodies [To Be Determined] to enforce social agreements with communities | | |

| Impor-tance /Priority (H/ M/ L) | Date of finding/ record [yymmdd] | Ref. no. | IA's latest referen-ce | Area / Element of the VPA/LAS | Origin of evidence (if not con-fidential) | Identified ISSUE description | [H/M/L Impact Issue *n* ] | Impact [1-3] | Recommen-dation(s) | Update of Progress, Mitigation/ Corrective measure | Progress ref. no. [P*n* ] | Impact of measure [-4 to +4] |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **H** | 180216 | HII 10 | A4R Vol.2, 6.5.4 | Issuance of Export permits | Audit 2 | FDA approval of Export permit against SGS/LVD evidence and recommendation | HII 10 | **3** | Ensure no export permits are granted against LVD evidence and recommendations | Cases building up | | |
| **H** | 180414 | HII 11 | A4R Vol.2, 7.3.6.8 | Legal framework relative to the LAS | Audit 2 | No evidence received of revised LVD Procedures formally approved as legally binding on forest stakeholders | HII 11 | **3** | Public consultation and FDA BOD approval of any updated version; July 2016 remains the official version | IA response to FDA/IAWG comment on A3R: Copy of Board Approval to be provided when effective | | To be monito-red |
| **H** | 180711 | HII 12 | A4R, Vol.1, 7.3.1.10 | VPA Art. 16,1; NFRL 4.2 | Audits 2 to 4 | Forest Management Advisory Committee (FMAC) currently weak, showing rare interventions and limited inputs | HII 12 | **3** | The FMAC was established and is operational, but it may need support to play its role more effectively and visibly as a needed layer of public participation in sustainable forest governance | | | |
| **H** | 180801 | HII 13 | A4R Vol.1, 6.4.1.1 | VPA Annex II, Appendix A | Audits 2 to 4 | Generally slow development of new regulations and their application to the LAS, despite some recent progress | HII 13 | **3** | Steadier development and implementation of new regulations, including through a revision of the Legality Matrix | Progress acknowledged, but five regulations still awaiting board approval and two pending EU review (now due under the new EU VPA support project) | | To be monito-red |
| **H** | 180801 | HII 14 | A4R Vol.2, 6.1.9.1 | Supporting measures | Audit 2 | Loopholes previously existed in LAS implementation between different ESPs | HII 14 | **3** | Ensure coverage of comprehensive scope by the long-term technical assistance to the LAS implementation processprocess (VPA-SU2); assemble all procedures in one single document | The question now is whether VPA-SU2 covers the entire LM scope | | |
| **H** | 180911 | HII 15 | A4R Vol.2, 7.4.3.1 | LVD Procedures | Audit 2 | Problems with CoC procedures for LVD staffs re: accuracy &/or level of implementation in the field | HII 15 | **3** | The Manual must be revised and the procedures implemented | SOP24 now (very partially) covers the loading inspection and sealing of containers | | |
| **H** | 180912 | HII 16 | A4R Vol.2, 7.4.3.2 | LVD Procedures | Audit 2 | Serious gaps in LVD procedures in respect of auditor training & qualifications and related records | HII 16 | **3** | Document and apply procedure irt LVD auditor qualifications and records | | | |
| **H** | 180912 | HII 17 | A4R Vol.2, 7.4.1.1 | Pre-felling requ'ts, CFMA MPlan | Audit 2, 4 | FDA approved a CFMA management plan based on a 15-year cutting cycle in contradiction with the Law | HII 17 | **3** | Reconsider approval of CFMA management plan(s) on such unlawful and unsustainable basis. Align the cutting cycle in CFMAs with that of FMCs (25 years) in accordance with SFM regulations | FDA working with MoJ to standardize the cutting cycle for all commercial operations (with the FMC's 25-year cutting cycle) | | To be monito-red |
| **H** | 180914 | HII 18 | A4R Vol.2, 7.4.4.4 | Issuance of Export permits | Audits 1-3 | Current log exports receiving illegitimate export permits without complying with the list of official requirements | HII 18 | **3** | Adopt a time-bound 'Current regime requirements for EP' enforcement plan, or close down the entire Liberian logging sector | | | |
| **H** | 180917 | HII 19 | A4R Vol.2, 6.4.7.2 | Facilitation of IA's work (VPA Art. 11.5) | Audits 1-3 | Failure by VPA implementation partners to respond to IA's requests for information against the provisions of the VPA | HII 19 | **3** | Ensure the IA has access to the information necessary for the performance of its functions (VPA Art. 11.5a) and auditees respond to information requests and questions | | | |
| **H** | 180400 | HII 20 | A4R Vol.2, 7.4.3.4 | LVD auditing against the CFHP | Audit 2 | LVD audit team not conducting thorough enough field audits; currently idle under Audit 4 | HII 20 | **3** | Address planning, quality and quality control issues of LVD audits | | | |

| Impor-tance /Priority (H/ M/ L) | Date of finding/ record [yymmdd] | Ref. no. | IA's latest referen-ce | Area / Element of the VPA/LAS | Origin of evidence (if not con-fidential) | Identified ISSUE description | [H/M/L Impact Issue *n* ] | Impact [1-3] | Recommen-dation(s) | Update of Progress, Mitigation/ Corrective measure | Impact of measure [-4 to +4] |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **H** | 190125 | HII 21 | A4R Vol.1, 6.2.4.2 | VPA Ann.II, App. A, LM Verifiers 2.6.2, 3.5.2, 4.2.3, 5.3.2, 5.4.2, 5.5.2, 8.6.1 | Audits 3, 4 | The role of the LED is not clearly defined, very few penalties are being enforced, and FDA is not, or inconsistently preparing Annual Compliance Audit Reports for all operators. | HII 21 | **3** | Confirm the general competence of LED in all LM Principles and confirm the key roles & responsibilities identified for LED within FDA: 1) qualify infractions and enforce all penalties; 2) act as inspectorate general, above FDA's operational departments and above LVD; 3) perform relevant compliance audits and compile the Annual Compliance Audit Reports; 4) store all evidence; 5) maintain a centralized penalty management system and public registry; and 6) assist with the Annual Enforcement Report to the Board. | | |
| **H** | 190124 | HII 22 | A4R Vol.1, 6.2.4.2 | VPA Ann.II, App. A, LM Verifiers 2.6.2, 3.5.2, 4.2.3, 5.3.2, 5.4.2, 5.5.2, 8.6.1 | Audits 3, 4 | LED currently weak, its role not clearly assigned and not effectively implemented, due to: lack of approved procedures and templates, capacity, resources, and inter-departmental communication and coordination. LED currently incapacitated within FDA to make any meaningful contribution to legality in the Liberian forest sector; and enforcement chain totally dysfunctional. | HII 22 | **3** | Ensure the responsibilities of LED are clearly assigned and recognized, and effectively implemented with approved procedures and templates, properly skilled and trained staff, and adequate budget allocation including for field inspections; plus, effective coordination across relevant FDA units, systems and levels, and with other MACs; and proper scheduling of work. | | |
| **H** | 190125 | HII 23 | A4R Vol.1, 6.2.4.2 | | Audit 3 | ISSUE HII 23 has been closed for being merged with HII 21 and HII 22 above as revised. | HII 23 | **3** | ISSUE HII 23 has been closed for being merged with HII 21 and HII 22 above as revised. | | |
| **H** | 171226 | HII 24 | A4R Vol.2, 6.2.4.3 | Public disclosure of information | FDA website | FDA website consistently down for months, not fulfilling its key communication role in support of, and even obstructing LAS and NBSTB implementation | HII 24 | **3** | Reactivate website, keep content updated, and maximize uptime; publish regular monitoring website performance reports | | |
| **H** | 190204 | HII 25 | A4R Vol.2, 6.4.9 | LM, 2.2-2.4 | Audit 3 | Missing concession documents implying ongoing non-conformances of operators to legal requirements for operating | HII 25 | **3** | Options to consider: reconstruct the missing documents, declare an amnesty for the past, or cancel the contracts | See JIC AM, FP (Relates to HII 7) | To be monito-red |
| **H** | 190205 | HII 26 | A4R Vol.1, 6.2.1.3 | LM, 5.2-5.3 | Audits 3, 4 | Unclear respective responsibilities of FDA EIA Division in the CFD and EPA, hence possible loopholes or duplications of efforts | HII 26 | **3** | Clarify the respective roles and responsibilities of FDA (EIAD) and EPA relative to EI inspections and the FDA Annual compliance reports | IA to be provided with FDA-EPA MOU as evidence that i) FDA EIA complements EPA's work and ii) responsi-bilities are clearly divided | |
| **H** | 190206 | HII 27 | A4R Vol.2, 6.2.2.2 | LM, 2.1 | Audit 3 | Unlike with CFMAs, no procedures exist to ensure that affected communities are consulted by FDA and give their prior informed consent to FMCs and TSCs | HII 27 | **3** | Ensure a consistent process is applied to meet the 'prior informed consent' requirement for affected communities in issuance of FMCs, TSCs and CFMAs | | |
| **H** | 190206 | HII 28 | A4R Vol.2, 6.2.2.3 | LM, 2.1, 3.4, 3.5 | Audit 3 | Insufficient budget for CyFD. Without proper means for field staff to operate, the other issues are contingent | HII 28 | **3** | Prepare a budget to allow CyFD to fulfill requirements in the LM, including Goods & services and Capex | | |

| Impor-tance /Priority (H/ M/ L) | Date of finding/ record [yymmdd] | Ref. no. | IA's latest referen-ce | Area / Element of the VPA/LAS | Origin of evidence (if not con-fidential) | Identified ISSUE description | [H/M/L Impact Issue *n* ] | Impact [1-3] | Recommen-dation(s) | Update of Progress, Mitigation/ Corrective measure | Progress ref. no. [P*n* ] | Impact of measure [-4 to +4] |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **H** | 190206 | HII 29 | A4R Vol.2, 6.2.5 | FDA | Audit 3 | Inability of FDA and key depts to fulfill their functions as per the LM, due to lack of funding, part. for goods & services, and to late release | HII 29 | **3** | Allow annual budgets acc. to FDA needs; clarify funding mechanism under new Local Government Act; urgent contingency plan to address priorities | | | |
| **H** | 190207 | HII 30 | A4R Vol.2, 6.5.2 | VPA Ann. II, 3.2c | Audit 3 | LVD (LiberTrace) does not currently support the Benefit sharing with communities, where it is due, by providing the calculations | HII 30 | **3** | LiberTrace to provide data for CFMAs. LVD to issue reports at block or smaller level for reconciliation. Align blocks with community areas | | | |
| **H** | 190214 | HII 31 | A4R Vol.2, 6.3.2.1 | VPA Ann. I, NFRL 13.5a | Audit 3 | Apart from logs and primary processed wood (HS Code 44.03, 07), other timber products in VPA Ann.I not enrolled in the COCS: a gap, since FLEGT licensing shall apply to them in future | HII 31 | **3** | Apply the COCS to all timber products listed in the VPA Annex I that are being exported from Liberia, including fuel wood (HS Code 4401), which also includes rubber wood chips | | | |
| **H** | 190214 | HII 32 | A4R Vol.2, 6.3.3.3 | Export permit | Audit 3 | Export permits (EPs) are being issued by FDA outside LiberTrace, without consulting with SGS/LVD, and no register is being kept by FDA of all EPs that are issued. A parallel system of issuance of EPs presents a high risk of fraudulent issuance of illegitimate permits | HII 32 | **3** | Ensure a central register is being kept in a single place and public by FDA for all export permits issued for any forest product (be it enrolled or not in the COCS), with incremental numbers. Any parallel system of Export permit issuance should be stopped | | | |
| **H** | 190215 | HII 33 | A4R Vol.1/ Vol.2, 7.3.5.9 | Minimum cutting diameters (CFHP, 2009 Guidelines) | Audits 3, 4 | A list of administrative Diameter Cutting Limits (DCLs) is currently missing in the forestry regulations of Liberia; and the scientific methodology provided in the Management Guidelines (2009) for adjusting the DCLs sustainably and through a consultation process is likely not being currently applied. | HII 33 | **3** | FDA to 1) re-issue a regulation on DCLs of general application for new forest contracts and to amend any affected existing FMC contracts; and 2) to fulfill its role and legal obligation to apply the requested methodology | | | |
| **H** | 190219 | HII 34 | A4R Vol.1 / Vol.2, 6.5.3 | LEITI, LM Indicators 11.2-3 | Audit 3 | Suspension of Liberia from EITI, due to incompliances relative to annual reporting, change of leadership, and multi-stakeholders process; preventing implementation of LM Indicators 11.2-3 | HII 34 | **3** | Liberia will be suspended from EITI until it complies with EITI Board's prescribed measures to ensure that Liberia is committed to, and implementing the EITI principles | | | |
| | 200103 | HII 35 | A4R Vol.1, 6.2.2.2 | Forward Planner | Audit 4 | Several statements in the 'VPASec Updates' (7th JIC version of the Forward Planner) refer to falsely alleged findings of the IA and fail to provide any clear reference for these findings | HII 35 | **2** | Any allusion to findings of the IA in the Forward Planner must provide a clear reference to, and truthfully reflect the exact IA's findings. | | | |

| Impor-tance /Priority (H/ M/ L) | Date of finding/ record [yymmdd] | Ref. no. | IA's latest referen-ce | Area / Element of the VPA/LAS | Origin of evidence (if not con -fidential) | Identified ISSUE description | [H/M/L Impact Issue *n* ] | Impact [1-3] | Recommen-dation(s) | Update of Progress, Mitigation/ Corrective measure | Progress ref. no. [P*n* ] | Impact of measure [-4 to +4] |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **H** | 181020 | HII 36 | A4R Vol.1, 6.2.6.1 | EPA | Audit 3 | EPA virtually unable to complete quarterly field inspections due to the lack of: resources (primarily), a clear divide of responsibilities between FDA CFD (EIAD) regarding Verifiers 5.3 and 5.4, procedures to conduct the inspections, awareness of the CFHP checklist, and training for inspectors | HII 36 | **3** | Proper budget allocation to EPA, clear division of responsibilities between FDA CFD (EIAD) regarding who should check Verifiers 5.3 and 5.4, procedures to conduct the inspections, awareness and use of the CFHP checklist, and training of EPA EIA inspectors. | | | |
| **H** | 181020 | HII 37 | A4R Vol.1, 6.2.6.2 | MoL | Audit 3 | MoL unable to complete regular field inspections of forestry operations (only office inspections), primarily due to a lack of resources. Absence/lack of: procedures and training for MOL inspectors, labor solicitor available through MOL, and officers appointed to conduct hearings in relation to labor grievances | HII 37 | **3** | That the MOL first be supplied with the necessary resources that will allow them to fulfill their responsibilities regarding inspections of all the forestry operations in the country | | | |
| | | MII 1 | | | | | MII 1 | | | Issue upgraded from medium to high impact level, under HII 24 | | |
| **M** | 180223 | MII 2 | A4R Vol.2, 7.4.3.3 | LVD documenta-tion | Audit 1, 2 | Documentation and training of LVD audit team needs updating | MII 2 | **2** | Revise LVD audit procedures, align training of audit team | | | |
| **M** | 180223 | MII 3 | A4R Vol.2, 6.4.10 | COCIS development | Audit 1, 2 | Functionality issues w/ auditing section in the COCIS software (LiberTrace) | MII 3 | **2** | Make suggested changes to the auditing section of Libertrace | | | |
| **M** | 180223 | MII 4 | A4R Vol.2, 6.4.11 | LVD COCIS data management | Audit 1, 2 | Data management issues in LiberTrace: information missing, situation not accurately qualified | MII 4 | **2** | Methodical analysis of data in LiberTrace for accurate data assessment | | | |
| **M** | 180223 | MII 5 | A4R Vol.1, 7.4.14 | VPA Art. 19,3g Communication and transparency | Audit 1, 2, 4 | No Annual reports published by the JIC for 2015 to 2019; LVD monthly reports no longer publicly available | MII 5 | **2** | Publish outstanding annual progress reports and LVD monthly reports | | | |
| **M** | 180712 | MII 6 | A4R Vol.2, 7.3.1.13 | VPA Art. 19,3e Communication and transparency | Audit 2 | Official notes missing for two of three JIC Technical Meetings (161130, 171204) | MII 6 | **2** | Publish outstanding and future notes for JIC Technical Meetings | | | |
| **M** | 180712 | MII 7 | A4R Vol.2, 7.3.1.14 | VPA Art. 19,3c, 21,3, 24,7 | Audit 1, 2 | JIC's own rules of procedure not established, not published, to incl. Arbitration | MII 7 | **2** | Establish, publish JIC's rules of procedure, to incl. Arbitration | | | |
| **M** | 190204 | MII 8 | A4R Vol.1, 6.2.1.3 | LM, 4.1 | Audit 3 | Lack of approved procedures and templates for FDA to manage the competitive concession bidding process; lack of AOP template for operators to follow, and of approved procedures for approval of AOP by FDA | MII 8 | **2** | Procedures and templates for the management of the competitive concession bidding process by FDA, AOP report template for the operators, and approval procedures and checklist for CFD (including for the CFMA Forest Management Plans) to be developed and implemented | New community forest management guidelines reportedly launched at the end of October 2019 | | To be monito-red |

| Impor-tance /Priority (H/ M/ L) | Date of finding/ record [yymmdd] | Ref. no. | IA's latest referen-ce | Area / Element of the VPA/LAS | Origin of evidence (if not con-fidential) | Identified ISSUE description | [H/M/L Impact Issue *n* ] | Impact [1-3] | Recommen-dation(s) | Update of Progress, Mitigation/ Corrective measure | Progress ref. no. [P*n* ] | Impact of measure [-4 to +4] |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **M** | 190204 | MII 9 | A4R Vol.1, 6.2.1.3 | LM, 4.2 | Audits 3, 4 | Lack of Compartment report template for operators to follow, and of approved procedures for FDA approval of Compartment plan | MII 9 | **2** | Report template and approval procedures to be developed and implemented for Compartment plan and annual blocks | FDA Management to "develop a compartment harvesting report template after 5 years" | | To be monito-red |
| **M** | 190204 | MII 10 | A4R Vol.1, 6.2.1.3 | LM, 5.2-5.3 | Audits 3, 4 | Lack of specific procedures and checklists, report templates, training, and resources for CFD EIA Division inspections, including of waste disposal | MII 10 | **2** | Prepare relevant procedures, checklists and report templates for EIAD inspectors and equip them with training in LM requirements and with adequate resources | Provide IA with evidence of FDA-EPA MOU ensuring that EIA Division of FDA complements the work of EPA, and that the responsibilities of each are clear | | |
| **M** | 190205 | MII 11 | A4R Vol.1, 6.2.1.3 | LM, 5.4 | Audit 3 | Lack of allocation in LM and procedures, checklist and of templates implemented for inspections and compliance audits of harvesting operations by FDA wrt watercourse protection | MII 11 | **2** | Allocate responsibility. Implement procedures, CFHP checklists and a report template for field inspections and compliance audits by Regional staff | Same as above | | |
| **M** | 190206 | MII 12 | A4R Vol.2, 6.5.2 | LM, 3.4 | Audit 3 | It is unclear which FDA Dept. enforces social obligations: CyFD (natural function) or CFD (better placed in-field) | MII 12 | **2** | Confirm which FDA Dept. is responsible to enforce social obligations towards communities | | | |
| **M** | 190207 | MII 13 | A4R Vol.2, 6.1.7.3 | VPA Ann. II, 3.2c | Audit 3 | COCS not currently allowing CSOs to provide LVD and others with monitoring data on operators' compliance | MII 13 | **2** | Allow CSOs/ Communities to access data, provide (counter-) evidence, file complaints/ inquiries | | | |
| **M** | 190207 | MII 14 | A4R Vol.1, 6.4.11 | VPA Ann. II, 5 (COCS) | Audit 3 | Felling commonly not declared before export, and COCS only retrospective. Mean-while, logs are not traceable back to forest and stumpage fees are not paid. In the absence of field checks by CoC Inspectors, abandonned logs may not be declared | MII 14 | **2** | Dissociate felling declaration (w/in e.g. 20 days) and payment of stumpage (w/in e.g. 10 more days) to encourage early registration in COCS; declare the use of barcode tags on new logs; check waybills through fixed or mobile checkpoints; strengthen field checks to detect absent or late declarations of felling and abandoned logs | | | |
| **M** | 190207 | MII 15 | A4R Vol.1, 6.4.11 | VPA Ann. II, 5 (COCIS) | Audit 3 | Operators not proactively updating their files in Libertrace for missing documents before ship loading | MII 15 | **2** | LVD must have a system to remind the Operators (to update the situation of the file and to do it right to avoid blocking the system) | | | |
| **M** | 190212 | MII 16 | A4R Vol.2, 6.1.9.1 | VPA Ann. II, 5.1 | Audit 3 | Confusing numbering of current LVD SOPs (vs. Manual Chapters), and between the two sets (Operators vs. LVD staff), and also with reference to previous sets | MII 16 | **2** | Renumber LVD SOPs as per the Chapters in the Manual, equally in the two sets, and provide correspondence between new and old sets | | | |
| **M** | 190213 | MII 17 | A4R Vol.2, 6.2.1.2 | Commercial Forestry Dept. (CFD) | Audit 3 | Absence of a clear organizational chart for the Commercial Forestry Department (CFD) | MII 17 | **2** | Develop an organogram specific to the CFD as a basis for quality management | | | |
| **M** | | MII 18 | A4R Vol.1/2, 6.1.7.3 | LAS verification framework | Audit 3, 4 | Confusion so far in LAS documentation regarding the different levels in the LAS Verification Framework | MII 18 | **2** | Consider implementing a more logical definition of five levels in the LAS verification framework, as recommended | | | |

| Impor-tance /Priority (H/ M/ L) | Date of finding/ record [yymmdd] | Ref. no. | IA's latest referen-ce | Area / Element of the VPA/LAS | Origin of evidence (if not con-fidential) | Identified ISSUE description | [H/M/L Impact Issue *n* ] | Impact [1-3] | Recommen-dation(s) | Update of Progress, Mitigation/ Corrective measure | Progress ref. no. [P*n* ] | Impact of measure [-4 to +4] |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **M** | | MII 19 | A4R Vol.1/2, 6.1.7.3 | LAS verification framework | Audit 3, 4 | On the basis of a clear definition of four levels in the LAS verification framework, some roles currently entrusted to LVD at Level 2 create issues | MII 19 | **3** | In particular, consider transferring Level 2 field inspections from LVD to CFD, together with the associated resources, to remove conflicts of interest issues and for more coherence in the LAS and | | | |
| **L** | 180223 | III 1 | A4R Vol.2, 7.4.7 | VPA Art. 3,2, Annex I list of products | Audit 1, 2 | Ann.I adds or omits products, compared to the EUTR, to the trade's disadvantage | III 1 | **2** | Make it consistent with the list of products in the EUTR | | | |

**Importance/Priority**? High (H): Risk severity 9-12, or Issue impact 3; Medium (M): Risk severity 5-8, or Issue impact 2; Low (L): Risk severity 1-4, or Issue impact 1.

**Reference no.**: unique Risk ref. no. or Issue ref. no.

**Element of the LAS:** describes the particular element of the LAS to which the above "Reference code no." refers.

**Date of record:** YY/MM/DD of the date the record is entered in this database.

**Origin of evidence:** an individual audit, a report, a complaint, as possible examples; and/or reference of any associated document(s).

**Identified issue:** description of the issue, in the event that an issue has been identified.

**Issue ref. no. [H/M/L Issue *n* ]:** incremental number per H/M/L Impact Issue.

**Impact [1-3]**: estimated impact of the issue, rated between 1 and 3 (highest impact).

**Update of Progress, Mitigation/ Corrective measure:** progress made, mitigation measure, or corrective measure implemented.

**Impact of measure [-4 to -4]:** estimated (negative to positive) impact of the progress or mitigation or corrective measure, if/as already implemented.

## 7.2.2 Risks

'Progress and risks & issues tracking' Database [IA Progress DB]

B. RISKS

| Impor-tance /Priority (H/ M/ L) | Date of finding/ record [yymmdd] | Ref. no. | IA's latest referen-ce | Area / Element of the VPA/LAS | Origin of evidence (if not con-fidential) | Identified RISK factor | Identified RISK description | [H/M/L Risk *n* ] | Probabi-lity [0-3] | Impact [1-4] | Seve-rity [0-12] | Recommendation(s) | Update of Progress, Mitigation/ Corrective measure | Impact of measure [-4 to +4] |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **H** | 171219 | HR 1 | A4R Vol.1, 7.3.5.8 | Legal framework relative to the LAS | Global Witness release; IA legal review | Enactment of new law in October 2017: Forest Industrial Development & Employment Regime Act (FIDERA) | That 1) deferred payments are finally waived after 3 years, on the basis of compensations that were not foreseen in the contracts, and public forest revenue is written off; and 2) contract compliance and forest law enforcement i.r.o. fiscal responsibility are undermined | HR 1 | 3 | 3 | **9** | Share an impact assessment with the stakeholders; consider reviewing the law, or assess the need to design an adaptation plan | FDA and LRA agreed there is a need to review the Act after it expires in 2020 and decide whether there is a need for a repeal or an amendment | -4 |
| **H** | 180223 | HR 2 | A4R Vol.2, 7.4.4.4 | Export permits | Audits 1-3 | EPs currently not issued based on broad legal compliance | Abusive legality claims in contexts of EUTR, other int'l timber regulations or certification | HR 2 | 3 | 3 | **9** | This limitation must be recognized and made publicly known | | |
| **H** | 180223 | HR 3 | A4R Vol.2, 7.3.9 | FLEGT licensing | Audit 1, 2, 4 | Insisting on full compliance with the totality of LM requirements as a straight condition for FLEGT licensing is likely to be both unrealistic and counter-productive | Prompting the circumvention of some requirements, or blocking the system, or fueling corruption | HR 3 | 3 | 3 | **9** | 1) Waive 'full compliance with LM' as a condition for a FLEGT License, by amending the relevant VPA annexes (incl. Annex II, Art. 6.1); and 2) Implement the provision in Annex II (Art. 6.3 - "Detail-ed guidance on [enforce-ment]"), which may include approving and implementing the Enforcement Handbook (draft, 31.08.17) | | |
| **H** | 180223 | HR 4 | A4R Vol.2, 6.4.7.4 | FDA Commercial FD, field inspections | Audits 1-4 | FDA field staff lacking critical resources, independence, management support | Demotivation; ineffective inspections, reporting and sanctioning | HR 4 | 3 | 4 | **12** | (See HII 6)<br>Increase budget allocation to CFD, including for goods and services and Capex, allowing it to fulfill the LM requirements and contribute to government self revenue generation | (See HII 6) | |
| **H** | 180704 | HR 5 | A4R Vol.2, 6.4.9 | Validity of forest contracts | 6MR2, 3.3.2.5 | Reviews of all agreements, contracts and concessions signed by/with the Government | Contracts may be terminated for non-compliance | HR 5 | 2 | 4 | **8** | GoL not to pursue cancellation where this could lead to costly and lengthy arbitration or litigation outside Liberia | Noted no cancellation is intended. | |
| **M** | 190207 | HR 6 | A4R Vol.1, 6.4.11 | VPA Ann. II, 5 (COCS) | Audit 3 | Undeclared logs can circulate without the waybill and without control | Illegitimate logs risk circulating and be processed undeclared or smuggled out of the country | HR 6 | 2 | 4 | **8** | Review procedures for early registration in COCS; add consistency data checks in LiberTrace; implement efficient, fixed or mobile roadchecks | | |

| Impor-tance /Priority (H/ M/ L) | Date of finding/ record [yymmdd] | Ref. no. | IA's latest referen-ce | Area / Element of the VPA/LAS | Origin of evidence (if not con-fidential) | Identified RISK factor | Identified RISK description | [H/M/L Risk *n*] | Probabi-lity [0-3] | Impact [1-4] | Seve-rity [0-12] | Recommendation(s) | Update of Progress, Mitigation/ Corrective measure | Impact of measure [-4 to +4] |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| M | 190207 | HR 7 | A4R Vol.2, 6.2.3.7 | LVD | Audit 3 | N/A | N/A | HR 7 | N/A | N/A | N/A | | HR 7 downgraded from high to medium, as MR 6 | |
| M | 191101 | HR 8 | A4R Vol.2, 6.2.3.2 | LVD, COCIS, LLD | Audits 2, 3, 4 | Uncertain status of the capacity handover process from SGS to GoL/FDA/LVD with: some handover activities not yet implemented (e.g. Legality Verification, monitoring of Export Permit issuance, hosting of LiberTrace servers, system support & maintenance); no new SGS-GoL agreement reached yet (only short-term); some activities not resumed yet by LVD (e.g. field audits); SGS Liberia not yet enabled to play a truly independent third-party role in EP issuance | Current LAS functioning and future success of the VPA implementation process undermined; SGS might stop supporting the LiberTrace software, while Liberia does not have the internal capacity in place yet to use, support and maintain the system at the current level; critical potential impacts, considering that the COCIS and current Export Permit issuance are essential elements of the Liberia LAS | HR 8 | 3 | 4 | **12** | Do not allow total handover until full and durable capacity exists within GoL/FDA; maintain third-party role in EP issuance; consider a Public-Private Sector partnership to support financially (possibly against forestry operators' rights to use it as their own system) the hosting, management (under third-party monitoring), and support & maintenance (through a service provider) of the LiberTrace system, thus ensuring its sustainability | | |
| M | 180223 | MR 1 | A4R Vol.2, 7.3.6.9 | Regulation on CDLs | Audits 1-3 | N/A | N/A | MR 1 | N/A | N/A | N/A | Risk re-qualified as high-impact ISSUE ref. HII 33 | N/A | N/A |
| M | 180801 | MR 2 | A4R Vol.2, 6.4.14.2 | Border control, VPA Art. 8,1b | Audits 1-3 | Harper: transshipment occurs at see from rafts of floating logs or barges to self-loading ships, left to Customs/ Police/ Marine control | Uncontrolled/Illegal loading of ships by barge or raft (w/out EP) ashore e.g. Harper (and possibly other places?) | MR 2 | 2 | 3 | **6** | VPASU capacity building of Customs/ Police/ Marine, whether resulting border control capacity is effective and reliable | | |
| M | 180801 | MR 3 | A4R Vol.2, 6.4.14.2 | Border control, VPA Art. 8,1b | Audits 1-3 | All terrestrial border crossings are not fully and permanently controlled by Customs/Police/etc. | Smuggling through unmanned border-crossings (without EP) | MR 3 | 2 | 3 | **6** | VPASU capacity building of Customs/ Police | | |
| M | 191223 | MR 4 | A4R Vol.2, 7.3.6.10 | Legal framework relative to the LAS | Audit 3 | Adoption of new Land Rights Act in Sept. 2018, strongly promoting community forestry (through CFMAs) | Negative impacts on land and forest management due to limitations in: capacity (of communities to manage the forests), areas and volumes (much smaller), duration (if reduced cutting cycles) and requirements (simplified | MR 4 | 3 | 3 | **9** | CFMAs need to be properly regulated and monitored so that logging companies do not benefit from lower regulation and taxation | | |
| M | 191223 | MR 5 | A4R Vol.2, 7.3.6.10 | Legal framework relative to the LAS | Audit 3 | Adoption of new Local Gov't Act in Sept. 2018: local governments shall now collect fees for issuance of annual business licenses and permits (including chainsaw milling); central government shall transfer to county governments the annual contributions from concessions. Coupling with Land Rights Act. | Further governance challenges for FDA/GoL: reduced control on community forest management (see MR4) and on Gov't revenue collection by the central government, fewer resources for the central budget, and uncertainty about the use of the new revenues by local governments. | MR 5 | 3 | 3 | **9** | Share an impact assessment of these two new laws with the stakeholders and assess the need to design an adaptation plan to mitigate the risks. | | |

| Impor-tance /Priority (H/ M/ L) | Date of finding/ record [yymmdd] | Ref. no. | IA's latest referen-ce | Area / Element of the VPA/LAS | Origin of evidence (if not con-fidential) | Identified RISK factor | Identified RISK description | [H/M/L Risk *n*] | Probabi-lity [0-3] | Impact [1-4] | Seve-rity [0-12] | Recommendation(s) | Update of Progress, Mitigation/ Corrective measure | Impact of measure [-4 to +4] |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **M** | 190207 | MR 6 | A4R Vol.1, 6.2.3.7 | LVD | Audits 3, 4 | LVD managers have access to operators' data in LiberTrace | Declared data used to fabricate or alter inspected data (CoC data quality issue; under-declarations) | MR 6 | 2 | 3 | **6** | Follow the SOPs for sample checking rates; Capture GPS coordinates of tree/stump with other data, or scan the barcoded tag; Or use electronic devices to secure field data capture and processing; Implement independent quality control (sample checks) of inspected CoC data from LiberTrace | | |

**Importance/Priority**? High (H): Risk severity 9-12, or Issue impact 3; Medium (M): Risk severity 5-8, or Issue impact 2; Low (L): Risk severity 1-4, or Issue impact 1.

**Reference no.**: unique Risk ref. no. or Issue ref. no.

**Element of the LAS:** describes the particular element of the LAS to which the above "Reference code no." refers.

**Date of record:** YY/MM/DD of the date the record is entered in this database.

**Origin of evidence:** an individual audit, a report, a complaint, as possible examples; and/or reference of any associated document(s).

**Identified risk factor:** an event / situation / fact that engenders risks.

**Identified risk description:** description of the risks engendered by the risk factor.

**[H/M/L Risk *n*]:** incremental Risk number per H/M/L risks.

**Probability [0-3]:** probability that the risk materializes.

**Impact [1-4]:** estimated impact on Liberian forests and people if the risk materializes, rated between 1 and 4 (highest impact).

**Severity [0-12]:** product of Probability and Impact.

**Update of Progress, Mitigation/ Corrective measure:** progress made, mitigation measure, or corrective measure implemented.

**Impact of measure [-4 to -4]:** estimated (negative to positive) impact of the progress or mitigation or corrective measure, if/as already implemented.

# 7.3 Baseline review of VPA requirements, Track record of activity

## 7.3.1 VPA Articles

#### 7.3.1.1 VPA Art. 3,1b

Status of this review: archived in A4R Vol.2 (same numbering and heading).

#### 7.3.1.2 VPA Art. 3,2

Status of this review: archived in A4R Vol.2 (same numbering and heading).

#### 7.3.1.3 VPA Art. 4,1a

Status of this review: archived in A4R Vol.2 (same numbering and heading).

#### 7.3.1.4 VPA Art. 8,1a

Status of this review: archived in A4R Vol.2 (7.3.1.5, same heading).

#### 7.3.1.5 VPA Art. 8,1e

Status of this review: archived in A4R Vol.2 (7.3.1.6, same heading).

#### 7.3.1.6 VPA Art. 8,2

Status of this review: archived in A4R Vol.2 (7.3.1.7, same heading).

#### 7.3.1.7 Art. 9,1a

Status of this review: archived in A4R Vol.2 (7.3.1.8, same heading).

#### 7.3.1.8 Art. 9,1b

Status of this review: archived in A4R Vol.2 (7.3.1.9, same heading).

#### 7.3.1.9 VPA Art. 14,2

Status of this review: archived in A4R Vol.2 (7.3.1.10, same heading).

#### 7.3.1.10 VPA Art. 16,1-3 regarding stakeholder participation

Status of this review: The first part of this review has been archived in A4R Vol.2 (7.3.1.11, same heading).

Specific research in consultation with the IA Legal Expert with regards to the role of the Forest Management Advisory Committee (FMAC) has been finalized below.

The **Forest management Advisory Committee (FMAC)** is a statutory body with defined membership and prescribed procedures for appointing its membership. Its function is to advise FDA on the National Forest management Policy provided for in Section 4.3 and the National Forest Management Strategy provided for in Section 4.4 of the NFRL 2006.

Section 4.5 (d) specifically explains the advisory role of the FMAC in the following words: “The FDA management shall offer to the public and “THE FOREST MANAGEMENT ADVISORY COMMITTEE” the “OPPORTUNITY TO COMMENT ON THE FULL DRAFT of the Report before submitting it to the Board of Directors.” This means that the FMAC has a defined role to serve as an independent body to screen and/ or advise on a forest management policy and to participate in

validating a proposed land use regarding committing a forest area to a commercial forestry, community forestry, etc.

Update as part of Audit 4: The statement made by the IA in the Audit 3 report, as well as the initial conclusion and recommendation, and the Issue HII 12 raised, are no longer valid.

The **FDA/IAWG response to the Main C&R in the Audit 3 report** rightly challenged the initial conclusions.

*Forest Management Advisory Committee was established in 2007 and is functional. The FMAC is Chaired by Rev. Dr. Isaac Chukpue- Padmore, and the Secretary is Amanda Padmore.*

*Mitigation Measure:*

*Responsible Department: Commercial Dept./SPU*

*Time Frame:*

*Reference: NFRL of 2006, section 4.2*

*Remarks: The FMAC has since been established in 2017.*

As part of the Audit 4, the IA Legal expert provided the written evidence obtained from the Chairman and the Secretary of the FMAC (after the FDA provided the contact details) supporting the functioning and support of the FMAC.

However, copies of documents obtained by the IA to demonstrate that the FMAC is currently active, like in forwarding advice on Regulations and document that FDA had earlier sent the Committee, show only rare interventions with limited inputs:

- Minutes of FMAC's 7th regular meeting held on August 2, 2011;
- Minutes of FMAC's 1st quarterly meeting held on May 2, 2015;
- Concept Note in response to a communication from the FDA MD dated June 26, 2019 on four policy documents.

The FMAC sees its role as a Technical Advisory Arm, like to review draft regulations. Is this consistent with the provisions in the NFRL (above)?

The above was not a provision for the FMAC to be consulted for example in the successive extensions of the TSC A2 (by over 10 years after the initial first 3-year term). If not, could/should another instance have been consulted in that case?

The IA's initial recommendation (above) may have been reasonable, in broad terms, but the existing FMAC cannot be expected to have *an inspectorate role in all FDA decisions and approvals against clear procedures*, in case this is what was felt to be needed.

The responsibility of the FMAC is to "advise". The next question is what exactly is it to advise on? The same law answers this question. The advisory role concerns the following:

1 National Forest management Policy

2 National Forest management Strategy

3 Regulations and Guidelines.

*There is no mention of concessions or contracts.*

The contemplation of the law seems to be that the FMAC will have a right "to comment on" the foregoing documents just as the general public would do, although their contribution is expected to be slightly technical.

The legal advice therefore was to not interpret a statutorily prescribed right or duty "to advise" and/or "to comment on" certain policy or strategic documents to be the same as *serving as a "screener" or an "oversight body" relative to operational matters such as contracts and concessions*. Likewise, *although civil society plays an independent monitoring role, it does not mean that they have a legally established right of participation in award of concessions and forest contracts*.

It is also worth mentioning that the reference to the FMAC determining the suitability of a land to commercial forest contract is not stated to be done in each case. Rather, (…) this suitability determination is to be done in advance and on a holistic basis to see whether a given forest is suitable to conservation, community or commercial forestry. Once that determination is made, the FDA may give a number of forest contracts or concessions to areas designated as suitable for commercial forestry, assuming that it is also government owned.

The conclusion therefore is that the FMAC is not required to review award of contract or their extensions.

A key reservation is with the last phrase of the initial recommendation "*so /to promote transparency and accountability in forest governance*". *The work of the FMAC is* more to make available needed technical expertise and broad stakeholders' perspectives, and *not much with creating a governance accountability mechanism*.

Hence, it is very unlikely that the FMAC will have or ever need to *play an inspectorate role in FDA decision-making*. This is not what it was intended for.

To conclude on the FMAC and stakeholder participation in the implementation and monitoring of the VPA pursuant to the VPA Art. 16,1-3:

- The FMAC has only an "advisory" role and function as reflected in its name. An advisory body has no binding role in decision making; it has only a right to be consulted and a voice to offer its opinion, which may be accepted or rejected.
- The FMAC's role is defined and delimited in the NFRL as being to advise with forest management policy and strategy, which should be differentiated from management and/or operations. In this context, it is good to see the FMAC just like civil society all of whom are required to be consulted on policy and strategy development issues/processes, but do not have an established role in decision making.
- The statement in the previous report can be slightly revised to state that the FMAC is found to be established and operational, but needs to be supported to play its role more effectively and visibly as another needed layer of public participation in sustainable forest governance."

Revised ***conclusion***: The multi-stakeholder governance of, or involvement in, the VPA implementation and monitoring processes, as requested by the VPA, is now considered complete with the Forest Management Advisory Committee (FMAC) duly established to play its independent advisory role to the FDA. However, the FMAC is rather weak, showing only rare interventions and limited inputs.

| |
|---|
| Revised **ISSUE** ref. **HII 12** in the IA Progress DB: |
| **Impact level**: High; |
| **Identified ISSUE**: Forest Management Advisory Committee (FMAC) currently weak, showing rare interventions and limited inputs; |
| **Recommendation(s)**: The FMAC is found to be established and operational, but it may need to be supported to play its role more effectively and visibly as another needed layer of public participation in sustainable forest governance. |

This research in relation to stakeholder participation and the FMAC was initiated by the IA under this section, as part of the broader governance framework and with regards to discretionary decisions by FDA Management observed in some occasions (in the context of the TSC A2 case and others).

Since it became evident that the FMAC would only play a limited role in that regard, there was an attempt by the IA to formulate a general recommendation to the JIC.

Possibly relevant language used during discussions included: the *perceived need* for a "*a governance accountability mechanism*", "*serving as a "screener" or an "oversight body" relative to operational matters such as contracts and concessions*", to "*play an inspectorate role in FDA decision-making*" including "*approvals, following clear procedures*", "*so as to promote transparency and accountability in forest governance*", and in view of the fact that "*although civil society plays an independent monitoring role, it does not mean that they have a legally established right of participation in award of concessions and forest contracts*".

It seemed a more productive approach to strengthen systems in place (within FDA and between FDA and the rest of the Government and other stakeholders) or to strengthen an existing body than to create a new one.

The latter option requires a reflection on the need, implications and practicality of any layer of decision-making or oversight besides (i) the Board of Directors which is the highest decision making body, (ii) the President of Liberia who appoints the Board and is the authorized representative of the shareholder/ Government of Liberia; and (iii) the National Multi-stakeholders Steering Committee (NMSMC), which is a good body for discussing forest governance, although with no authority above the Board.

The question, therefore, was whether the sort of oversight mechanism contemplated herein is not similar to the National stakeholders steering body or whether this or any existing body can be restructured to achieve the intended purpose. The next question might be how and by whom this body is to be constituted. Answering these questions would help better frame a recommendation.

The initial recommendation for the FMAC (to play an independent advisory role to the FDA and so promote transparency and accountability in forest governance) should be revised as follows, given the small membership of the FMAC and its limited "advisory" function:

"To strengthen the National Multi Stakeholder Monitoring Committee (NMSMC) and broaden as well as formalize its mandate and role in monitoring and reviewing

the work of duty bearers in promoting transparency and accountability in forest governance in Liberia."

This has been added to the recommendation associated with the ISSUE **HII 8**. (See the next section 7.3.7.3 Institutional setting for effective VPA implementation etc.

Technically, (a suggestion is that) this could rely on a register of all FDA management decisions and instructions made in writing, with incremental numbering, that further allowed or facilitated monitoring and control by the FDA Board of Director and third-party auditing.

Status of the following reviews: archived in A4R Vol.2 (7.3.1.12 to 7.3.1.17, same headings).

**7.3.1.11 VPA Art. 19,1-2**

**7.3.1.12 VPA Art. 19,3a, 3b, 3d, 3e, 3f, and 3g**

**7.3.1.13 VPA Art. 19,3c, Art. 21,3, and Art. 24,7**

**7.3.1.14 VPA Art. 25 and Art. 29**

**7.3.1.15 VPA Art. 26,1**

**7.3.1.16 VPA Art. 26,3**

## 7.3.2 Annex II – Introduction of Legality verification in the VPA

Status of the following reviews: archived in A4R Vol.2 (under 7.3.2, same headings).

**7.3.2.1 Relevant references in the VPA**

**7.3.2.2 Discussion**

## 7.3.3 Annex II – Introduction of the chain of custody system (COCS)

Status of the following reviews: archived in A4R Vol.2 (under 7.3.3, same headings).

**7.3.3.1 Relevant references in the VPA**

**7.3.3.2 Discussion**

## 7.3.4 Annex II – Definition and coverage of the LAS' scope

**7.3.4.1 Timber sources**

Status of this review: archived in A4R Vol.2 (under 7.3.5.3, same heading).

## 7.3.5 Annex II – Legal and regulatory framework relative to LAS implementation

**7.3.5.1 List of relevant references in the VPA**

Status of this review: archived in A4R Vol.2 (7.3.6.1, same heading).

#### 7.3.5.2 Introduction

Status of this review: archived in A4R Vol.2 (7.3.6.2, same heading).

#### 7.3.5.3 Legal framework vs. institutional & governance frameworks

The existing forest law regime in Liberia is fairly responsive to the VPA requirements. Necessary institutional arrangements are being developed, strengthened or maintained. The National Forest Reforms Law (NFRL, 2006) represents a comprehensive forest law statute that contains nearly all the legal basis for the VPA, and it has remained un-amended. Its recognition of commercial, community and conservation forest activities (the "3 Cs" – see next section) remains the legal standard in Liberia as is also the right of civil society and communities to participate in forest governance.

To ensure legality of timber, including effective traceability, the FDA is being supported to have necessary departments established, staffed and trained to undertake legality verification and issue export permits, including FLEGT licenses for timber products exported to EU countries.

A number of regulations adopted to implement the NFRL provisions and to also support VPA implementation continue to remain in force and get updated. See 6.4.1.1 where the development of new regulations is monitored.

However, during the last quarter of 2017, the Government of Liberia enacted a law by which it deferred the payment of outstanding bid premium owed by holders of forest management contracts. This law (known as FIDERA) was passed without consultations with civil society, communities and even the FDA, which represents a serious flaw in the development process of new legislation. Furthermore it has raised questions about enforcement of fiscal provision of the NFRL, contract compliance, and community rights to such taxes. Related section re: FIDERA: 6.2.6.3 LRA, Government forestry revenue collection.

**Relevant extracts from the 6th JIC (June 2018) Aide-memoire and Annex 2:**

- According to the LTA, the FIDERA does not affect the land rental fees, and logging companies are still paying land rental arrears;
- With regards to the FIDERA and its impact on the collection of tax arrears, the MD explained that *the FDA, together with other government institutions, was committed to enquiring about its origin and to revisiting it based on proper stakeholder consultations* (Introduction, 11). This is an acknowledgment of the Risk raised by the IA (below).

**Extract from the 7th JIC (Feb. 25 – March 1, 2019) Aide-memoire, on Forest Revenue Collection:**

34. … the Forestry Industrial Development and Employment Regime Act (FIDERA) expires in 2020. FDA and LRA agreed that *there is a need to review the Act and decide whether there is a need for a repeal or an amendment*.

**FDA/IAWG response to the Main C&Rs in the Audit 3 report:**

*SOFRECO did not present any evidence of this "risk" to contract compliance or provide suggested mitigating measures that FDA can respond to. This appears outside the scope of the audit and FDA proposes this be deleted from the audit report*

IA review of FDA/IAWG response:

- See 6.2.6.3 on the effects of the FIDERA on Government Revenue collection (6th and 7th JIC Aide-memoire sources).
- FIDERA was passed without consultations and *de facto* waves current contractual fiscal obligations. This is against VPA spirit that requests sound law reforms (so, definitely in the IA's scope).
- IA did recommend measures: impact assessment, adaptation plan.
- IA sees no reason to delete this from the report. Risk HR 1 shall remain open.

The IA revised the **RISK** referenced **HR 1** in its IA Progress DB, accordingly:

| **RISK HR 1** |
|---|
| **Risk level**: High; |
| **Identified RISK factor:** Enactment of new law: Forest Industrial Development & Employment Regime Act (FIDERA) in October 2017; |
| **Identified RISK description:** That 1) deferred payments are finally waived out of contract terms & conditions after 3 years, on the basis of compensations that were not foreseen in the contracts, and public forest revenue is written off; and 2) contract compliance and forest law enforcement in respect of fiscal responsibility are undermined; |
| **Recommendation(s)**: Share an impact assessment with the stakeholders; consider reviewing the law, or assess the need to design an adaptation plan; |
| **Update of Progress, Mitigation/ Corrective measure:** FDA committed to enquiring about the origin and impact of the FIDERA and to revisiting it based on proper stakeholder consultations (June 2018). Amending bill sent to the legislature, not passed. FDA and LRA still agreed there is a need to review the Act after it expires in 2020 and decide whether there is a need for a repeal or an amendment (March 2019). |

#### 7.3.5.4 Overview, as per the VPA preamble

Status of this review: archived in A4R Vol.2 (7.3.6.4, same heading).

#### 7.3.5.5 The VPA Legality Definition: an exhaustive representation, or a sub-set of Liberian law?

Status of this review: archived in A4R Vol.2 (7.3.6.5, same heading).

#### 7.3.5.6 Hierarchy of the legal and administrative texts

Status of this review: archived in A4R Vol.2 (7.3.6.6, same heading).

#### 7.3.5.7 Existing Liberian forestry legislation

Status of this review: archived in A4R Vol.2 (7.3.6.7, same heading).

#### 7.3.5.8 What it takes for an implementing text to become a by-law regulation (binding on forest stakeholders)

Status of this review: followed-up on during Audit 4 (See 7.3.6.8, in A4R Vol.2, same heading), but without significant changes to the conclusions.

#### 7.3.5.9 Minimum cutting diameters

The first part of this review, not updated during Audit 4, can be found in the Volume 2 of this Audit 4 report (7.3.6.9).

The Risk registered by the IA (ref. MR 1 in the IA Progress Database) was re-qualified as a high-impact ISSUE (ref. HII 33) for the Audit 3 report, that cutting diameters were indeed being reduced, and the 2009 Guidelines not applied, thus undermining SFM.

The review of this issue continues below as followed-up during Audit 4.

*FDA comment to the Audit 2 report (28.11.2018):* "The approved diameter cutting limit from the old CFHP to be annexed to the new CFHP document through the FDA board resolution. FDA Management does a communication to SGS/LVD with a list of Diameter Cutting Limit to be updated in the LiberTrace"
*IA response to FDA comment:* Information acknowledged. Will be added to the report and followed-up on these two actions planned by the FDA.

**FDA/IAWG response to the Main C&R in the Audit 3 report**

*The contract between the Authority and contract holders provides that the contract holders follow the Code of Forest Harvesting Practices (CFHP) and Forest Management Planning Guidelines. The FMC contract holders need to develop a strategic forest management plan. The Diameter cutting limit was included in the CFHP of 2007, and it was mistakenly excluded in the 2017 amendment. The diameter cutting limit needs to be revised based on scientific and commercial standards.*

*Mitigation Measures: The FDA is to enforce that FMC holders submit their strategic plan. Review of the Diameter Cut limit*

*Responsible Department: Commercial Dept./LVD*

*Time Frame: Pending*

*Reference: MD/084/2018/-2*

*Remarks: FMC holders to comply with letter 084 to submit strategic plan*

IA review of FDA/IAWG response:

- The IA acknowledges FDA comments that FMC contract holders must follow the Forest Management Planning Guidelines (FMPGs) of 2009 and develop a strategic forest management plan (SFMP), and that, further, the DCL needs to be revised based on a scientific methodology (for future attention, the IA is not sure this should be based on commercial standards).
- The IA also acknowledges that a letter (Ref. MD/084/2018/-2) was sent to FMC holders to submit their strategic plan.
- However, according to the FMPGs, it is the FDA that should apply the scientific methodology provided in them, during the preparation of the SFMP, for adjusting administrative DCLs, through a consultation process that may lead to keeping, decreasing, or increasing the DCL of some species in the contract area.
- The IA has not been provided with a copy of letter 084 to FMC holders to submit strategic plan. The IA has therefore no evidence that the letter was sent to all FMC holders, how the letter addressed the whole issue, and whether a letter to one or several operators was an adequate way of enforcing the DCLs as per the 2009 CFHP.
- FDA needs to further clarify how it intends to review the DCLs.

- Meanwhile Issue HII 33 shall remain open.

**Other FDA/IAWG response to the Main C&R in the Audit 3 report**

*Risk/ Issue: Minimum diameters cut limit not correctly enforced*

*Response: In the absence of the diameter cut limit stated in the Code of Forest Harvesting Practice, all Forest Management Contracts contain minimum diameter cut limit. While it is true that B6.22 states that no tree should be felled smaller than 60 centimeter at breath height section B6.23 also recognize that contract holders should adhere to the Liberian Code of Harvesting Practices. Additionally, management issued a notice on the minimum diameter cut limit and is being enforced.*

*Mitigation Measure: A letter on dbh enforcement was written to all companies. Additionally, staff are being recruited to enforce logging companies adherence to diameter cut limit.*

*Responsible: Department: Commercial Department*

*Time Frame: 2019/2020 annual operational period*

*Reference: MD/171/2018/-7*

*Remarks: Scalers have been hired to enforce dbh and measurement of the logs at the felling site and bush landings.*

Future IA action: To follow-up during the next audits and look into existing forest contracts and again in EPs issued:

- If possible, liaise with the current concession reviews to highlight this issue (the IA has not had a chance to do this).
- That Clause B6.22 in FMC contract template states that no tree should be felled smaller than 60cm at BH;
- That Clause B6.23 recognizes that contract holders should adhere to the CFHP;
- Reality and efficiency of staff (scalers) being recruited to enforce DCL;
- Meanwhile Issue HII 33 shall remain open

***Follow-up under Audit 4:***

The IA is still investigating the sequence of events since the last audit and whether the old variable cutting diameters are physically being applied in the field or whether the 60cm cutting limit is being used across the board.

SOP 10 was reviewed dated 07 May 2018 and table 9.1 and paragraph 9.2.2 both read that minimum clearfell diameter for TSC is 20 cm. As TSCs are scheduled for clearfell, the minimum diameter does not pose a significant risk to the Liberian forest legality system.

However, a point that the IA is following up upon is at what minimum tree cutting diameter the TSCs have been applying. The old SOPs do not refer to the 20cm minimum and if this has been applied, then it was incorrect since the new SOPs are not yet valid and thus implementable. This undermines the maintaining of strict procedures and implementing them only when approved in order to ensure good governance measures are maintained in Liberia.

How does LiberTrace currently implement the DCLs, also referred to as 'Minimum Felling diameters' (MCDs)?

1) Regarding the general regime:

Under TOOLS, Regulation, Approved, SPECIES (104/105):

- Reg. 107-07 was initially "Applicable from 01/01/2008 To 07/31/2016". It includes MIN. DIAM. But is probably (subject to verification) primarily aimed at providing FOB values (M3) and STUMP FEE / LOG FEE / PUP FEE %;
- '107-7 Corrected' is now 'Applicable from 01/25/2019 and shows the 'MIN. DIAM.' Of each species (60cm and above, save for a few "1" suggesting no restriction), supposedly consistent with the DCL values in the "Old Code".
- The correction and others in between are likely to have only concerned the "revised FOB unit prices" (the last one as of December 2016), with one possible exception for 'Diameter Cutting Limit' regulation 'Applicable from 01/19/2019 To 01/24/2019'.

2) For exceptions to the general regime, as applied to specific resource areas:

Under PREHARVEST, RESOURCE AREA, CONSTRAINTS WITHIN MANAGEMENT PLAN:

Text: "*The below constraints within the management plan allow defining the prohibited species and the Minimum Felling diameters (MCD) specific to the current resource area. These values, depending on the type of constraint chosen, will either replace or make stricter the values defined in the active regulation (Please note that Constraints may be changed over the time).*"

For FMCs:

- A 'Global Minimum Cutting Diameter (MCD)' value of 60 centimeters has been applied to "replace the regulation";
- 'Most [Read "More"?] restrictive values' above 60cm have then been applied for 29 species, as of a variable date (between January 24 and February 5, 2019. For future attention: the IA assumes this is consistent with the DCL values in the "Old Code";
- In 'View Details', for each species the question "Is prohibited?" is asked and, for LOP – Ekki, for example (MCD 80cm), the answer is "No". For future attention, it is not clear to the IA whether this is consistent with the guidance in the LiberTrace User's Guide (p.69) that "*If the species is prohibited in the active regulation it cannot be 'Not Prohibited' in the resource area. However a species prohibited in the resource area can be 'Not Prohibited' in the active regulations*" and what this guidance really means (same as the next sentence "*The most restrictive values between the entered values and the values of the active regulations will be used*"?).

For CFMAs:

- Same as for FMCs (where this function has been activated)

For valid TSCs:

- For the TSC A2 attributed to Tarpeh Timber Corporation, and in fact for all other active TSCs, the 'Global Minimum Cutting Diameter (MCD)' that

"replaces the regulation" is down to **40cm** for 29 species; For future attention: Is this by Law?

***Summary of findings***

The revised CFHP (May 2017) does not regulate minimum cutting diameters anymore as in the previous version of 2007 (which prescribed variable cutting diameters depending on species, but with no species less than 60 cm, to ensure a long term sustainable yield in all timber species). It had been agreed that an instruction would be adopted as a separate document (so as to avoid outdating the whole CFHP if any one of the diameters was to be changed).

Due to this void, cutting diameter limits (DCLs) were being reduced on an *ad-hoc* basis: the FDA in several known occasions applied the general 60cm rule to *all* species (instead of as an absolute minimum whereas some species should have a higher DCL, as in the old CFHP); the single limit of 60 cm was also applied in LiberTrace across the board, including for Export permits issued for species that have a DCL of 60cm or above in the old Code.

Yet, the Forest Management Planning Guidelines of 2009 (FMPGs) should have been followed since the Code, in Section 4, provides for the need to comply with them. These Guidelines define the DCL and refer to the CFHP (of 2007, necessarily) about existing DCLs. Such reference remains valid, even though the Annex on DCLs was not included in the revised Code. The FMPGs further provide a clear scientific methodology to be applied *by the FDA* during the preparation of the SFMP (Strategic Forest Management Plan) for adjusting administrative DCLs, through *a consultation process* that may lead to keeping, decreasing, or increasing the DCL of some species in the contract area.

Towards the end of 2018 and the beginning of 2019, the FDA sent comments to the IA. The FDA acknowledged (i) the mistaken exclusion of the DCLs (as in the CFHP of 2007) in the 2017 amendment, (ii) the need to revise the DCLs based on scientific and commercial standards, and (iii) that contract holders are requested to follow the CFHP and the FMPGs (and thus need to develop a SFMP). The FDA further mentioned 1) a communication to SGS/LVD with a list of DCLs to be updated in LiberTrace, 2) a letter to all FMC holders to submit their strategic plan, and 3) a notice on the minimum DCL that is being enforced for the 2019/2020 operational period (it is unclear yet to the IA whether this notice is the same as the letter). The FDA also claimed that "scalers have been hired [supposedly with the CFD] to enforce DBH and measurement of the logs at the felling site and bush landings".

For future attention, the IA still needs to be provided with evidence that the letter 084/2018/-2 was sent to all FMC holders (and/or the notice issued), how it addressed the whole issue, and whether it was an adequate way of enforcing the DCLs as per the 2009 CFHP; and also with field evidence that new staff (scalers) are effectively enforcing DCLs.

For the IA, however, it is the FDA that should apply the scientific methodology provided in the FMPGs, for adjusting the administrative DCLs during the preparation of the SFMP. The FDA also still needs to clarify how it intends to review the DCLs.

Since then, the IA has now observed how LiberTrace now does currently implement the DCLs and assumes that, for FMCs and CFMAs, it is consistent with the DCL values in the "Old Code".

***Conclusions (updated)***

As the IA found, the minimum administrative "Diameter Cutting Limits (DCLs)" are still in force, as now implemented in LiberTrace and, the FDA claims*, as newly enforced through instructions to the logging operators and added inspection capacity. This is despite the fact that the DCL list was not any more annexed to the revised CFHP (Code of Forest Harvesting Practices, May 2017).
* FDA must provide the IA with tangible evidence of these claims, for future attention.

The Code (Section 4) provides for the need to comply with the Forest Management Planning Guidelines (FMPGs) of 2009, which define and refer to the DCLs in the CFHP (2007) and also provide a methodology for *the FDA to apply* during the preparation of the Strategic Forest Management Plan (SFMP) for *adjusting administrative DCLs*, in a consultation process that may lead to *keeping, decreasing, or increasing the DCL* of some species.

The FDA comments suggest that FDA is relying only on the contract holders to develop their SFMP and to adjust the administrative DCLs. If that is confirmed, it means the FDA would not be fulfilling its role, as defined in the FMPGs, to apply the provided methodology.

A temporary conclusion is that minimum diameters are now enforced in LiberTrace, assumedly in accordance with the DCL values in the "Old Code", but that it is likely that neither the contract holders nor the FDA are currently applying the methodology provided for in the FMPGs.

***Recommendations (updated):***

FDA must provide the IA with tangible evidence for some of the claims it made that it is enforcing the Diameter Cutting Limits (DCLs) i.e. instructions to logging operators, added inspectors.

It is FDA's role and legal obligation to apply the scientific methodology provided in the Forest Management Planning Guidelines (FMPGs), for adjusting the administrative DCLs through a consultation process during the preparation of the Strategic Forest Management Plan (SFMP).

The FDA also still needs to clarify how it intends to review and regulate the DCLs that do not formally exist in any current law or regulation.

While a recommendation for the JIC is to consider supporting any FDA's effort to re-issue a regulation on DCLs of general application for new forest contracts, a review of existing forest contracts needs to look at whether there was a provision that was specific in each contract relative to the cutting diameters:

- For existing FMCs that do not have such provisions, the FDA can proceed to issue a new regulation (which will prevail if not directly contrary to the FMC);
- If an existing FMC has such a provision, the FDA can engage the FMC holder to amend the contract accordingly (which will require legislative ratification);

- For other existing forest contracts that are not subject to full ratification (TSCs, CFMAs below 50,000 hectares), an FDA regulation can lawfully amend or annul the existing forest contract.

In view of the above, the **ISSUE** (ref. **HII 33**) in the IA Progress Database has been revised as follows:

| **ISSUE HII 33** |
|---|
| **Impact level:** High |
| **Identified ISSUE:** A list of administrative Diameter Cutting Limits (DCLs) is currently missing in the forestry regulations of Liberia; and the scientific methodology provided in the Management Guidelines (2009) for adjusting the DCLs sustainably and through a consultation process is likely not being currently applied. |
| **Recommendation(s):** FDA to re-issue a regulation on DCLs of general application for new forest contracts and to amend any affected existing FMC contracts; and to fulfill its role and legal obligation to apply the requested methodology. |

#### 7.3.5.10 Land Rights Act and Local Government Act

Status of this review: completed in previous reports of the IA (from Audit 3, 6.1.1.9); and can now be found in A4R Vol.2 (7.3.6.10, same heading).

## 7.3.6 Current relevance of the Legality matrix / Urgent need to update and review the Legality matrix

Status of this review: was mostly completed in previous reports of the IA (from Audit 3, 6.4.3); can now be found in A4R Vol.2 (same numbering and heading).

## 7.3.7 Annex II – Broad institutional set-up of the LAS

This section will in future accommodate all system-based assessment aspects incl. transverse issues like CoI. For further attention of the IA: section on the establishment of each relevant FDA Dept. or other Gvt body to *in fine* include the clear mandate as per NFRL/ToR and the actual role description (if existing and different).

#### 7.3.7.1 Establishment of the Legality Verification Department (LVD)

Status of this review of the initial establishment of the LVD: was considered completed in 6.1.7.1; was therefore moved to A4R Vol.2 (7.3.8.1; same heading).

#### 7.3.7.2 Legality verification of operators working under an independent forest management certification scheme

Status of this review: considered completed in the Audit 3 report (as 6.1.7.6); can now be found in A4R Vol.2 (7.3.8.5, same heading).

#### 7.3.7.3 Institutional setting for effective VPA implementation, Multiple conflict of interest issues for the Auditing section of the LVD and within the FDA

The first part of this review has not been updated during Audit 4 and can be found in A4R Vol.2 (7.3.8.6, same heading). The review continues below, from follow-up under Audit 4.

**FDA/IAWG response to the Main C&R in the Audit 3 report**

*Issue HII 8: Potential conflicts of interests (CoI) between key roles of LVD and within FDA in VPA implementation*

*Response: There is no conflict of interest between LVD and LLD. The law is clear that the export permit function should be done by the LLD. The LLD is still in the process of being established. The FDA has requested that the VPASU-2 review and make recommendations on this issue.*

*Mitigation Measure: Establishment of the LLD, review the functions of LVD, LLD and Commercial Department*

*Responsible Department: Simulu Kamara, Jerry Yonmah, Wolfang Thoma & Shiv Panse/VPA SU-2*

*Time Frame: 1st week in October, 2019*

*Reference: Revision will take place after submission of the inception report by VPA SU-2*

*Remarks:*

IA review of FDA/IAWG response:

- Key CoI issues for LVD (and within the FDA) not addressed in the response
- Response focuses on LLD, although IA has not yet covered LLD, only issued recommendations for LLD relative to LVD, depending on options for LVD
- IA asked VPASU-2 for the outcome or status of its review of the functions of CFD, LVD and LLD and its recommendations on the issue (26.10.19 mail to VPASU-2 TL); 26.10.19 TL reply: “Not yet completed, we have a meeting next week at FDA to go over and attempt to complete this task”; 28.10.19 new mail to TL: “Kindly keep me informed of any progress with this issue”; and 07.02.20, new reminder to TL, but no reply received at the time of closing this report.
- Meanwhile, Issue HII 8 shall remain open.

***Main recommendation (revised)***:

a) CoC inspections should be transferred to the Commercial Forestry Department of the FDA (CFD). As such CFD should be a regular user of LiberTrace and should benefit from the same funding mechanism as LVD for the CoC inspections.

b) The LVD Technical manager should report directly to the MD of the FDA who will be responsible for ensuring that LVD findings are effectively and objectively addressed.

c) Until the LLD is created, the final review and formal issuance of the Export Permits should be moved out from CFD and to a place above LVD in the FDA organogram or outside the FDA.

d) Strengthen the role of the NMSMC (See 7.3.1.10) to increase transparency and accountability in forest governance as exercised by the FDA; or establish a Board with representatives from key (GoL and other) institutions to review all FDA Management and Board approvals related to or affecting law enforcement.

e) Consider **mitigating the risks of conflicts of interests** in future by **separating out the** three following **roles** in the institutional setting for VPA implementation:

   1. **Monitoring and verification** at Level 2 of government control (traceability and legality data management in COCIS, and field inspections of forest management and CoC requirements), reporting to the DMDO;

   2. **Level 3 Auditing, of the Level 2 forest sector control checks** conducted by all government bodies responsible for verification, and **recommendation** for Export permit (or FLEGT license) issuance based on overall compliance (incl. related COCIS management for Legality and Fiscality and for approval of EP issuance), reporting to the MD; and

   3. **Final approval and formal issuance of Export permits** (or FLEGT licenses) based on an **independent** decision to follow, or not, the recommendation issued under 2 above.

Further alternative options for consideration by the JIC for their respective merits:

- Assign the first role (Level 2 Monitoring and verification), as part of a merger of the current CFD and the current LVD COC inspection and data management sections, to a broader CFD (possibly renamed “LVD”, the name being in fact appropriate to concentrate all Level 2 control).
- Move the second role (current LVD Level 3 auditing/LV) out of the FDA, to another government department, such as the Ministry of Finance under the LRA for example, to give it the autonomy that it requires to fulfill its defined role in the VPA. Clearly, this would require building forestry expertise within the hosting entity where it does not currently exist and additional costs would have to be met.
- Keep the third role (licensing) assigned to the future LLD within the FDA (with the obligation to follow the decision of the auditing body) or rather merge it with the auditing unit (currently LVD) outside the FDA (possibly into a broader “LLD”, the name in fact being appropriate to concentrate auditing and licensing), under the LRA for example.

***FDA comment to the Audit 2 report (28.11.2018):*** “The above statement contradicts the VPA.”
*IA response to FDA comment:* The IA admits that implementation of the above options might constitute a departure from, and require an amendment to, the relevant annex (to be identified) in the current VPA.

*Update from Audit 4, with LRA*

There is a need to go back to the VPA, to raise the need for clear checks & balances, to the skills and oversight required, since only a strong institution can manage the challenges and withstand the pressures. For future attention: Does the VPA provide for an independent LLD or not?

Fulfilling the role of LLD (even more LVD) requires forestry expertise, which does not currently exist within LRA and would come with a cost. But where else, if not within FDA, can there be an independent LLD: under LRA or under a Board.

In an attempt to avoid creating new, additional structures (like a 5th level oversight above an independent LLD…), though, there may be a need to take into consideration the existence of two institutions that currently provide external auditing of Government bodies:

1) The General Auditing Commission, reporting to the Legislature, supported by the EU; but it would only do an annual audit and would not be involved in operations; and

2) The Internal Audit Secretariat/ Services, which could be involved at the level of FLEGT License issuance and other key approvals but would have to build a forestry unit (just like the LRA would also have to).

So, these considerations do not disqualify the above alternative options.

Note: this has to be analyzed in the context of the current FDA Administration being in favor of an autonomous institution[48].

Consulted regarding the above FDA/IAWG response that "The FDA has requested that the VPASU-2 review and make recommendations on this issue", on 26.10.2019 the VPASU-2 replied "Not yet completed, we have a meeting next week at FDA to go over and attempt to complete this task". No further update has been received despite several reminders.

This analysis initiated in the Audit 1 report had led to the recording of an **ISSUE** (ref. **HII 8**) in the IA Progress Database, now revised as follows:

| **ISSUE HII 8** (revised) |
|---|
| **Impact level:** High; |
| **Identified ISSUE:** Conflicts of interests (CoIs) between key roles of LVD and within FDA in VPA implementation; |
| **Recommendation(s):** Transfer the CoC inspections to CFD; have the LVD head report directly to the MD; until the LLD is created, move the final review and formal Export Permit issuance out from CFD to a place above LVD in the FDA; and strengthen the independent or multi-stakeholder committee provided for in the NFRL, or a supervisory Board, to increase transparency and accountability in forest governance as exercised by the FDA. In future, consider further separating out the key conflicting roles in the FDA (CFD) and outside the FDA (LVD/LLD). |

### 7.3.8 Operator's compliance with Legality matrix requirements, assessed against the SD-01 and CFHP audit checklists

Status of these reviews: considered completed in previous reports of the IA; can now be found in A4R Vol.2 (7.3.10.1 to 7.3.10.3, same headings).

[48] Newly appointed FDA Managing Director, "Reclaiming FDA's Autonomy Is A Welcomed Step" (Posted on the FDA website on February 16, 2018). This has been commented by a stakeholder as being against IMF policy in favor of unicity of budget (centralization) and also against the UN sanction committee recommendations back in 2006.

**7.3.8.1 Auditing against the SGS/LVD Audit Checklist SD 01 to assess Operator's compliance**

**7.3.8.2 Auditing against the CFHP Checklist to assess Operator's compliance**

**7.3.8.3 Combined conclusions and recommendations from both assessments (against SD 01-01 and CFHP checklists)**

The latter includes the IA's review of the related FDA/IAWG response to the Audit 3 report.

### 7.3.9 Management of non-conformances under the VPA

Status of this review: considered completed in previous reports of the IA; can now be found in A4R Vol.2 (7.3.13, same heading). It includes the IA's review of the related FDA/IAWG response to the Audit 3 report.

## 7.4 Implementation of VPA requirements

### 7.4.1 Approval of Forest Management operations (LM P4)

Status of these reviews: mostly completed in previous reports of the IA; can now be found in A4R Vol.2 (7.4.3.1, 7.4.3.2, same headings); include the IA's review of the related FDA/IAWG responses to the Audit 3 report.

**7.4.1.1 Approval of a Community Forest Management Plan in a CFMA**

**7.4.1.2 Approval of Annual Operation Plan (AOP) in a CFMA**

### 7.4.2 Social Obligations and Benefit Sharing (LM P3)

This new section has been created to receive the reviews initiated during Audit 4 in 6.5.2 (Implementation of social agreements with communities) once completed.

### 7.4.3 Performance of the Legality Verification Department (LVD)

Status of these reviews: considered completed in previous reports of the IA; can now be found archived in A4R Vol.2 (7.4.6.1 to 7.4.6.4, same headings).

**7.4.3.1 Standard operating procedures (SOPs)**

**7.4.3.2 The LVD auditing section (as of April 2018)**

**7.4.3.3 Documentation used by the Auditing section of the LVD**

**7.4.3.4 Assessment of LVD auditing against the CFHP Checklist**

### 7.4.4 Review of the current issuance of Export permits

Status of these reviews: considered completed in previous reports of the IA; can now be found archived in A4R Vol.2 (7.5.2.5, 7.5.2.6, 7.5.3.1, same headings).

**7.4.4.1 Background research**

**7.4.4.2 Follow-up**

**7.4.4.3 New evidence and findings, Export permit issuance and LVD reviews using the current regime**

**7.4.4.4 Updated conclusions and recommendations**

### 7.4.5 Inconsistent enforcement of Legality matrix requirements / Many requirements of the Legality matrix not currently verified

Status of this review: considered completed in previous reports of the IA; can now be found in A4R Vol.2 (7.4.12; same heading) where it has been archived and only slightly updated.

### 7.4.6 Communication and transparency

Status of this review: considered completed in previous reports of the IA; can now be found in A4R Vol.2 (7.4.13; same heading) where it has been archived and only slightly updated.

### 7.4.7 Timber products that are subject to the LAS

Status of this review: considered completed in previous reports of the IA; can now be found archived in A4R Vol.2 (7.4.14; same heading).

### 7.4.8 Government forestry revenue collection

This new section (7.4.15 in A4R Vol.2, still empty) will in future receive the content of reviews completed in 6.2.6.3 (LRA, Government forestry revenue collection) where possible making reference to relevant P&Is in the LM.

## 7.5 Review of the issuance of Export permits, Track record of activity'

This new section (still empty) will in future receive, in the separate Volume 2 of this Audit 4 report (A4R, Vol.2), the content of reviews completed under 6.3 (Review of the current issuance of Export permits).

# 8 APPENDIX (ANNEXES)

## 8.1 Container Loading Inspection Report 10-28-2019

This document relates to Chap. 6.2.3.8 Audit of a container loading inspection by LVD during Audit 4.

| | Quality Management System | Reference | WI-LVD-30 |
|---|---|---|---|
| | | Version | 2 |
| | | Date | 08/02/2017 |
| | Container Loading Template | Page | 1/2 |
| | | Author | Abraham Sheriff |
| | | Approved by | Simulu M. Kamara |

Trip Plan # 6065

Shipment Start Date: 25/10/2019 Shipment End Date: 28/10/2019

Contract Area: SAPL Port: Free Port of Monrovia

Total $M^3$ to be loaded: 214.107 $m^3$ Total $M^3$ Short Shipped: 12.589 $m^3$

Vessel Name: Vela Inspectors: Alexander Yongbah, Jr & Tulee Wekyee

Buyer Address: 1 Raffle place # 34-01/One Raffle Place Singapore
Singapore - Singapore

Shipment Description: Round Logs

| Export Permit No. | Specification. No | Volume Loaded ($M^3$) | Contract Area | Short Shipped listed (Running No.) |
|---|---|---|---|---|
| 2019/00696 | #00696 | 93.550 $m^3$ | SAPL | — |
| 2019/00697 | #00697 | 107.968 $m^3$ | SAPL | 18 |

Comment: The Total of 201.518 $m^3$ was loaded out of 214.107 $m^3$.
Note: The Seal # provided on the parking list are not LVD own,
The containers were Sealed by the company herself.

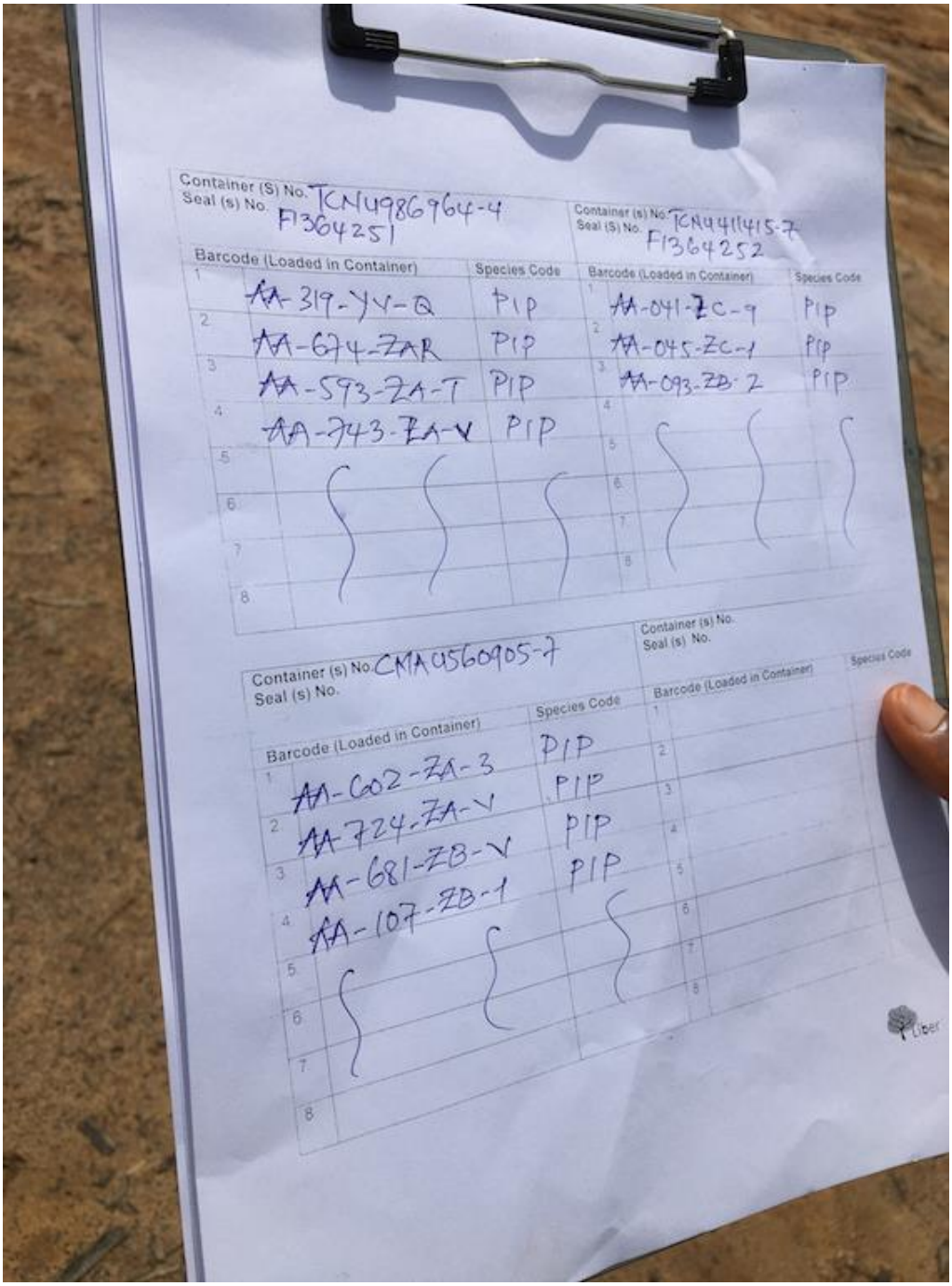
Signed: LVD CoC Lead Inspector

Approved by: LVD Operations Manager

LiberTrace

## 8.2 Filling in Container loading form by container

This document relates to Chap. 6.2.3.8 Audit of a container loading inspection by LVD during Audit 4.



# 8.3 Sing Africa Reconciliation

This document relates to Chap. 6.2.3.8 Audit of a container loading inspection by LVD during Audit 4.

Inspection Site: Freeport, Monrovia
Name Of Vessel: Container
Shipper: Amrose Singapore

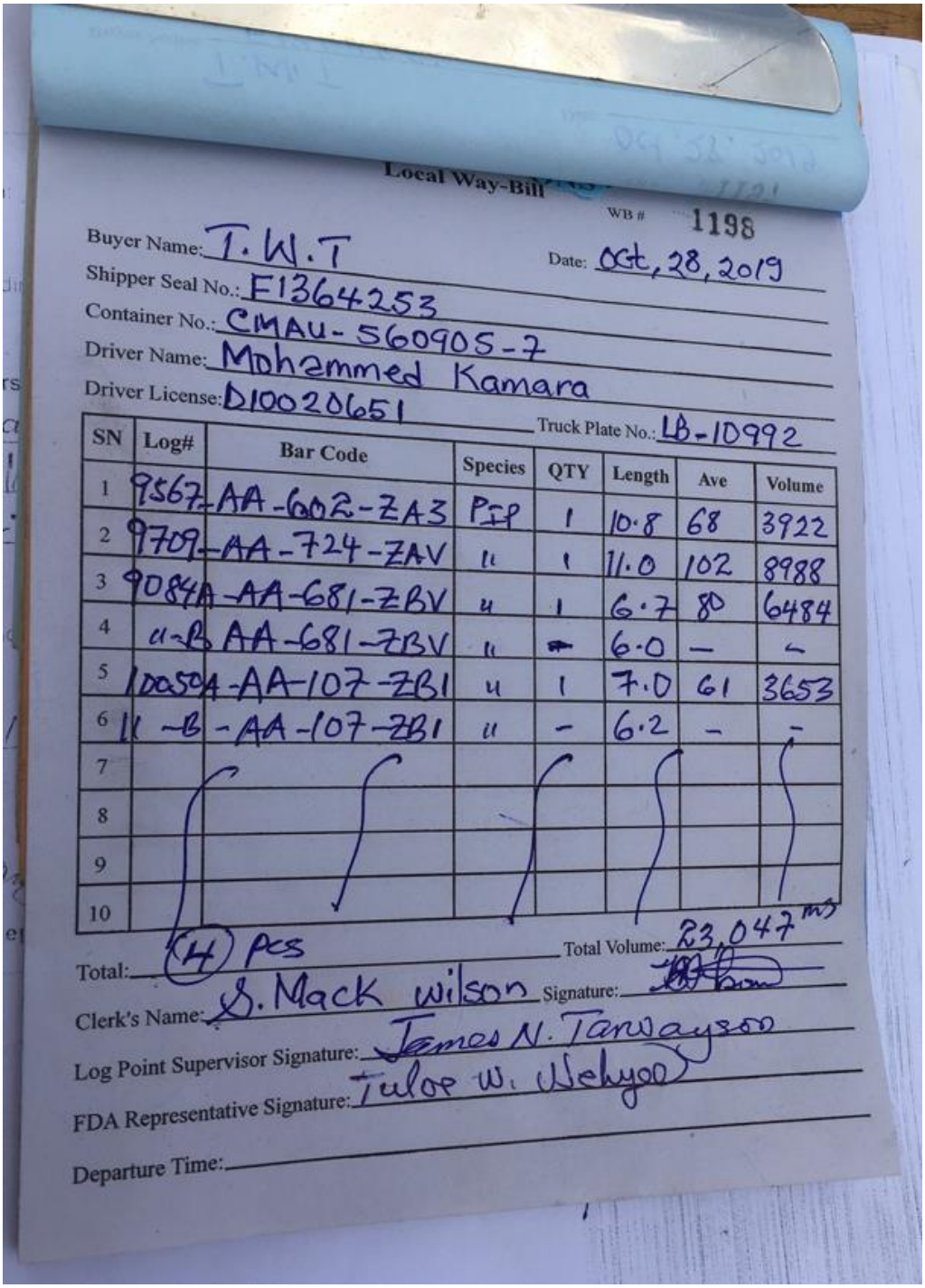
| Loading Request # | ETA | ETD | Loading Date | Export Permit # | Destination | Volume (m3) | No. of units | Species | Loaded Products: Loading Done | Loaded Products: Not Loaded | Loading report Nov-18 (Vessel: (container)): Vol. to be loaded (m3) | Loading report Nov-18 (Vessel: (container)): Volume loaded (m3) | Loading report Nov-18 (Vessel: (container)): Short Shipped (m3) | Loading report Nov-18 (Vessel: (container)): Verif | Loading report Nov-28 (Vessel: Safmarine (conta: Vol. to be loaded (m3) | Loading report Nov-28 (Vessel: Safmarine (conta: Volume loaded (m3) | Loading report Nov-28 (Vessel: Safmarine (conta: Short Shipped (m3) | Loading report Nov-28 (Vessel: Safmarine (conta: Verif | Total: Vol. to be loaded (m3) | Total: Volume loaded (m3) | Total: Short Shipped (m3) | Total: Verif |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 2018/00263 | 11.11.2018 | 11.14.2018 | 11.12.2018 | 2018/00419 | | | 55 | LOP | 55 | 0 | 415,090 | 415,090 | 0 | Ok | | | | | 415,090 | 415,090 | 0,000 | 415,090 |
| 2018/00264 | 11.12.2018 | 11.18.2018 | 11.26.2018 | 2018/00427 | | | 41 | | 34 | 7 | | | | | | | | | 0,000 | 51,019 | 0,000 | |
| 2018/00258 | 10.20.2018 | 10.31.2018 | 11.26.2018 | 2018/00428 | | | 59 | | 44 | 15 | | | | | | | | | 0,000 | 77,671 | 0,000 | |
| 2018/00265 | 11.12.2018 | 11.19.2018 | 11.12.2018 | 2018/00429 | | | 31 | ENTU, LOP | 25 | 6 | 214,542 | 168,381 | 46,161 | 46,161 | | | | | 214,542 | 168,381 | 46,161 | 168,381 |
| 2018/00269 | 11/26/2018 | 11/29/2018 | 11/26/2018 | 2018/00430 | | 764,879 | 117 | ENTU, LOP | 52 | 65 | | | | | | 373,431 | | | 0,000 | 373,431 | 0,000 | |
| 2018/00266 | 11.12.2018 | 11.19.2018 | 11/26/2018 | 2018/00432 | | 441,018 | 62 | LOP, PAR, A | 30 | 32 | | | | | | 171,873 | | | 0,000 | 171,873 | 0,000 | |
| 2018/00270 | 11/26/2018 | 11/29/2018 | 11/26/2018 | 2018/00437 | Kolkata, Indi | 132,348 | 27 | Sougue (PA | 24 | 3 | 629,632 | 583,471 | 46,161 | 583,47 | 802,795 | 794,968 | 671,967 | 130,828 | 0,000 | 120,974 | 0,000 | |
| | | | | | | | 392 | | 264 | 128 | 629,632 | 583,471 | 46,161 | 583,47 | 802,795 | 794,968 | 671,967 | 130,828 | 629,632 | **1378,439** | 46,161 | |

| Found under LR # | B/L # | Date issued | Port discharge | No. of containers | Species | No. original pieces | No. cross cut pieces | No. Pieces, total | Volume (m3) | Export Permit # (manual note) |
|---|---|---|---|---|---|---|---|---|---|---|
| 2018/00263 | 71147103A | 11.29.2018 | Macao Strait | Chittagong, Bang | 6 Azobe (LOP) | 15 | 11 | 26 | 133,299 | |
| 2018/00264; 265 | 579550159 | 11.30.2018 | San Alessio | Chittagong, Bang | 15 Azobe (LOP) | 47 | 20 | 67 | 317,870 | |
| 2018/00266; 269, 270 | 579733645 | 01.09.2019 | City of Hong K | Kolkata, India | 13 SAPELI | | | 59 | 287,980 | 427, 428, 430, 432 |
| 2018/00269 | 579838249 | 12.17.2018 | City of Hong K | Chittagong, Bang | 11 Azobe (LOP) | | | 51 | 240,531 | 430 |
| 2018/00258 | 579436210 | 12.07.2018 | Jan Ritscher | Kolkata, India | 3 SAPELI | | | 17 | 65,972 | |
| 2018/00258 | 579406225 | 12.07.2018 | Jan Ritscher | Tuticorin | 8 KEMPAS | | | 37 | 172,875 | |
| 2018/00269 | 711514418 | 12.24.2018 | Oregon Trader | Chittagong, Bang | 10 Azobe (LOP) | 34 | 2 | 36 | 212,421 | 430, 439 |
| 2018/00266 | 711471037 | 02.07.2019 | Seaspan Loga | Kolkata, India | 12 SAPELI | | | 73 | 274,284 | 432, 427, 428, 437 |
| | | | | | | 81 | 22 | 340 | **1705,232** | |

326,793

## 8.4 Company waybill

This document relates to Chap. 6.2.3.8 Audit of a container loading inspection by LVD during Audit 4.



Local Way-Bill

WB # 1198

Buyer Name: T.W.T Date: Oct, 28, 2019

Shipper Seal No.: F1364253

Container No.: CMAU-560905-7

Driver Name: Mohammed Kamara

Driver License: D10020651 Truck Plate No.: LB-10992

| SN | Log# | Bar Code | Species | QTY | Length | Ave | Volume |
|---|---|---|---|---|---|---|---|
| 1 | 9567 | AA-602-ZA3 | PIP | 1 | 10.8 | 68 | 3922 |
| 2 | 9709 | AA-724-ZAV | " | 1 | 11.0 | 102 | 8988 |
| 3 | 9084A | AA-681-ZBV | " | 1 | 6.7 | 80 | 6484 |
| 4 | " -B | AA-681-ZBV | " | - | 6.0 | - | - |
| 5 | 10050A | AA-107-ZB1 | " | 1 | 7.0 | 61 | 3653 |
| 6 | " -B | AA-107-ZB1 | " | - | 6.2 | - | - |
| 7 | | | | | | | |
| 8 | | | | | | | |
| 9 | | | | | | | |
| 10 | | | | | | | |

Total: (4) Pcs Total Volume: 23.047 m3

Clerk's Name: S. Mack Wilson Signature:

Log Point Supervisor Signature: James N. Tanyaysoo

FDA Representative Signature: Tulor W. Wehyee

Departure Time:

# 8.5 Forestry Sector Revenue

This document relates to Chap. 6.2.6.3 LRA, Government forestry revenue collection.

**FORESTRY SECTOR REVENUE**

| TAX CODE | TAX KIND | FY2017/2018 | | FY2018/2019 | |
|---|---|---|---|---|---|
| TOTAL | | 8 939 512 | % | 7 240 098 | % |
| 111126 | CIT Regular (25%)(200b2C) | | | 50 859 | |
| 111141 | WH (Res.) on salaries and wages | | | 59 556 | |
| 111142 | WH (Res.) on rent | | | 1 337 | |
| 111143 | WH (Res.) on payments for serv. rendered | | | 2 490 | |
| 114512 | Vehicle license plates | | | 10 400 | |
| 114514 | ANNUAL VEHICLE REGISTRATION STICKER | | | 4 200 | |
| 114521 | Business registration fees | | | 900 | |
| 115111 | Import duties on goods other than rice and petroleum | | | 20 694 | |
| 115114 | ECOWAS trade levy | | | 4 118 | |
| 115119 | Other import duties | | | 882 | |
| 115127 | GST on imported goods (excluding petroleum) | | | 1 785 | |
| 143212 | Admin.Penalties on CIT | | | 2 306 | |
| 143214 | Admin.Penalties on WH Residents | | | 1 385 | |
| 143218 | Admin. Penalties on Goods. Services. Excise. Licenses and other taxes | | | 31 | |
| 143222 | Admin.Interest on CIT | | | 537 | |
| 143224 | Admin.Interest on WH Residents | | | 1 758 | |
| 111111 | PIT for residents (200a) | 85 270 | | | |
| | WH (Res.) on salaries and wages | 45 303 | | | |
| 111126 | CIT Regular (25%)(200b2C) | 557 305 | | 362 496 | |
| 111131 | Presumptive (small tax) (4%)(200c) | 143 | | 1 000 | |
| 111131-RUR | RURAL Presumptive tax (200c) for small taxpayers (4%) | 58 | | 669 | |
| 111141 | WH (Res.) on rent | 2 577 | | | |
| | WH (Res.) on salaries and wages | 519 754 | | 622 407 | |
| 111142 | WH (Res.) on rent | 7 878 | | 16 026 | |
| | WH on Rent(individual) | 500 | | | |
| 111143 | WH (Res.) on payments for serv. rendered | 45 347 | | 80 925 | |
| 111144 | WH (Res.) on Interest, Dividends, Royalties, License Fees, and similar payments | 22 387 | | 99 853 | |
| 113119 | Other land use 1 acre or above (within city. town. municipal or commonwealth district) | | | 60 | |
| 113131 | Business or commercial use | 296 | | | |
| 113134 | Farm use in urban areas | | | 313 | |
| 114511 | Motorbike license plates | 100 | | 50 | |
| 114512 | Vehicle license plates | 41 431 | | 36 964 | |
| 114514 | ANNUAL VEHICLE REGISTRATION STICKER | 22 063 | | 38 776 | |
| | Annual vehicle registration stickers | 23 588 | | 356 | |
| 114519 | Other motor vehicle taxes | 275 | | 75 | |
| 114521 | Business registration fees | 17 244 | | 5 596 | |
| 114538 | Gold license fees | 10 000 | | 10 000 | |
| 115111 | Import duties on goods other than rice and petroleum | 547 253 | | 264 296 | |
| 115114 | ECOWAS trade levy | 58 515 | | 36 105 | |
| 115119 | Other import duties | 44 192 | | 148 487 | |
| 115124 | Customs user fees | 48 514 | | 598 | |
| 115126 | Customs penalties and fines | 57 921 | | 34 859 | |
| 115127 | GST on imported goods (excluding petroleum) | 861 966 | | 297 564 | |
| 115133 | Excise tax on cosmetics (imported) | 511 | | 497 | |
| 115137 | Excise tax on non-alcoholic beverages (imported) | 9 | | 23 | |
| 115149 | Excise tax on other imported goods n.e.c. | 25 733 | | | |
| 115211 | Cocoa and coffee | | | 2 625 | |
| 115219 | Other exports | | | 7 844 | |
| 141512 | Area fees (forestry - FMCs) | 31 008 | 0,3 | | - |
| 141513 | Contract administration fees (forestry - FMCs) | 1 000 | 0,0 | | - |
| 141514 | Stumpage fees GoL share (FDA regulation 107-7 section 22b) (Forestry - FMCs) | 2 530 985 | 28,3 | 2 082 915 | 28,8 |
| 141516 | Timber Export license fee (FDA regulation 107-7 section 42c) (Forestry - FMCs) | 166 892 | 1,9 | 46 269 | 0,6 |
| 141517 | Log and wood product export fee (FDA regulation 107-7 section 44-45) (Forestry - FMCs) | 2 451 698 | 27,4 | 2 324 847 | 32,1 |
| 141518 | Chain of custody management fee (GoL SGS contract. 1.4% FoB value) (Forestry - FMCs) | | - | 1 000 | 0,0 |
| 141529 | Other fees (Forestry - FMCs) | 8 500 | 0,1 | | - |
| 141531 | Area fees (Forestry - TSCs) | 300 | 0,0 | | - |
| | **Sub/total Forestry Revenues** | **5 190 383** | **58,1** | **4 455 031** | **61,5** |
| 141564 | Class C license (mineral mining) | 150 | | 113 | |
| 142102-MFA | MFA - Amendment of Articles of Incorporation | 110 | | 180 | |
| 142123-MOJ | MOJ - Private contract security accreditation | | | 2 000 | |
| 142141-NFS | NFS -Fire safety inspection fee | 85 | | 75 | |
| 142171-BIN | BIN - Resident permit (non ECOWAS) | 240 200 | | 93 904 | |
| 142172-BIN | BIN - Resident permit (ECOWAS) | 2 450 | | 2 300 | |
| 142173-BIN | BIN - Resident permit of renewal (non ECOWAS) | 33 900 | | 63 300 | |
| 142174-BIN | BIN - Resident permit of renewal (ECOWAS) | 1 400 | | 2 550 | |
| 142175-BIN | BIN - New re-entry permit (non ECOWAS) | 21 200 | | 5 800 | |
| 142176-BIN | BIN - Renewal re-entry permit (non ECOWAS) | 2 300 | | 6 200 | |
| 142179-BIN | BIN - Adjustment / change of status | 5 050 | | 4 000 | |
| 142182-BIN | BIN - Airport visas | 15 600 | | 7 600 | |
| 142183-BIN | BIN - Booklet fees | 700 | | 150 | |
| 142187-BIN | BIN - New gratis permit (non ECOWAS) | | | 1 300 | |
| 142188-BIN | BIN - Renewal gratis permit (non ECOWAS) | 100 | | 150 | |
| 142201-LBR | LBR - Domestic Incorporation filing fee | 1 040 | | 200 | |
| 142202-LBR | LBR - Authorization to do business filing fee | 500 | | | |
| 142208-LBR | LBR - Re-registration fee | 24 731 | | 36 174 | |
| 142261-MOA | MOA - Phytosanitary Certificates | 6 025 | | 8 825 | |
| 142262-MOA | MOA - Export permit (agriculture) | 50 | | 50 | |
| 142271-MOL | MOL - Regular work permit | 240 000 | | 162 000 | |
| 142272-MOL | MOL - Gratis work permit | 2 000 | | 1 200 | |
| 142273-MOL | MOL - Other work permit | 75 000 | | 110 000 | |
| 142276-MOL | MOL - Contractor License Fees | 100 | | 100 | |
| 142297-MOT | MOT - Eligibility certificates | 200 | | | |
| 142525-BIN | BIN - Other fees (Ministry of Justice: Bureau of Immigration) | 380 | | 540 | |
| 142525-FDA | FDA - Other fees and charges (Forestry Development Authority) | 20 571 | | 12 700 | |
| 142525-MOL | MOL - Other fees and charges (Ministry of Labor) | 200 | | | |
| 143129 | Other legal fines and penalties (from other government units) | | | 1 000 | |
| 143212 | Admin.Penalties on CIT | 119 | | 11 534 | |
| 143214 | Admin.Penalties on WH Residents | 5 630 | | 9 597 | |
| 143217 | Admin.Penalties on Property taxes | 224 | | 85 | |
| 143222 | Admin.Interest on CIT | 305 | | 4 705 | |
| 143224 | Admin.Interest on WH Residents | 2 599 | | 4 929 | |
| 143227 | Admin.Interest on Property taxes | 80 | | 103 | |